

A threshold concepts focus to first year law curriculum design: supporting student learning using variation theory.

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Abstract

This Nuts and Bolts session presents the work of a current ALTC Priority Projects Grant which uses variation theory and phenomenographic research to improve the way the threshold concept of legal reasoning is taught in the first year of law. The session will (a) explain the project and the theory behind it, (b) discuss the outcomes of research conducted with students, and (c) explain how this research was integrated into a new curriculum design approach for the first year of law.

Introduction

This session presents the initial outcomes of an Australian Learning and Teaching Council (ALTC) funded curriculum renewal project, entitled “A threshold concepts focus to curriculum design: supporting student learning through application of variation theory”, led by Gerlese Akerlind (ANU), Jo McKenzie (UTS), Mandy Lupton (QUT) and Keith Trigwell (USyd). The project has used phenomenographic and action research methods in the law and physics disciplines to develop a model for curriculum design that directly addresses common misunderstandings amongst students of disciplinary threshold concepts (Meyer and Land, 2003; 2005; 2006). The curriculum design methods explored in the grant harness the variation theory of learning developed (as an outcome of phenomenographic research) by Marton and colleagues (Marton and Booth, 1997; Bowden and Marton, 1998; Marton and Tsui, 2004). The curriculum design focus for law was on the first year of legal education.

This Nuts and Bolts session will present the conceptual foundation for this curriculum design innovation (threshold concepts, phenomenography and variation theory), the method and results of the data collection and curriculum design method, and some preliminary results of the implementation and evaluation of the initiative in the first year law curricula of ANU, UTS and QUT. In order to canvass the project and its results in sufficient depth, it is

requested that this submission be read as the equivalent of two nuts and bolts session proposals (one hour).

A Threshold Concept in Law – Legal Reasoning

Threshold concepts are transformative and integrative in nature: once understood, they transform students' views of the subject area, because they enable students to coherently integrate what were previously seen as unrelated aspects of the subject, providing a new way of thinking about it. Threshold concepts are vital for students' ongoing personal and professional development because they provide "a transformed internal view of subject matter, subject landscape, or even world view" (Meyer and Land 2005 p. 373), leading not only to new ways of understanding a subject area but also to a shift in the learner's sense of identity. It is only through coming to understand such threshold concepts that students can come to think like a subject specialist and adopt a disciplinary way of thinking about the world. "When an individual acquires a threshold concept the ideas and procedures of the subject makes sense to them when before they seemed alien". In this sense, in coming to understand threshold concepts, students also come to see the subject, the world and themselves differently.

The transformative and integrative nature of these concepts makes them commonly troublesome for students to learn, and so they are often not fully understood by students. This can result in long-lasting implications for students' learning in the subject area, and their ability to apply that learning in professional practice. Threshold concepts are therefore a particularly valuable area on which to focus extra curriculum design attention. Threshold concepts have been referred to as the 'jewels in the curriculum' (Land, Cousins, Meyer & Davies, 2005, p. 5) because they can be used to identify transformative points in students' learning. They help explain why many students 'get stuck' at common points in the curriculum and why some students can pass a course exam, but not necessarily be able to apply their learning when in a professional setting. A focus on threshold concepts in curriculum design helps play a diagnostic role, highlighting for teachers areas of the curriculum that deserve special attention, not only because they represent transformative learning points, but because this is where students are most likely to experience difficulties in their learning.

Before settling on the concept of legal reasoning, the law group discussed a range of possible threshold concepts for law as a focus for the project. Interestingly, at the start of discussions, both the physics and law disciplines were initially drawn to the overall concept of *uncertainty* as a threshold concept. That is, that new students in both these disciplines often assume there is one correct answer, and that a key goal of a university education in law or physics, particularly in the first year, is to make students comfortable with conceptual 'greyness' - the notion of uncertainty, and hence complexity. As discussions progressed, however, the key threshold objective in the learning of law was identified as being able "to think like a lawyer" – this includes an understanding of uncertainty, that there is not necessarily a quick or simple or one right answer, but extends more broadly to accepting different ways of arguing and different possibilities for analysis of the facts and problem at hand.

The law group therefore resolved, but only after much debate and discussion (and consideration of other possible concepts such as the rule of law, and the notion of precedent), that the central threshold concept for law, the most important threshold concept for the first year of legal education, was legal reasoning. This was defended against the key criteria for a threshold concept (Meyer & Land 2003) as follows:

Transformative: Legal reasoning is transformative because being able to engage in legal reasoning provides students with a sense of self-identity as a lawyer; they pass through a portal of knowing what it means to be a lawyer. Once inducted into legal reasoning a student is able to look at the other side, accept there isn't a right answer, know that they have to think deeply about meaning and argument, and be persuasive. The capacity to do legal reasoning helps students to comfortably problematise and question issues; to test the facts along with the boundaries and limits of issues. However, the transformative nature of legal reasoning can also be seen as a staircase rather than a portal—that is, its development might take three or four semesters (or a lifetime), but the teaching of the concept in the first year is a critical first step on that staircase.

Integrative: Legal reasoning is integrative because it facilitates student understanding about what lawyers (solicitors, barristers, judges etc) are doing: why it is possible to have multiple perspectives and arguments. Legal reasoning inculcates students into the integrated nature of the culture of legal argument and the importance of authority and evidence to the efficacy of legal argument.

Troublesome: Legal reasoning is a troublesome concept because it contradicts some of the students' prior assumptions (or everyday ways of knowing things) up to the point of entry to law school, and therefore it takes them out of their comfort zone. It involves learning how to take responsibility for your position and your argument. It contradicts the possibility of simply making assertions without backing them up, or of finding the one 'right' answer. It forces students to re-consider, and possibly to change, their preconceptions about what law is and what law can achieve.

Irreversible: The ability to apply legal reasoning is irreversible. Once you are able to reason, analyse and argue like a lawyer, and use authority to provide evidence for a position and assertions, you cannot undo that skill.

Phenomenographic Research with Students about their Understanding of Legal Reasoning

Once legal reasoning had been identified as the threshold concept for law, wider discussion allowed us to then formulate and design an action research project with the aim to examine first year law students' levels of understanding of this threshold concept. We devised a series of questions and a short problem scenario (the trigger material) with the intention to discover what differences there may be in response. Across the ANU, QUT and UTS 25 students were interviewed. The interviews were conducted by tutors in the various law schools, recorded and transcribed verbatim. The aim of the interviews was to reveal the qualitatively different ways of experiencing the phenomenon of legal reasoning amongst first year law students. The interview data were analysed phenomenographically (Marton and Booth, 1997; Akerlind, 2005). This analysis was conducted as an iterative process of constant comparison of transcripts, looking for key similarities and differences in students' experiences of legal reasoning. The analysis identified variation between students in awareness (and lack of awareness) of key features of legal reasoning.

We were able to then distinguish less sophisticated from more sophisticated understandings of the concept of legal reasoning. Four levels of increasingly complex understanding were identified in which legal reasoning was seen as: 1. a formulaic process for predicting a legal outcome; 2. an interpretative process of arguing for an outcome serving the needs of the client; 3. a dynamic, responsive and innovative process for allowing the existing law to reflect changes in society; and 4. a means by which law can be changed for the good of

society, where it is necessary to use the law as an instrument to effect social change.

As part of the data analysis a matrix was constructed highlighting increasing sophistication in students' awareness of different features of legal reasoning associated with increasing sophistication of their overall understanding. Students' perceptions of the purpose of legal reasoning were tabulated as part of the matrix. The analysis also highlighted differences in student perceptions of where legal reasoning is demonstrated. The students' understanding of the nexus or perceived lack thereof by judges using legal reasoning to decide cases was illuminating. Many students' perceptions that the reason for reading case law is only to find out the rules of law (and nothing more) were quite disturbing.

Curriculum Design for Teaching Legal Reasoning Using Variation Theory

The matrix was then used to inform redevelopment of aspects of foundational first year subjects. The aim of the curriculum design development was to allow students to achieve more complex understandings of legal reasoning, in terms of the four levels outlined above. All law teachers involved in the project agreed that a mastery of legal reasoning as a fundamental concept underpinning law studies (and indeed legal practice) cannot be achieved quickly but is a process of maturation throughout the law degree and beyond. However, it was also agreed that it would assist students in their studies if all students were able to reach at least a level 2 understanding in their first year of study, perhaps leaving levels 3 and 4 to be targeted in later years.

The redevelopment of the way legal reasoning is taught at law school through this project harnesses the "variation theory of learning" (Marton & Tsui, 2004). According to variation theory, misunderstandings (or less sophisticated understandings) of a disciplinary concept or practice may be explained in terms of students' lack of awareness of key features or aspects of the concept/practice. Learning is thus seen as occurring through a shift in awareness, where a student becomes aware of aspects of a concept/practice that they had not previously noticed and connects them to other new aspects.

Our research indicated that students have a wide variety of understandings of legal reasoning (as represented in the four levels articulated above). The identification of this range of student understanding allowed us to engage in curriculum design to enable students to progressively expand their awareness of different aspects of the concept, and of the relations between those aspects. It also allowed us to develop ways to help students to then generalise their understanding through applying the concept in different contexts, including professional-like settings such as providing legal advice to a client. Our treatment of this expanding awareness of different aspects of legal reasoning in the curriculum design can be understood in terms of Land's (2008) progressive stages of a students' conceptual journey towards full understanding of the concept.

The curriculum design aim is to provide a method for drawing students' attention to the critical features of legal reasoning identified through the interview analysis, encouraging discernment of those features through structured variation: The curriculum design approach seeks to vary critical features of legal reasoning as it is taught, whilst holding other elements constant, so that students are more likely to notice those variants and hence develop a better understanding of the complex facets of legal reasoning.

Session Structure

The presentation team propose to run the session in three 20 minute blocks following the

headings outlined above: 1. project introduction and threshold concepts in law; 2. phenomenographic research regarding student understandings of legal reasoning; and 3. the curriculum design implications and results of the research. In each 20 minute section a speaker will present for approximately 10 minutes and then encourage audience discussion. The final section will include an exemplar of the curriculum redesign in action – showing how the teaching of legal reasoning as a threshold concept in the first year of law is improved through using variation theory.

Questions and Discussion Points for Audience

The audience will be asked to engage with and discuss the following:

- The potential value of identifying threshold concepts in their curricula.
- The implications of focusing extra curriculum attention on such concepts.
- The pedagogical insight provided by phenomenographic investigation of variation in students' understanding of key concepts.
- The potential of using variation theory for curriculum development in their discipline.

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