

Decoding the Discipline for Postgraduate Law Students

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INTRODUCTION

What do I know as a lecturer and researcher that I wish I had known when I began my postgraduate studies in law? This is the question I sought to answer when preparing to teach Legal Research and Methods to postgraduate law students. To do so, I employed the seven step framework known as 'Decoding the Disciplines'. The scholarship associated with this model emphasises the need to understand the process of learning in the particular context created by a particular discipline. Instead of focusing on the mastery of disciplinary content, lecturers' concern under this framework turns to the disciplinary nature of learning (Shulman, 1987).

There is a symmetry between the philosophy of 'decoding the disciplines' and the goals of the Legal Research and Methods module. This is a threshold module designed to bridge the divide between undergraduate and postgraduate study, to provide students with a deeper understanding of their discipline, and the skills they need to undertake their first significant piece of independent research.

Using the 'Decoding the Disciplines' framework, which is discussed in detail below, helped me to identify an important difficulty facing postgraduate law students; that is a lack of understanding of, or confidence to engage in, the twin skills of critical reading and critical thinking. Moreover, by focusing on the disciplinary nature of learning generally, and the nature of undergraduate education in law in particular, I began to understand why such a fundamental skill is lacking in many of our postgraduate students.

Before turning to the 'Decoding the Disciplines' framework and my application of it, this paper discusses a number of the key characteristics of disciplinary teaching and learning generally. It goes on to discuss the nature of teaching and learning at undergraduate level in Law, considering the particular challenges posed by our discipline which, I will argue, act as obstacles to student engagement with critical reading and thinking.

WHAT IS DISCIPLINARY TEACHING?

The objective of discipline-specific teaching is to move beyond so-called 'generic pedagogical knowledge' towards 'discipline specific pedagogical knowledge' (Berthiaume, 2009; p. 216). To explain this distinction, Berthiaume distinguishes between a knowledge base for teaching, and a discipline-specific base for teaching arguing that the knowledge base for teaching consists of a teacher's:

- a) knowledge about teaching (our understanding of skilful teaching),
- b) beliefs relating to teaching (personal, untested assumptions about teaching that guide us), and
- c) goals relating to teaching (what the teacher is trying to accomplish).

By contrast, a discipline-specific base for teaching relates to:

- a) socio-cultural characteristics of the discipline (characteristics that are social constructed through the establishment of norms, practices or rules) and,
- b) the epistemological structure of the discipline (characteristics that depend upon how the field is structured). (Berthiaume, 2009: p. 216)

At a minimum, lecturers provide their students with the required knowledge base for their subject comprising, in Shulman's terms, 'an adequate base of facts, principles and experiences from which to reason' (Shulman, 1987: p. 13). But they go further. Lecturers also provide students with a '*process* with which to think about what they are doing'. Accordingly, lecturers teach their students not only about what is *central to the subject* and what is *peripheral*, they also impart a discipline-specific mode of thinking. Shulman argues that, although it is often unconsciously done, each lecturer communicates, 'ideas about the **ways in which "truth" is determined** in a field and **a set of attitudes and values** that markedly influence student understanding' (Shulman, 1987: p. 9).

Law as a Discipline

If one considers, briefly, the development of law as an academic discipline, it becomes clearer why the nature of legal education at undergraduate level may pose challenges for those who teach law at postgraduate level. Law, as an academic discipline, is a relative newcomer to the academic canon. It was established as an independent academic discipline in the early twentieth century. Previously, legal education was wedded to training for the legal professions. The once pervasive view that the goal of legal education is to prepare students for life in professional practice never entirely died away, although its prominence has receded. Nevertheless, the influence of professional bodies is still evident in the shape and content of the undergraduate curriculum (Varnava and Webb: 2009, p. 364). Undergraduate syllabi are rightly described as 'content heavy'. This, along with what Varnava and Webb describe as the 'natural conservatism of the subject and those who teach it', ensures that traditional pedagogic approaches, persist. Accordingly, teaching is provided using the traditional lecture and tutorial format, and assessment is dominated by the closed-book exam (Varnava and Webb: 2009, p. 365). Too often, this leads to a surface approach to learning where remembering and reproducing material provided by others is rewarded and genuine critical engagement with a range of texts is not. This is an important point that I return to below, but first I will introduce the Decoding the Disciplines framework.

THE DECODING THE DISCIPLINES FRAMEWORK

The 'Decoding the Disciplines' framework emerged from the collaboration of over fifty faculty members of Indiana University in 2004 and draws from the scholarship associated with discipline-specific pedagogy. The framework can be used across disciplines because it is designed to complement other teaching and learning methods. It is not intended to be seen as a deterministic model, or to be applied in any rigid way. Instead it should be viewed as a series of questions lecturers may ask

themselves in order to systematically identify what students have difficulty learning within a given subject area, and what they really need to know.

There are seven steps within this framework. I will introduce them briefly first, before discussing each step, and my application of it, in more detail.

The seven steps encourage lecturers to pose the following questions when preparing for their classes:

1. What is the bottleneck to learning in this class?
2. How does an expert do these things?
3. How can these tasks be explicitly modelled?
4. How will students practice these skills and get feedback?
5. What will motivate students?
6. How well are students mastering these learning tasks?
7. How can the resulting knowledge about learning be shared?

To begin with the first step:

1. What is the bottleneck to learning in this class?

This very practical starting point encourages lecturers to identify difficult areas and concepts within each topic to be taught; 'the points in a course where the learning of a significant number of students is interrupted' (Middendorf and Pace, 2004: p. 4).

Bottlenecks in Legal Research and Methods:

To identify the bottlenecks to learning in my subject I began to consider the kind of education the students had experienced to date. Law students at undergraduate level learn to master a great deal of material for exam purposes. The degree to which they engage with it critically must vary, but often it appears to be fairly low. There is the desire for the one canonical textbook, that probably never completely dies, but needs to lessen over time. As Varnava and Webb argue:

... law is very content-heavy and as traditionally taught can instil a surface approach to learning where there is insufficient time to reflect on, question and analyse what is taught. (Varnava and Webb: 2009, p. 370)

It is an unfortunate but increasingly recognised fact that the heavy emphasis on the terminal exam at second level, the advent of the grind school and associated mentality, tend to lead to a high level of 'rote learning'. Although we are at pains to encourage a move away from this approach, for reasons already discussed (the strong influence of professional bodies, an overcrowded and content heavy curriculum, and traditionally conservative pedagogical approaches) I suspect it is part of the nature of law as a discipline to reward this approach at undergraduate level. In these circumstances, it is not possible to encourage too much in the way of original thought from the undergraduate law student. If this is true, then the approach to learning, mastered by students at second level, will continue to prove successful at third level.

Accordingly, the job of the undergraduate law student is to show that she has mastered a great deal of material; that is, that she has read, understood and sufficiently synthesised that material to answer exam questions well. At postgraduate level more is required and a key goal of Legal Research and Methods is to bridge the divide.

Some of the bottlenecks students experience when embarking on the Legal Research and Methods include:

- i. Poor understanding of where the goalposts lie now that they have moved to postgraduate study: just how much is expected?
- ii. A fear of methodology: many students view it as unfamiliar and difficult terrain; and
- iii. Lack of experience of critical reading and critical thinking.

Fear of methodology can be overcome by clear and sympathetic instruction. As already indicated, it is the students' lack of experience of critical reading and critical thinking that I will focus on today. It relates well to the first point, because as students learn more about critical engagement with a variety of texts they begin to get a sense of where the goalposts lie in postgraduate work.

Having identified the bottlenecks associated with this module I move on to step two.

2. How does an expert do these things?

This question engages ideas about the disciplinary nature of learning discussed above. It encourages lecturers to remember how unfamiliar the new material provided may appear to the students. It also highlights how unfamiliar the correct mode of address to that material may be.

Step 2 has been found to be the most challenging of all the steps. It requires 'metacognition'. This means that, as lecturers, we must dissect our own thinking patterns, which is very challenging; not least because research now demonstrates that modes of both thinking and problem solving differ greatly across the disciplines. Moreover, and rather unfortunately, the unique ways of thinking associated with our discipline become invisible to us over time (Middendorf and Pace, 2004: p. 5).

This becomes a problem when we instruct postgraduate law students to engage in critical reading and thinking in a serious way. Students have difficulty understanding exactly what is meant by this. Many still have difficulty in separating out those aspects of the material that are of central importance from those that are peripheral.

For example, at undergraduate level we require students to read large numbers of individual case reports (many spanning to over 100 pages). We instruct them that each case will advance the law by just one small incremental step at a time. Therefore, the skill is to sift through the often long and detailed *facts* of the case in order to arrive at the *law* applied to them. Not all students, however, master this

skill. They can be mesmerised by the sensational facts of, say, a murder case – at the expense of the contribution to the law of murder made by that case. In the same way, postgraduate students can have difficulty recognising the most important aspects of the texts they are reading. They can also have difficulty in separating the more solidly reliable sources from the ephemeral.

Critical reading has been described as a very active process, but one that students find difficult. Wallace and Wray note two reasons for this. First, for students used to a surface approach to learning, the time investment needed is an obstacle. Secondly, and perhaps more importantly, they note that:

‘modular courses tend to encourage “thinking within a course box”. The atomisation of knowledge and learning that often occurs can also create a barrier to critical reading’. (Lucas and Milford: 2009: pp. 395-96)

Many students, then, who have not engaged in critical reading at undergraduate level require guidance if they are to understand what is required. Before providing detailed guidance, I provide some simple advice. I encourage students to adopt an attitude of constructive impartiality, by which I mean that they should neither accept an author’s argument uncritically, nor reject it out of hand. Instead, it is helpful to ‘adopt a critical frame of mind that maintains a distance from, and friendly scepticism towards, what authors say’ (Wallace and Wray, 2011: p. 5).

Having done this, I then provide a definition of critical thinking which we can interrogate together in the classroom. The definition of critical thinking I found most helpful comes from Edward Glaser.

Glaser (Glaser, 1941) finds that there are several requirements associated with critical thinking including:

- [The] ability to recognize problems [...],
- to gather and marshal pertinent information,
- **to recognize unstated assumptions and values,**
- to comprehend and use language with accuracy, clarity, and discrimination,
- to interpret data,
- **to appraise evidence and evaluate arguments,**
- to recognize the existence (or non-existence) of logical relationships between propositions,
- to draw warranted conclusions and generalizations,
- to put to test the conclusions and generalizations at which one arrives,
- **to reconstruct one's patterns of beliefs** on the basis of wider experience, and
- to render accurate judgments about specific things and qualities in everyday life.

Working with these ideas helped me to break down the concept of ‘critical thinking’ into its constituent parts (discussed below). I used this as my starting point and moved on to step three.

3. How can these tasks be explicitly modelled?

Having completed step two, I was able to identify and prioritise the aspects of critical thinking I wanted students to (begin to) master in the first semester. When reading each new article I encouraged students to:

- i. Identify the unstated assumptions and values held by its author,
- ii. Evaluate the evidence and arguments presented,
- iii. Become aware of their own attitudes and values and how these affect their evaluation of the material.

These were the three core factors I wanted students to address throughout the semester. I was able to explicitly model these tasks through instruction and short class exercises. One exercise I found useful was to take a set of short articles, and ask students to read and prepare to discuss their article with the three factors in mind. Through a discussion session we would interrogate the author's argument, his worldview and our own reactions to both. Finally, I would ask students to consider the different ways in which their own, often unacknowledged, worldview and biases influence the way they respond to new texts.

4. How will students practice these skills and get feedback?

Learning to master these skills within the particular discipline of law is probably more difficult and multi-faceted a learning process than is generally appreciated. Simply receiving a set of instructions about critical thinking in class will not be enough. Students need opportunities to practice.

Because I was dealing with a relatively small group, students were given the opportunity each week to practice in class. Building on our in-class exercise, I provided students with a variety of short, provocative articles written from a perspective probably not shared by many of the students. I was fortunate in that none of the students had done any reading in the field of law and economics. This sub-discipline approaches social and moral issues from a purely economic vantage point. So, for example, we started with the series of articles on so-called 'baby selling' provoked by a celebrated article on the subject by American judge Richard Posner (Posner, 1978). Posner's thesis was that the government monopoly on adoption is inefficient and inequitable and a free market approach, if properly structured, would be more effective. Similarly, we also worked with a set of articles provoked by Ronald Coase's argument that regulation of environmental pollution impedes manufacturers, and therefore the economy, so that rather than forcing them to reduce their output, we should be permit manufacturers to compensate local landowners for any harm caused (Coase, 1960).

These articles, though dated, concern issues that continue to resonate in different ways today. The authors make claims that are controversial. The task for each student was to evaluate the author's claims and to come to their next session prepared to teach the class about the article. More importantly, they were to come prepared to argue *against* their own views on the subject. The purpose of the exercise was to encourage students not only to evaluate the author's claims, but to become

aware of their own attitudes and values and how these influence their interpretation of the material before them.

Week on week students were able to practice their critical thinking skills, demonstrate them to the rest of the class and receive constructive feedback from their peers. I was also able to give additional feedback about how well they were progressing and how well they had understood the process.

I found these first four to be the major steps in the Decoding the Disciplines framework. I will discuss the remaining three relatively briefly.

5. What will motivate students?

It is said that the roman theorist Quintilian argued that the teacher's job is to 'arrange victories for the students'. Certainly this framework may help lecturers to prepare a set of small victories, each building on its predecessor.

Learning to engage with texts on a deeper level is stimulating work. When students find they are beginning to hone a new set of skills, they begin to see themselves improving, and this in itself is motivating.

The Decoding the Disciplines model moves the focus from large and daunting challenges (sitting an exam), to smaller more manageable tasks (reviewing an article). This also provides a source of motivation, particularly when students receive meaningful feedback every week on a small, clearly defined task. A willingness on the part of the lecturer to engage enthusiastically and give praise whenever possible will add to this.

6. How well are students mastering these learning tasks?

This framework pushed me to break down the global concept of 'critical thinking' into its constituent parts. By doing so, I was able to identify the bottlenecks to learning and devise an appropriate set of in-class exercises and weekly tasks for students. All of this makes the formal and informal assessment of students much easier. Weekly student presentations, and the discussions that followed, allowed students to demonstrate whether or not they are mastering these tasks. Working with provocative material made it easier for students to realise that authors also have prejudices and assumptions and often, as seen in these articles, an underlying agenda. Therefore, an author's claims are not to be accepted at face value, instead their argument must be evaluated. Students became aware through practice that, as Wallace and Wray state:

For an *argument* to be convincing, the claims in the *conclusion* need *adequate warranting*. Warranting is adequate when you, as the reader, are satisfied that there is *sufficient* evidence, and that it is *appropriate* evidence. (Wallace and Wray, 2011: p. 35)

In the articles we evaluated the key missing ingredient was the moral component. As students became aware of this they became more sensitive not only to the authors' underlying values and attitudes, but also to their own, and to how these factors impact upon their interpretation of the material.

7. How can the resulting knowledge about learning be shared?

When they devised this framework in 2004, a key goal for the participants from Indiana University was to encourage all staff to participate in the scholarship of teaching and learning. They argue that we cannot fully understand something until they have succeeded in explaining it to someone else, and further that:

'The process of sharing teaching goals and strategies forces us to make explicit elements that might otherwise have escaped our notice, to see possibilities that had previously escaped us, and to recognize inconsistencies or flawed logic.' (Middendorf and Pace, 2004: p. 10)

That is why fora such as this one, provided by the ICEP, are so important, and why I was keen to participate in the discussion today.

Conclusion

In this paper I have argued that critical reading and critical thinking are fundamental skills required by postgraduate students, but too often they are skills that postgraduate law students have yet to master. I have suggested that the reasons for this are systemic. The architecture of education at second level, and at undergraduate level in law schools, can actually operate as barriers to the development of these core skills.

The process of facilitating the development of these skills in postgraduate law students is more difficult than it may seem. Using the Decoding the Disciplines framework proved very helpful. Not only did it help me to identify the absence of these skills as a core problem facing new entrants to the Masters programme, using the framework also helped me to devise strategies and activities that would enable students to engage in these activities regularly and successfully.

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