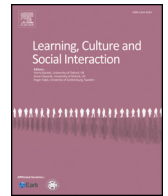




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Maintaining doubt to keep problems open for exploration: An analysis of law students' collaborative work with case assignments

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ABSTRACT

This article examines how second-year law students act and interact to maintain legal doubt in solving case assignments in groups. Professional norms of inquiry within the legal domain include keeping an issue open for exploration and ensuring that all potentially relevant aspects of a case are considered before reaching a conclusion, as well as making the basis for such conclusions transparent. However, we do not know much about how students appropriate this core aspect of legal problem-solving. We analysed videotaped discussions in two student groups as they worked with cases in international law. The findings bring to the fore how (1) the students' interactions; (2) legal texts; and (3) the use of professional procedures and principles for investigation constituted an exploratory dynamic through which doubt was collectively produced and maintained in the group work. The analysis shows that in the process of getting deeper into aspects of the case at hand, problems were opened up and kept open by the students'/construction of a number of intermediate questions. The relevance of such questions was tested in the group work, but also guided by texts and procedures that are linked in systematic ways. The article argues for the value of group work to support students in learning to take part in core knowledge practices that characterize legal problem-solving.

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1. Introduction

This article examines how law students in groups act and interact in order to maintain doubt in solving legal cases. As newcomers to a professional domain, students need to learn the norms and procedures through which knowledge is explored and applied in this specific knowledge community. This involves appropriating the discourse and conventions for how established knowledge is used to illuminate specific problems and their potential solutions; how tools like texts and other materials can be used in framing and solving problems; and what counts as relevant ways of reasoning and acting in the professional domain. In short, student learning is about taking part in and appropriating the knowledge practices that characterize the profession (Anderson and Hounsell, 2007; Jensen, Nerland, and Enqvist-Jensen, 2015).

One aspect of knowledge practices concerns the processes through which questions are identified, opened up and thoroughly explored to arrive at a solid understanding or convincing solution. In such processes, it is crucial to avoid jumping to conclusions or establishing facts too early, as this may prevent deeper insights and justified claims. The strategies used to ensure proper

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investigations and to validate decisions vary across domains. Different knowledge communities have different techniques and criteria for *how* to reach justified conclusions (Donald, 2002; Knorr Cetina, 1999). Moreover, they may place different emphases and labels on related phenomena. In the STEM subjects, it is common to use the term ‘inquiry’ to denote in-depth investigation of knowledge and problems. In the humanities, it is more common to talk about critical thinking as denoting an investigative stance towards knowledge. The two may have several things in common, such as involving reflexivity in epistemic matters and rules of performance. At the same time, the labels used reflect characteristics of the different kinds of knowledge and insights produced in different domains.

In the legal domain, the term ‘doubt’ is used to express ways of keeping problems open until all conceivable aspects of the problem are thoroughly examined and the conclusion reached is well justified. Studies of legal practice from the courtrooms have identified doubt as a key aspect of legal problem solving and in ensuring sustainable development within this field of expertise. Berti, Good, and Tarabout (2015) claim that the role of doubt in this field is equivalent to that of curiosity in science or surprise in philosophy, in the sense that doubt generates novelty and makes it possible to see issues from new angles. Likewise, in Latour’s (2010) study of practices in the French Council of State, doubt was identified as a value against which judges assess their work. His study illuminates how judges make many efforts to actively construct and maintain doubt in order to postpone conclusions and to ensure that all relevant arguments are critically explored. This happens, for instance, through repeated reviews of legal texts and through the use of contradictory drafts of decisions. These procedures bring a slowness to practice which ‘allows the law to ensure that it has doubted properly’ (Latour, 2010, p. 220). Even though legal knowledge does not reflect absolute certainty, a judgment has to be made in the end; once a case has been closed, there is no return. The main burden of ensuring that all relevant aspects are considered therefore lies ahead of arriving at a conclusion. Thus, legal doubt entails both keeping problems open for exploration and making the exploratory process transparent. Doubt is expressed in legal work as problems continue to unfold through rules for interpreting authoritative sources of law (e.g. Donald, 2002). Furthermore, transparency relates to justification by referring to authoritative sources effectuated in the construction of the legal questions which are raised and also by making alternative drafts of decisions public.

Whereas the task to maintain doubt is organized as a collective effort and distributed on several roles in the courtroom, *students* will need to learn how to enter into different roles and engage in actions and procedures in order to learn how to maintain doubt. A previous study on group work in an introductory course in a Norwegian law programme has shown how first-semester law students tended to jump to conclusions rather quickly in solving legal cases (Jensen et al., 2015). In this study, learning an exploratory approach through a thorough and stepwise examination of legal sources was identified as important for learning legal problem solving. From an educational perspective, an emerging question is how after the very first introduction period, students appropriate ways of maintaining doubt as they solve problems in educational settings. By perceiving doubt as a collective achievement in legal practice, where different roles, texts and procedures interplay (Latour, 2010), we will explore the characteristics of students’ collaborative actions as they engage with complex legal cases. Our analytical focus will be on a) the characteristics of the students’ interactions, which contribute to keeping problems open and ensuring that relevant issues are thoroughly explored; and b) what roles legal resources play in such processes. We analyse the students’ interactions and their use of sources in the context of students’ group work and their attempt to solve complex open case assignments in a 3rd semester seminar in public international law.

The article is organized as follows: first, we review relevant research on student learning in legal education with an emphasis on studies that focus on students’ ways of resolving legal problems. Next, we frame our study conceptually by presenting a perspective on student learning as intrinsic to participation in knowledge practices, which are informed by discipline-specific tools and procedures *and* form the problem-solving process. We then present the empirical context and methodology, followed by an analysis of students’ work.

2. Law students’ learning and problem solving

Legal education has attracted researchers’ interest both regarding law as a distinctive form of expertise and the highly concept-driven knowledge that characterises the domain.

One influential strand of research focuses on learning within legal education as a matter of appropriating the legal discourse by learning the particular ways of reasoning and constructing convincing legal arguments (e.g. Burns, 1997; Donald, 2002; Mertz, 2007). Previous studies within this strand have paid attention to challenges in the first year of law school and convey how students undergo a process of reorientation of their everyday understanding of human conflict. Such reorientation implies removing the contextual, narrative, and emotive features from human affairs and human conflict and is guided by a vocabulary of abstract, technical and nuanced terms and principles. In her ethnographic study of classroom interaction in eight law schools, Mertz showed how the *language of law* serves as a tool that enables first-year law students to ‘stand back and weigh aspects of the problem at hand [...]’ (Mertz, 2007, p. 10). The professional language and its concepts are thus important means in this transformative process.

Another strand of research has focused on legal reasoning (e.g. Donald, 2002; Stratman, 2002; Weinstock, 2016) and showed how such reasoning is guided by specific rules embedded in the institutional discourse. The legal discourse is very specialized and organized around formal concepts, which serve as tools. However, there is little research which addresses *interactional* aspects or questions of how students engage with *profession-specific tools* in educational settings in legal education. Some recent studies conducted within other professional programmes have shown how ways of appropriating cultural tools and participating in relevant ways come across as interactional achievements in which engaging with the knowledge content of the activity is at the core (e.g.

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