A Critical Reflection on the Methodology of Teaching Law to Non-law Students

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Summary

Legal education no longer exists exclusively for law students who wish to enter the legal profession. Increasingly, law components are found in many other degree programmes. However, students from other disciplines often find law uninteresting and difficult. Such negative experiences have been blamed on traditional ways of teaching law. Many have suggested that this problem could be overcome if different teaching approaches were adopted. In contrast, this paper argues that the idea that there is a direct causal link between certain ways of teaching and 'good results' is overly simplistic. It therefore critically examines some of these claims and suggests factors that should be taken into consideration including the notion of 'academic tribes', disciplinary characteristics, and 'threshold concepts'.

Contents

Introduction

The audience of legal education no longer consists exclusively of law students with a view to entering the legal profession. Increasingly, law components can be found in many degree programmes such as accountancy, social work and civil engineering. Inclusion of such modules is very often an accreditation requirement set by professional bodies. This can, for instance, be seen in the prescribed curriculum set by General Social Care Council for university's degree course in social work – one of the five key areas in which students must undertake specific learning and assessments is law (e.g. Department of Health and General Social Care Council). However, it appears that the study of law is not a popular choice for students coming from other disciplinary backgrounds. From students' module evaluation forms and general feedback, it seems that students generally struggle with law subjects. They feel overwhelmed by the amount of reading required and are often not sure how to study the subject. This can then lead to further problems in writing assignments and examinations. Moreover, it may result in them obtaining low marks and leaves both students and lecturers frustrated. Consequently, teaching law to students from other disciplines has been 'characterised as being both secondary and inferior to that teaching and those students that are found within the law school' (Bradney 1998, p 81).

The ideas contained in this article have been mainly developed through my experience of teaching business law and company law to professional, foundation, undergraduate and postgraduate accounting and business students. Accordingly, the focus of this article is on teaching law to students on business programmes. It is, however, suggested that this experience would not be any different from that of other lecturers teaching a subject to students who perceive the subject as 'secondary'. The main method of research has been an exploration of the relevant journals and books. Ideas, informed and drawn from both legal education and higher education literature, were tested in a small-scale empirical research conducted by the author.

In spring 2005, I invited second year undergraduate students on the BA Accountancy and Finance programme, and postgraduate students on MA Accountancy and Finance, to attend a focus group. In response, 14 students (13 undergraduates and 1 postgraduate) volunteered and formed two discussion groups. In order to inform the discussion, they were initially asked to complete a questionnaire to provide information about the characteristics of the group members. This was designed to elicit information concerning their perception of law, why they had chosen the programme and the challenges they faced in studying law. The discussion then proceeded to develop some of the themes arising from the questionnaires. The questions were the same for both undergraduate and postgraduate participants. In spring/summer 2006, the exercise was repeated with the next cohort of students using a slightly different methodology; 56 students (out of 115) attended a session where they were asked to complete the questionnaire. As a much larger group was present for this exercise, the discussion was more limited than in the more intimate group in the previous year.

This article is divided into four sections. After this introduction, it will briefly examine the rationale for including law in the business curriculum. Subsequently, the article will critically examine traditional ways of teaching law and the alternative approaches; finding derived from

the empirical research will also be considered. Thirdly, other factors such as approaches to problem-solving, distinct disciplinary conventions and expectations which contribute to the difficulty of learning law for non-law students will be considered. It is argued that these factors could be seen as 'threshold concepts' that students need to acquire for the purpose of learning law. The final section offers some conclusions.

The Rationale for Including Law in the Business Curriculum

The rationale for including law in the business curriculum tends to be pragmatic and utilitarian. Early business school education was strongly informed by the needs of industry; it consisted largely of descriptive treaties on existing practices in industrial settings (see e.g. Bolton 2000 and Jeuck 1986a). It therefore had a strong vocational focus and included coursework on book-keeping, filing, secretarial studies and similar subject matter. Business law, in particular, was considered as 'useful knowledge' (Jeuck 1986b). Today, the vocational focus remains the centre point of the business education and it invariably influences the areas of law that are taught to students on such programmes. Typically, the two law components are Business Law and Company Law whose contents often simulate the law syllabus set by professional bodies such as Institute of Credit Management, Chartered, Certified and Management Accountants.

The principal aim of these law modules is usually to acquire a basic understanding of how the law works and its impact on business. The intention is not to turn non-law students into lawyers but to introduce the legal environment to individuals and companies operating within it. Finally, it is thought that business practitioners should recognise the need to seek further professional legal advice where necessary. This objective is, however, not always easily achieved. Students seem to view law as a distinct area and find the various 'parts' of law and their interaction complex. As a law lecturer, I often explain to students that that law is pervasive, that 'law in its own way covers the whole range of human activity there is no side of life which it does not touch… the student of law… must appreciate the affinity of his ideas with the social, moral and economic ideas alongside of which it developed' (Gower 1950a, p 137). This view might be criticised as lawyer-centred. Nevertheless, in the context of business studies, there is a need for students to appreciate the different layers of law that apply to business and recognise the impact that changing legislation may have on a given industry.

Law Teaching

The apparent disinterest exhibited by business and other non-law students, combined with their generally less satisfactory performance in law subjects, has generated a body of literature written by legal academics on how teaching law to non-law students could be improved (see e.g. Byles & Soetendorp 2002a, and Endeshaw 2002). Offerings of this nature consist mostly of changing teaching methods and rehearsing some pedagogical methodologies. Further, early-career academics are now generally required to obtain a teaching qualification. Such courses are often of fairly generic nature and usually comes in the form of 'learning how to teach' with the claim that structuring the lectures according to certain methods would be able to solve the problems experienced by both students and lecturers (see. e.g. Race & Brown 2001a). The idea that I would be able to attract and maintain students' interest in the perceived 'secondary' subject was very appealing. However, I have become increasingly sceptical of generic and uniform approaches that ignore the disciplinary characteristics, and the legal education literature

that appears to emphasise the skills without examining theoretical aspects. The idea that there is a direct causal link between certain ways of teaching and 'good results' seems overly simplistic as this interpretation potentially ignores the interactional relationships between teachers, students and subject-matter.

Is the argument that the conventional way of teaching law is inherently unsatisfactory justified? Traditionally, legal education was delivered in the combination of large class lectures and tutorials. As a lecture is a largely uninterrupted one or two-hour address from a lecturer, the assumption with this teaching method involves an expert giving pre-packaged knowledge to students: a law lecture usually starts out with an explanation of a legal principle, followed by important cases which either set the 'precedent' for the principle and/or expanded the principle. Facts of the cases will be described and decisions made by judges will be explained.

The lecture method has often been criticised as inadequate because interaction on students' part is not usually anticipated (e.g. Biggs 2003, Bligh 1998a and Le Brun & Johnstone 1994a, p 258). The general view of a large class lecture, as the scenario described by Gower in 1950 is that 'a lecturer dashed in at five minutes past the hour, gabbled dictation until five minutes to the hour, barked forbiddingly 'any questions?' and then dashed out again.' Admittedly, the drawback of this way of teaching is that lectures could potentially be constituted by a set of lecture notes; a lecturer could be just fulfilling the function of dictating the words contained in the lecture notes. Nevertheless, there are distinct advantages with the lecture method especially in relation to legal education. Considering the large number of undergraduate students studying law, it is an effective way, both in terms of time and resources such as staffing and rooming, as information can be imparted quickly to a large group of students. More significantly, a lecture essentially provides a guide and the conceptual framework for further reading, a vital part of legal education. 'The point of lectures is not to display the teacher's learning but to encourage the student to learn' (Gower 1950b, p 199).

A very substantial literature exists in the area of improving large class teaching (see e.g. Le Brun & Johnstone 1994b, Bligh 1998b, Race & Brown 2001b and Ramsden 2004). Some general themes involve the factors of interaction, concentration span, importance of structure, and need to create 'vicarious experience', i.e. drawing on examples which relate to students' personal experience. Some of the issues, such as the importance of a well-planned and structured lecture, are valid as it enhances the teaching presented to students. But is teaching really an activity that can be mastered with a manual? With some of the more 'innovative' methods, often, the assumption is that students would be prepared and eager to interact. Factors such as students' personality, attitude and reaction have not been addressed. Some students, not just the less diligent ones, do not always want to interact and they might feel distinctly uncomfortable by drawing attention to themselves, running the risk of making 'a fool of themselves'. The traditional lecture method is preferred because students might feel protected by the anonymity offered in a large group.

Yet, legal education has always had interactive dimension. Tutorials fulfil this particular function: students are asked to read relevant authorities, prepare for the tutorial questions and come to these sessions for discussion. The nature of legal enquiry is to identify the legal issues and find an appropriate solution. A teacher's questions guide the student to an understanding of the nature and extent of his or her ignorance (Le Brun & Johnstone 1994c, p 258). Often

termed as the Socratic Method, in the form of a dialogue, it is designed to force students to think independently and help them participate in the process of analysis. As demonstrated in the US law schools, it is possible to use the Socratic Method, adjunctively with the Case Method, in a large lecture environment. The Case Method, pioneered by Langdell at Harvard in the 1870s, requires students to read the materials contained in the casebooks prepared by lecturers before coming to the lecture where students will be required to explain the cases (see e.g. Patterson 1951a, Le Brun & Johnstone 1994d, and Gower 1950c) The assumption is that students 'learn better when they participate in the teaching process through problems solving than when they are merely passive recipients of the teacher's solutions' (Patterson 1951b).

If this works well, why not design all lectures in the form of a 'large tutorial'? On the face of it, the Case Method is not much dissimilar to the 'English version' of tutorials. However, the difference is significant. The Case Method has been severely criticised as 'eristic, not dialect […] it seeks to win an argument, not to achieve a synthesis or to reach an understanding' (Wofford 1978, quoted in Le Brun & Johnstone 1994e, p 285). Patterson (1951c) went further to suggest that case method was 'a wasteful method of imparting information to students' (p 22). The US method, delivered in a large class environment, has been commented as 'awash with silent tension' (Hantzis 1988, p 156). This contrasts with small group tutorials in England; this gives students the valuable contact with lecturers and also encourages students to express their views and become involved in processes that, some students, would refrain from in a large lecture situation.

One particular approach that has already generated quite an extensive body of literature in legal education is the contextual or environmental approach (Byles & Soetendorp 2002b). It is generally regarded as the most appropriate way of teaching students from non-law disciplines by designing a context-based approach that relates to their own subject area. Following factors in relation to designing a programme for non-law students have been suggested (Byles and Soetendorp 2002c, p 145):

Knowing you own values and experiences – 'where you are coming from';

Understanding the relevant of law to the discipline that you are working on;

Identifying strategies for supporting student learning that focus on context rather than content.

This approach appealed to me initially because I believed it allowed me to draw on a variety of students' vicarious experience and understandings both in their own disciplines and personal life; hopefully it would provoke students to become more interested in law and find it more accessible. Further, historically, modules offered to business students would have been diluted versions of existing law modules developed for law students (see e.g. Broadbent 2005). Accordingly, the content might be revised to consist of a more general nature and fewer details but the structure remains very much the same. Arguably, it could result in non-law students feeling disengaged from the study of law. This led me to wonder whether instead of concentrating on legal rules, I could deconstruct and repackage the legal materials through integrating them into students' main discipline. Instead of introducing legal principles at the beginning, I asked the students to consider a scenario based on a real-life small enterprise case

study. As these are accounting and finance students, the idea is to encourage them to actively think and engage, drawing from their existing knowledge base, then provide the 'law in context' by introducing different sets of rules which will come into play in their answer.

The students' response surprised and disappointed me partly because they had difficulty understanding certain concepts which I presumed they already knew such as the meaning of a 'transaction', partly because they had difficulty applying principles that had already been taught in their own disciplines. I soon realised that there are two apparent problems with the argument for a contextual approach:

1. It is premised on the approach of *delivering* law.

2. It is made on the assumption that although business students *might* find it hard to perceive the links between law and their disciplines, they are presumed to have a *satisfactory understanding* of their own discipline and, further, an interest in expanding their knowledge.

In other words, the contextual approach presumes that the gap between legal theories, principles and their application could be bridged with accounting issues or any of the range of discipline when teaching law to non-law students.

Experience tells me something different. When asked whether they could see the link between law and their chosen course of study, all students in the spring 2005 focus group answered 'yes'. In 2006, 77% of students (43 out of 56) responded a definite '*yes*' and 11% (6 out of 56) answered '*kind of*'. The comments, provided by students who answered 'yes', were generally overwhelmingly positive with answers such as:

> '*Yes, law surrounds everything we do in life- every job, social situation, family situation, it's not just important for accounting*', '*yes, totally. Business and law is a good combination on different level such as accounting setting up a business- the rights of employees/shareholders.*'

But when I asked them whether they would have chosen company law if it were not compulsory, the aggregate answer remained less encouraging with only 27% responding '*yes*', 45% responding with a definite '*no*' and 28% with '*maybe/not sure*'.

This led me to think that the difficulty of teaching business students might have little to do with students' difficulties establishing the links between law and their own programme. Three arguments can be tentatively advanced:

1. Students are presumed to have a *satisfactory understanding* of their own discipline so the contextual link can be made. Students, however, have not yet mastered their own discipline. If the knowledge base is not there, the basis of the context falls apart.

2. It is presumed that students should have an interest in expanding their knowledge linked to their own discipline. Since some students do not even enjoy their own disciplines, it is hard to motivate them to think in context. Some students told me that

they have chosen to study a discipline that presents a promising and safe career prospect rather than one they find interesting.

3. They find reading law difficult as some students raised their view about the 'jargon' and 'too much detail and case law'.

It seems to me that teaching method is only part of the more complex issues. There may include such as the approach to problem-solving, 'languages' associated with the disciplines, style of writing and presenting, and ultimately their perception of a particular subject that need to be considered.

The Discipline of Law and its 'Threshold Concepts'

A 'discipline', conceptualised by Bourdieu, is 'an area of structural, socially patterned activity or "practice"' (Terdiman 1987a, p 805). It is organised around a body of internal protocols and assumptions, characteristic behaviours and self-sustaining values (Terdiman 1987b, 806). Learning a certain academic discipline could therefore be argued that students are acquiring 'a set of conventions that are oriented towards the status quo' (see e.g. Stallybrass, 1948, quoted in Cownie *et al*, p 153). Similar suggestions were put forward by Nissani (1995, p 122) that 'each discipline has its peculiar constellation of *distinctive components*' that would include 'methodologies, personal experiences, values and aesthetic judgments' as a discipline is 'any comparatively self-contained and isolated domain of human experience which possesses its own community of experts'. This particular notion and the related study of disciplinarity are particularly associated with Becher's 'academic tribes' (2001). The cultural roots of each discipline were developed to form a community so that all new comers would be trained to acquire the necessary language, conventions, values, and background knowledge in order for the tribal members to easily 'communicate' with each other.

As a legal academic teaching company law to business students, I often get the feeling of 'otherness' on the territory of another 'tribe'. When I attend meetings at the business school, I am treated with courtesy but there is a very distinct 'you are not one of us'. Further, from students' point of view, I have been isolated as 'the other' before teaching has even started. Is this view justified? Why would first year business students find law challenging before having any actual experience of study of law? Conversely, similar resistance and subsequent difficulty can also be witnessed when law students study a non-law subject. Very few law students at my institution choose to study a non-law option module. The lack of curiosity on part of law students is equally intriguing. Starting a new subject is always difficult. However, could it be argued that if students come to a discipline with certain assumptions, they will then interpret the content of the course in their preconceived way? Subsequently they are less willing and prepared to embrace the subject they perceive to be 'different' to their main discipline? If that is the case, what effect does their perception attribute to their learning?

First year students often tell me that they see law as a set of rules that have to be 'obeyed' and followed. The 'formality' of law seems to alienate them. This feeling of alienation is further intensified when students experience difficulty reading legal texts. A much-remarked feature of legal writing is its perceived dryness and a particular way of expressing thoughts. As Vick suggests (2004, p 168), once disciplinary boundaries were settled, each of the disciplines

evolved their own modes of 'discourse'. In part, he claims that 'the discourse is simply a matter of vocabulary' (p 167). All students have to acquire certain disciplinary vocabulary when they commence their course of study irrespective the discipline involved. But a mere acquisition of legal vocabulary is insufficient to facilitate an understanding of legal materials. A discourse cannot be reduced to vocabulary alone as it reflects modes of thought, reinforced by cultural practices and institutional frameworks, through which groups come to construct and communicate with each other.

Moreover, students are also expected to present their knowledge and understanding in a certain way in accordance with the disciplinary academic conventions. This is a common problem experienced by students who embark on degree programmes, which contain courses that do not form part of their main academic disciplines because they are often told to follow different conventions associated with given disciplines. Differences in academic conventions are actually greater than many of us appreciate. It could contribute to the lack of understanding of other disciplines – academics are usually unaware of the preferred conventions adopted by other disciplines. The language of citation and reference methods would be one example of this phenomenon. Although interchange between systems is now more common, distinct preferences and referencing style remain associated with specific disciplines used by different groups of academics. Business academic tend to use Harvard Style referencing, Chicago-style provided two systems: one for humanities and one more often used for sciences. Even the footnote referencing system used mainly by legal academics has many variations such as Oxford referencing and the Harvard Blue Book. This point might seem trivial but it increases the feeling of alienation experienced by new students of a discipline. It also influences on how students present their works. A law student's perception of 'presentation skill' is in effect very different than what a business person's interpretation of it. Many business students write their assignments in the fashion of a report which is not the desired form of a piece of legal writing. It would, however, be the acceptable format for a business assignment. The writing style, often more casual and informal is less acceptable according to the legal academic conventions.

The importance of developing skills of critical analysis of a problem is probably the most important aspect of university education. There is no doubt that all graduates should be equipped with the necessary critical and analytical skills which are essential to solve complex problems, whether these questions involved are economics, business decisions or politics. However, how a discipline adopts 'a style, a set of approaches and a mechanism of problem formation, recognition and solution' (Balkin 1996, p 5) influences our expectation of students' work. The debate around 'critical thinking' in students' essays is well documented (see, e.g. Scott 2000a and Lea & Street 1998a). As Scott commented, 'these terms, ["analyse", "argue", "discuss", and "evaluate"] frequent essay titles where they serve to encode particular modes of enquiry within particular fields of study. However, the problem is that students often fail to decipher these codes, or to grasp the meaning…'(Scott 2000b, p 277). And this seems to play an important factor in teaching law to non-law students as it would appear that business students do not seem to critically engage with legal issues. They often believe a mere recitation of facts is sufficient.

How can one address this issue? Legal language and conventions can be mastered. But the crucial ingredient of legal education is how to identify legal issues and provide the necessary analysis. We encourage students to 'think' like a lawyer by developing the ability of spotting

and analysing of issues in order to tackle a problem, identify relevant facts and give appropriate advice after considering possible arguments from both sides. The essence is that 'law is an argument not a statement, it is to be debated and discussed' (Cownie *et al* 2003, p v). It is difficult to provide a model answer for what teachers look for other than providing a list of 'ingredients': theoretical, conceptual, well-written and clearly expressed. These do not translate well into disciplines that are numeracy predominated. This difference often results in an expectation gap between students and teachers. From students' perspective, they have 'answered' the questions as the correct information has been provided; from teachers' perspective, the questions have not been 'addressed' by students, as there is no analysis of the issues other than regurgitated information.

The problem generated by this expectation gap has often been illustrated according the theory of deep and surface learning approaches by Marton and Säljö (1976): if students adopt the surface approach: they memorise all relevant cases and legislation but do not really understand the legal issues contained in the question nor understand how to apply law to the problem scenario. This invariably produces a poor piece of work that lacks critical analysis. The deep approach is that students should treat cases and legislation more than just 'text' but try to understand the underlying concerns and policies, implications and the effect; this would then enable students to engage in critical analysis. This, however, does not address the dilemma faced by students who might find legal texts inaccessible. Critics of 'deep' and 'surface' learning note that the learner frequently appears as 'an anonymous decontextualised, degendered being whose principal distinguishing characteristics are "personality" and "learning style" or "approach to learning"' (Malcolm & Zukas 2001). As with teaching methods, learning styles provide an effective way of explaining different levels of understanding achieved by students and recorded 'results' produced by students. However, this alone does not address the issue of 'expectation' nor provide further explanations as to why certain students struggle with particular concepts that others grasp with ease; nor does it provide a satisfactory description as to how students could be assisted in developing a deeper understanding of the subject matter. These factors, such as reading, specific disciplinary language, approach to problem-solving and style of writing and writing, can be labelled as 'threshold concepts' that need to be acquired by students.

Threshold concepts are defined as 'concepts that bind a subject together, being fundamental to ways of thinking and practising in that discipline' (Meyer & Land 2005a, p 1). They suggested:

> 'Once a student has internalised a threshold concept they are more able to integrate different aspects of a subject in their analysis of problems. Students who have not yet internalised a threshold concept have little option but to attempt to learn new ideas in a more fragmented fashion. On acquiring a threshold concept a student is able to transform their use of the ideas of a subject because they are now able to integrate them in their thinking. The integrative aspect of a threshold concept presents distinctive problems for learners who are studying a subject as part of their degree.' (2005b, p 1)

Accordingly, students who do not think of themselves as 'learners' of a given subject are likely to face particular difficulties in grasping 'concepts that bind together aspects of a subject that may seem quite disparate to a novice' (Meyer & Land 2005c, p 2). Unless students can grasp these threshold concepts, their understanding will remain partial and superficial. To help

students negotiate such concepts more successfully, the importance of identity and the need to engage critically with the concepts from the 'field of study' should be incorporated into the teaching.

Conclusion

This article challenged the popular view that changing teaching method and restructuring lectures alone could solve the difficulty of studying law experienced by non-law students when they have to 'switch' from discipline to discipline, either by creating a contextual link or varying teaching approaches. It argued that teaching methods only play an ancillary role. It is suggested that students should be supported in negotiating transitions between disciplines. Emphasising the lecture structure neglects the issue that students frequently fail to understand the conventions in the given discipline, and subsequently, experience great difficulties in the process of studying the subject.

Better understanding and more effective communication need to be attained between academic staff from different disciplinary background to avoid conflicting 'writing practices' (Lea & Street 1998b) and expectations. So far, little dialogue has been encouraged between different disciplines within institutions. As Hoskin and Anderson-Gough (2004, p 77) pointed out: 'what had undermined the integrative intent was the continued power of disciplinary specialisation in terms of content offered'. The logistics of launching and resourcing a module and its disciplinary 'ownership' present obstacles to a more inter/multi-disciplinary 'field of study' [Note 1]. It is suggested that a more integrative approach would help students engage effectively in the acquisition of the disciplinary concepts that underpin any given 'secondary' subject.

Note

[1] The author developed a module with three business school colleagues in summer 2005; the module itself consisted of subjects concerning migrant workers which could fit into law, business studies and economics. Although it generated a great deal of interest, one problem was finding a home for the module. It could only work with active participation from all three disciplines, but logistically, it was difficult to launch a module that would require resources from three schools. However, it did present a new dimension as to how future courses could be structured and whether or not our perception of how the structure of our degree programmes in general could be changed.

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