THE CONTEXT

In the late nineteenth century Christopher Columbus Langdell, Dean of Harvard Law School, introduced a new pedagogy in law that was designed around Socratic teaching. Prior to this, most common law jurists had emphasised the importance of artificial, natural law reasoning which was prone to be more subjective, speculative, value laden, and ultimately illogical (Davies, 1994, p. 110). This new pedagogy placed law cases at the centre of students’ learning, and demanded much more from the students in terms of analysis and defence of legal explanations. In particular, it involved a case-dialogue method, where students are called upon to recount facts, argue legal principles and explain their reasoning in the lecture hall before an authoritarian lecturer. All of this was designed to mirror the combative realities of adversarial proceedings. So, for example, in a lecture, the lecturer might demand of a student the facts of a case, the legal points at issue, the court’s reasoning by reference to other cases, the underlying legal doctrine or principle, and the effect that an altered fact pattern might have on the outcome.

The case method was premised on a number of propositions. First, the study of law was designed around two scientific components: empiricism and rationalism. As regards empiricism, the raw data of appellate cases was for the lawyer what chemical compounds were for the chemist. Students were expected to read cases for themselves and discover and understand legal principles. The rational component was the assumption that legal reasoning must be deductive (Hoeflich, 1986, p. 120). Rigorous logical reasoning, honed through reading caselaw, was the trump concern, even at the expense of other legal skills. Langdell phrased it in the following terms:

“Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied” (quoted in Schofield, 1907, p. 279).

For this purpose, the library rather than the courtroom or law office was the appropriate workshop. As Langdell noted:

“We have also constantly inculcated the idea that the Library is the proper workshop of professors and students alike; that it is to us all what the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists” (quoted in Hoeflich, 1986, p. 120).

Thirdly, law is viewed as a closed system. Broader social, cultural, moral or political considerations should be abandoned in pursuing these hermetically-sealed legal principles. In this way, law could be viewed as determinate, an “apolitical, value-free, technocratic discipline” that was divorced from practical outcomes or concerns of justice (Carrington, 1995, p. 707). Fourth, the lecture method of teaching law was to be replaced by the Socratic case method, whereby general principles of law on particular issues would be worked out in the classroom through interaction between the lecturer and students on relevant cases (with the headnotes omitted) (Chase, 1979, p. 332). In terms of student learning, this represented an important switch away from the emphasis on learning legal rules to...
an emphasis on learning legal skills (analysis, argument, reasoning, synthesis). Fifth, the casebook, rather than the textbook, would be employed as a teaching aid in which the really important cases in a particular field were selected and arranged in systematic sequence (Kenny, 1916, p. 187). Finally, Langdell’s conception of law was “court-centred”, premised on case-law as the primary source and modus operandi of law (Twining, 1985, p. 12).

Gradually Langdell’s case method approach became a model for most other university law schools who valued the systematic and rigorous training that it provided. The law schools of Columbia, Michigan, Northwestern, Western Reserve University, Cornell, Chicago, Cincinnati, Stanford, Illinois, Hastings, Notre Dame, Hastings, New York and Yale all adopted the method by the early twentieth century (Kimball, 2004, p. 34; Bartholomew, 2003, p. 379). It was also employed by Australian and English professors. As Theodore S. Woolsey at Yale noted in 1924: “The old way bred great lawyers. But like the caste mark of the Brahmin, the case system is the cachet of the crack law school of today” (quoted in Bartholomew, 2003, p. 388).

The case method soon became the ‘signature pedagogy’ of legal education in most common law countries. It was, and still is, viewed as being important in training students in the basic skills of law, especially in analysing, distinguishing and synthesising cases. It also encourages students to trace historical precedents to their original sources, and hones their reasoning and argumentative skills in concrete situations. It is concerned with demonstrating what the courts would do in fact, excluding thereby social, political, theoretical and historical contexts. This encourages students to place rules into categorical systems in order to understand law’s internal point of view. The desired learning outcome emanating from the case method is that a student will understand that law emerges from a rigorous analytical procedure called legal reasoning. In making a science of legal reasoning, it helps to validate the law, to give it a ‘structure of truth’.

There are, however, weaknesses in the Langdellian approach which undermine its epistemological and pedagogical contribution. Its epistemological emphasis on scientific reasoning, especially the deductive-inductive logic it adopts in respect of case law, is very effective as a legitimation narrative, but once you scratch the surface, it will quickly be discovered that it conceals far more than it reveals. The coherency and fixity it seeks to inculcate in law students is beset by a number of difficulties that seriously undermine its credibility. How, for example can it account for the interpretive leeways of language? Or the belief that facts are elusive and will need to be constructed? Or the premise that our judges are not asocial or apolitical operators but bring their own experiences and value systems to bear on disputes before them? Or the argument that law is not a seamless web which has already logically covered every eventuality? Or the notion that law employs principles and standards (such as the ‘reasonable man’, ‘proximity’, and ‘reasonable foreseeability’) that are malleable? Or the suggestion that ruptures in social, economic or cultural conditions will require solutions and ways of legal thinking which will not be found in the static past of previous judicial decisions? Langdellianism does not contend with such complex, interdisciplinary issues, and consequently students do not have to contend with them. Instead, through dogmatism, and a severe form of Nelsonian blindness, it claims that the pathway to objective ‘truth’ can be mined through doctrinal legal reasoning alone.

EPISTEMOLOGICAL SHORTCOMINGS

Many of these criticisms have begun to emerge in recent years. In terms of its epistemological shortcomings, commentators, for example, increasingly began to question whether it was proper for law to be categorised as a science in the way that we perceive the natural or
physical sciences. Is Langdellianism not merely dogmatism emphasising ‘taxonomic stock-taking’ (Hutchinson, 1999, p. 302) through the raw data of reported judicial decisions? Was it not simply a vital part of the project of modernity whose primary function was to rid the western world of local, contingent, irrational, and non-objective phenomena?

Interpreters of social rules that are designed to regulate human behaviour, it was increasingly argued, do not always operate with data or methods which provide systematic exactitude or yield reliable predictions. Law is premised on facts and a grammar of rules that do not easily lend themselves to algebraic formulas. Of course, and as far as is practicable, law should attempt to rout personal equations and the contingent from the courtroom so as not to be arbitrary, corrupt, or partial. This is an important ideal that we should all strive for one that is enshrined in our conception of the Rule of Law, but Langdell (and other legal educators) went further in attempting to make a science of law.

The value of cloaking legal method in a scientific garb is obvious: it will appear objective, value free, rational and fair. “Establishing the scientificity of law”, as Davies notes, has “seemed an essential way of reinforcing law’s claim to truth” (1994, p. 97). This begs two questions: first, to what extent is our law system based solely on a rigid scheme of deductions derived from a priori principles? Second, even if it is not, could we guarantee that it would be in the future? As to the first question, whether law is a pure geometrical exercise, most commentators would agree that judicial decisions do not have an intrinsic order. They “are not the products of logical parthenogenesis born of pre-existing legal principles but are social events with social causes and consequences” (Cohen, 1935, p. 847). An analysis of cases in any particular field of law therefore will not therefore simply reveal any rigorous science, premised solely on a priori propositions, in operation.

As to the second question, law is a social endeavour. This limits the extent to which certainty can be achieved. Because it is social (and normative), legal propositions are not verifiable in the same way that empirical propositions are (e.g. the boiling point of water). How, for example, can we be sure that different judges would arrive at the same deductions in any give case (given their social conditioning, the vagueness of language, and the elusiveness of facts)? How, particularly in times of rapid social and industrial change, can we guarantee that for every legal dispute there is a fixed antecedent rule already in place which will permit simple, formal syllogising (Dewey, 1924, p. 26)? In addition, is it sufficient and morally just that a judicial finding is valid simply because it follows a deductive logical form? What about the ethics of the finding, and the morality of the decision? Moreover, even the traditional sciences rely on particular ways of knowing and organising events and data that are not fixed and absolute (Kuhn, 1970; Foucault, 1991), but are influenced by power relations, shared beliefs, and subjective interpretations of collecting and interpreting data. All of these phenomena militate against the possibility of ever achieving the mechanistic application of deductive-inductive logic in law through the legal syllogism.

Other commentators would also suggest that certainty and determinacy in law is a myth for a number of reasons. To begin with, fidelity to the a priori principles of the past in some instances will be unsuitable in a contemporary context having regard to changes in cultural, social, political, economic and moral contexts (Pound, 1908, pp. 605-623), and will demand that the trier of fact either overturn the earlier precedent, or manipulate it to produce a fairer result. In this sense, legal rules are not hermatically sealed from broader considerations (Pound, 1905, p. 344; White, 1972, p. 1004). Second, law is based on language, not on algebraic concepts, and language by its very nature has an open texture that often gives rise to a number of legitimate interpretive choices. Language is not (always) a transparent, objective medium. It is enmeshed in subjective reference points (signifiers) for the both the listener and the speaker (Patterson, 1996, pp. 151-180), that militate against the objectivity of interpretation. Langellianism, therefore, relies on a form of essentialism, when it
poses the view that there are essential meanings to words that can be objectively understood through a process of adjudicative neutrality, rather than meanings having to be chosen through a process of interpretive construction.

Third, much of the Langdellian approach is also centred upon the reasoning set out in upper court decisions. But these courts are not fully representative of the workings of the territory of law (Grossman, 2006, p. 67) or even the court system more particularly. Moreover, there does appear something very indeterminate about the process by which judges deductively apply rules to facts as part of the seamless web of law. In short, there does appear to be an element of hollowness to formalist claims about the objectivity of doctrinal legal rationality. Some commentators suggest that the coherency of law is inseparable from subjectivity (which formalism seeks to deny). As Balkin (1993, p. 105) notes: “[S]ubjectivity is not an intrusion into law - it is a constitution of law … [T]he fact of the matter is that legal coherence is the product of a hermeneutic interaction. It is the result rather than the object of a process of understanding”. To begin, there will often be a choice in the rules, principles or standards to apply (and the enforceability of same), or exceptions to invoke, thereby permitting arguments which purportedly follow the logic of legal reasoning to lead in different directions with different outcomes. Statutes, too, can “be extended pretty widely and contracted pretty narrowly…to catch or let out the situation you are deciding” (Radin, 1925, p. 361). It will also be possible to confine a particular ruling to its particular facts so as to avoid having to follow it. Thus doctrinal legal rationality is a process which is much more open to manipulation than that conceded by those committed to Langdellian case method (Llewellyn, 1960, pp. 72-73): “every decision is a choice between different rules which logically fit all past decisions but logically dictate conflicting results in the instance case” (Cohen, 1931, p. 215). Furthermore, whilst appeal courts mostly concern themselves with the niceties of legal particulars (substantive and procedural rules), trial courts have to contend themselves with facts, and facts by their very nature are elusive. They do not comprise the hard, objective, untainted data of science (Frank, 1947, p. 1308).

The interpretation of facts and legal rules is also in part based on the predispositions of the trial judge. Individuals are not asocial, apolitical or amoral automata. Although there may be specific reasoning skills, some commentators would argue that the “correct legal solution” is usually nothing more than the “correct ethical and political solution” at a particular point in time (Kennedy, 1983, p. 20). We all have attitudes, preconceptions and beliefs, and operate within particular social and cultural paradigms, which colour our view of the facts and affect us in our judgments (Quinn, 2002, p. 146). Why should we consider judges to be any different (Frank, 1947, p. 1308)?

Of course, attempts to highlight uncertainty in our legal system can be as dogmatic and one-dimensional as Langdellian claims to certainty. It can ignore the inner logic of law and the importance of analogical reasoning, the constraints placed on the judiciary by fidelity to precedents and various canons of interpretation and construction, the importance to judges of being part of “an interpretive community” who dislike their judgments being overturned, and the fact that many cases are relatively straight-forward where there will be broad agreement on the relevant facts, legal principles and the interpretation of language (Hart, 1961, p. 132). All of this is true. Nevertheless, the issues documented here about the possibility of uncertainty in law should raise sufficient doubts about the epistemological credibility of Langdellianism as a means of producing truth in law. Law is more impermanent, flexible and artificial than formalists would have us believe.
PEDAGOGICAL SHORTCOMINGS

In terms of its pedagogical shortcomings Langdellianism, it is argued, reified common law principles, premised on case law. By its very nature this gives students a very partial view of the legal system, ignoring for example all ‘law jobs’ that do not involve court work, but also downplaying other sources of law such as statute law which has grown exponentially in the recent past. But even its approach to court work was partial (Llewellyn, 1935, p. 675; Pound, 1939, p. 26), premised on the paper rules of casebooks (law in books) rather than actual court practice (law in action). Frank made this point very well when he suggested:

“If it were not for a tradition which blinds us, would we not consider it ridiculous that, with litigation laboratories [courts] just around the corner, law schools confine their students to what they can learn about litigation on books? What would we say of a medical school where students were taught surgery solely from the printed page? No one, if he could do otherwise, would teach the art of playing golf by having the teacher talk about golf to the prospective player and having the latter read a book relating to the subject. The same holds for toe-dancing, swimming, automobile driving, hair-cutting, or cooking wild ducks. Is legal practice more simple? Why should law teachers and their students be more hampered than golf teachers and their students? Who would learn golf from a golf instructor, contenting himself with sitting in the locker-room analysing newspaper accounts of important golf-matches that had been played by someone else several yeas before?...As a result of present teaching methods, law students are like future horticulturists who restrict their studies to cut flowers. They are like prospective dog breeders who never see anything but stuffed dogs” (1947, pp. 1311-1313).

But even if we ignore the distinction between law in books and law in action, his introduction of the casebook as the standard teaching aid can also be criticised for narrowing the reading horizons of law students. It also ensured that legal academics engaged their energies in largely unoriginal casebook research work, tracing the celestial lines of development of various legal rules emanating from upper-court decisions, but never engaging in broader discursive analysis of the working of rules, the ideological, economic and socio-political currents running through them (Cohen, 1935, p. 833), the dynamics of how they change, and the policy and contextual implications for choosing one rule over another (Lasswell and McDougal, 1943, p. 203). The narrowness of his approach to legal education seemed ill-fitted for university life which was meant to stir the creative and critical emotions in students in a ‘House of Intellect’ type environment (Twining, 1995, p. 293; Kahn Freund, 1966, p. 128). Can Langdellian law really be considered a university discipline if law students are not required to engage with the political, ethical and social consequences of the practice of law? As Griswold (1967, pp. 300-301) asked about law teachers: “We encourage imagination – in small ways, and perhaps in analogical reasoning. But do we encourage imagination in the broad sense? Do we encourage our students to devise new premises, to start out on whole new lines of reasoning, to come up with new solutions?” Finally, the case method also ensured that whilst learning was participative, it was hardly student focused. Its central axis point was the authoritarian law lecturer, who dictated the flow of questions before a large student audience (Feldman and Feinman, 1984, p. 930).

Many commentators would also argue that the formalism advocated by Langdell was essentially conservative in nature, designed to preserve economic and political power in the hands of the wealthy and powerful. His approach to teaching law served to provide a cloak of legitimacy for the underlying structural inequalities of power which are imbricated in the cross-currents of society. It also helped inculcate a set of attitudes towards the legal system in society, exhorting in particular its legitimacy on the basis of its ‘bloodless’, apolitical and neutral nature (Lapiana, 1999, p. 143; Banks, 1999, p. 456). But this ideology of objectivity, egalitarianism and the strict application of rules masked and mystified law’s partiality, particularly its capacity to preserve and maintain the status
quo for those in power (Horowitz, 1992, pp. 253-254). In other words, although law, as part of an overall ideological hegemony, will serve the interests and values of the powerful, it is packaged as if it is value free.

Hiding behind the ‘false consciousness’ of Langdellianism (Freeman, 1981) - and the search for a priori principles that could be deductively applied to facts - “was a small set of operative first principles that were deployed to uphold the political imperatives of individualism an adamant support of the most conservative interpretation of individual rights embodied in the Constitution; a preference for common law precedents over novel social legislation; an anti-majoritarian bias stemming from the conception of the individual as occupying a sphere of absolute rights broaching no encroachment; a preference for the continuity of traditional customs over the uncertainties of social progress; and a bias in favour of the interests of the privileged classes over the clamouring agitations of the oppressed” (Goetsch, 1980, p. 231). This also had implications for legal education, particularly through the way in which teachers (unconsciously) mystify legal reasoning, thus serving a variety of hierarchical interests. As Kennedy notes, “bias arises because law school teaching makes the choice of hierarchy and domination, which is implicit in the adoption of the rules of property, contract, and tort, look as though it flows from and is required by legal reasoning rather than being a matter of politics and economics” (1982, pp. 40-61). Finally, formalism also has implications for legal practice, particularly the notion that what lawyers actually do is apolitical and independent, merely following the inner technical logic of the law. This might be reassuring, but it is a denial of the political and social realities of legal practice (Hutchinson, 1999, pp. 307-308).

The major consequences of this Langdellian/formalist approach to legal education was that learning was not integrated into the realities of legal practice. It was not integrated because it did not examine:

- The psychological or sociological ways in which facts were constructed;
- The social, cultural, political, or economic environments in which decisions were made;
- The moral or ethical contexts in which decisions were made;
- The psychological dimensions of decision-making;
- The texture of language that often gives rise to a number of legitimate interpretive choices;
- How the law operates in practice;
- The political and social realities of legal practice.

FRAMING THE QUESTION

Over the past three decades attempts have been made to make legal education more inclusionary and integrative, to incorporate a greater variety of learning materials and to offer students more opportunity for critical engagement with the subject matter (Thomas 2006, pp. 239-253). These attempts include much greater interdisciplinarity (law and history; law and economics; law and literature; law and sociology; law and politics); greater use of clinical legal education (as we shall see); an increased willingness to engage with theory (for example, Feminism, critical race theory, etc.); a greater emphasis on legal writing; an increased willingness to view law from the perspective of different groups (employees, women, persons with a disability, gay and lesbian communities, etc.); the incorporation of policy perspectives designed to facilitate democratic change in society; the increased use of information technology and computers which moves lecturer-student interaction beyond
the lecture room (the use of blackboard, for example); the massive expansion in access to legal information (i.e. Westlaw, Lexis, Bailii) which moves the student learning experience far beyond the traditional casebook; an increased willingness to incorporate legal ethics into the curriculum; and an increased emphasis on student learning and student understanding. All of these streams are flowing in a different direction to that signposted by Langdellianism/formalism.

LEARNING JOURNALS AS A MEANS OF PEDAGOGY AND ASSESSMENT

In this essay, I want to look at one dimension to this more integrative approach to legal education: the use of learning journals on an LL.M (Master of Laws) programme in Criminal Justice in the Faculty of Law at University College Cork (UCC). In particular, I would like to determine how learning journals facilitate integrative learning through assessment and pedagogy. A Learning Journal is a collection of reflective comments concerning educational and practice activities or events. It could contain an entry for each class, meeting, discussion or workshop that you participate in and regard as relevant to a student’s learning plan. Journals are used to stimulate critical thinking, providing insights into knowledge at the higher levels of learning involving analysis, synthesis, integration and evaluation of information. Journals also encourage students to make their learning personal by thinking about and articulating their thoughts (Moon, 1999). They will also focus attention on student values, attitudes and beliefs and help them make them explicit what they might previously have been implicit and unexamined. Journals give students the opportunity to reflect on learning, to take ownership of learning, and to become more “self-aware, self-directed learners” (Loacker, 2002, quoted in Huber and Hutchings, 2009, p. 10)

LL.M IN CRIMINAL JUSTICE

The LL.M. in Criminal Justice is integrative and unique in its own right because, as its promotion material on our website recognises, “it provides a core clinical component, which offers students the opportunity to pursue a theoretical inquiry into criminal justice while experiencing the reality of the criminal justice system in practice”. UCC’s Faculty of Law has developed a well-established network of relationships with various criminal justice agencies. A clinical coordinator in the Faculty of Law organises a series of placements in partnership with these agencies. These placements enable students to explore the perspectives of An Garda Síochána (the Irish police), victim organisations, probation service, prisons and the courts (judiciary, prosecutors and defence). This partnership between academia and the broader community offers an unrivalled opportunity for research into criminal justice theory and the divergence between policy and the reality of the implementation of criminal law on the ground.

In order to encourage integration of learning, applications are accepted and encouraged from professionals (even if they do not have a law degree qualification, a requirement for all other LL.M. programmes) working within the criminal justice system, including solicitors, barristers, members of An Garda Síochána, the Prison Service and the Probation Service. Students taking this specialised degree must complete a thesis (12,500 words excluding reasonable footnotes) in the area of Criminal Justice. They must take the following two units:

- LAW 535 Law, Policy and Methodology (one unit)
- LAW 519 Criminal Justice (Clinical programme) (two units)

Students can then take four units drawn from the following:

- LAW 525 Terrorism, Dissonance and Criminal Justice (one unit)
- LAW 530 Contemporary Issues in Irish Constitutional Law (one unit)
LAW 554 Criminology (one unit)
LAW 551 Immigration and Refugee Law (one unit)
LAW 550 International Criminal Law (one unit)
LAW 546 Juvenile Justice (one unit)
LAW 545 Penology (one unit)
LAW 560 Cybercrime (one unit)
LAW 556 International Humanitarian Law (one unit)
LAW 558 Mental Health Law (one unit).

The clinical aspect of the course (LAW 519) is very innovative in Ireland. Such clinical programmes are common elsewhere, particularly in North America, where many focus on the criminal process. Some of the most notable include Osgoode Hall, Harvard and Cardozo Law Schools. The rationale of the course is to bridge the gap in traditional legal education between the theory and the practice of law. To this end, in addition to the study of the theory of the criminal process, there are placement components, which give the student the opportunity to examine how the criminal process operates in the ‘real world’.

Students on this course are placed with the courts, members of the legal profession, victim service providers, the police, the prison service and the probation service to see how perspectives other than the academic or legal view the criminal justice system. Students attend the Circuit Court criminal sessions for a period of three weeks as well as visiting the District Court, the Children’s Court and the Central Criminal Court; they are also given the rare opportunity to visit Cork Prison, Mountjoy Prison, St. Patrick’s Institution and the Central Mental Hospital. The course is now seven years old as part of a specialised LL.M. in Criminal Justice.

The LL.M. (Criminal Justice) (Clinical) does not operate from a clinic base, and therefore chiefly relies on observational exercises together with the simulation exercises referred to above which satisfy the requirement of ‘realism’. In addition, students, where possible, conduct live interviews with counsellors and volunteers working at the Sexual Violence Centre Cork (formerly the Rape Crisis Centre), members of An Garda Síochana, probation officers and prison staff, so as to gain an insight into the perspectives of all those involved in the criminal process. Throughout their placements students maintain a ‘learning journal’ in which they keep detailed records of court proceedings and note points of interest and impressions from the various placements that are part of the course. The learning journal is periodically inspected by the clinical coordinator (currently Ms Dorothy Appelbe) as well as the external examiner at the end of the year. A mark is awarded out of sixty for the learning journal which accounts for 30% of the total marks available for the Advanced Criminal Process (Clinical Programme) (two units). The following information is provided to the students in their student manual:
Students must keep a learning journal as part of this course. A learning journal is a securely bound A4 hardback manuscript (preferably typed) as well as media reports which you have collected that reflect the matters encountered and discussed as part of this course...

Reflection is a continuous theme of any clinical law programme. This Clinical Programme as part of the LL.M. (Criminal Justice) (Clinical) provides ample opportunity for students to discuss their experiences of the criminal justice system encountered on this course. The weekly seminars are an obvious focal point for students to share their experiences with fellow students. Traditionally students on this programme also engage in informal reflection with each other. A Learning Journal is evidence of students’ reflection.

Since reflective learning may not be a concept students have encountered as part of their undergraduate education, most students initially find reflective learning a challenge! Reflective learning takes time to get used to. Most students appreciate the value of reflective learning if they enter into it in the right spirit.

The learning journal should amount to a complete record of your experiences of the clinical programme. It should contain an account of the date, time and location of the placement/seminar, those persons you spoke to, what was discussed, any questions you or another student asked and the answers provided. However, your journal entries should aim to go beyond merely documenting the experience. Your reflective journal should also be an account of your general impressions of the placement/seminar. These impressions should include your own views, both intellectual and emotional, of the surroundings, the persons encountered and the matters discussed etc. A first class journal will also aim to evaluate what was observed in context e.g. the implications of the exclusion of certain persons/sections of society from jury service, or the reasons behind media coverage of a particular case/story.

Your Learning Journal is not something you can put on the ‘long finger’, to compile at the end of the year. Learning journals will be inspected regularly throughout the course and students may be asked to submit preliminary reflections on various aspects of the clinical programme on a continuous basis for which feedback will be provided.

In the context of the aforementioned, my question is this:

*Learning journals are relatively novel in law. To what extent do they facilitate integrative learning both in terms of pedagogy and assessment? I believe that I am well placed to carry out the examination given that I lecture two of the more theoretical modules on the programme - criminology and penology.*

**GATHERING THE EVIDENCE**

Thirty students (each allocated a number between one and thirty) in the academic year 2007/2008 completed Law 519. I wrote to all of them on the 20 September 2008, requesting their permission to use their journals in my research project. All granted permission. The next task was to go through each of the 20,000 word learning journals to demonstrate how integrative learning took place (and the standards that were attained) among the students. I completed the entire 600,000 review in June 2009, and highlighted the various relevant threads that emerged from the review of the journals.
EMERGENT FINDINGS AND BROADER SIGNIFICANCE

As a result of the clinical programme, it is clear that students are stepping beyond the boundaries of doctrinal legal rationality. Their experiences on the programme made all of them aware that law is a product of social relations; that its inner logic, though very relevant, does not reveal its true nature, particularly how it operates in practice; and of the psychological and sociological factors underpinning decision making, and the social realities of people’s lives and how the criminal law affects them. In the section that follows, it is readily apparent that learning journals facilitate integrative learning both in terms of pedagogy and assessment.

Learning journals have played a crucial role in acting as a conductor for the integrative learning experience of students on the clinical programme. I have grouped these learning experiences into various categories:

- The roles played by various parties in criminal law particularly prosecuting counsel, the judge, the jury, prosecution witnesses, and the process of examination in chief and cross-examination, and how a narrative is built;
- The social realities of crime;
- The dynamic of the courtroom (particularly the frequent level of disorder in the courtroom);
- The type of individuals to whom the criminal law applies (is there a pattern – young, male, deprived background, lack of education, etc.);
- The interpretation of rules in practice;
- Role play and how decisions are reached in practice;
- Student observations on the workings of the system.

(i) The Roles Played: Law in Action

The employment of learning journals on the clinical LL.M. programme allowed students to demonstrate their knowledge of the various roles that different actors play in the criminal justice system. This is a key outcome sought in the clinical programme, opening up the law in action as opposed to law in books. As evidence of this, on the 8 November 2007, student 1 observed the case of *DPP v Ian Horgan*, and became very conscious of the different roles played in the criminal trial, particularly: prosecuting counsel, the judge, the jury, prosecution witnesses, and the process of examination in chief, and how a narrative is built. All of this understanding was recorded in the student’s learning journal.

After a Garda ride along on the 9 February 2008, student 4 noted:

“I was amazed at how different and difficult the job of the Gardaí actually is… I now appreciate more the difficult circumstances in which they must carry out this job”.

(ii) The Types of Crime

One of the key difficulties with a formal legal education is that whilst students learn legal rules about various crimes (the *actus reus*, *mens rea* requirements, defences, evidential rules, due process rights, maximum punishments), they develop little or no knowledge about the social realities that hide behind these rules. What is the prevalence of crime? What offences repeatedly appear before the courts? What types of factors are at play? The clinical programme allows us to integrate this knowledge into their understanding and the learning journals helped us record that understanding.
Student 12, for example, noted: “one could not fail to notice the issue of drugs either. Over half the cases we heard were drug related…”

Student 17, following his Garda ride along, noted in his or her learning journal that the Garda in Cork city get five to six calls a night relating to incidents of domestic violence, but they find that a lot of the calls are bogus, “many involving alcohol” (p. 59).

Having visited the District Court in Cork, student 21 noted the following:

“For me, it was interesting to note that the majority of the cases were for public order offences. The majority of individuals had come to court because they were drunk and or intoxicated in a public place…Throughout my visits to the District Court, it became evident that the type of sentence that an individual would receive was more [sic] dependent on his or her prior history. Did he or she have any previous run-in with the law?”

The issue of alcohol is an interesting one. Up to this point the only formal understanding that students had of alcoholism and its relationship with crime related to the defence of intoxication and the circumstances when it applied. There are only four or five relevant cases on this issue. Yet these clinical experiences helped them understand that whilst the defence of alcoholism was relatively rarely used, the issue of drunkenness as a causal factor in crime was much more prevalent.

(iii) The Architecture

Most students have little or no understanding of the dynamics of a courtroom. The neat ‘paper-logic’ of the rules they have learned gives the impression of a coherent, ordered dynamic in the courtroom. Yet this is not always the case. The learning journals helped students reflect on the disorder that sometimes occurs.

In the Hogan case in the Circuit Court on the 5 November, 2007, student 3 noted “that it was hard for the [jury] to see the witnesses on the witness stand”. Moreover, the student in his or her learning journal also noted that “there was no particular place for the accused to be situated” (at p. 19).

(iv) The Criminals and Their Lives

When law students learn legal rules in a lecture hall, implicitly they are being informed that law follows a logic of universal individualism (that we have can make rational choices). Everyone is the same before the law, enters into the ‘social contract’ in the same way, and is treated in the same way. The world of rulebook law, therefore, is an asocial one that does not accommodate the individuality of human beings. This is a mistake because many commentators would argue that in areas such as criminal law this logic of universal individualism has the potential to produce unfair results. For example, it treats individuals from socially marginalised backgrounds – with histories of school failure, dysfunctional families, drug abuse, unemployment, and poor housing – in exactly the same way as individuals from more affluent backgrounds. This may result in an over-representation of those from poorer backgrounds in our criminal justice system. As Foucault noted:

Visit the places where people are judged, imprisoned or executed…One thing will strike you everywhere; everywhere you will see two quite distinct classes of men, one of which always meets on the seats of accusers and judges, the other on the benches of the accused, which is explained by the fact that the latter, for lack of resources and education, do not know how to remain within the limits of legal probity…Law and justice do not hesitate to proclaim their necessary class dissymmetry (1991, p. 276).
Similar arguments have been made in Ireland. Bacik et al (1997), for example, noted:

*The abstract individual defendant is at the core of criminal law doctrine, presented as a rational actor, isolated from the social context within which human behaviour occurs, and lacking any distinctive or defining characteristics. However, it is well established that those individuals who come into contact with the criminal justice system as defendants are not representative of the population at large. Indeed, as a group of defendants, they can be said to share certain defining characteristics: they tend to be disproportionately young, male and working class.*

It was hoped that through the clinical programme the students would become more aware of the social realities underpinning crime. Through the learning journals this was demonstrated in a number of instances. Student 1, for example, after a visit to Cork Prison, noted:

> “[The prison officer] confirmed that, as per anecdotal evidence, the majority of the prisoners incarcerated in Cork come from a handful of addresses. He stated that there are also a numerous incidences of multi-generational incarceration with one family having seven sons, their father and their uncle imprisoned at the same time”.

Student 2 had a similar response following a visit to Cork District Court in October 2007:

> “I felt I was witnessing the weakest and the most vulnerable in our society trying to answer the ‘How’, the ‘Where’, the ‘When’ but above all the ‘Why’ of what they did. Some arrogant, full of bravado, but possibly internally crying to be so different, to be decent and happy, some out of need to feed themselves or their children or a sick family member. Some out of greed possibly created out of jealousy...Some not knowing why, through lack of mental ability...The point of all this is that I wonder how many of the accused do what they do out of pure badness?” (p. 6).

Student 12, after a visit to Cork prison, noted the following:

> “I was most surprised by the relative freedom of the prisoners to move around inside the prison...The friendly greetings interchanged between staff members and inmates also impressed me...Prison has perhaps become a method for controlling the lower classes by taking them ‘out of circulation’ for a period and permanently handicapping them with a prison record for the remainder of their days” (p. 10).

Student 15, after visiting Cloverhill Courthouse to observe applications for bail, noted:

> “The majority of applicants came from marginalised backgrounds and suffered social deprivation. I was shocked by the amount of previous convictions the applicants had...A myriad of applicants suffered from drug addiction...”

(v) The Rules

The learning journals also enabled students to document circumstances where they encountered legal rules being interpreted and applied in courts. Student 1, on the 12 November 2007, observed a discussion in Court Two in Cork Circuit Court on the issue of accomplice testimony. A state witness had been arrested as part of the alleged crime and the question at issue was whether that made her an accomplice and the consequences of that label. Student 3, having observed a case, discussed the informal method of identification used for singling out the accused. The student went on to note:
“At the time of this case, I was taking a class in terrorism, dissonance and Criminal Justice’…[We] looked at the issue of miscarriage of justice cases where Garda or police evidence which was not completely reliable or properly obtained was allowed, resulting in a conviction…Cases where the judges allowed evidence which was improperly obtained also had the qualities of a crime control model that Packer wrote about in the 1960s” (p. 23).

On the same case, student 22 noted:

“What I found interesting was how the case fell apart not because of any argument that [the witness] had identified the wrong man but rather because strict procedure was not rigidly adhered to by the police in their investigation. In Herbert Packer’s seminal article on the two models of the criminal process, he posited that “if the crime control model is like an assembly line, then the due process model is an obstacle course’. In penology, we studied David Garland’s thesis that contemporary western society is undergoing a shift from the traditional due process model to a more control orientated system of justice. This case seems to show that at least in Cork’s Circuit Court due process values are still alive and well”.

Student 7 gained a lot from the lecture given on forensic evidence by Dr Smith from the Forensic Science laboratory. The student felt that we needed a proper DNA database to take full advantage of the power of science (p. 57).

Student 14 discussed at length the issue of visual identification evidence as a result of one of the cases she observed, and in particular the failure of a Garda to observe the strict guidelines that govern identification parades (p. 120).

Student 24 felt that the lecture given by Mr Justice Paul Carney related well to what he had learnt in relation to the law on sentencing: “I found the citations he used in relation to punishment interesting particular in relation to punishing the offender and not the offence and it being about rehabilitation” (at p. 47).

(vi) Role Play
The students were also required to act as a shadow jury in real cases. Again, in learning legal rules, they would not be familiar with the psychology of decision-making, which is far more complex than the simple syllogistic application of law to facts. Having observed a case, a group from the class undertook a shadow jury exercise, student 1 observed the group dynamic, particularly the emphasis of previous bad character evidence, and inferences from inaction on the part of the defence.

Student 9 also enjoyed the exercise believing it “was an opportunity to see what a real jury goes through when trying to come to a verdict”. The student also commented on the fact that “after much deliberation we ultimately came to the same decision as the real jury” (p. 29). In particular he noted:

“The first thing that happened in our jury room was someone posed the question of whether or not we believed the accused was guilty. Unknown to ourselves we had taken a vote before going through any of the evidence or directions from the judge…It became evident that three people were leading the discussion with the other five taking a back seat. This happens in actual juries also…Obviously having tow or three jurors doing most of the talking is not ideal as their views may carry more weight than they should” (pp. 29-30).
(vii) Criticisms

The learning journals also helped students express their opinions on various policing, judicial and lawyer practices that they observed on the clinical programme. Many of these observations arose out of the vagaries of the situation; it had not been contemplated by the programme directors. Student 1, for example, in hearing a defence counsel address the issue of the role of the trial judge to the jury and likening it to papal infallibility (“the learned trial judge is in the position of a pope”) asked: “this supposes that the jury are a homogenous group of devout Catholics which of itself confines the demographics of the jury selection” (p. 30)

Student 6, after one visit to Cork District Court, observed an individual who was arrested for being drunk in a public place under Section Four of the Criminal Justice (Public Order) Act 1994. The student noted:

“This is a case I personally feel should never have been brought to court at all and is a classic example of what the adult caution system was introduced to encapsulate. The man was not abusive to Gardaí, was not violent, apologised and expressed remorse for his actions yet still ended up in court and nearly left with a criminal conviction. I felt that the discretion which is extended to the Gardai was not utilised in this situation … I felt saddened to be witnessing a case where the criminal justice system operated in such an unfair manner”.

Student 1 noted that there was an assumption made about a prisoner that he was illiterate: “I had a difficulty with this… he had to correct her and tell her that he was capable of doing this himself. Whilst I accept that there is a major problem with literacy in prisons the default setting should not presume that the prisoner is illiterate until told otherwise” (p. 57).

Student 9, after observing a case in the Circuit Criminal Court felt that it took the judge too long to go through his directions: “it appeared as though the jury were not listening too intently and none of them were taking notes. Of course the judge must give an accurate picture of all the evidence but it is possible to be much briefer as other judges generally are” (at p. 27).

But students were not always integrating theoretical and clinical knowledge

The learning journals also reveal the extent to which curricular fragmentation is occurring. Some of the observations made by students in the journals should have been connected with theoretical learning that took place in class. For example, student 5, during his Garda ride along on 1 February 2008, was taken to the surveillance room at Anglesea Garda station in Cork. He noted:

“The cameras are of a very high quality and produce very clear pictures. The Garda in the room demonstrated this by zooming in on a car registration plate and by zooming in on two young men walking down the street who did not realise that we were watching them”.

Given this opportunity, it was surprising that the student did not attempt to frame the debate in more theoretical terms, in particular the drift towards the use of low visibility, high transferability, involuntary techniques of surveillance. These surveillance techniques operate across public and private domains. Student 23, after visiting Cork District Court, noted:

“From the litany of cases we witnessed it is obvious that many of these offenders are lower socio-economic members of society who do not really care less that they are wasting the Garda Síochana’s time by committing petty crimes on an on-going basis. Many are from broken homes, are single parents and substance abusers and the patterns in court seem to endlessly repeat themselves and only highlight what happens out on the streets day in, day out”. 
Similarly student 25, after a visit to Cloverhill District Court, noted the following:

“I found Cloverhill to be a very interesting placement. It was interesting to see that a large number of the applicants being processed were mostly young males with very similar lifestyles...young, no jobs, children and drug problems. I found it interesting that some of the applicants who had a history of absconding were still granted bail”.

Student 8, after a visit to the old Cork gaol on the 31 October 2008, noted (at p. 58):

“In our visit to the prison we learned about the hardship that the prisoners suffered on a daily basis. The food they ate was of a terribly low standard and they rarely got to leave their cells. The punishments were very severe when you consider the crimes that some of them committed. A woman got five years imprisonment for stealing a small piece of cloth at the market and it is wondered whether the same would happen to a member of the aristocracy. ...There was wax exhibit of a young boy being whipped...for stealing a piece of bread. These were hard times where hard labour and solitary confinement in the dungeons were the norm...From my own perspective a visit to this prison highlighted just how far this country has come in terms of humanity and how we must never revisit those dark days”.

Again, one would have expected such an excellent observations to be connected back to what was learnt in criminology lectures. This would have explained how market societies have the potential to promote crime by increasing inequality and concentrated economic deprivation.

Student 10, involved in a discussion group with Judge Con O’Leary, was asked why juveniles got involved in crime: “He [the judge] offered the opinion that maybe they could not respond to the process of change and this led them to fall into the criminal net” (at p. 63). This is an excellent example of control theory in criminology, which attributes juvenile crime to a loss of social control normally imposed through social institutions such as the family, faith, education, and the community or one’s neighborhood. If such informal social control is weakened, formal means of social control may be imposed via the juvenile and adult criminal justice systems. The student, however, never attempted to frame the judge’s observations within an overarching theoretical model as to why juveniles commit crime (and the extent to which this model can be contested).

Student 11, after a group discussion with a prosecution counsel, noted:

“[The prosecution counsel] told us that he personally believes that the only way to improve the problems surrounding drug abuse in Ireland is to legalise all drugs. He stated that it would then be up to individuals to become registered in order to obtain their fix. He stated that this might operate to curb casual drug-use because people might be afraid of becoming registered in case it appeared on their medical records” (p. 208).

One would have expected these observations to be framed within the labelling school of criminology which argues that crime and deviance are not pre-given, objective categories, but negotiable statuses. It is a mistake to see deviance simply as the ‘infraction of some agreed rule because it ignores the fact that what counts as deviance is largely a function of the ability of groups with political power to impose their concept of right and wrong on the behaviour of other groups’.

Student 16 raised the issue of inconsistencies in the sentencing practices of judges, particularly in relation to the possession of drugs (p. 16). This is an excellent observation but the student did not connect this observation back to critical criminal law which suggests that the coherency and determinacy of criminal legal reasoning is a myth. This, it is argued, is particularly true of sentencing.
CONDITIONS FOR DOING THE SCHOLARSHIP OF TEACHING AND LEARNING

It was very easy to undertake this research. I was given excellent support from the clinical coordinator of the programme, Dorothy Appelbe, who provided me with all of the learning journals. My former head of department, Professor Caroline Fennell, who set up the programme, was very supportive in that she gave me permission to undertake the study. The students also were very helpful, all granting me permission to trawl through their journals looking for strengths and weakness. My colleagues on the NAIRTL project were always positive. Their enthusiasm gave me the momentum to complete the project. I am very grateful to all of these parties for helping me undertake this work.

BENEFITS OF THE WORK

It is well documented that students’ learning has become too fragmented, promoting specialised understanding within very narrow boundaries (Huber, 2005, p. 4). Students accordingly do not ‘necessarily have integrative experiences’ (Thompson Klein, 2005, p. 9). The clinical programme at UCC attempts in part to address this by helping the students to observe ‘law in action’. As part of this drive to get beyond doctrinal legal rationality and fragmented modular choices, the learning journals employed on the programme acted as a very suitable mechanism for assessing the extent to which students connect learning across multiple fields including undergraduate doctrinal law modules, postgraduate theoretical law modules, and clinical education. It was also found that learning journals act as an excellent pedagogical tool in enabling students to draw upon their multiple learning experiences, and link them in concrete, though complex, work situations. All of the above examples demonstrate how this has taken place.

The architecture of assessment and pedagogy needs, however, to become more refined, more explicit, drawing upon the entire teaching programme. At present the learning journals are the responsibility of one member of staff and there is no input from other lecturers working on the programme. It is submitted that in order for learning journals to achieve their maximum effect, there needs to be more proactive attention to integration and synthesis at both a pedagogical and assessment levels. It is difficult to assess whether students are making consistent insightful connections between academic courses and observed clinical experiences unless a system is devised that incorporates all lecturers on a course into the assessment of those journals. Similarly, a pedagogical framework needs to be established around the portfolio that again involves all lectures on the course (having regard to the academic courses they teach, what integrative outcomes would they expect for students having regard to particular clinical experiences, what links would they expect them to make between their individual courses and the clinical experiences in question).

Both in terms of pedagogy and assessment, the use of learning journals needs to be planned among all staff on the programme. This can impose a heavily logistical load (particularly in an academic environment where we are used to limited surveillance vis-à-vis our own modules) requiring constant tacking back and forth between where students are in respective academic modules and where they are at in terms of their clinical experiences. Increasing we hear about learning communities; but we also need to develop teaching communities to foster and facilitate more intentional integrative learning experiences. It is not just a question of modular fragmentation; it is also a question of a disconnection among academic staff, due mainly to tradition where the degree of collaboration is minimal. The learning journal on a Masters programme like the one I am involved in needs to be managed by the entire teaching community on the programme to optimise pedagogical and assessment outcomes.
REFERENCES


