A JUDICIOUS MIX OF TECHNOLOGY AND TEACHERS: ONLINE TEACHING OF CRITICAL THINKING IN LEGAL EDUCATION

John Montgomery
School of Law
University of the Witwatersrand, Johannesburg, SOUTH AFRICA
montgomeryj@law.wits.ac.za

Abstract
This paper is situated in the context of a law school in post-apartheid South Africa. Law students need to hone their ability to think critically yet the majority of students come from schools which did not equip them for this demand. One central text which lends itself to high order thinking is the court judgment. Traditional classroom teaching often does not have enough time to devote to developing this important skill. Since much of the studying of the judgment will be done outside the classroom, this paper suggests that a low technology, integrated approach which could assist students. This aid would be based on a recognised cognitive taxonomy and could be created by lecturers with relative ease.

Challenges facing South African universities

Some years into post-apartheid South Africa, there is now an "increasing diversity among students with regard to educational background, cultural assumptions, linguistic competence … [and] political experience" (Dison & Rule 1996, p.84). At a time where the majority of students are black, to not take cognisance of this changed demographic is both naïve and counter-productive. Black students entering formerly white universities feel a "cultural alienation" stemming from the perception that the medium of instruction – English – functions as "a marker of social class, and as a source of inequity and feelings of inferiority" (Warren 2000, p.6). Many of the students function at ESL level which impedes their ability to express themselves in arguments requiring critical analysis.

Students have already attained a certain level of cognitive development when they enter university. However, many students initially operate at lower levels during at least their first year since they are confronted with a new subject and new material. In legal studies it is important to bring students to a high order of critical thinking as quickly as possible since most of the texts they will encounter will require critical thinking. The challenge facing law schools is to take the students beyond the basic legal principles of law – the technicalities of legal doctrine – to acquire a capacity to read and analyse legal materials critically and knowledgeably. According to the Benchmark report (2000) "critical analysis is recognised as a key attribute of graduates. It involves the ability to identify flaws in an argument".

Critical thinking: a working definition

Drewett (1992, p.76) proposes a working definition of critical thinking, in an academic environment, as two inter-related processes: "One of which is to be able to identify and analyze the way in which others have put forward a particular proposition, while the other is to be able to construct one's own systematically structured assertions, leading to a particular conclusion". In the context of a law school, this integration could be achieved if judicial opinions were used to develop critical thinking skills. This working definition is consistent with the requirements placed on a law student studying a judicial opinion:

to first understand how the judge argued, and then to construct her own assertion, leading to a particular conclusion. Too often, however, students' work shows "surface learning … superficial, 'blurred' readings of texts, poorly developed abstract reasoning or conceptual understanding, and factual reproduction or rote-learnt solutions" (Warren 2000, p.5).

Using judicial opinions as central texts for critical thinking
An ubiquitous law school technique, sometimes referred to as the case method, is to require students to read and understand judicial opinions. According to White (1985, pp.109-110) the judicial opinion is a "central text" in law schools since this text contains "problems, as pieces of law-life, to be taken apart and put together, to be imaginatively participated in". White maintains that an emphasis on the judicial opinion makes sense: "[w]hatever is problematic in a contract, a statute, a regulation, or an administrative decision … is likely to end up in a judicial opinion."

Often the law student is given a case just as it appears in the law reports, without further guidance, and is expected to understand it. Without guidance there is often only a superficial understanding of the case whereas if more support were given, much more could be gleaned. The language of the opinion is often archaic, stylised and difficult even for students whose first-language is English. Knowing the facts of the case is only the start. Too often, however, students only gain a passing understanding of the facts of the case, serviceable enough for exams. And yet there is much more to a judgment. For example, the arguments made by the parties, testing statements against other possibilities, asking what would happen if the facts were changed, and trying to see what was not said which ought to have been said. Having read a judgment and drawn out the argument, students should be able to explain how the parties had built their arguments, what evidence was used, and how counter arguments were dealt with. Further, they should be able to articulate why the court's holding was convincing or unconvincing; make explicit the assumptions behind their own opinions and justify those assumptions, and draw conclusions about the likely consequences or implications of their stand. That is, students have to become critical thinkers.

The purpose of this paper is to suggest that the environment for critical thinking amongst law students can be enhanced through the use of online technology. What has been said of critical thinking in relation to judgments could apply equally to other disciplines where large amounts of texts are studied in-depth, for example, literature or case studies, such as in psychology.

Pedagogical considerations

There are three pedagogical considerations which I believe have a bearing on critical thinking: choosing an appropriate cognitive taxonomy; choosing an appropriate learning theoretical framework, and taking into account that students form a heterogeneous group. For the taxonomy I propose using the SOLO taxonomy (Biggs & Collis 1982) although Bloom's taxonomy also lends itself to this purpose. For a suitable learning theoretical framework I propose an adoption of the legitimate peripheral participation concept developed in situational learning (Lave & Wegner, 1991). The third consideration of student heterogeneity takes into account study preferences, learning strategies and learning styles.

Mode of delivery
A "judicious mix of technology and teachers … can help achieve greater learning effectiveness" (Goodyear *et. al.* 2001, p.66). The envisaged online component explored in this paper recommends this 'judicious mix'. The "shift away from exclusive emphasis on technical legal knowledge (black letter law) to examination of the nature of legal knowledge and its construction … requires a parallel shift in the methodology of teaching, such that the educational model emphasises dialogue and critique rather than transmission of knowledge" (Parashar & Philip 1998, p.549). In the context of this paper, the shift in methodology would be away from only classroom contact to adding an online component as an adjunct to classroom teaching.

Software
Any of the usual testing programmes could be used, for example Blackboard or WebCT, but, for ease of administration, my recommendation is software which is not server-dependent. The point is that it is less about the sophistication of the software and more about the prior construction of the questions and feedback responses.

Even though it may seem less innovative to use a simple programme, it appears to be the best choice in this context. Until big issues in South Africa such as better bandwidth or guaranteed student access to computers are resolved, the medium needs to be technically simple and require no extra technical support for successful implementation. An example of such software is Hot Potatoes which the University of Victoria Humanities Computing and Media Centre makes freely available at http://web.uvic.ca/hrd/halfbaked/. With this simple, server-independent software most lecturers could learn how to use it and students do not have to be online to do the exercises since these would be downloadable with no extra software needed. This means they can be created and used on an average computer.

Some of the exercises would be multiple choice questions (MCQs) which suggests that there are 'correct answers'. Other exercises would be free-response in the form of short critiques which suggests that there are no 'incorrect answers'. Yet the critical thinking exercise should not have right or wrong answers; some answers are more right than others. Both the MCQs and free-response questions need to have comprehensive feedback rather than a score. Feedback will not result in a score but possibly a grading based on broad bands according to relevancy. The exercises are designed for learning rather than scoring.

Lecturer involvement; how it works

Typically, a lecturer would select a case important to her course, a *locus classicus*. As part of her classroom preparation, she would have to study the case carefully and read up on surrounding commentary. Instead of stopping there, however, she could prepare questions and feedback responses in each of the taxonomy levels; especially the higher levels as these are the most ignored. Assuming simple, stand-alone testing software is chosen, it is easy for her to put these questions into the programme since the text (likely to be in electronic format for class teaching anyway) can be copy/pasted to the testing software with relative ease.

There are certain additional benefits to this approach. It would help address various reasons why lecturers have avoided supplementing their courses with an online component. Some of these reasons are that it is too labour-intensive and there is a resistance by lecturers to use materials which, whilst highly specific, have been developed elsewhere (Iolis, for example). Our finding is that lecturers seem to want control to develop and edit their own materials or be able to modify materials developed by others. They also do not want the online component to be extra work; rather a by-product of the preparation they would have to have done to prepare for classroom teaching.

Possible disadvantages – suggestions

Suggestions to overcome some of the disadvantages of online teaching in legal education are:

Unreliability and slowness of the technology and unavailability of computer equipment. A major hindrance to online learning in South Africa is malfunctioning technology or lack of access to computers. Low bandwidth is a particular problem. Suggestion: keep to simple technology.

Absence of a teacher during the online exercises. Suggestion: build into the exercise the ability to e-mail the lecturer. Also, the exercise is not completely online as students will also participate in classroom lectures.

Perceived by students as an (unnecessary) extra workload. Suggestion: build in adequate time to complete the critical thinking exercises without students feeling rushed. Stress that the general technique of critical thinking is being taught at the same time as the judgment is being discussed.

Absence of spontaneous discussion with peers. Suggestion: students should be allowed to work in pairs or groups.

Inadequate feedback. Suggestion: build in excellent feedback to all MCQ / free-response questions. Discuss questions in class raised by students whilst they were completing the exercise online so that the whole class can benefit.

Conclusion

The change in demographics in the student body at South African universities provides the impetus to change to more innovative teaching techniques. More traditional classroom teachers are coming around to the view that there is potential for technology to add quality to their teaching and learning environments.

References

Biggs, J.B., & Collis, K.F. (1982). *Evaluating the quality of learning – the SOLO taxonomy*. New York: Academic Press.

Dison, L. & Rule, P. (1996). Bridging the subject-student divide: an integrated approach to developing foundational curricula. *academic development*, Vol. 2, No. 2, 1996, 83-97.

Drewett, M. D. (1992). "Oh dear not another critical thought!": an analysis of student critical thinking differences and how these impact on ASP. Proceedings of the South African Association for Academic Development (SAAAD) National Conference at the Port Elizabeth Technikon, South Africa.

Goodyear, P.; Salmon, P.; Spector, J. M.; Steeples, C. & Tickner, S. (2001). Competences for online teaching: a special report. *ETR&D*, Vol. 49, No. 1, 2001, 65-72.

Lave, J. & Wengner, E. (1991). *Situated learning: Legitimate peripheral participation*. Cambridge: Cambridge University Press.

Parashar, A. & Philip, R. (1998). Online assessment and legal discourse: dialogue and choice. Proceedings of the 15th Annual Conference of the Australian Society for Computers in Learning in Tertiary Education, Wollongong, 549-559.

Quality Assurance Agency. (2000). Quality assurance agency for higher education. *Draft statement benchmark standards for law (England, Wales, N. Ireland)* [Electronic version]. Retrieved May 20, 2002, from http://www.qaa.ac.uk/crntwork/benchmark/bencheval/law_textonly.htm. (Referred to in this paper as the Benchmark report.)

Warren, D. (2000). Learning and teaching in higher education, with reference to the South African context of student diversity. Proceedings of the UNESCO Africa conference at the University of the Witwatersrand, Johannesburg.

White, J. B. (1985). *Heracles' bow: essays on the rhetoric and poetics of the law*. Madison, Wisconsin: University of Wisconsin Press.