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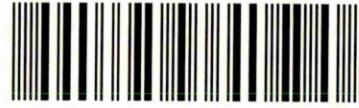
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**Law Student Understandings of Critical Thinking:
A Phenomenographic Study**

Catherine Anne Morse

A dissertation submitted in partial fulfilment of the requirements of
Sheffield Hallam University
for the degree of Doctor of Education

2009

Abstract

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This dissertation provides a phenomenographic analysis of perceptions of critical thinking in Law students. The ability to develop and demonstrate critical thinking is a key element in higher education, being an important criterion for success in terms of assessment. Critical thinking is particularly significant in the context of the study of Law, as Law embraces both problem-solving in the 'technical' sense as well as the consideration and evaluation of argument, policy and jurisprudential questions. While definitions of critical thinking are problematic, they would include such notions of problem-solving and evaluation, so making legal education interestingly susceptible to such enquiry.

Phenomenography as a qualitative research method is well established, (although also contested) and has been used particularly in the field of educational research. It aims to give a 'second-order' account of perceptions of phenomena and so appeared to be an appropriate methodology in this instance, where the main investigation concerns students' own interpretation of what 'critical thinking' might connote.

A group of first- year students was interviewed and a set of questions used to enable their perceptions and experience of critical thinking to emerge. An account of these perceptions, categorised under five headings, was then developed. The five categories are as follows: Critical thinking as negative; Instrumental critical thinking; A sense of argument; A general sense of analysis and Critical thinking as a way of being. The findings in relation to such perceptions, reviewed in the light of the literature on critical thinking and some of the current debates surrounding practices and directions in legal education, have clear implications for informing curriculum development, changing practice and developing pedagogic theory.

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Chapter 1

Introduction: The Problem

Background

The subject for my research, essentially students' perceptions of critical thinking, grew out of several initial sets of ideas and was refined over a period of months. I wanted to look at issues within legal education, particularly relating to the first year experience. To concentrate on the first year of undergraduate study seemed especially appropriate for both personal and external reasons. My own teaching in universities has tended, more particularly in recent years, to be predominantly at first year level. Many of my administrative and pastoral roles have been related to this level of study and experience. Furthermore, many of the more recent initiatives both at Sheffield Hallam University and in higher education generally, for example those referred to in the work of Smith and Hopkins (2005); Lowe and Cook (2003); Cook and Leckey (1999), have related to what has been broadly termed the 'transition' issue – notably the transition of students from school or college to university at the age of eighteen or nineteen (still a majority of the student population, although this may be beginning to shift slightly due to demographic and other factors - see for example the BBC report on the findings of 'Universities UK' on demographic change and falling demand for places) (10th July 2008). There seemed, then, to be a sufficient academic and professional basis here (given the nature and

requirements of the Doctorate in Education (Professional Practice)) for potential research which would have implications for curriculum development and student support on the Law Programme and the LLB in particular. (This is given a little further explanation below).

Broadly, there were three stages in the development of this research topic. My first thoughts centred around researching the problems and issues in teaching interdisciplinary subjects within the Law curriculum, a topic on which I had written two short conference papers (Morse, 2002 and 2005) and which was of particular interest given my activities at the time. Thinking about this enhanced my realisation that the aspect which especially concerned me was the student 'experience', but 'experience' in a more subjective sense i.e. what their own expectations, assumptions, insecurities and existing skills and knowledge might be. Such thinking also threw up the interesting questions of what Law as a discipline is, and also the potential for a disjunction between staff and students' perspectives and perceptions as to the nature of legal education.

This first phase of thinking developed into a more student-focussed idea, relating more specifically to comparing students' perceptions of the academic skills they have as compared to staff perceptions. The question of the assumptions and expectations of students in regard to what a Law degree involves would also be explored (Pue, 2008). Academic skills and perceived 'deficiencies' have been at the fore of some recent developments and debates

within education, (Lizzio *et al* 2002, Hattie 1996) and indeed, the press and media in general, ('School leavers lack basic skills, say universities') (The Guardian, 9th February 2006) so again in respect of this topic there was an interesting and relevant meshing of personal experience and external significance.

However, continuing discussions with key academic staff then helped me to refine my ideas further. Considerations for example of scope, manageability, appropriateness of research methodologies and personal interest gave rise to a 'final' set of ideas which have more than formed the basis for this research dissertation. In principle, a consideration of students' perceptions of critical thinking relates to three important requirements of doctoral educational and professional work; namely, it has implications for practice in terms of how to enhance the student experience; it raises academic questions as to the nature and purpose of law teaching, and it is a topic of immense personal interest. Discussions and consideration of research methods and methodology, approaches to interviewing, selection of students and so on then took place.

Reflections on Critical Thinking

It has for a long time seemed to me that critical thinking - whether we call it by this name, or criticality, or the ability to critique and analyse (using these terms more or less interchangeably for the present) is and should be a central tenet of

higher education, if not of all education. I could trace this personal conviction as having derived probably largely from my own educational background (grammar school, academic 'hothouse' sixth form college, English Degree and teacher training) and, to some extent, family influences. Much learning, from a relatively early age, appeared to stress the importance of not merely acquiring 'knowledge' but of being able to question, analyse and develop argument—particularly so in subjects such as English, Religious Education, later at 'A' Level History and more recently in my legal studies. It was stressed to us during my teacher training that such an approach was particularly important at 'A' Level, and it had been fostered during my English Degree studies. Coming into learning and teaching Law I became aware obviously of a different and more explicit set of requirements and possibly tensions – put simply, what can be termed the 'black-letter' approach to legal education and training which puts a greater emphasis on the students' ability to 'learn the law' and not worry too much about theory, critique or wider contextual issues. In this version of legal education (and it would be easy, if possibly simplistic to call it "legal Gradgrindism") what matters is the acquisition of facts, cases, 'the Law' and the ability to apply these in certain scenarios. The variants and tensions within legal education are developed a little further in the concluding chapter but suffice to say that such different approaches to the teaching of Law, combined with several other more recent trends in higher education generally (broadly, the move towards vocationalism, skills and competencies and away from 'liberal arts' ideals have certainly challenged, but not necessarily shaken my initial

convictions as set out above. Indeed, there is a significant counter-movement which I would tend to endorse:

An academic called for a campaign for "critical higher education" this week, warning that the vision of universities as places that foster independent and critical thought is being replaced by a "wholly economicistic" view ... "a view of education as a commodity rather than as a process, a set of 'inputs' to be delivered and consumed"...

(Brecher, B, quoted in Attwood, R, "Nurture sceptics, not industry fodder, critic says") THE, 24th January 2008 p.5.

Other recent authors adopting this kind of thinking include Barnett (1990, 1994 and 1997), and Rowland (2001).

Such personal reflections are relevant not just in relation to the genesis of this research, but to the question of positionality, or the potential for intrusion of personal 'position' into the research, in terms for example of interviewing approaches or interpretation of data. I think in this case, if this is an issue it would mainly be in relation to what in Chapter 5 is termed the fifth category - "Critical Thinking as a Way of Being". This is where students were asked about their view of critical thinking as relating to the wider world and society as opposed to its academic significance. This view of critical thinking, as described below, for example by Brookfield (1987 and 2005) is one which has particular resonance for me and I was inevitably pleased when I "found" it, while being aware of:

...the problem for the researcher of projection of his own conceptions into the interpretation of the interview material.
(Hedegaard and Hakkarainen in Ashworth *et al*, 1986 Ch. 6 p.134).

While such findings would not vitiate any interpretation of data it is important to be aware of and reveal and comment on such personal predispositions or prejudices.

Clearly, a consideration of critical thinking brings in several wider issues which may be touched on in this dissertation but remain generally outside its scope – questions relating for example to the nature, purpose and politics of education including legal education; what (legal) education is and ought to be; whether the increasing emphasis on skills and competencies is tending to detract from the development of critical thinking; and how students themselves perceive the learning of Law. The latter points in particular may lend themselves to future research but this work will concentrate on the critical thinking dimension, particularly as seen through students' eyes, and as described further below.

The Research Rationale and Focus

For the immediate purposes of this research the two key questions appear to be, then, how can critical thinking be defined, and what might be the students' perceptions of critical thinking. It may become possible to relate their perceptions to the definitions expressed in the literature, or it may be that there

appears to be little relationship between the two. If it should emerge that there is little consonance, this research may acquire additional significance in alerting us to such a discrepancy, with possible implications for our understanding of students and their interpretation of what we as academics expect them to demonstrate in terms of their approach to study and in the conceptual frameworks and terminologies we employ.

In any case, however, this research should help us better to comprehend how students have internalised the notions of critical thinking and analysis with which they may have been presented during their academic careers. It is clear that critical thinking is a highly important aspect of a student's general academic performance in Law, notwithstanding my comments above regarding 'black-letterism'. There is a great emphasis placed upon this cognitive skill, in terms of, for example, the assessment criteria used locally and the QAA benchmarking skills for Law:

Critical analysis is recognised as a key feature of graduateness. It involves the ability to identify flaws in an argument.

(Section 2 Para.4.12 Law Benchmarking Statement 2007)

Such skills have come to signify 'graduateness', post-Dearing, with the apparent commitment to the principle that higher education should:

sustain a culture which demands disciplined thinking, encourages curiosity, challenges existing ideas and generates new ones.

(Para.1.4 National Committee of Enquiry into Higher Education 1997)

Our students are exposed from the outset to a learning and assessment culture which prizes critical analysis; their basic assignment feedback sheet with which they become rapidly familiar, (and which is used as a reference point in the interviews for this research, see Appendix B) currently talks of, for example:

Consistent use of critical analysis well integrated into the text [and] critical and wide-ranging use of relevant cases and materials
(two examples of 1st Class criteria);

Some evidence of critical thought/overly descriptive content
(examples of 2:2 and 3rd Class overall criteria).

In terms of essay-writing generally, and perhaps particularly within the more contextual or socio-legal subjects studies, there is a demand for critical thinking to be displayed in order for the higher levels of grading to be achieved. In short, then, strong emphasis is being placed, both in the wider and local contexts, on the demonstration of a faculty important for real success, where those most involved and affected may have an incomplete, or distorted, or otherwise unhelpful perspective which may be at odds with what academics are seeking and which they wish to reward.

This still, of course, begs the question of what critical thinking is, or might be. This will be explored in Chapter 2, primarily by means of a literature review. Moon (2008) more recently offers a map of the territory and identifies some of the complexities involved in definitions, showing an awareness of critical thinking as a 'way of being' (Ch.2 p.47) (which she ascribes to Brown and Rutter, 2006) and which I have used in Chapter 5 to describe my fifth

phenomenographic category. However, in general terms what I have talked about so far relates to a broad academic notion – the critical analysis of texts, materials and ideas. Within the Law curriculum, as suggested above, there is also a strong emphasis (partly driven by professional body requirements) on critical thinking in the sense of the logical application of facts and Law for problem-solving; a more clinical, or process-based set of critical skills, with an emphasis on the making of 'critical judgements[s] of the merits of particular arguments' (Section 1 Para 7.1 Law Benchmarking Statement 2007).

Such skills and approaches will also be considered in relation to the literature and in the context of the students' perceptions of what critical thinking might be, in relation to Law specifically.

Implications for Professional Practice

An enhanced understanding of students' perceptions may be used to inform professional practice within the teaching of Law, in the contexts specifically of curriculum development and delivery, and particularly in relation to what has been termed the 'transition' issue. Higher education institutions (and the teaching of Law is no exception) pay great attention to the management of what is being termed Induction and Orientation, and this emphasis seems likely to increase in the coming years. In principle, Induction and Orientation refers to aspects of life in higher education with which the

students need to become familiar, and the term really embraces the pastoral, social and academic support available; management of student expectations; introduction to the notion of independent learning, and initial development of academic and other skills necessary for successful learning and future employability.

A demonstrable form of knowledge, then, about students' perceptions, together with a concomitant set of inferences (possibly) about the barriers to the development of critical thinking, would make a useful contribution to our approaches to the academic aspect of Induction and Orientation. Such work is already being undertaken at the time of writing; see for example the work of Lowe and Cook (2003) and Smith and Hopkins (2005). It is envisaged that the findings of this current research will contribute to this empirically - based and developing awareness of student experience and perception.

With reference to the methodology underpinning this work (Phenomenography - discussed particularly in Chapters 4 and 6), the following quotation provided at this stage reveals a general objective:

The purpose of this increased emphasis on the descriptive elements of research would be to make possible an improvement in the accuracy and analytical clarity with which we are able to discuss educational phenomena... there clearly is a need for complementing main-stream research with approaches that regard the educational field and the world of teachers and students as yet to be discovered and conceptualized.

(Säljö in Ashworth *et al* 1986, Ch.5 p.121)

Greater understanding of students' views may lead to improved communication with students in the context of the articulation of critical thinking *desiderata* and in the ways in which we attempt to impart what is meant by critical thinking and analysis. Clearly this is a theme which will be developed further in the concluding sections, but in short it is anticipated that this work could underpin future changes and developments in the delivery of the Law curriculum here, particularly in relation to the first year of study. The work should both raise awareness of the student view and thus also prompt and inspire discussion and action on how best to enhance our pedagogic response, for example in relation to the explanation and teaching of skills and the giving of feedback – the latter especially being designated, at least by students, as a problematic area.

A brief outline of the mechanisms by which such research may be locally disseminated and considered and principles implemented may be useful. Currently I am Learning, Teaching and Assessment (LTA) Co-ordinator for the Law Subject Group, but whether my rôle changes or not in the near future there would be opportunities to present and discuss findings with key staff through Law's LTA Group, and/or through the programmed series of research seminars held at regular intervals, as well as at staff meetings and other Divisional and Faculty LTA events. While tending to be concentrated around key events such as validations, there is ongoing planning, discussion and consultation amongst colleagues in relation to a range of curricular and associated issues, and responses to this work would be integrated into these processes. There may

also be further opportunities to develop and embed practices and approaches arising from this work with the support of, for example, future Centre for Excellence in Teaching and Learning (CETL) and Learning and Teaching Institute (LTI) - based opportunities for project work in this area.

A Wider Context

As has been suggested, the fact that this work should inform Induction and Orientation, and assist in identifying and ameliorating difficulties that students have in the context of critical thinking, means that the research clearly contributes to the ongoing work relating to "transition" to the first year at university.

Transition has been more heavily emphasised in recent years due to a range of suggested factors, in particular external developments such as widening participation, the debate over the nature and quality of 'A' Levels and other post-sixteen qualifications; increased and government-led targets for admission to University, and other socio-cultural factors which influence the forms of knowledge, expectations and perceptions of the generations currently entering university. The acquisition of academic skills is seen as being a key part of the transitional or orientational 'phase' and critical thinking, or analysis, can be no exception. The findings of this work, then, are of widespread concern and will

be used to inform current debate, by means of the preparation and presentation of conference papers.

There is a certain topicality to the notion of critical thinking, not least in the (rather instrumental) context of the introduction by some universities of Thinking Skills Assessments as part of their Admissions procedures, particularly for law and other "high-applicant number" courses:

Critical thinking skills must be more widely taught if we are to broaden access

(Alec Fisher: THES Dec. 19/26 2003, no.1620 p.18)

Students applying to read law at the leading universities will have to sit a joint entrance paper as part of this autumn's selection process... The test is designed to provide "objective evaluations of candidates from a wide range of social and educational backgrounds by assessing general intellectual skills of comprehension, analysis, logic and judgement... in this way the test will help to widen participation in higher education".

(Glen Owen: The Times, Feb.3.2004. p.8, quoting the "architects" of the National Admissions Test for Law).

It is interesting to note, (if admittedly not strictly relevant for this research project) how the notion of critical thinking is being related to the issue of widening participation within this particular set of debates. On the one hand (and reflected in the latter quotation) critical thinking is being presented as somehow being a free-floating, neutral measure of 'intellectual potential', unrelated to social and educational background and so useful in determining

intellectual capacity for (legal) study in a fair and “even-handed” way. However as Fisher notes in the THES article referred to above, it is likely that:

...students from more privileged backgrounds will be given instruction in these skills before taking the TSA [Thinking Skills Assessment], and their advantaged position will be maintained.

An interesting and highly topical political context therefore exists for an enquiry into the possession of critical thinking skills, perhaps particularly among Law students.

Critical thinking tests (subject again to definitions as discussed in Chapter 2) of course also form a significant part of employers' selection techniques, at least in terms of the logical thinking and problem-solving aspects.

To sum up, then, the aim of this work is to provide a better understanding of students' perceptions and interpretation of what we as academics expect in terms of some of their approaches to study. It should help us better to understand students' ability to undertake critical analysis in a wide academic context and to some extent to apply it in a specifically legal context. Some of the factors which may inhibit their understanding may be extrapolated and this may lead to improved pedagogic approaches. In both the wider context of higher education, and legal education specifically, critical thinking is seen as key:

Intellectual integrity and independence of mind. This requires a high degree of self-motivation, an ability to think critically for oneself beyond conventional attitudes and understanding and to undertake self-directed learning; to be reflective in the sense of being self-aware and self-critical... These abilities and other transferable intellectual skills are usually developed by degree level education...

...the Degree course should stand as an independent liberal education in the discipline of Law, not tied to any specific vocation.

(Paras. 2.4 and 4.6 1st ACLEC Report 1996)

(Lord Chancellor's Advisory Committee on Legal Education and Conduct).

The different approaches to the Law Degree - as liberal education, and as preparation for professional practice are commented on further, particularly in Chapter 8.

These, then, are the key themes and principles to be pursued and developed in the succeeding chapters.

Chapter 2

Critical Thinking

It is apparent from reading the main contributors to the debate on critical thinking that there exist several definitions, or purported definitions, of what critical thinking might mean. An initial impression of the range of possibilities is suggested by the existence, at one end of the spectrum, as it were, of a view of critical thinking as a system of logical problem-solving, for example Ennis (1995) and Bowell and Kemp (2005). At the other end, (for this immediate graphical purpose), an impression of critical thinking as an entire approach to life and society, in a sense that nowadays could be termed a mental ‘lifestyle’, can be found (Brookfield, 1987 and 2005; Moon, 2008). Conceptions moving towards the latter can be seen in the developing sense of critical thinking as being allied to, or constituted by, reflection and reflectivity. It is such conceptions and definitions which will be explored in further detail and analysed below.

Certain problems immediately present themselves within the context of such intended analysis. The first, and in a sense the most unwieldy, is the problem of isolating the notion of “critical thinking” from the study of “thinking” generally. It became very apparent, quite early in the reading, that there would be a need to construct a boundary to exclude, for example, the more psychological and neurological accounts of the thinking process. Theories of cognitive

development and psychological experiments in the field are not included here, for reasons of space, lack of expertise and indeed relevance.

The processes of cognition are not essential to what is particularly being scrutinised here; namely, the attempts to define and categorise what is broadly termed critical thinking, from the perspective of both academics and students. However, it would be naïve not to acknowledge that certain conditions for, and processes of, critical thinking, are not rooted in the deep structures and chemical interactions of the brain, or in key psychological aspects of thinking, developed from infancy, such as what Bruner *et al.* (1956) would term "...one of the simplest and most ubiquitous phenomena of cognition: categorizing or conceptualising." (Preface Pviii)

Secondly, to some extent there should be an awareness of the particular political or philosophical contexts in which writing on critical thinking has taken place. Broadly, for example, there has been a shift from an essentially positivist or "technical" outlook to (in some cases) a view of critical thinking as being an aspect of the maturing self, with a greater emphasis on subjectivity and self-awareness. Such shifts could be linked with other changes in society, such as the growth of individualism, and the relative distrust sometimes evidenced in modern society in respect of positivism and scientific developments.

Changes in educational policy and ideology have also taken place. It could be suggested that there has been some degree of shift to a more student-centred approach, certainly if contrasted, for example, with educational approaches in the 1950s and previously. However, it may appear that this shift has been offset to some extent by more recent political interventions such as the promotion of league tables, the necessity of "teaching to the exam" and the standardisation and homogenisation of the curriculum, at least in schools. Pedagogic trends will undoubtedly influence, and be influenced by, developments in the theory of critical thinking.

Writers such as Habermas and Chomsky perhaps particularly reflect an awareness of the relationship between critical thinking and the political context of the time:

The encroachment of economic and administrative sub-systems on communicative interaction can be suffocating. Nonetheless, there is a potential for emancipation and resistance through social movements concerned with the quality of life...

Habermas deems it essential that we develop the institutions and the communicative competence necessary to secure an effectively functioning public sphere in which practical questions can be resolved through public discussion and decided on the basis of discursively achieved agreement.

(Mezirow, 1991, Ch.3 p.72)

There is here a suggestion of a close and necessary relationship between what Habermas termed 'emancipatory learning', which includes critical reflection and the construction of rational discourse, and the wider political and economic

world we inhabit. We will return to this idea of an emancipatory aspect of critical thinking below.

What will now firstly be considered is the notion that critical thinking is largely about logical (in the strict sense) thinking and problem-solving. King and Kitchener (1994) go straight to this consideration, (if only subsequently to critique it):

Traditional attempts to define critical thinking typically reflect two perspectives. From one perspective, critical thinking is viewed as synonymous with logic or the hypothetico-deductive method...From another perspective, critical thinking is seen as a process of inquiry or problem solving.

(Ch.1 p.8)

The connection with logic, and traditional assumptions about the development of critical thinking within the curriculum, is given expression by John McPeck, albeit while also acknowledging the “vagueness of the concept” which can support:

...curriculum proposals ranging from courses in Latin to logic and clever puzzle games.

(McPeck, 1981, Ch.1
pp.1-3)

This would appear to reflect the notion of critical thinking broadly espoused by employers’ testing techniques, for example, through the deployment of the typical “scenario followed by multiple choice questions” test for job applicants. The test is presumably designed to reveal the degree to which the candidate

can assimilate facts, comprehend and negotiate contradictions and linguistic complexities and arrive at a logically deduced and correct conclusion. Such tests would appear rooted in an instrumental and logic-based conception of critical thinking. Such an approach has been given a certain topicality, as mentioned above in the introductory chapter, in relation to Thinking Skills Assessments and widening participation, for example.

It seems that such tests are being increasingly used to determine a candidate's intellectual capacity for academic study in a fair manner, where class, gender, ethnicity and other such factors relevant to educational performance are left in abeyance. As has been noted above, however, there remains the possibility of more privileged or fortunate students being thoroughly coached in such types of test, so that they rapidly become more conversant with the techniques to be applied.

In relation to such views of critical thinking, (as relating to skills in logic) I would agree with McPeck's assertion of a "fallacy" which:

...consists in regarding a *necessary* condition of critical thinking, namely a concern for logic, as a *sufficient* condition for critical thinking.

(Ch.1 p.8)

The idea of critical thinking as being, if not merely to do with logic, but with 'process', is one which appears to be connected with the work of Robert Ennis, who wrote a key article in 1962, and who appears at the time of writing on the

reading list of the OCR Examinations Board Advanced Subsidiary GCE in Critical Thinking Syllabus. His work *Critical Thinking* (Prentice Hall, 1995) is recommended as “[a]n excellent critical thinking text”.

McPeck, however, subjects his work to some fairly vehement criticism. One of the first points he makes (and one which may be particularly relevant in its implications for my project) is as follows:

...it is never clear whether Ennis sees himself as providing a conceptual analysis of critical thinking, so that we can know more clearly what it is, or merely a list of suggestive ‘aspects of critical thinking that researchers and educators ought to use as discrete and testable foci. While these two endeavours are distinct, there is considerable evidence throughout the paper that Ennis sees himself as providing both. Regardless of his intent, I shall argue that the analysis fails on both counts, but it is disquieting not to know at what point precisely he is trying to carry out which.

(Ch.3 p.40)

I have quoted this at some length as this passage seems well to express some of the potential conceptual and methodological pitfalls surrounding this kind of enquiry. Primarily there may be a slippage or elision between the attempts at conceptual definition of critical thinking and what I would term the “how to do it” and therefore perhaps “how to identify it” approach, in which there may be a danger of declining into a limiting and potentially reductive “checklist” mentality. Such an approach would be useful and valid for certain purposes (and, from a fairly cursory view so far of the A/S level syllabus this seems to be the

approach taken in that context) but it may fail to give full credence to any broader notion of critical thinking, (to be discussed below).

What McPeck mainly takes issue with in Ennis' approach, however, is his apparent insistence on the notion that critical thinking is about "the correct assessing of statements" (quoted in Ch.3 p.41) (although it should be pointed out that some of his later definitions are broader than this). Ennis discusses twelve 'aspects' or 'abilities' (and McPeck thinks this "switch" in usage is significant) (Ch.3 pp.41 and 55), and "three distinguishable dimensions" (Ch.3 p.41) of critical thinking, with the net result, according to McPeck, that his analysis is limited and misconceived. Put simply, there is not enough recognition in Ennis' work of, for example, the problem of different versions of "correctness" and the question of the foundational factors on which knowledge is constructed. These problems McPeck terms "epistemic" (Ch.3 p.44). He objects to the notion that critical thinking can be inherently allied to the notion of correctness, suggesting instead that there can be "degrees of critical thinking" and that "subtlety and...flexibility" (p.45) are what is needed within the concept.

McPeck also attacks the 'aspects' or 'skills' element in Ennis' work:

The criterial dimension of critical thinking precludes the *a priori* isolation or abstraction of any special set of particular skills to characterize it. Thus Ennis's twelve 'aspects' – which, incidentally, he often calls 'skills' – cannot contain the inherent diversity of critical thinking: they cannot, therefore, define it.
(p.50)

It would seem clear that it is this element of identifiable (and hence, it may be presumed, teachable) skills which makes this approach to critical thinking so attractive to curriculum and syllabus designers in the world of education today, as evidenced, for example, in AS level subject specification documents and the debates referred to above over testing and widening participation. However, from another perspective, such definitions and conceptualisation of critical thinking appear contentious (as has been indicated above) and limited. From the point of view of subsequent analysis the most cogent expression of critique comes from King and Kitchener (1994):

Those who see critical thinking as only problem solving fail to acknowledge that epistemic assumptions (assumptions about knowledge) play a central role in recognizing a problematic situation. They often see a close relationship between such thinking and the scientific method. Typically, they specify a set of steps for approaching a problem, such as formulation and then testing hypotheses. What is missing from this approach is the understanding that such steps cannot be applied if the individual fails to recognize that a problem exists and that this recognition itself is predicated on other assumptions about knowledge (for example, that it is gained through enquiry).

(Ch.1 p.8)

We can see a connection between King and Kitchener's categorisation of problems, and associated problem-solving techniques, and what will be further discussed below in terms of critical thinking as an approach to life and the world in general. They contrast "problems that can be solved using deductive logic" with "[p]roblems such as overpopulation, hunger, pollution..." (Ch.1 p.10). The difference lies essentially in the extent to which a problem can be definitively described and a "correct" solution determined. Working out a

“solution” to what they term “ill-structured problems” will involve far more than a mere application of deductive logic or quasi-mathematical formulae. As they point out, people’s “knowledge about the limits of knowing...and the criteria for knowing” (Ch.1 p.12) will become significant. Overall, King and Kitchener’s “Reflective Judgement Model”, positing seven stages of reflective thinking development (Exhibit 1.1 Ch.1 pp.14-16) stands as a seemingly robust and necessary antidote to the traditional view of critical thinking as logical puzzle solving.

King and Kitchener ascribe much of the early inquiry into critical and reflective thinking to the work of John Dewey. In his work *How We Think* (1933), for example, we can see the beginnings of an attempt to define and delineate the otherwise rather vague or even common-sense notion of reflection, with reference to problems of uncertainty, evidence, and epistemic assumption. He describes at one point (Ch.5 p.72) the differences between “formal reasoning and thinking as it actually goes on in the mind of any person”, laying particular emphasis on “actual thinking [as] a process...always [having] reference to some context”.

What seems to be key, and something which will be returned to in this exploration of what critical thinking might be, is the notion of evidence. Reflective (critical) thinking, however initiated:

...includes a conscious and voluntary effort to establish belief upon a firm basis of evidence and rationality.

(Dewey, 1933, Ch.1 p.9)

Like the concept of critical thinking itself, the term “rationality” becomes problematic. It connotes the Latin “ratio” (reckoning; reason), invoking the deductive logic approach described above. But “rationality” also evokes a wider and more philosophic approach, through the idea of rationalism as a deliberate oppositional movement to, for example, supernatural, customary, or religious beliefs.

The principle of rationality, in one of these guises, would appear to underpin most definitions of critical thinking. Rationality points both to the deductive logic approach, through the reflective model, and toward the emancipatory or ‘lifestyle’ approach to be described below. It is perhaps through the emphasis on rationality, carrying as it does these various meanings, that Dewey attempts to get beyond dualistic thinking in this field. In her foreword to *How We Think* Maxine Greene comments on:

...his effort to integrate...“personal attitudes and knowledge about the principles of logical reasoning” (Dewey, 1993, p.34). There is no inherent opposition, he insisted, between such attitudes and logical processes...

(Foreword to 1933 Edition, p.xv)

Dewey however develops his account, or definitions, further. Critical, or reflective thinking, does not only signify the application of rationality even in its widest sense. Other epistemic considerations come into operation.

We may carry our account further by noting that *reflective* thinking, in distinction from other operations to which we apply the name of thought, involves (1) a state of doubt, hesitation, perplexity, mental difficulty, in which thinking originates, and (2) an act of searching, hunting, inquiring, to find material that will resolve the doubt, settle and dispose of the perplexity.

(Dewey, 1933, Ch.1 p.12)

He goes on to acknowledge that a state of mere perplexity does not necessarily give rise to reflective thinking if the thinker is insufficiently critical. This then may still beg the question of what constitutes critical thinking.

What Dewey does, though, is to establish some cornerstones, as it were, for a wider conception of reflective and critical thinking. Rationality, evidence, awareness of context and uncertainty are all pre-requisites for such a process.

He seems to stand between an excessively technical and instrumental view of critical thinking (technical problem-solving) and the emancipatory, thoroughgoing critical world view:

Genuine freedom, in short, is intellectual; it rests in the trained *power of thought*, in ability to 'turn things over', to look at matters deliberately, to judge whether the amount and kind of evidence requisite for decision is at hand...

To cultivate unhindered, unreflective external activity is to foster enslavement, for it leaves the person at the mercy of appetite, sense and circumstance.

(Dewey, 1933, Ch.5 p.90)

These sentiments perhaps accord with the traditional notion of a liberal education, where a disinterested pursuit of knowledge, through the study of arts, literature or the classics, for example, was seen as being the most intellectually beneficial of all forms of study and particularly so in contradistinction to vocational training. Liberal, or humanities education, can be critiqued from a number of perspectives, but nevertheless:

...has traditionally concerned itself with broadening horizons and facilitating individual personal development.

(Fox and Bell, 1999, Ch.1
p.5)

Unreflective, uncritical activity from this perspective is not conducive either to positive personal development or the good of society as a whole. Such ideas have been taken forward, for example, in the work of Donald Schön, (1983) albeit in arguably a somewhat instrumental way.

The notion of reflection, and the reflective practitioner, seems to be being harnessed to a type of Human Resources model ("we're all reflective practitioners now") in that much professional development, appraisal and advancement in educational and comparable circles rely at least partly on such reflective principles and approaches being apparently evidenced.

However, another manifestation of reflective critical thinking, leading on to a wider and more emancipatory view, can be found for example in the work of

Stephen D. Brookfield. Brookfield has written a considerable amount on the subject of critical thinking and related issues; for example his work *Developing Critical Thinkers* (1987) not only examines what the concept might mean and how it can be identified and developed, but also considers it in the wider contexts of personal development and social and political ‘healthiness’. There appears to be a recognition in Brookfield’s work of critical thinking as at least partly being to do with the challenging of received and internalised views, with a concomitant benefit both for personal growth and society’s well-being.

Brookfield describes critical thinking thus:

This activity entails much more than the skills of logical analysis taught in so many college courses on critical thinking. It involves calling into question the assumptions underlying our customary, habitual ways of thinking and acting and then being ready to think and act differently on the basis of this critical questioning.

(Brookfield, 1987, Part 1
p.1)

In essence, for Brookfield critical thinking is not merely an academic tool but a way of life. Aspects of critical thinking in his conception include, for example, “identifying and challenging assumptions”; “challenging the importance of context” and the development of “reflective skepticism” (pp.7-9). Such mental behaviours can, he argues, help in the enhancement and strengthening of democracy, because people who are critical thinkers will become more mature, more aware and more engaged with what he terms “broader social forces” (Preface, p.xi). He suggests that:

A readiness to ask why things are the way they are, a capacity to speculate imaginatively on alternative possibilities, an inbuilt skepticism of the pronouncements and actions of those who are judged to be in positions of political and economic power – these are fundamental ways in which the processes of critical thinking, analysis, and reflection in adults can be recognized.

(Brookfield, 1987, Part 1,
Ch.4 p.68)

These are qualities (notwithstanding the point about critical thinking not being limited to the classroom) which students in higher education (according to my presuppositions) ought to be in the process of developing. Arguably Law students in particular should develop a critical sense along the lines of Brookfield's quotation from Berger and Kellner (1981, p.6); that:

...not only is the world not what it appears to be, but it could be different from what it is.

(Brookfield, 1987, Part 1,
Ch.4 p.68)

There is a relationship between this view of critical thinking and the debates over the forms and purposes of legal education, briefly referred to earlier, which it will be interesting and relevant to pursue. There is a growing body of literature relating to these issues within legal education but the most immediately pertinent comment comes from Unger, writing in the *Modern Law Review*:

...[legal analysis]...must elect the citizenry as its primary and ultimate interlocutor. It must imagine its work to be that of informing the conversation in a democracy about its present and alternative futures.

(Modern Law Review,
1996, p.20)

The idea, then, that:

...the liberal legal education seeks to prepare the graduate for intelligent participation in the politico-legal life of the community.

(Brownword, in Cownie
1999, Ch.2 p.29)

is one which would seem to highlight the relevance of critical thinking in Brookfield's sense and which meshes with my personal and professional interests as set out at the beginning.

The idea of critical thinking in the 'reflective skepticism' sense, as Brookfield describes it, is one of the aspects I should like to pursue in my enquiry. How far in practice this can be developed is a point again which will be returned to in the discussion on Methodology below. Brookfield's work is also useful in this regard, as he gives a great deal of attention to the question of how to recognise critical thinking, which should prove invaluable in the interviewing process.

Critical thinking is not seen as a wholly rational, mechanical activity...

Being a critical thinker involves more than cognitive activities such as logical reasoning or scrutinizing arguments for assertions unsupported by empirical evidence. Thinking critically involves our recognizing the assumptions underlying our beliefs and behaviours.

(Ch.1 pp.12-13)

This approach leads on to an even wider range of associated theories about learning, personal development and societal responsibility. Brookfield cites, for example, Habermas' theory of "emancipatory learning" where "learners

[become] aware of the forces that have brought them to their current situations and [take] action to change some aspect of these situations (Ch.1 p.12).

Even more interesting is his discussion of the development of critical analysis of political issues, and television, later in the book. What Brookfield terms “ideological detoxification” and “media literacy” (Ch.10 p.189) are in my view crucial aspects of any attempted definition of what critical thinking might involve, and we will return to this below.

An arguably more radical stream of critical thinking analysis can be traced through the work of Stephen D. Brookfield, then, and in the writings of, for example, Habermas and Chomsky. While critical thinking *per se* is not the latter's immediate or obvious subject it is evident in their concern for “emancipatory learning” (in Habermas) and in Chomsky's challenge to the “manufacturing of consent” in modern society.

Chomsky writes in relation to the methods of social control utilised in democratic societies:

The most effective device is the bounding of the thinkable, achieved by tolerating debate, even encouraging it, though only within proper limits.

(Chomsky, 1989, Ch.5
p.105)

It follows, then, that the necessary corrective to the hegemonic control this implies, and to the ideological manipulations of the mass media, is the fostering

of a critical awareness of the processes by which consent is manufactured in modern liberal societies. Chomsky puts it thus:

My personal feeling is that citizens of the democratic societies should undertake a course of intellectual self-defence to protect themselves from manipulation and control, and to lay the basis for more meaningful democracy.

(Chomsky, 1989, Preface viii)

Chomsky's analysis clearly draws on Gramsci's theories of hegemony and Althusser's depiction of the workings of ideological state apparatuses. The "bounding of the thinkable, achieved by tolerating debate" (as referred to above), recalls Marcuse's notion of "repressive tolerance". The work of the Frankfurt School of critical social theory, set up in 1923, cannot, for reasons of space and because of the focus of this dissertation, be considered in great length or detail. However it is clear that the analysis and approaches central to the school are key to any account of critical thinking in the sense of it being an emancipatory and challenging philosophy countering dominant cultural and social world-views. Brookfield makes a powerful case for this form of critical theory to be taught in adult education, quoting Kincheloe's approach to critical thinking as being:

...the ability of individuals to disengage themselves from the tacit assumptions of discursive practices and power relations in order to exert more conscious control over their everyday lives.

(Kincheloe, 2000, p.24,
quoted in Brookfield, 2005,
Ch.1 p.13)

The conceptual tenets central to the work of the Frankfurt School – ideology, hegemony, alienation, power, liberation and reason are seen by Brookfield as essential ingredients in adult (higher?) education if it is to be a transformative and liberating experience. He argues that examination of these theoretical approaches in the context of contemporary life and society can lead to greater recognition and challenging of one's assumptions (Brookfield, 2005, Preface, p.ix). Above all critical theory provides a “far more politicized” discourse within adult education than has traditionally been the case (Brookfield, 2005, Preface p.ix).

Such politicisation, as he acknowledges, will worry some people:

Critical theory has as a priority the critique of capitalism...[I]ts intellectual genesis is in Marxism, a fact that is hardly likely to endear it to the vast majority...

(Brookfield, 2005, Preface p.x)

As Jonathan Wolff points out, however, it is salutary to bear in mind that:

...the failure of Communism does not mean that all is well with Western, liberal, democratic capitalism. And it is Marx, above all, who still provides us with the sharpest tools with which to criticise existing society.

(Wolff, 2002, Intro., pp.1-2)

Unless critical thinking is to be robbed of all substance, then, it must be focussed on and attuned to analysing the forces operating around and within us in the society we inhabit.

Critical theory, as described briefly above, can then provide a significant and potentially rewarding approach to the examination of ourselves and our society. Brookfield provides a nice response to those worried about, or resistant to, the “anti-capitalist” theme of such theory:

So at the same time as affirming students' right to disagree with and condemn Marx, I also affirm my right as a teacher to insist they engage him before they ritually dismiss him.

(Brookfield, 2005, Ch.2
p.363)

Such approaches to the notion of critical thinking, and what adult and higher education may be expected to promote, leads on to a necessary, if brief, examination of the work of Habermas in this context. As mentioned above, his conception of ‘emancipatory learning’ connotes critical reflectivity, the (re)construction of rational discourse and critique of the political world we inhabit. The key aspects of his thought in this respect would appear to be “the ‘colonization’ of the lifeworld by the market economy and legal-bureaucratic regulation” and the ways in which “public opinion ceases to be a source of critical judgement and checks, and becomes a social-psychological variable to be manipulated” (Outhwaite, 1994, Ch.1 p.9).

Habermas’ thoughts and theories in relation specifically to learning have a great significance for any account of critical thinking and the learning process. As Brookfield puts it:

Although his body of work is intimidatingly wide, certain theories close to adult educators' concerns repeatedly emerge. There is the belief that adult learning is the engine of social change and that understanding its dynamics is as important as understanding mechanisms of production and exploitation. There is also the contention that critical reflection is a learning process observable mostly in adulthood, and a consequent emphasis on the possibility of adults reflecting back on ideological norms and behaviors internalised uncritically in childhood.

(Brookfield, 2005, Ch.9
p.273)

This passage is quoted at some length as it appears clearly and comprehensively to sum up the significance of Habermas' work for educational theorists and scholars. Of course, it is clear that such a conception of adult learning is one very distant from:

...the "real world" of adult education as practiced in adult basic education, adult undergraduate degree completion programs, corporate training, and so on.

(Brookfield, 2005, Preface,
p.X)

Critical theory generally, including Habermas' approach, is by definition going to be, and be perceived to be, oppositional and counter-intuitive in a society where instrumental, quantifiable and vocational values predominate in education. In such a society there is potential for 'subversion' of any notion of critical thinking from that envisaged within a critical theory, or emancipatory framework, to one where it becomes apparent that:

What is in evidence is, rather, a form of critical thinking that serves the operationalism and decisionism of the modern organisation.

(Barnett, 1997, Ch.4 p.56)

In a further very astute observation Barnett writes:

Schön (1983) thinks that he is describing how the skilled professional functions; in fact he is telling us about the character of modern society as such. We are all reflective practitioners now. Critical thought, as reflective practice, is a constitutive element of the working life of the highly educated. ...In that sense, the idea of the reflective practitioner may be 'reflective', but it is thoroughly uncritical.

(Barnett, 1997, Ch.3 p.39)

What is signified by reflective practice, as well as critical thinking, depends on political context, purpose and the contemporary social meanings with which the terms are imbued. For Habermas the construction of knowledge and the nature of learning embraces three particular elements: "the technical, the practical, and the emancipatory" (Mezirow, 1991, Ch.3 p.72). The first two of these relate to what Habermas termed instrumental and communicative learning.

It is the "emancipatory interest...[which] impels us, through reflection, to identify and challenge distorted meaning perspectives".

(Mezirow, 1991, Ch.3 p.87)

Reflection, for Habermas, then, involves critical self-reflection as to, for example, the ideological forces which underlie our existence, and hence the conditions governing our "lifeworld" and the changes taking place therein. This, then, is a manifestation of critical thinking as a form of theory-into-practice:

In self-reflection knowledge for the sake of knowledge attains congruence with the interest in autonomy and responsibility. The emancipatory cognitive interest aims at the pursuit of reflection as

such. My *fourth thesis* is thus that *in the power of self-reflection, knowledge and interest are one.*

(Habermas, 1972,
Appendix, p.301)

As has briefly been indicated above, Ronald Barnett has also explored various aspects of critical thinking and reflectivity. In essence, he classifies critical thinking in four ways: critical thinking as control, reconstitution, the development of wisdom, and praxis. In his conception these relate to, (in turn, and in short), principles of validity; intellectual scepticism; autonomous thinking, understanding and contemplation; and finally emancipatory thinking and interventionist action (paraphrased from Barnett, 1997, Ch.1 p.21).

The first conception would appear to recall the technical, logical problem-solving approach discussed at the beginning of this chapter. There is then a deepening development of the conceptions until something more akin, perhaps, to Habermas' approach is reached. There is also an apparent similarity with the reflective judgement model posited by King and Kitchener (1994).

Barnett acknowledges that critical theory, as outlined above, can be an important part of this development:

...our cognitive efforts have the power not just to cloak us with illusions or ideologies, but also to critique the world – and, in that critique, to have a self-referential capacity.

(Barnett, 1997,
Introduction, p.5)

In Chapter 5 Barnett develops his categorisation of critical thinking further, in what he terms a ‘schema’. Clearly any such attempt at categorisation of such intangible thought processes is bound to be subjective to some extent but his classification seems to add depth and sophistication to what in my overall analysis here appears as a rather linear ‘progression’ from critical thinking as the logical problem-solving model to critical thinking is the ‘lifestyle’ or lifeworld and social analysis approach.

In terms of the ‘schema’ he proposes, one axis is formed by the domains of knowledge, self and world, which relate to the forms of criticality of (in turn) critical reason, critical self-reflection and critical action. This is then given perspective by the other axis, levels of critical thought. These he posits as being critical thinking skills, metacritical (reflexive) capacities and critical thought (Barnett, 1997, Ch.5 pp.69-71).

In this categorisation of students’ development, then, there is a movement from the capacity of “making permitted cognitive moves of rational argument” (p.70) to a capacity “to reflect critically on one’s own understanding...to the development of the reflexive capacity to evaluate that understanding and its epistemological standing” (p.71).

These qualities start to “point towards *critical thinking*” – which can develop into “*critical thought*”. For Barnett there is a difference.

Barnett's analysis of the uses (and arguably, abuses) of critical thinking in the modern world and the modern university is particularly arresting. He recognises and describes, in an entirely judicious and fair-minded way, the almost necessary pressures and limitations which are in practice brought to bear on any curricular development of the 'higher levels' of critical thinking. Changes in the range of academic disciplines offered; the development of mass higher education; changing relationships between universities and wider society and the effects of post-modernisation and globalisation are some of his examples (pp.78-90) which are contributing to changing conceptions of critical thinking, despite an apparent universality of approach within academe.

Problems of Definition

Since the mid 1970s, the proponents of thinking in the schools (and colleges) have become distinctly more numerous and more vocal. The banner they have unfurled is emblazoned with the phrase 'critical thinking' and although neither they nor those who oppose them are very clear about just what critical thinking entails, the hue and cry continues to mount.

(Lipman, 2003,
Introduction p.2).

While this quotation reflects a particularly American emphasis it serves well to express the definitional problem. One of the most apparent and besetting problems in this research, and the critical thinking literature review in particular, has been the difficulty in defining and capturing what is meant by 'critical thinking'. It is an issue which the interviewees allude to, both implicitly and

explicitly, in their discussions, and which eludes all but the most narrowly-focussed and technical writers on the subject. Later (in Chapter 5), in the attempt to give shape and categorised expression to students' perceptions, in effect there is created a set of student-generated quasi- definitions which may to some extent mesh with or reflect some of the 'givens' in the literature (this is developed in Chapter 8). However, the uncertainties, assumptions and preferences of the students (as we shall see, for example in preferring the word 'analysis' to 'criticism') in themselves would appear to indicate a definitional problem.

As we have seen above, the literature describes a range of approaches, from the technical to the philosophical or political. To attempt to encapsulate in a few terms what critical thinking is or might be appears to me both difficult and, potentially, reductive. Nevertheless Ennis (referred to above) and others have provided lists of qualities which may be associated with critical thinking; summaries of some of these together with their 'authors' are presented by Lipman (2003, Ch.2 pp.56-60). Definitions tend to centre around, for example, problem-solving and decision-making; attention to formal thinking processes; claims testing, and evaluation of interpretation. The point is, that as Lipman suggests :

No doubt there are dozens more of such characterizations that are equally worthy of mention ...The problem is that we lack an organizing principle that will enable us to put these random characterizations together in a consistent and coherent way.

(Ch.2 p.58)

From this perspective it is perhaps not altogether surprising that the students do not in general evince very highly conceptualised or completely articulated perceptions, tending (as will be seen) to rely on a set of more or less fragmented or goal-oriented apprehensions of what is expected of them in this area of their academic life.

If we were to go on to locate the 'random characterizations' of critical thinking within the often contested context in which debates about educational theory and practice take place, the situation becomes even more complex. For example, a fundamental (possibly) disagreement is described by Lipman (2003, Ch.3 p64):

The conception of thinking [which] primarily entails *problem solving*

versus

The conception of thinking [which] primarily entails *problem seeking*.

He denotes this difference as relating to education in the sciences (in the former conception) and the humanities. (This, incidentally, raises an important and interesting question in relation to legal education which is developed in the concluding chapter. Put simply it is the continuing and largely unresolved question about the nature and purpose of legal education as being 'technical' or 'humanities-based').

In the context of critical thinking both these conceptions would appear highly significant, although there has probably been a tendency for the former to be prioritised.

Conditions for the development of critical thinking will depend to a great extent on the model of educational practice being pursued. What Lipman (Ch.1 p18) terms the 'standard' and 'reflective paradigms' also bring in considerations, for example, of the extent to which interdisciplinarity, autonomy, research and creativity are incorporated within a particular curriculum. It is difficult to see how critical thinking can or should be viewed in isolation from the wider educational context or ethos.

A different emphasis in attempts at definition can be traced, for example, in King and Kitchener's work (1994) :

there are obvious conceptual similarities between some definitions of critical thinking and reflective judgment. There are also some definitions of critical thinking that differ in substantial ways from the definition of reflective judgment... critical thinking is typically defined as logic or as a set of general problem-solving skills, and many definitions focus on the role of formal or informal logic to illuminate basic reasoning skills.

By contrast, those who write about critical thinking within a cognitive psychology tradition tend to be more concerned about the thinking process and how it develops... Neither group acknowledges the importance of epistemic assumptions in distinguishing between problem types or the role that these assumptions play in formulating solutions.

(Ch.8 p.190)

The relationship between critical thinking and reflective judgement, and other forms of related thinking such as moral judgment, appears to be a complex and contested one. Perhaps one route into an examination of this relationship is, as King and Kitchener suggest, to consider that :

...the domain of reflective thinking focuses on issues of how we can know and how we can make the best possible decisions in light of intellectual uncertainty.

(Ch.8 p.206)

The problem of the definition of critical thinking appears to widen the more it is considered, and, like the path Alice tries to take to the hill in Carroll's 'Through the Looking Glass', to shift according to one's position at any given moment. Logic, (formal and informal); problem solving; problem seeking; use and evaluation of evidence; probing of argument; academic analysis; reflection; moral thinking; epistemological issues and intellectual and societal scrutiny are just some examples, as we have seen, of what critical thinking might be said to signify.

It would be problematic enough to take even one or two of these, and attempt to relate them in any rigidly systematic manner to the students' perceptions, as captured and described in Chapter 5. Given the complexity of 'thinking about critical thinking' there is a difficult adjustment to be made when trying to categorise and then review, in the light of available literature, the students' own apprehensions. This is developed a little further below, in the concluding chapter.

Chapter 3

Methods of Research

The development of qualitative, as opposed to quantitative research methods, at least in the social sciences, can be linked to the increasing dissatisfaction with and disavowal of the philosophical and scientific approach of Positivism. It could be said that Positivism has enjoyed an interesting history. From being effectively a liberating antidote to superstition and religious obsession, rooted in the eighteenth century Age of Enlightenment, it has come to be seen at least from some perspectives as a limited and one-dimensional approach unsuited to particular forms of research (within for example, the social sciences). Positivism's association with the idea of the search for objective truth, its emphasis on separating fact from value, and reliance on what have been seen traditionally as scientifically rigorous methods of enquiry have all come to be questioned, from within the social science community itself, as to its methodological fitness for purpose, and from the broader philosophical critiques stemming from post-structuralism and particularly post-modernism.

To have awareness and understanding of the debates and critiques underpinning social science research methods is essential not least for the determination and selection of the particular method to be used in a specific research project. But the issues lie more deeply: questions of methods and their underlying philosophies relate to the other key debates within research –

the relationship of subjectivity and objectivity; the status of the researcher relative to the 'researched', questions of interpretation of data, triangulation, and problems of discourse, for example.

It is the intention here to illustrate some of these issues with reference particularly to three key areas – interviewing techniques, transcription of data, and analysis (in broad terms) within qualitative research. Questions of subjectivity and objectivity permeate these areas, inevitably, and will be addressed where possible.

Interviewing

At its simplest:

The interview is a dialogue between two people, and its structure is shaped by the process of interaction: the interplay of question and answer, taking turns in speaking, both of you knowing what has already been discussed as you progress through a series of topics.
(Drever, 1995, Ch.6 p.62)

This quotation might be said to represent more the 'common-sense' approach – which is done "without thinking much about how we do it" (Douglas, 1985: 12, quoted in Arksey and Knight, 1999, Ch.1 p.7).

Reflection, however, might suggest that as with any formalised or semi-formalised (or indeed any) verbal interaction there will be several layers of

significance, potential dissonance, power relations, ambiguity and tension, to name a few, which will attend, implicitly or explicitly, any interviewing situation. For a sensitive, meaningful and, from the point of view of the research project, ultimately useful interview to take place more is needed in terms of examination both of the mechanics of interviewing and of the attendant sub-texts which arise from the process. This will be returned to below.

Interviewing (in various forms) has become a mainstay of qualitative research methods especially where the objective is to:

...explore areas of broad cultural consensus and people's more personal, private and special understandings.

(Arksey and Knight, 1999,
Ch.1 p.4)

Still using 'interviews' in the broadest sense we can begin to see why they are so predominant (although not exclusive) within qualitative social science research. If, as one definition puts it:

Social science disciplines are concerned with the sentient experience of being human and have in common an interest in human thought, life, culture and action.

then it would appear appropriate to use:

Alternative, qualitative approaches [which] concentrate on understanding the thinking and behaviours of individuals and groups in specific situations.

(Arksey and Knight, 1999,
Ch.1 p.10 (both
quotations))

Interviewing allows the researcher some access to personal perceptions and therefore to a sense of the degree of shared (or not) understanding of a phenomenon (in the particular case of my research) within a particular, localised community.

In terms of the mechanics, and types of interviewing, one of three forms is usually employed, again the choice being largely dependent on the objectives of the research and the research question being asked. Structured, semi-structured and unstructured approaches reflect the different 'agendas' which researchers may have and the type of knowledge they are seeking to construct. Broadly, structured interviews involve a set of predetermined questions which must be adhered to while semi-structured interviewing allows for more exploration and further questioning, within the parameters of some key, predetermined questions. Unstructured interviews may or may not involve explicitly articulated themes for exploration; there is here more emphasis on the interviewee's interests.

For my purposes, in this research, a semi-structured approach seemed most appropriate. I wanted to elicit a set of perceptions around a theme (critical thinking) within, mainly, a particular context (academic life) so a number of guide, or prompt questions would be essential in helping to set out the research concern and channel the students' thinking to some extent. However, I did not want to lose valuable data referring to other aspects of the student perception

relating, for example, to their views on personality, life-experience and 'lifeworld', and on our approaches to teaching on the Law Degree. Drawing boundaries round critical thinking, and abstracting it from the 'lifeworld' are in any case highly problematic, as has been illustrated in Chapter 2. Wider questioning and, to some extent, improvisation enhanced this aspect of the interviews, whereas a more strictly scripted approach may have stifled both the expression of such ideas and probably their articulation of views on critical thinking itself. I mention briefly, in Chapter 5, that this was not an easy or straightforward concept for several of the interviewed students to deal with.

As indicated above, however, there is much more to the art of interviewing than merely deciding on a structure and the set of questions to be asked, important though these are. Different writers (in particular, Kvale, 1996) have identified various aspects of qualitative research interviewing which need to be reflected upon and consciously thought through by the researcher – at best so that she initiates and arrives at the most satisfying (for all concerned) possible interview outcome, and at least that no damage is done (I shall return, briefly, to this point, below).

The theorisation of interviewing appears to concentrate around on the one hand, the positioning, and role of the researcher and the respective personal and cultural histories of the researcher and the interviewee – what I might term, albeit crudely, the question of personal interaction - and on the other hand, the

more linguistic and philosophic approach to the discourse involved. These are not necessarily unrelated, but are different in their emphasis. The issue of positionality in research is well-documented (see for example Denzin and Lincoln, 1998), but within the specific context of interviewing it relates more, as I see it, to the question of how the interviewer comes across, what persona she inhabits or adopts, and the relationship between the interviewer's personal sincerity and authenticity and potential for manipulation of the 'subject'.

A possibly extreme example of the last point above is provided by Arksey and Knight, in the context of interviewing and participant research:

His [a young interviewer] lack of familiarity with the trade meant that he was not treated with seriousness. The woman, on the other hand, could take the role of the 'dumb broad' and ask naïve questions that would expose answers that would be hidden by assumptions were the interviewer more expert-seeming.

(Arksey and Knight, 1999,
Ch.1 p.10)

Such observations start to take us into the area of ethics. At the very least it is important to be mindful of:

...the question of 'social roles' ... It is important to note that you do not just inhabit one social role ('research interviewer'). In fact we all carry around a bundle of roles with us ... and the fore-grounded interviewer-interviewee roles are not the only ones to be operative.

(Wengraf, 2001, Ch.2
p.44)

Social roles may relate to, as Wengraf also points out (Ch.2 p.18) the kinds of "secret personal histories" we all have relating to interviews. Such past

experiences will to some extent “shape and colour” how interviewers conduct the proceedings, both consciously and unconsciously.

You are likely to respond by 'playing particular interview scenes' or the whole cycle in terms of your unconscious repertoire. In the same interview, both informant and interviewer may be constantly switching roles through a medley of historic 'interview identities' without ever realising what they are doing.

(Wengraf, 2001, Ch.2
p.18)

The question of ethics in research and interviewing is clearly a large and to some extent separate area which would merit in-depth consideration. For the present, however, and as mentioned briefly above, the overriding consideration is, as Wengraf puts it (also on p.18) “to provide relatively safe research interview experiences for myself and my informants”. For the interviewer there should be awareness of potentially distressing lines of enquiry and the potential for the calling-up of uncomfortable or buried memories, together with a sense of the positioning within the interviewer relationship, as an ethical minimum. This is assuming the necessary formalities as to explanations, consent and so on have been gone through.

Clearly some situations will require much more consideration from an ethical point of view – vulnerable individuals, sensitive or confidential personal issues and so on – but such subjects lie outside the scope of this particular research project. However, whether or not a more formalised consideration of ethics is felt to be appropriate in a particular case, an understanding of these other

questions of social role, power relations and "human intersubjectivity" (Wengraf, 2001, Ch.2 p.46) are important for the creation of positive experiences for interviewer and interviewee, and for a sensitive and fully appreciative interpretation of data. The "common-sense" view of interviewing alluded to above may be the kind of approach which makes the following observation necessary:

I wish only to stress that power is a dimension of the interview interaction dangerously likely to be overlooked or ignored or denied by the well-intentioned and good-natured interviewer.

(Wengraf, 2001, Ch.2
p.44)

We can now turn to what I have termed the linguistic/philosophic analysis of interviewing. Writers such as Kvale, in particular, are beginning to apply some of the more recent developments in discourse analysis, philosophy of language and theories of knowledge to "the conversation" which is the social science research interview ("a construction site of knowledge" Kvale, 1996, Ch.3 p.42).

Such approaches can provide a shift in emphasis in qualitative research; an aspect which I was originally interested in pursuing within this project, but needed to abandon for reasons of space, time, and the focus of this research. It relates to the:

...application of discourse analysis [in which] interview texts do not merely refer to some reality beyond the texts, but the participants' discourse is of interest in its own right, and the authors pose questions, such as, how is the talk constructed? And What (*sic*) does it achieve?

(Kvale, 1996, Ch.3 pp.42-43)

From this perspective:

...discourse analysis [is] not so much a method as an approach, focusing on the constructive nature of questioning, transcribing, and analysing in interview research.

(Kvale, 1996, Ch 3 pp.42-43)

Discourse analysis potentially enables us to look more deeply not just at an external 'reality' or set of views and thoughts generated by the interview process, but at how those views and thoughts are themselves constructed by language:

Structuralists ... attack the idea that language is an instrument for reflecting a pre-existent reality or for expressing a human intention. They believe that 'subjects' are produced by linguistic structures which are 'always already' in place.

(Selden, 1989, Ch.4 p.74)

Such a shift in emphasis also has implications for an understanding of the relationship between objectivity and subjectivity. The linguistic-philosophic analysis suggests that:

Language constitutes reality, each language constructing reality in its own way. The focus on language shifts attention away from the notion of an objective reality, as well as from the individual subject. There is no longer a unique self who uses language to describe an

objective world or to express itself; it is the structures of language that speak through the person.

(Kvale, 1996, Ch.3 p.43)

To put it another way, what underpins this mode of analysis is the Lacanian view that 'consciousness is constructed by language' (Delanty, 1997, Ch.5 p.99). Such recognition could have significant effects if more fully incorporated into research methodologies (see my concluding point to this chapter, below).

Discourse analysis, together with the post-modernist questioning of notions of objective reality, provide further theoretical challenges to the positivist approaches to social science research outlined, for example, at the beginning of this chapter. If knowledge can be said to be constructed through language, through conversational interaction then this can lead to a different understanding of the nature of 'objectivity':

When we understand knowledge as the social justification of belief rather than as accuracy of representation, conversation replaces confrontation with nature ...

Human reality is understood as conversation and action, where knowledge becomes the ability to perform effective actions. Today, the legitimation question of whether a study is scientific tends to be replaced by the pragmatic question of whether it provides useful knowledge.

(Kvale, 1996, Ch.2 p.37,
Ch.3 p.42)

Kvale further interrogates the notion of objectivity in the context of qualitative research interviewing, in Chapter 4, where he defines the concept of 'intersubjective agreement' and tries to encapsulate the meaning and purpose of the research interview within a perspective of linguistic, philosophic and

social awareness. I quote again at some length as this analysis moves us on a great distance from the 'common-sense' approach to interviews.

With the object of the interview understood as existing in a linguistically constituted and interpersonally negotiated social world, the qualitative research interview as a linguistic, interpersonal, and interpreting method becomes a more objective method in the social sciences than the methods of the natural sciences, which were developed for a nonhuman object domain. From this perspective the qualitative research interview obtains a privileged position concerning objective knowledge of the social world: The interview is sensitive to and reflects the nature of the object investigated, in the interview conversation the object speaks.

In conclusion, the interview as such is neither an objective nor a subjective method – its essence is intersubjective interaction.

(Kvale, 1996, Ch.4 pp.65-66)

This analysis also provides a more subtle unravelling of the subjective/objective argument, partly by drawing an explicit contrast between the natural and other sciences and their objects and concerns, and partly by situating the interview within the complex context of the interacting and interweaving strands of psychology, culture, language and society. This militates against any received notion of a clear, distinct objective entity which is awaiting discovery – the 'miner' image which has been used for example by Kvale (1996, Ch.12 p.226) to convey this approach (as opposed to, for example, the 'bricoleur' image of the researcher) :

The *bricoleur* understands that research is an interactive process shaped by his or her personal history, biography, gender, social class, race, and ethnicity, and those of the people in the setting... The *bricoleur* also knows that researchers all tell stories about the worlds they have studied.

(Denzin and Lincoln, 1998,
Ch.1 p.4)

Having looked at the art of qualitative interviewing in some depth, I will now briefly consider some other key aspects of this particular research approach, aspects which again may seem to allow for a 'common-sense' evaluation but which also carry potential for a more complex consideration. Issues relating to transcription and interpretation to some extent overlap, but I will attempt to outline some key critical points, while acknowledging that the literature and discussion on textual interpretation is extremely wide and forms a discipline in itself.

Transcription

There is some debate in the literature (eg Drever, 1995, Wengraf, 2001) as to the extent to which full transcription of interviews is necessary, and how best transcription can be achieved. Much of this is concerned with the mechanics of the process, in the sense of, for example, whether every single "um, er" should be rendered or whether this interrupts the flow of narrative and meaning for the interpreter/reader to the extent that they should be edited out. Few transcripts will be 'perfect' in the sense that they may have to represent indistinctness or other problems with the recording medium; background noise, coughing,

interruptions and unclear interjections and so on. As with interviewing itself, though, the mechanics of the process interact with and to some extent contribute to the construction of meaning and the potential interpretations available:

...such factors as location, type of day, time of day, social constraints, physical and social arrangements and interruptions need to be considered. These physical and temporal arrangements are always of considerable importance.

(Wengraf, 2001, Ch.2
p.43)

To this one could add factors such as the act of recording itself (elevating the 'status' of the occasion, perhaps, and subtly altering the dynamics of the interviewer/interviewee relationship) and, subsequently, as referred to above, the issues which arise through the transcription process. The particular approach used in transcription could, it could be argued, affect the meanings subsequently attributed to and generated by the interview. As will be seen, however, the idea of 'meaning' becomes more complicated when a further analysis of the process is undertaken.

The most significant critical point in relation to the act of transcription (though also relating to the question of interpretation) is the question of paralinguistic expression – which could include what is colloquially termed 'body-language', spatial arrangements, and other aspects of non-verbal communication. As has been pointed out:

Transcripts are decontextualised conversations. If one accepts as a main premise of interpretation that meaning depends on context, then transcripts in isolation make an impoverished basis for interpretation.

(Kvale, 1996, Ch.9 p.167)

It is the "slightly blank gazes, sudden leaning-forwards in the seats" (Wengraf, 2001, Ch.2 p.47) which I as an interviewer was acutely conscious of, which also lent meaning and subtlety to the students' expressed views, and made interviewing a vivid and enriching experience.

In this study I aimed as far as possible for full transcripts in the sense that there are almost no omitted passages, and I have aimed to give a 'flavour' of the students' responses by leaving in 'ums', 'ers', repetitions and 'non-sense' expressions. However the transcription is not exhaustive in the sense that, for example, I have not detailed the length of pauses, coughs, references to facial expressions or, in a very few cases, 'aside' dialogue relating to an individual student's progress. Such detail would be relevant for some types of research of an ethnomethodological nature but it would not directly enhance the immediate concerns of this research project. In general I have not punctuated their speech - it seemed to me that leaving their responses as more of a 'stream of consciousness' was a more appropriate way for me to represent their views than to impose what could be a misleading or strained syntactical structure. Where parts of the tape are indistinct I have indicated this, and I have included remarks as to, for example, 'laughter...', again to help to provide a sense of context.

Interpretation

The question of textual interpretation has become central in more recent years, not least due to the pervasive influence of post-structuralist and post-modernist theories of discourse and interpretation, initially mainly within university English Departments but now more widespread within, for example, the disciplines of History, Law and the Social Sciences. In Law the main exponent, Peter Goodrich, has used such theory for example to begin to deconstruct orthodox doctrines of precedent (Goodrich, 1986) and to establish new approaches to discussions of the history and symbolic language of the common law (1990).

From such perspectives, and put rather simply, texts are no longer to be seen as authoritative documents where authorial intention is paramount; rather there is a multiplicity of possible interpretations where the reader takes an active and (consciously or unconsciously) direct role in making and establishing meaning from the text, constructing rather than deciphering meaning. Such nuances of interpretation, and of theory, could of course be applied to a set of interview transcripts as to, say, a law report or a nineteenth-century novel. The point is that interpretation, from this viewpoint, is necessarily fallible and largely subjective.

If we relate this to the medium of the interview, then again something rather

different from the 'orthodox' Positivist-inspired mode of analysis and epistemology starts to emerge. Such an approach also begins to address the questions of validity and objectivity which may be posed in relation to qualitative research, as referred to briefly above.

A postmodern approach forgoes the search of true fixed meanings and emphasises descriptive nuances, differences and paradoxes. There is a change from a substantial to a relational concept of meaning, with a move from the modern search for the one true and real meaning to a relational unfolding of meanings. *Different interpreters constructing different meanings of an interview story is then not a weakness, but a strength of the interview method.*

(Kvale, 1996, Ch.12 p.226)
(emphasis added)

This presents one of the major challenges to the proponents of triangulation in this form of research, which "implies there is only one true social reality" and is a "concept [which] carries too positivist a bias" (Arksey and Knight, 1999, Ch.2 p.24). Instead, a reasoned and sensitive appreciation of what interviewees say, taking into account the contextual and other aspects of communication mentioned above, and with an awareness of:

...the tone of voice and the speed of delivery, the silences, the hesitations, the mode of delivery of the words [which] can be important in determining meaning and reception as the actual words themselves.

(Wengraf, 2001, Ch.2 p.47)

can create a different kind of 'validity', in which:

The basic subject matter is no longer objective data to be quantified, but meaningful relations to be interpreted.

(Kvale, 1996, Ch.1 p.11)

Principles other than Positivism-based instruments for 'checking' come into play, as described by Booth (1996) and quoted in Clough (1996):

Standard tests such as reliability, validity and replicability are neither appropriate nor adequate when lives are not consistent, biographical truth is a will-o'-the-wisp and *stories inevitably reflect something of the teller*.

(p.72) (Clough's emphasis)

What I have tried to outline here are some of the critical and sometimes perhaps easily overlooked aspects of qualitative research interviewing. What remains for me the most potentially interesting idea is that again expressed by Kvale:

Interview research, language, is both the tool of interviewing and, in the form of tapes and transcripts, also the object of textual interpretation. *Nevertheless, it has been rare in the social sciences for interview researchers to analyze the language medium they use as tools for and objects of their research.*

(Kvale, 1996, Ch.3 p.43)
(emphasis added)

While it is important to recognise that interpretation is a complex and contested phenomenon, it should also be remembered that the particularities and peculiarities of discourse and interpretation theory do lie largely outside the scope of this work. A full linguistic analysis, which would be founded on the theories outlined above, is not being attempted here. In interpreting the transcripts I have relied fundamentally on accurate transcription, a good

working knowledge (based on several years' experience) of the type (in the broadest sense) of student being studied, and a strong sense of the context and distinctive flavour of each interview.

The style, or nature of each interview was open, interviewee - focussed and in a sense collaborative, with an awareness that the accounts of critical thinking produced do reflect interviewer participation in the interviewees' explorations.

Chapter 4

Phenomenography: Describing students' different perspectives

As mentioned above, the methodological approach known as Phenomenography will be used in relation to the discovery of students' perception of critical thinking. A classic definition and introduction to Phenomenography and the work of Ference Marton can be found in Husen and Postlethwaite (1994) (pp 4424-4429):

[it is]...the empirical study of the limited number of qualitatively different ways in which various phenomena in, and aspects of, the world around us are experienced, conceptualised, understood, perceived and apprehended.

Phenomenography provides a methodology for analysing qualitative data, gathered for example through interviewing, so that the elements of (in this case students') perceptions of a subject may be expressed and ordered in categories, known within this approach as "categories of description". These categories, once set out, (normally hierarchically), give rise to an "outcome space" as Marton described it, so that the researcher can arrive at a view of the variations of perceptions demonstrated by the subjects under study. The emphasis is on the types of conceptions and perceptions which are manifested, not on the individuals themselves. In this sense, then, Phenomenography is concerned with "second order" experience i.e. experience which is already reflected on or internalised by the subject. It places emphasis on what is said

by the interviewee – that is what constitutes the data of the reflected-upon experience.

To sum up, then, at this point, the key aspects of the phenomenographical approach are as follows: it attempts to “map” the student experience; it looks at the (perceived) relationship between students and the world in respect of the phenomenon being researched; it looks at the degree of variation of perception within a group, and attempts to categorise, in an ordered manner, the range of responses within a group.

Phenomenography offers a methodology, well-established (particularly within higher education contexts¹) for eliciting and analysing data relating to students' perceptions of pedagogic concepts. The hierarchical ordering of categories should give rise to knowledge or awareness of the most meaningful and significant of students' conceptions which can then be used to inform projected change in the curriculum or whatever other area may be appropriate. (Some studies may not place such emphasis on the question of hierarchy but it appears as an important element in the original writings). However, it should be borne in mind that Phenomenography offers, by definition, a fairly restricted form of analysis (categories, for example, are normally limited to six) and also that inherent in this approach are several philosophical and methodological problems which will be discussed in detail in Chapter 6.

¹ Studies have been conducted, for example, into students learning Accounting (Lucas, 1998), creative practice (Drew and Williams 2003), concepts in Chemistry (Lybeck *et al*, 1988) and aspects of physics (Prosser and Millar, 1989).

The results of a phenomenographic study, even where (particularly where, perhaps) on a small scale, can clearly reveal to the researcher the variations, strengths and weaknesses in students' apprehensions of the concept being studied. Admittedly, the nature of this research approach provides no more than a 'photograph' at a particular point – there is not necessarily any follow-up or developmental frame of reference built in, as in longitudinal forms of research. But if the aim of the research is to ascertain how a particular, and in all senses, typical, cohort of students perceives a particular concept, in order to inform teaching or other practice initially in the short term, this approach can reveal some evidence on which local change of practice, or at least assumptions, can be based. As the emphasis in phenomenographical analysis is on the group, not the individual, it follows that the findings can and will contribute meaningfully and practically to local curriculum (or other) development. Emphasis being on the group also, of course, has implications for the writing-up of data – too much, or injudicious use of quotations from individuals may have the effect of shifting the focus away from group and category findings, which it is crucial to keep at the forefront for purposes of interpretation and expression.

Interpretation is of course, of the essence. One strength of phenomenography is that it:

...aims at the construction of a typology of the different kinds of conceptions held by students themselves, albeit interpreted by researchers in such a way as to provide what may possibly be a clearer and more articulate account of student conceptions than students would themselves generate unaided.

(Lucas and Ashworth,
1997, p.4)

How far do the acts of interpretation and categorisation compromise, or even effectively re-write, the students' expressions of their experience? In phenomenography there exists, even more apparently perhaps than in some other forms of research, a double regression or mediation process. As Ashwin has pointed out (2005), in phenomenography it is the *conception* of students of their experience which is being captured, not the "actual" experience:

Phenomenography takes a 'second-order approach', by which is meant that focus is on the experience-as-described, rather than on either the psychological process generating the experience or the 'objective facts' themselves.

(Lucas and Ashworth,
1997, p.1)

Recognising this essential aspect of phenomenography leads on to awareness of some of the inherent problems and limitations of this form of research. Firstly, listening to and recording, and subsequently categorising, the "experience-as-described", invokes the issue of what can broadly be termed "positionality". Secondly, it could appear that phenomenography can only show how student experiences and awareness are perceived – not why or how these experiences have been sorted, for example by social class (Ashwin, 2004).

In relation particularly to first-year students and research relating to what is now frequently termed the “transition” problem (18 year-olds finding the demands of university work very difficult after ‘A’ level) it would be useful to look at structural factors such as class, prior educational experience, family experience of university and so on. But such analysis is absent from the phenomenographical approach. While noting this limitation, it is suggested however that the insight provided by the phenomenographical approach into students’ perception is in itself valuable basis (as suggested above) for changing and developing local practice.

The problem of ‘positionality’ however requires further and deeper attention, going as it does to the heart of the research question, whichever methodology is adopted. In interpreting and categorising the students’ experience there will be, almost inevitably, a degree of researcher subjectivity in the typology and categories drawn, the selection of what is “key” for these categories and in the interpretation of the students’ voiced conceptions.

Several theoretical, and practical, issues arise from this in the deployment of the phenomenographic research approach. The whole question of the relationship between data analysis and literature review becomes, to an extent, problematic:

The conventional structure of an empirical research project, echoed in the layout of scientific papers, is to become familiar with the relevant research literature at an early stage. This is appropriate in

positivistic research in which earlier work suggests a hypothesis which the new study sets out to test. But phenomenographic research is not set up from such a standpoint, and the ear of the researcher must be open to aspects of the participants' lifeworlds which run directly counter to existing conceptualisations or (and this is hard to detect, needing the full resources of empathy of the interviewer and transcript-analyst) aspects which are only subtly different (but – on reflection – tellingly different) from existing expectations.

(Lucas and Ashworth,
1997, pp.10-11)

This quotation is at some length as it appears to me to encapsulate one aspect of potential researcher intervention (if not bias) in the act of listening and writing-up. The researcher should, in effect, carry out a continuous and vigilant form of what has been termed 'bracketing' (which is further developed below). Certainly I became aware, at an early stage in the interviewing process, that my personal preconceptions and 'biases' as to concepts of critical thinking were greatly at variance with what most of the students seemed to be expressing. In a sense this made the process clearer, because there was so little potential for a meshing of the students' and my views. In effect I was putting into practice the following exhortation:

To hear these expressions clearly and to retain a continuing lively interest in the life-world of the person who is possibly very differently inclined from themselves, certainly requires the researcher to bracket their own experience and attitudes.

(Ashworth, 1996, p.20)

This notion of 'bracketing' requires further development. It derives from the work of Edmund Husserl, the founder of modern *phenomenology*, one of the key philosophical viewpoints in the development of phenomenography, in the

mid twentieth century. This philosophical approach has underpinned many qualitative research methodologies, and seeks to solve epistemological problems by emphasising the need to enter and access an individual's "lifeworld" so that the researcher can begin to understand the significance and meaning of particular phenomena for that individual. Phenomena are located within our consciousness so as researchers we need to try to study how things are presented, in our minds, largely through language, although the latter approach has been subsequently more developed through the work of, for example, Gadamer (1989). As we have seen, phenomenography aims to map the variety of reflected-on conceptions, not the 'phenomena of consciousness'; however many of the issues of phenomenology are pertinent to phenomenography and the approaches are strongly related.

It follows that in the attempt to access and describe the individual's lifeworld, the researcher's personal presuppositions and knowledge of existing conceptualisations and categories must be consciously set aside, or 'bracketed'. The description will then approach as near as can be the conceptualisation of the research participant.

It is possible to break down the notion of bracketing into further sub-categories, as has been suggested for example by Ashworth (1996) and Lucas and Ashworth (1997) but for immediate purposes the two most significant types of presupposition which could contaminate the students' expressed experience

would appear to be those relating to the researcher's personal pre-commitments, and those deriving from the research literature. Both of these lead almost inevitably to a paradox...

The phenomenographic epoché should entail a suspension of commitment to the accepted view of the subject matter in order to grasp the meaning of the material to the student, yet it is only through some knowledge of the material that the student can be understood.

(Lucas and Ashworth,
1997, p.14)

Some might argue that "researchers should wait until their analyses are complete before reviewing the existing literature" (Lucas and Ashworth, 1997, p.11). Where existing studies or models are very dominant there may be a temptation for the researcher to interpret and classify their own data (whether consciously or unconsciously) in a manner 'in line' with existing "knowledge", rather than in a truly revelatory and illuminating manner.

In my own research I have surveyed a range of academic literature prior to the analysis of data.

As suggested above, I have particularly observed that my personal views and pre-commitments as to notions of critical thinking, accord far more with some academic theories than do the students' views. This is clearly a rather generalised statement, but one which refers us back to my personal reflections expressed in Chapter 1. However as a basic example, the approaches taken by

Stephen Brookfield strongly reflect my own views and yet were the kind of approach adopted least (by a long way) by the students. This serves as a salutary reminder, then, both of the need to absent, as far as possible, my own prejudices, and to "focus on similarities and differences between the ways in which the phenomenon appears to the participants" (Husen and Postlethwaite, 1994, p.4428). Which, after all, is the whole point of the exercise.

To return to the starting point, then, the salient point about phenomenography is that it provides:

...a description of variation, a description on the collective level, and in that sense individual voices are not heard.

(Marton and Booth, 1997,
Ch.6 p.114)

The other key aspect, as mentioned above, is that it is concerned with second-order experience. By this is meant that the focus of study is not experience itself, but experience as already reflected-on or conceptualised.

Expressed in a different way, this concerns the "internal relationship between the experiencer and the experienced" (Marton and Booth, 1997, Ch.6 p.113). Phenomenography attempts then to map the variations of experience-as-perceived, not cognitive processes as such, as would be, for example, the focus of a psychological, or physiological, investigation.

Phenomenographical research can, it would seem, help to give a rich picture of student perceptions of learning and thinking. Säljö (1982) has described the difference between what have been termed “compositional” and “contextual view[s] of reality and research” (Ch.1 p.22) and the relative merits and demerits of each; phenomenography would appear to relate more to the latter where it becomes:

...evident that our understanding of how learning functions increases when information coming from the actor's perspective is taken into account.

(Ch.2 p.37)

As he states (Ch.2 p.48) “a vital role could be played by information emanating from a second-order perspective”.

As suggested above (Ashwin 2004) phenomenography may not provide a full and detailed context for students' perceptions but it can certainly help to reveal the presentation of the subject under study (Newton's Third Law of Motion, critical thinking or other phenomenon) to the student. Säljö cites Colaizzi's study (1971) where there was an attempt to:

...compensate for the traditional emphasis on behavioural data by building a body of experiential data (p.101)...[what matters is the]...presentational side, i.e. how the material to be learned appears to the learner.

(quoted in Säljö, Ch.2
p.35)

Once the data has been collected, analysis will be carried out in order to present a view of the pattern of variation in the students' perceived experience. It is this variation which is the main concern of the phenomenographical researcher. "Categories of description" provide an ordered, and normally, hierarchical depiction of the range of conceptualisations (the "outcome space" – terms deriving from Marton's work) present in the students' discussions. The emphasis is on the categories of conceptualisation, not on the views of particular individuals, or, as Marton and Booth (1997, Ch.6 p.128) put it:

... "categories of description refer to the collective level".

...the goal is that [the categories] should be complete in the sense that nothing in the collective experience as manifested in the population under investigation is left unspoken.

(p.125)

Here, then, lies the challenge for the interpreter/researcher. Analysis will involve an immersion in the interview transcripts with a consequent attempt to interpret and categorise quotations according to their apparent similarity of meaning and significance. For a phenomenographic analysis there is a shift...

from the individual students (the interviews which had lent meanings to the quotes by being their contexts), to the meanings embedded in the quotes regardless of whether these different meanings originated from the same individuals or not.

(Marton and Säljö in
Marton *et al.*, 1997, Ch.3
p.42)

In the categorisation process there will be a judgement made as to how the students' comments relate to each other, and a necessary process of

interpretation and interpolation in deciphering the students' different modes of expression, vocabulary, conceptualisation and so on, in order to arrive at a meaningful set of categories of description which have integrity and validity.

The process of construction of the categories would seem to be key in terms of the yielding of meaningful conclusions from the study, and for satisfying requirements of rigour and validity. Marton and Säljö (1997, Ch.3 p.42) describe the...

lengthy and painstaking iterative procedure with continual modifications in which quotes are assembled, and consequently further changes in the precise meaning of each group of quotes take place.

To return to one of the points first made in this chapter, then, the validity, not replicability, of a phenomenographic study stems partly from this iterative and intense analytic process, and partly from the attention paid to the second-order nature of the students' perception, which, as has been suggested above, can provide a different and arguably richer picture of 'how students learn':

What can be seen from a first-order perspective could – and, we think, should – be informed by that which can be seen from the second-order perspective.

(Marton and Booth, 1997,
Ch.6 p.121)

Having said this, two last main observations perhaps need to be borne in mind.

The first relates to research in general, and no less to phenomenography:

We can't describe a world that is independent of our descriptions or of us as describers...There is no complete, final description of anything and our descriptions are always driven by our aims.

(Marton and Booth, 1997,
Ch.6 pages 113 and 123)

The issues of subjectivity in research, and the limitations on claims for knowledge, lie largely outside the scope of this project, although they are referred to in Chapters 3 and 6.

Lastly, and with particular reference to phenomenography, it is worth quoting Marton and Säljö, at relative length, in identifying perhaps the particularities and peculiarities of this research approach:

We do not believe there is any uniform technique which would allow other researchers to go from "the pool of meanings" to the emerging pattern of a hierarchy of similarities and differences. It is essentially a *discovery procedure* which can be justified in terms of results, but not in terms of any specific method. In each study the discovery process will inevitably be different, depending on the specific purpose and the context of the research.

(Marton and Säljö in
Marton *et al.*, 1997, Ch.3
p.43)

The Interviews

In order to collect data I used a semi-structured interview approach with each student, using six 'prompt' questions (Appendix A) and making use of the Law Group's feedback sheet (Appendix B) as material to stimulate reflection. On average, interviews lasted about forty minutes though clearly some students

were less loquacious than others. The interviews took place between October and March of their first year here, the aim being as far as possible to capture reasonably 'fresh' perceptions. Of course, one of the incidental benefits of this form of research was that I gathered other insights and observations, for example more generally on the transition from school to university, and some of these are commented on in my concluding chapter.

I had carried out a small 'pilot' study the previous year to give practice in interviewing, and I found this to have been very helpful. The students appeared, on the whole, reasonably relaxed and seemed to find the process interesting and enjoyable. I was careful to reiterate and explain the aims and potential outcomes of the research and to link it with the wider research developments in higher education concerned with transition, student experience of learning and so on, so putting my 'local' project into a wider context for the students. Again, almost as an incidental benefit, I found that my relationship with the students, at a personal level, was much enhanced by the interviewing process. Above all it seemed that their education here became slightly more humanised and personalised by the process, as we were able to talk about a wider range of issues than "merely" the legal curriculum. I should like to think the students began to gain a broader appreciation both of our professional concerns, as staff responsible for teaching them, and of the wider background and context of academic research generally.

Interviews in Phenomenography

There is clearly much writing about interviewing – techniques, pitfalls, structures, types of questioning, and this was developed further in Chapter 3.

The aim here is to give some insight into the particular issues in interviewing for a phenomenographic study. In this research we have not been concerned with the setting of a specific task for the students to undertake, as has been the case with some well-publicised phenomenographic studies such as Säljö's research into students' reading of texts (1982). The emphasis in my study (as he said) has been on the second-order concerns:

...the particular aspect is that of the interviewee reflecting over his experience in a state of "meta-awareness", being aware of his awareness of something.

(Marton and Booth, 1997,
Ch.6 pp.129-130)

It is subsequently pointed out in this chapter that:

Sometimes such reflection occurs spontaneously, and sometimes the interviewer and the interviewee have to persist to reach the required state.

(p.130)

The latter was found to be the case in my experience. In asking students about their notions of critical thinking there is an assumption that the concept (phenomenon) exists in their conscious mind, to be reflected on and talked about. One challenge for me as interviewer was how to stimulate (adequate)

reflection without pre-empting or leading the students towards inauthentic or spurious responses.

In this respect I feel there was particular value in my opening questions which established the terrain of the interview but rooted the emphasis at once and firmly in the interviewees' own experience and perception.

Another problem related to questioning technique emerges in relation to what can be broadly termed the issue of context:

How do we know that the interviewees would not have said something different had we asked the question in a different way, using a different strategy and other examples? The answer to this question is that one has to accept human thinking as contextually determined.

(Säljö in Ramsden, Ed.,
1988, Ch.2 p.42)

For phenomenography, Säljö argues, (as opposed to "traditional perspectives on learning"), "context is integral to our way of making sense of reality" (p.44). In other words, our awareness of context contributes towards the phenomenographical registering of students' conceptions of reality.

The issue partly relates back to the problem of discourse, and interpretation (as outlined in Chapter 3) and back to the problem of subjectivity (interviewer and interviewee). As Marton and Booth (1997) put it:

We cannot describe a world that is independent of our descriptions
or of us as describers.

(Ch.6 p.113)

and this is as true of those being researched as it is of the researcher.

Chapter 5

Data: Five ways of understanding critical thinking

Introduction

One of the dynamics underlying this phenomenographic research can be summed up as follows:

From an instructional point of view, it may be more useful to know about an inappropriate model that a student has assembled of a phenomenon than to be aware of the 'missing' knowledge or skill that results from his or her application of that inappropriate model.... One side of this view of learning is that what a student does should be understood in the context of the task: the other side is that the effect of the conditions has to be understood in terms of the perception of the individual learner.

(Ramsden, 1988 Ch.1
pp.22 and 24).

The following review of the interviews conducted with First-year Law students should help to illuminate some of the preconceptions, perceptions and possible *lacunae* in their apprehension of critical thinking and critical analysis; perhaps confirming or dispelling academics' own presuppositions about students' approaches and understanding.

It was difficult to establish very clear complete categories, as much of the students' response was in effect to conflate and confound several aspects of critical thinking, and their vision of critical thinking as a concept appeared somewhat fragmented. It was also difficult, therefore, to see how certain

categories could be neatly subsumed by subsequent categories. However, as will be seen, five categories did emerge with some degree of hierarchical relationship, and these are described below.

Phenomenographic analysis, as has been explained above in Chapter 4, does not claim that there is a unique position in the outcome space for each individual. Rather, the outcome space is the researcher's construction of the variations in conceptualisation rather than variations in personal position. There is an important role for researcher interpretation here, which will be discussed in the following chapter.

Method

The data was collated from a series of interviews with fifteen first-year LLB students (including one English LLB/Maîtrise student) conducted between October 2005 and March 2006. Each interview lasted approximately forty-five minutes to an hour, and they were taped (with the students' permission). Six broad prompt questions (see Appendix A) were used to give some structure and consistency of approach to the interview, but students were not prevented from digressing (subject only to time considerations). The questions were designed to elicit responses which would reveal something of students' perception of what critical thinking meant to them. Tapes were subsequently

transcribed and a phenomenographic analysis constructed as will be described below.

Initial Observations

On studying the transcripts two related features of the interviews rapidly became apparent. Several students had little to say and/or found it difficult to reflect upon or articulate views on critical thinking. This resulted in some somewhat vague and inchoate comments at times, or somewhat circular observations. The other related aspect emerging from some of the interviews is that in places the interviewer, anxious perhaps to encourage comment by promoting different ways of looking at the topic, starts talking too much and over-complicating the questions. It is clear, though that for some of the students this was an exercise in self-reflection not previously undertaken and is in some senses challenging and even anxiety-provoking. This becomes more apparent in the parts of the interview relating to life "here".

[of studying Law here] I really don't know, it's something where I just need I think to get to grips with it now. It's quite of a shock.

(D, p5 l6) (transcript quotation references are to page number and line number)

Overall, however, it is true to say that there was a very positive atmosphere in the interview sessions. There was some laughter, opportunities to give advice mentioned, and specifically I as a tutor felt that the interviewing process led to a

better degree of understanding, relationship-building and empathy with the students than I had hitherto experienced.

In terms of the students' expressions of their thinking and perceptions based on experience, five categories would suggest an adequate representation of the trends discussed. Of these, categories three and four are particularly difficult to differentiate.

In extrapolating the categories, two particular principles have been borne in mind; the 'commonality' of perception across the study, together with the 'completeness' of conception articulated. Where these two features mesh, this would signify an especially strong theme for categorisation.

The categories constituted through analysis of the interviews are described as (1) Critical thinking as negative (2) Instrumental critical thinking (3) A sense of argument (4) A general sense of analysis and (5) Critical thinking as a way of being.

A gloss on these categories would provide the following: there was considerable discussion ranging round issues of argument, 'two-sidedness', use of evidence and "picking things apart" which have mainly been used to support the third category. More generally there were references to ideas relating to comparison, 'analysis', and 'depth' – these have been incorporated

into the fourth category. Instrumentality refers to the idea of critical thinking being regarded as a necessary tool for academic (examination and/or coursework success) at school and university, but as something not relating to anything outside the academic sphere. Category one captures the notion of criticism being equated with negativity. Category five relates to those who took a more developed view to category four, in seeing critical thinking as an intelligent, rational approach to the world and society in general – essentially not confined to its deployment as an academic tool.

1. Critical Thinking as Negative

1a. Being critical as fault-finding.

A feature of some of the students' responses was that the word 'critical' appeared to suggest notions of negativity and disparagement. The vocabulary of academic analysis itself appeared to be 'loaded' in various ways. While this was not a very widespread concern it was quite deeply felt by those who mentioned the notion.

I mean it automatically puts into people's minds they have to be harsh and judgmental or something as opposed to put forward a good and bad argument.

(O, p4 l17)

...critical analysis where now I mainly think of the weaknesses more than the strengths ... I think it's the word critical that does it to me ... some of us think critical I don't know why I think it's because of the word.

(B, p4 l29)

...when you hear the word critical ... I'm not sure how to word it but initially you have to put bad points as opposed to good ones.

(O, p2 l34)

...because when you think critical you always think negative and it's not necessarily

(F, p3 l24)

There was a preference expressed for words such as 'evaluation', 'analysis', 'present an argument' which appeared less negative.

...analysis... it's a bit more even...

(F, p4 l9)

I'd probably say analyse it rather than critical because you know I'd focus more on the weaknesses being critical...

(Interviewer: And of the two in that sense analyse conveys a similar kind of meaning but without the negativity?)

Yes.

(B, p5 l14)

...I've learnt that critical means to represent an argument...

(O, p2 l36)

It would seem that the negative associations of the word 'critical' form a sort of subset of the general uncertainties surrounding the word, as evinced by the students:

I think it [the feedback sheet] could be more helpfully worded because quite a lot of people do not necessarily understand what critical means and everybody just keeps going about it as it's so important...

(N, p4 l14)

...evidence of critical thought needs to be more analytical I think that's always something I'm not too sure I suppose I need to ask about

(D, p3 l9)

If you display critical thought I would transpose that with analysis and do what I used to do in History ... I would just ignore what it says critical analysis because I'm not sure what it means and just analyse it like I used to do in History and hope that's what I need to do.

(M, p2 l35...)

I think it's because like because it's difficult, coming to this subject you don't know anything ... If I knew, if it was already in my mind I'd be able to criticise it ... but I just need more knowledge before I can start doing that.

(E, p3 l1)

1b. Confident and Critical Students

The last quotation also introduces the view of being critical as perhaps relating to questions of confidence and familiarity with material:

...cyberlaw it's all around and it does affect me I feel I can deal with especially well because I can criticise it because it does relate to me but in Constitutional Law I didn't have a clue when I came here what a constitution was and I didn't think I could like criticise it I feel a little bit I didn't really know enough a little bit for want of a better word inferior to argue about it...

(E, p3 l14)

I think sometimes it's not a case of knowing what it is it's whether to put it in or not, whether you'd be right to look at it that way, it's all confidence.

(D, p3 l14...)

1c. Criticism as discipline-related.

Perhaps some subjects (both in the sense of different disciplines, and as topics within the study of Law), are perceived as lending themselves more easily to critical investigation, perhaps where they mesh more either with

students' prior knowledge or with notions of 'allowable' subjectivity, as seen here:

With English Lit you think it's sort of your opinion and you'd be looking at a book and it's your opinion but with Law you have to incorporate everyone's opinion.

(H, p4 l1)

...English it [critical analysis] was never really, it never really came up in English much...

(M, p1 l16)

...critical analysis what we've now been told it's not anywhere near what we sort of did before. Before it was just sort of regurgitation what we'd been told and story writing.

(K, p1 l14)

...I think after I've got my knowledge I'll be confident to criticise it...I will go and think about things and start to begin to criticise in my mind it's beginning, when a lecturer says something it'll throw up in my mind what do I think about that but em, I never really expected to have a lot of you know analytical skills first off.

(E, p4 l2)

It seems, then, that the initial barriers preventing students from fully engaging in critical analysis and thinking from the outset may consist of issues of confidence, familiarity, perceived nature of the subject, lack of understanding of these terms and association of terms with negative discourse. The more common ways in which the terms are interpreted and 'implemented' by students are explored further below.

2. Instrumental Critical Thinking

2a.Critical Thinking Skills.

As suggested above, this category relates to the students' perceived need to acquire a set of 'technical' skills and approaches necessary to success at A level and beyond. Their conception appears firmly rooted in the instruction and suggestions imparted by their teachers, although there is some variation in opinion as to the cogency and clarity of such instruction. Nevertheless it is evident from the reflection on past academic experience together with the responses sparked by the feedback sheet criteria, that the students have a more-or-less articulated sense of what analysis (the preferred term by some – see further category One) means specifically in this context. To the extent there is variation within this category this relates to the 'success' of the teachers, as mentioned above, and also to the degree of detail and accuracy with which the ideas are expressed – but there is a broad consonance among the students as to what critical analysis signifies here.

2b. The teaching of critical thinking.

The students' responses illustrate various efforts being made to demonstrate what critical analysis meant in this context:

... they just like passed round essays which people had written which showed really good analytical skills ... and you know just every time she made comments on my work it was feedback of how you could improve that skill em, it was just like trial and error really

you know just constantly doing essays till you could see us you know progressing in that skill.

(N, p1 l15)

Em, they taught it you need to have at least two or three arguments for each point and then em just kind of summarise and make your own conclusions ... they didn't really do anything special from what I can remember basically just to say that telling us like giving examples.

(F, p1 l29, p2 l11)

... we had say an essay that we'd done and we went through it as a class afterwards then we'd go through the best sort of order that points should have been put through in ...

(G, p1 l25)

She explained a little bit about it but they didn't do a whole session or anything like that just like breaking it down and em weighing up pros and cons and that.

(H, p1 l17)

It wasn't like a critical thinking lesson as such it was more like em usually he'd read the essays and then it came back but how do you come to this conclusion, could you analyse better and little comments like that, to try and build your argument – we looked at like model answers as well to see how they did it to try and get the gist of it

(E, p1 l16)

Critical thinking, analysis, structure, sense of argument – these all appear to be different aspects of the package of skills which students expect to have to deploy for success.

Yes if you wanted to get a good mark you had to do critical thinking, make sure you always back everything up with a case or something like points you thought were flaws and then how it could be made better.

(L, p2 l20)

There is little evidence of a strong sense of purpose, or reason (other than what I have termed ‘instrumentality’) or acknowledgement of any notion of scholarship or intellectual pursuit in these responses.

... like picking out theories and ...then trying to like pick an argument between them – which was the best one sort of thing
(Interviewer) And did students in general see the point of that, understand what it was, in a sense why you were being asked to do that?

Yes, but I don't think a lot of students really understood how to differentiate between the two things and try and pull them apart I mean we didn't really have any in-depth lessons on it If we'd have been told everything that we needed to do it would have been a lot easier.

(Interviewer) And why perhaps.

Yes and so we'd just talk a bit about a theory and a couple of critical things and then talk about another theory and get a few more critical things and that would be it and remember where to put them in the exam.

(L, p2 l28)

2c. Skills for success.

In their responses to the Law Assessment feedback sheets the students displayed a comparable ‘technical’ approach – seeing the requirements necessary for success as more or less a set of skills to be deployed and demonstrated, perhaps, rather than seeing academic work and critical thinking as being contiguous and as being more holistically defined. Critical analytical work is seen as being made up from almost a set of (learned) responses rather than perhaps being a meaningful, highly conceptualised approach in its own right:

... not just straight describing – need to do your critical thinking of it the descriptive content , evidence and then obviously just describing the facts, evidence then that one exploring the evidence, research methods and what have you.

(I, p3 I28)

... analysis gets you extra marks ...

(M, p3 I16)

...make sure every point you make every quote you're using was related to the question, you analyse that point and kind of explain (rather than) just put the point down and just leaving it ... saying how the point is relevant to the answer you're giving how it's going to support the answer

(A, p3 I5)

... demonstrates understanding and awareness of appropriate theory, to me that would, I would approach that in a question that's researching the answer using texts and theoretical views and attempt to put that into the essay.

(O, p2 I37)

In general the response to the feedback sheets was positive, and it would appear that the layout and language of the sheets do correspond to the forms and approaches to assignment-writing and critical analysis with which the students are broadly familiar. Whether this has the effect, however, of reinforcing patterns of instrumentality in the students' academic behaviour, though, is perhaps an interesting issue.

3. A Sense of Argument

3a. Two sides of the question.

Such conceptions of critical thinking appear related to school experiences of A and AS level. Where students had been given some guidance as to 'how to do critical analysis' (see some observations in category Two, above), it has tended to be along these lines:

... to I suppose see different sides of things that you have been taught or things that you were reading on and to try and bring other things and information in with it and strengthen your arguments...

(D p2 l13)

... like planning and er put forward a balanced argument but to always back up what you are trying to convey

(G p1 l18)

... using relevant information and then like sort of weighing it up em with evidence of your arguments...

(N p1 l27)

Where students had a reasonably clear and articulate view of what critical thinking might mean it tended to be focussed on these key words; "argument", "backing-up" (or "evidence") and "sides".

It could be inferred that these are the skills, albeit fairly traditional, that teachers have been keen to inculcate, more recently in view of the concentration of press and parents on school league tables and examination success. If these are the learning outcomes and skills demonstrably and explicitly to be tested in public examinations, teachers will be astute to the necessity of "hammering it

in" (A p 1 l 11) and it is apparent that several students have internalised that message.

Again (subject to some of the observations in category Two) it is clear that several students have had the experience of various pedagogic attempts to communicate these approaches to critical thinking. Teachers used a variety of approaches – going through cases in lectures and asking students questions; using model answers containing good analysis, and using a degree of peer-assessment and comment.

3b. Critical thinking as *subject-specific* argument.

There was virtually no reference to critical thinking "as such" – critical analysis was in the students' experience always linked to particular subjects – only in passing was there any reference to critical thinking as a "separate" notion; (although apparently related to science).

... work out why I thought it was like that, is there anything other that makes me think like that within your argument.

(E p1 l29)

...we had em options, you know you do your general studies and things like that, we did have an option it was Science and Critical Thinking, em, that's instead of General Studies ... but I know that ... the options that they had ... they weren't very successful at getting people to go.

(J p1 l5)

3c. Evidence and argument.

The idea of ‘argument’ appears closely related to the notion of ‘pulling things apart’ as well as use of evidence. ‘Pulling things apart’ is a recurrent theme and clearly associated with what critical analysis ‘is’:

... I felt that I needed to instead of just saying this is this and that is that I needed to pull the arguments apart...

(E p1 l28)

... like breaking it down and em weighing up pros and cons ...

(H p1 l18)

... that idea of ... critically looking at how that relates to the other bit

(A p4 l12)

...you didn't just take one straight and narrow approach with the critical thought it would be that you could look at what the question's asking you to do and then sort of analyse it in the end in your conclusion but that could have different points that could either go against it or to the point the question asked for

(I, p3 l20)

...showing that you know something and showing that you can look into it, put it together, take it apart and analyse it...

(J, p5 l25)

Critical analysis for several students embraced these various related notions of argument, “pick[ing] out things and ...pick[ing] out bits and strengths of the case and weaknesses' (L, p 1 l 36...) and a sense of there being more than one way of looking at an issue – what could be termed “two-sidedness”. Showing awareness of a range of perspectives is central to these students’ perception of criticality, both in relation to past academic study and their current study of law.

Em, I suppose like rather than just reading one article or one book I'd read a range of things then draw your own conclusions from it rather than just taking one person's view of it I suppose.

(F, p4 l30)

...you use other sources, other people's ideas, other literature to try and support your view or support the view that's presented in the question, or disagree with that view.

(O, p2 l8)

(This also refers to the idea of evidence; see below)

You assume straightaway 'tho 'cos it's Law you've got to criticise and argue both sides ... if you're asking for sort of critical analysis of a case or a judgement or something you look at to argue both sides and criticise the arguments for it and criticise the arguments against it and that sort of thing.

(K, p3 l3)

I think you need em, you've got to have perspectives because Law I think of it from sort of legal and moral you know ... I just think perspectives em opinions like on the police and judges there are a lot of different perspectives ...

With English Lit you think it's sort of your opinion and you'd be looking at a book but with Law you have to incorporate everyone's opinion.

(H, p3 l25)

This idea also leads in to the reflection of a sense of 'evidence' and the ways and degree to which the study of Law appears to present different challenges to the students, at least from that academic perspective:

... in History you used the evidence em as a fall-back just to give your opinions a bit of weight. In Law you can't actually make an opinion without having a source behind you ... In History you know you'd use the source as an afterthought and just say what I wanted and then find the source to back me up whereas in Law if I did that I'd fail. It's really hard to have to get used to looking at the sources and then using them to form your opinion.

(M, p3 l29)

The following quotation appears to place more emphasis on subjectivity within the process of legal analysis but also notes the importance of external 'authorities' or evidence:

...critical thinking in Law compared to say Economics, it would be like Economics there is no sort of, in Law both sides could be the right answer whereas in Economics it's sort of, there's one answer and so you need to be able to examine in Law and use your ideas and your opinions to find your own sort of answer so you need to critically analyse and think about what you do by reading books and cases and have your own opinion.

(G, p5 l5)

Ideas of "backing-up" with evidence overall figure largely:

... backing it up with something that's analytical ... cite a case which is em backing up the point ... the authority would be the case.

(J, p4 l24)

...before you could rely on the facts and knowing things and your opinion whereas now you've got to be so careful of your opinion it's always as a reference ...

(D, p5 l25)

These facets of critical thinking, then appear to overlap to some extent in students' perceptions and together constitute a significant category. As suggested above, much of this form of conception would appear to derive from the (albeit varying) types of tuition – implicit and explicit, experienced mainly in the sixth form at school or college. Some students, as also referred to above, expressed a significant awareness of changing expectations in the study of Law, although there were clear exceptions to this:

No not at all I thought it [studying Law] would be a lot different ... I knew I wanted to do Law but I thought that the changeover I would like being thrown in the deep end I was really concerned about that em, but it's not been half as bad as I thought. It's been I don't know how to say it, it's not a complete, not at all shock.

(N, p6 l23)

For this category then, there appears to be a widespread, coherent, reasonably relational set of views as to what critical analysis (see further; category four) 'means' in the context of academic performance. Students were able to relate these views to the categories defined in the assessment feedback sheets, with the language used apparently being in keeping with the sort of approach previously inculcated.

4. A General Sense of Analysis

4a. Looking in depth.

Some commonly articulated variants of a sense of analysis related to notions, for example, of depth, comparison and structure, and continue the 'pulling apart' aspect referred to in the previous category.

When they said critical thinking I heard analyse in depth and basically scrutinise it in every way you know...

(B, p1 l23)

It's a lot more in depth [here] and we have seminars we have a lot more time to analyse things ...

(L, p4 l5)

... look at things more in depth rather than just like stating them ... [in response to being asked to say a bit more about what you mean by depth] ... putting the good aspects and the bad aspects about it and then maybe suggesting an alternative ...

(F, p2 l31)

...There were lots of different approaches [in Psychology] ...and then you look at whether your personal opinion whether people support it or whether they don't support it look at arguments against it and it's up to you then to go and do your critical thinking and come up with whether you believe it and contrast it with other approaches and see how they reflect on each other and how they go against each other...

(I, p1 l19)

...point out a critical point and compare it with something else as well

(C, p4 l3)

...I'd just maybe compare it to you know how does it fit in to the whole you know just fit it into everything - the big thing

(B, p4 l12)

What appears evident is that students' perceptions of critical thinking/analysis seem somewhat fragmented. There is little reference to any particularly coherent model of what critical thinking might connote; rather there are several disparate elements which the students describe (usually fairly superficially) as making up the 'package' of critical analysis required for academic success (see above, category Two). Critical analysis seems to be constituted from these, more or less discrete notions which, from the students' perception, can then be translated into the necessary techniques for coursework and examination assessment. The degree to which Law as a discipline, in higher as opposed to further education, is seen as presenting different challenges to this perception, is developed below.

It is partly because of the fragmented nature of the students' perceptions that it does appear difficult to categorise them in any obviously hierarchical manner (this applies especially perhaps to categories Three and Four). It is difficult in any case to extrapolate many complete articulations of what critical thinking might mean. It appears as something which the students have a sense of as being important (certainly for academic success); as being something more or less successfully transmitted to them by teachers, (described in category Two) and as something which can be demonstrated in a more or less technical fashion through coursework and examinations.

We never really got told exactly how there's different ways of critical thinking you know but in History and things like that we got told to do more em analysis of things. Yes there was more in History rather than - I got pulled up on quite a lot of English actually, they told me to do more on but I didn't always know what they expected me to do.

(D, p1 l8)

... they kept saying you've got to be analytical 'cos hardly anyone was analytical ... they kept saying be analytical, be analytical but I asked them how to be analytical you know like and they actually wouldn't tell me how to be analytical at all because obviously it's quite hard to describe.

(J, p2 l6)

... kind of just saying that you needed to be more analytical and that was it there was no kind of how or why, in your thinking

(A, p1 l16)

... he gave us examples ... he gave us an example of an analytical answer one that's put an interpretation on things ... this is what's gonna get your marks.

(M, p1 l29)

The extent to which the “message” of the importance of critical thinking/analysis has been transmitted and formulated to the students has been developed above, in category Three. The students’ views of what critical thinking signifies appears closely connected to what has here been termed an ‘instrumentalist’ conception, of a set of techniques which are not highly conceptualised but appear to exist as learned ‘tools of the trade’ for the A-level and first-year undergraduate scholar. However imperfectly understood (as exemplified by the quotations from D and J above) there is clearly a reliance on these approaches as they have been legitimated by teachers and will have ensured at least relative academic success so far, across a range of subjects.

4b. Critical thinking and Law.

The particular challenges posed by the study of Law at Higher Education level will now be addressed.

Perceptions of critical thinking in relation to Law raise some similar, but some distinct issues.

I think there's a lot more critical analysis needed doing now, a lot more because before you could rely on the facts and knowing things and your opinion whereas now you've got to be so careful of your opinion, it's never your opinion it's always as a reference ...

(D, p5 l24)

... you have to keep your own views separate from your analysis, I think, because analysis can to a certain degree, especially if you're writing an essay and you are tying up the ends it can have your own opinion in it, but there is quite a fine line I think between your own opinion.

(J, p6 l25)

With English Lit you think it's sort of your opinion and you'd be looking at a book but with Law you have to incorporate everyone's opinion.

(H, p4 l1)

These quotations would suggest a strongly-perceived sense of the study of Law as requiring a particular objectivity; a distancing of self from the discipline, perhaps, in contrast to other subjects where a more subjective involvement could be envisaged.

In terms of potential success students evinced the following, relating specifically to Law:

You'd have to really like use -a wide range of cases and try and think analyse the cases and then try to be critical about them as well.

(L, p3 l32)

... somebody says in a case law you know critically analyse it and I'd probably look at it and think ok where did they go wrong, you know where did they – didn't do this bit very well ... in the judgement.

(B, p6 l29)

You assume straight away 'tho 'cos it's Law you've got to criticise and argue both sides ... if you're asking for critical analysis of a case or a judgement or something you look at to argue both sides and criticise the arguments for it and criticise the arguments against it and that sort of thing. But yes it's sort of, rather than just writing what happened it's sort of analysing why it happened and what could have happened isn't it.

(K, p3 l3)

The idea of critically analysing case-law does emerge as quite a widespread and dominant notion:

... Contract – one case, I think it's Manchester and a housing association another case both had same principles two different rulings just 'cos of the wording you'd think it would apply to both.

(I, p4 l31)

Students' perceptions of the study of Law tend to revolve then around the importance of case-law, the significance of mooting as a highly positive experience, and the specific analytical demands made by Law, partly (as indicated above) in relation to case-law, but also in other ways.

While there is a lot of attention paid to the significance of case-law study the students also showed awareness of other aspects of legal study and analysis important for good performance:

... like theories ... try and use that as well.

(L, p3 l36)

... like critically analysing the judiciary then I'd probably start looking at all the weakness in there, why you know in all three branches of Law you know the weaknesses of that in relation to Law. Or if I had a statute I'd start by saying well you know this

statute is all very nice and everything, however it doesn't cover this part of you know the Law it's trying to ...

(B, p5 l14)

... researching the answer using texts and theoretical views and attempting to put that into the essay ... critically evaluating the theory you've used...

(O, p2 l39)

Again it could be inferred that the students have some sense of critical analysis in the context of specifically legal study, but it is far from being a complete, coherent or confident categorisation or articulation.

The experience of mooting is to be dealt with largely in Chapter 7, as it would appear to have particular significance for practical curriculum development and the positive personal and academic development of students.

5. Critical Thinking as a Way of Being

5a. The student lifeworld.

A small number of students gave some reflection to the notion of critical thinking as something wider than being a set of more or less understood approaches to academic work. Such perceptions, where they existed tended to emerge from the more 'general' questioning towards the end of the interviews, concerning for example current issues of the day, experiences with friends or relations or, less commonly, the students' reflection on their own character and personality. There seemed to be the most powerful manifestations of critical

thinking as a life-approach or way of being while these latter reflections were observed. By powerful is meant, in combination, an impression of conviction, even passion, together with a student's readiness to be critical of the external world and society. Critical thinking in this conception appears separate from the requirements of academic work and tends to be characterised as an approach to life and the world in general, perhaps as a personality trait. It is clearly beyond the scope of this research to look into aspects of psychological and familial influences on cognitive development but some students did explicitly refer to what they saw as such factors in the development of this trait.

5b. Personality.

(Interviewer) ... is it more a kind of would you agree with this phrase a habit of mind?

I think it is, yes. I think I've got it in my personal life ... I definitely recognise it in myself but I'm not sure about other people as such ... I think it's there ... I've been conscious of it since I started at secondary school sometimes I find things in my mind a bit too much...

(E, p6 l27)

I don't think it's something that you can teach really, I think it's something that em, people acquire, you are either a critically minded person or you're not ... some people, I think it's something you develop through life and obviously em, things that you do and essay writing and various things like that, you just develop it, I think you've either got it or you haven't.

(J, p12 l17)

I think to a certain extent people are generally more critical than others in everyday life and their approach I mean my ex-girlfriend could go through the day without worrying or thinking about anything to a great extent but I'm constantly evaluating the pros and cons of situations and things like that ...

Whether it's linked to intelligence or just how you've been brought up as a child, the toys you had as a child. Whether you've been

given toys that required you to be, to problem-solve ... I think people are just generally more inquisitive, some people are happy to sit back and take things as they are. Some people want to see what else is out there.

(O, p9 l16)

This quotation is as some length as it appears to encompass the key elements in what the students representing this category were generally expressing (as also seen in the extracts above) – scepticism as to the degree to which critical thinking can be formally 'taught', seeing it as an aspect of personality, seeing it as linked to some extent with early childhood and family experiences, and suggesting a slight sense of 'difference' or otherness.

(Interviewer) whether you'd go so far as call it scepticism. Have you always been like that?

Yes. Mum always says that I'm always the, always been like that.

(N, p9 l31)

... I can be ... quite logical in the way I'm thinking and if someone doesn't have that then I think yeh ... usually if I've got opinions on things I'm not the first one to go out shouting about it but just to I might listen to other people and what they've got to say as well ... My mum definitely, she definitely looks at things like that yes and analyses sort of people's way of thinking and picks up on things what are probably wrong to her yes.

(D, p6 l31)

I think I just need to sort of –listening to what is being said and think about – that's my nature that's the way I am.

(A, p5 l9)

(Interviewer) ... do you feel that you're a bit of a kind of or perceived as being a bit of a maverick or ... you don't see things the same as everybody else?

Yes, I'd say so ... [gives examples] ... because I've not suddenly become sceptical, it's just something I've always thought I don't know if it's the way I was brought up... I don't take things at face value ...

(K, p5 l32)

5c. The academic and the personal.

The beginnings of an interesting relationship between 'academic' critical thinking and 'way of being' critical thinking were also being sketched.

... I think you can be critical, it actually, you can be critical quite easily I think sort of like, I feel it's sort of eh, a trait or whereas critical analysis in an academic sense is a totally different skill ... I feel that because I'm critical it doesn't lend itself to make critical analysis easy.

(K, p10 l29)

Yes [criticality] more of a life thing because I think I'm better at it in life than I would be academically. I don't know whether it could work both ways!

(D, p7 l10)

Yes I'd say I'm not a critical thinker because of my course, I'm generally quite critical.

(K, p6 l12)

I couldn't see why they'd taken it [a conspiracy theory relating to the events of 9/11] so strongly on board from just seeing one programme.

(Interviewer)... So you were questioning not only their belief if you like but their evidence for their belief? ...

Yes because like in general I kind of like don't jump to conclusions I kind of just sit back and see what I've weighed up a bit.

(F, p6 l15)

Em, I don't really tend to watch the news or buy a newspaper but when I do what it throws up I tend to criticise it and get right

involved in it ... it's not a rounded argument all right so somebody's done this so the newspaper thinks that but what about the other side of the story – and that's frustrating ... if there's something else that I can think of I think well you know what if somebody just takes it as read and you end up in a seminar where people can't see the two sides of an argument or like have a debate that is how it is and that's the end of it.

(E, p6 l18)

Here can be seen a degree of meshing of the academic and way of being but as opposed, perhaps, to the more generally-suggested separation between the two:

(Interviewer) ... would your definition of critical thinking stretch that far, a kind of engagement with the world in general?

Probably not, like I said before I'd probably just associate it with academically. I've never really thought about it, as you know as thinking about society in that way. I never really have until today.

(B, p11 l20)

Initial Conclusions

There were some problems connected with categorisation, in that students' views of what constituted critical thinking did tend to (for example) overlap, or be not very fully thought-out, or be difficult to tease out, in some cases. Nevertheless the categories here described convey an adequate, and to some extent nested representation of their perceptions. The extent to which there is a clear hierarchy certainly in relation to the third and fourth categories, rather depends on an imposition of a certain structure on a set of interleaved notions relating to aspects of argument, evidence, 'two-sidedness' and the other

features referred to in these categories. In other words, 'a sense of argument' (the third category) itself includes some of the aspects of critical thinking subsequently given more emphasis and development within the fourth category (a general sense of analysis). It is difficult clearly to separate these two categories in particular, and another approach would be to see the sense of argument as a 'sub-type' of a more general sense of analysis. Having said that, it is apparent that several students did closely identify a sense of argument as a fairly clearly-defined, well-entrenched aspect of critical thinking and analysis, so it can legitimately be used to constitute a separate, visible category in this construction of outcome space.

It would appear that students have a strong sense that they need to 'do' critical thinking and analysis to get good marks, and have a sense of the mechanics of demonstrating it, in terms of, for example, comparing and contrasting of ideas, backing points up with evidence, and going into greater depth. What appears less certain, in their perceptions, is whether it can be (more) formally taught (see further, in Chapters 7 and 8), whether it relates to anything beyond A-Level and Degree study, and what its purpose might be. I was particularly struck by a strong sense that critical analysis was something they 'had to do', akin more perhaps to demonstrating factual knowledge or fulfilling a set of criteria for success. It seemed divorced, in general (although not always, as the fifth category illustrates) from any notion that it might be as it were an interesting, or important, or 'healthy' activity or approach in itself. It is suggested

that perhaps this is connected with what has been variously described as the demise of the idea of liberal education, the idea that:

[L]iberal education is not preparation for any specific job, but a preparation for a critical, aware and responsible appreciation of what is happening in the world both at work and outside.

(Fox and Bell, 1999 Ch.1
p.5)

as opposed to, perhaps, the “consumer-led demand for vocationalism in the undergraduate degree” (Cownie, 1999 Ch.9 p.242) which might also lead to a more instrumental and less widely-engaged set of student attitudes.

This, then, may have implications not merely for the curriculum but for increasingly prevalent notions of citizenship and social engagement. As was recently considered in “Times Higher Education” (THE) it can be argued that the humanities can contribute here, through their emphasis on critical thinking:

"I'm helping my pupils to think harder, to be more reflective, more cynical, harder to fool – a good citizen, in some ways..."

(Chris Beard, quoted in
'Soul Searching', Matthew
Reisz THE, 14 February
2008 p35)

This, together with some other implications of the students' perceptions, will be explored further in Chapters 7 and 8.

Chapter 6

The Problem of the Categories of Description in Phenomenography

One of the most problematic issues within the data analysis in this research was that of the construction of categories, or outcome space, following the interviews. It is the intention here to offer some exploration and explanation of this issue, both in relation to the key literature and to my personal understanding, interpretation and working-out of the problem. Such reflections link with discussion elsewhere (Chapter 5 on data analysis, Chapter 4 on phenomenography and Chapter 3 on methods, for example) but the focus here is on my relationship with the methodology selected, the question of subjectivity, and the dilemmas involved in constructing the outcome space. Some element of reflection appears necessary at this stage.

Underlying this issue is a more fundamental and, to some extent, personal set of questions. Determining categories, that is, the outcome space within this project necessitates some personal assertion and subjective interpretation. For most of my academic life (although not the more recent stages) any intimation of the subjective, the intrusion of the "I" into academic work has been seen as *anathema*. It feels almost alien now to be asserting and determining a categorisation in the absence of 'external evidence', relying largely instead on a subjective awareness of my positioning and the context of the students and the material produced to come up with a reasoned appreciation of the views

expressed. The contextualisation provided by my knowledge and experience of students from day-to-day over many years helps to provide a mediating, or regulating background to a sensitive interpretation of their statements. So my stance is not one of 'pure' subjectivity but represents instead a type of 'intersubjectivity' as discussed for example by Kvale and referred to in Chapter 3.

From the perspective of methodology, such approaches offer a reasonably satisfactory approach to the traditional questions of validity and significance of research. Nevertheless the more personal underlying issues remain, and I note there is a growing body of literature (eg Graves and Varma, 1997; Salmon, 1992) which attempts not only to map the 'mechanics' of the research journey but also the gender issues and the emotional, social and psychological challenges and changes brought about by the process. As has been suggested:

The student may be more worried about it not being good enough, and feel that the risks are not worth taking. On the other hand, the consequences of not taking the risk might be even more damaging in the end to a sense of personal identity.

(Light and Cox, 2001, Ch.8
p.139)

Briefly then, those are some of the inherent personal and reflected-on elements within the determination of outcome space. I will now turn to the definition and arguments contained in the literature, before saying more about how I dealt with the problem, in the light of the literature.

Phenomenographic Outcome Space

The terminology and methods associated with phenomenography are discussed in some detail in Chapter 4 and the intention here is more to develop some of the particular debates relating to outcome space. Nevertheless a brief résumé may be useful at this stage.

The term 'outcome space' derives from the earlier work in phenomenography, particularly that of Ference Marton. As stated elsewhere, what the phenomenographic approach concentrates on is firstly the 'second-order' perspective (i.e. how the subject experiences or perceives a phenomenon) and secondly, what variation may be evident in such perceptions, within a particular grouping. It is this second concern which gives rise to the use of the term 'outcome space'. The kinds of perceptions, or conceptions, resulting from a particular phenomenographic enquiry, are normally ordered or ranked into say, five categories which can reveal relative limitations or success in the understanding of a particular concept – hence the particular popularity of phenomenography in research relating to education. These categories illustrating variation are what are said to constitute the 'outcome space':

This outcome space, the map of the structural relations of the variation in the way a group (of students) experience a particular phenomenon ... illustrates the power of the phenomenographic approach ...

In summary, phenomenography takes a relational (or non-dualist), second-order perspective, *aims to describe the key aspects of the*

variation of the experience of a phenomenon rather than the richness of individual experiences, and produces a limited number of internally related, hierarchical categories of description of the variation...

(Trigwell and Richardson,
in Rust, 2003, Ch.3 p.39)
(emphasis added)

I will return to the question of 'hierarchy' below, although this is also related to the notion of variation to which I will now turn.

In theory and in practice, the identification of the types of variation in students' conceptions could be very useful in the development of different, and more targeted pedagogic approaches. If it is recognised that several students share a particular misconception (as was the case, for example in one of the earliest studies on the 'mole' concept in chemistry: (Lybeck *et al* 1988) then a changed focus within the explanation and explication of the subject, (putting the students' perception at the centre, rather than the concept itself) could lead to enhanced understanding and learning. It is the differing types of (mis)understanding which can help to move the teacher towards greater insights into the 'gap' between the explanation, and the understanding of students. (On a purely anecdotal note, I would have welcomed a phenomenographic enquiry into the teaching of algebra which of all branches of mathematics was always, as a pupil, the most conceptually mysterious to me. It is only as an adult that I have begun to grasp what algebra is 'for' and what it can do).

From Marton's original work we glean another key notion underpinning phenomenography; that the categories within the outcome space do not (emphatically) represent the positions or views of individuals. As has been mentioned above, particularly at the beginning of Chapter 5, the concern is with the variation of conception within a particular grouping. This emphasis raises an issue regarding the relationship (developed further below) between the students' 'lifeworld' and the process of categorisation - from what might be termed a 'strict' phenomenographic perspective the individual student's conception is irrelevant, and yet it could be argued that conceptions, or meanings within a category are inevitably drawn from and embedded within the individuals' 'lifeworld'. However, the insistence on group, not individual conceptions, can be useful for illuminating different conceptions of a phenomenon existing either at the same time or consecutively, within a student grouping, which a methodology reliant on individual response would not necessarily pick up. Nevertheless the abstraction, or separation of categories of outcome space from students' personal lifeworlds might mean that the researcher's interpretation or extrapolation of categories becomes even more potentially subjective, in the absence of any rich picture being given of the individuals from which the categories are drawn.

The work of interpreting the students' statements and assigning them to categories is a lengthy and iterative process, and the issues relating to discourse and interpretation discussed elsewhere (Chapter 3) clearly come into

play here. 'Immersion' in the transcripts; constant re-reading and cross-referencing leads to an emergence of key, repeated themes which can then be, at least roughly, categorised. It is this process which starts to yield the insights and manifestations of the students' subjective understandings and perceptions of the topic under investigation and to reveal a sense of 'group' conceptualisation – as quoted above this is one of phenomenography's 'strengths'. A meticulous and sensitive examination of the transcripts is clearly necessary for the assignment of categories, together with a reflective awareness of the relations between them, necessary for the development of a hierarchy (see below) and at least for an intelligent and useful appraisal of the overall 'direction' of the students' perceptions.

The Problem of Hierarchy

As quoted by Trigwell and Richardson (in Rust, 2003, Ch.3 p.39) Marton clearly referred, in his early work, to the idea of the formation of 'hierarchies' in the construction of the outcome space within a phenomenographic enquiry. The notion that, say, five categories of description should ideally 'ascend' so that each conception builds on and subsumes the previous ones (with the 'final' conception representing the most complete understanding) is one which is found in many accounts of phenomenographic research, such as Ashwin (2005) and Marton, Dall'Alba and Beaty (1993).

From a methodological point of view this does raise some interesting and significant questions, however. As with the law of negligence, it could be said that "the categories are never closed". The problem of a seemingly arbitrary, or premature, closing-off of constructed categories may be due to mundane reasons such as the time available, but also raises the question (touched on in Chapter 3) of the researcher, or interpreter's subjective choices:

Firstly, what basis is there for the assertion that there are a *limited* number of qualitatively different ways of experiencing a phenomenon? Since the categories of description are the production of the researcher, it would appear that it is the choice of the researcher to limit the number of categories of description. Presumably, given time and energy, one might extend the categories.

(Lucas and Ashworth,
1997, p.20)

It could be argued that a successful, or worthwhile piece of phenomenographic research will demonstrate a 'completeness' of conception within each category, which will be evidenced through quotation, and that this notion of completeness is more significant than the number of categories which emerge (note taken from Ashwin, 2004). The responsibility for categorisation does clearly lie with the researcher and it will not necessarily be demonstrable that another researcher would come to the same conclusions (Ashwin, 2004). The researcher should be clear about their experience of the research and be able to relate the evidence from the transcripts to their selected categories, showing a sense of positioning, preconception and contextual background to the research.

The problem of categorisation goes deeper and relates, as suggested above, to the question of interpretation, and of underlying criteria and the basis on which choices and differentiation is made. To a lawyer this raises a very specific question as it relates to the problematic operation of case law/precedent:

...similarities between the facts are advanced as reasons for recommending or justifying the same results...

In case law it is not uncommon for precedents to be cited by opposing sides in the form of competing analogies: ... In such cases the result turns on the relative importance or weight to be attributed to particular elements of similarity or difference...

(Twining and Miers, 1991,
Ch.7 p.261)

However, the legal example serves to illustrate the wider problem. In other words, the identification or ascription of qualities of "similarity" or "difference" involves the relativity principle – at what level of generality is the comparison being made?

...generality and particularity are matters of degree and some of the most difficult choices in interpretation relate to choosing an appropriate level of generality.

(Twining and Miers, 1991,
Ch.3 p.145)

However, one of the major problems within phenomenographic reporting remains the question of hierarchy. Again, this problem can be framed in different ways and it raises different sub-questions. One relates to the underpinning terms of reference and objective of a particular study; to put it simply, what are the criteria being used to determine the categories and to what extent do they fit with each other to give rise to a set of ordered and

conceptually-related hierarchical concepts? Can a hierarchy always be justified, for example where the object of enquiry is bound, potentially, to give rise to a fairly loose and disparate set of perceptions (perhaps as with perceptions of critical thinking). As I noted in Chapter 5, the delineation of outcome space was difficult as, for example, the categories of student response did not always fall neatly and clearly into definite 'conceptions' and there was some overlap between types of perception. Perhaps the ease (or not) of formulating hierarchical categories is related to the type of research question being asked.

To sum up:

In our view, it is not clear, as phenomenography assumes, that a hierarchically-ordered system of mutually-interrelated conceptions of a given key concept is attainable – and (if attainable) that it necessarily represents the meanings of the conceptions of students within their distinct lifeworlds...

For instance, it must be considered possible that the phenomenon under investigation has no place in a given individual's lifeworld, or that it takes a very different form.

(Lucas and Ashworth,
1997, p.21)

It should be recognised, then, that there is a danger of distorting the student views to make them 'fit' categories, or to organise them "in terms of the way in which student conceptions deviate from the 'ideal' authorised conception" (Lucas and Ashworth, 1997, p.23). This now takes us on to the issue of value-judgements and hierarchy.

In imposing an inclusive hierarchical structure (setting a conceptual framework

for one to emerge) in which some categories appear more 'complete' than others, the question inevitably arises as to whether this represents a set of value judgements being made by the researcher (note take from Ashwin, 2004).

The idea of "deviating from the 'ideal'" mentioned above will be a significant factor in the ordering and categorisation process, whether consciously or unconsciously, explicitly or implicitly. Put simply, it might appear that this vitiates the phenomenographic objective of demonstrating second-order experience, as the students' experience is now being refracted through a more or less authoritative value structure (the hierarchical outcome space) which deems some conceptions as less complete (deficient, inferior) than others. The presumption of a hierarchy in this sense appears to contradict the essential purposes, function and power of phenomenographic enquiry – which is to collate and express, as far as possible, 'the world as the learner experienced it' (Trigwell and Richardson, in Rust, 2003, Ch.3 p.38) in respect of a particular topic. It may be that the construction of an inclusive hierarchy is best or better for the development of a responsive pedagogy for the problem under consideration. But from the point of view of 'purely' learning about second-order experience it might seem that the hierarchical approach obstructs and obfuscates the interpretation of data.

If phenomenography is about finding out about students' perceptions, these

perceptions then, as it were, need to speak for themselves. There is no further need to 'assess' them in terms of relative deficiency. The process could become regressive or circular – the topic selected for investigation (mole concept; critical thinking) will have been selected, almost certainly, because teachers have encountered problems in students' understanding of that topic; the research reveals 'deficient' categories, (according to the researcher's view and/or the authoritative literature on the subject), and the hierarchical structure will reflect this. In this process there is a danger that the intended focus on the students' second-order perceptions is lost sight of to some extent.

The problem has largely been expressed in terms of the relationship between the students' 'lifeworld' and the 'authorised conception' (see for example Lucas and Ashworth, 1997, pp.23-26) but I would add to this the problem of researcher subjectivity, which is also touched on in Chapter 3). In my research, the final conception (critical thinking as a way of being) does at least partly reflect my personal belief. The point is, though, that the setting of a hierarchical structure would seem in some senses to detract from an emphasis being placed on the object of the research – ie the students' lived experience.

Having said that, the point made above in relation to pedagogic response needs further examination. It is important to stress that in phenomenography it is not just the categories themselves which merit attention, but the relations between them or the variation:

The categories of description corresponding to those differing understandings and the logical relations that can be established between them constitute the main results of a phenomenographic study.

(Prosser and Trigwell,
1999, Ch.3 p.57)

This is what in particular may give rise to useful knowledge for a constructive response from the teacher/researcher:

Another source of verification of the appropriateness of a set of categories is the internal logic of the categories themselves ... There may be an internal structure to a category system in the sense that what separates conceptions of a phenomenon is what is assumed to be in need of being explained...

A further aspect of the internal structure of categories that depict different conceptions of a phenomenon is that learning can be described as the change from one conception within this structure to a different one.

(Säljö, in Ramsden, 1988,
Ch.2 p.46)

It is the variation, and types of understanding represented by relational and hierarchical categories, which can be most informative and enlightening to the researcher and hold the most vivid potential for the development of changing practice.

Outcome Space and Critical Thinking

The construction of outcome space in my research on perceptions of critical thinking did raise certain problems. The hierarchical structure I did in the event

impose appears satisfactory from several angles. There did emerge a sense of ordering of conceptions in that within the group there was significant variation between more limited (less complete), less fully-articulated and less wide perspectives, and more fully-realised and deep approaches, which I have represented in the five categories discussed in Chapter 5. In that sense it was not particularly problematic to discover and express a hierarchical structure within the students' reporting, (pace comments above and in Chapter 4) in relation to personal and external 'authoritative' views - in this case on what might constitute critical thinking. The fifth category does convey a sense of a rich and wide-ranging understanding of both the minima 'required' and the potentialities and deeper life-relevance of criticality in its many aspects. The apprehensions expressed throughout the categories take us far beyond

...[the assumption] that any students entering higher education ought to understand what is meant by words such as 'argue', 'critical analysis', 'be explicit' ...

(McKenna, in Rust, 2003,
Ch.5 p.80)

The hierarchical structuring became more problematic in two particular areas. Firstly, as briefly noted above, it was sometimes difficult to separate apparently 'overlapping' categories and perspectives, particularly as between three and four (a sense of argument, and a general sense of analysis). It sometimes felt I was straining, artificially, to assign statements and views which in (some of) the students' minds seemed to be closely interrelated, into separate categories, (although this was not always the case). This could be described as a problem

of differentiation, perhaps particularly acute in investigating such a diffuse topic as critical thinking (as opposed to, say, understanding of a specific formula in physics or an empirically-demonstrable phenomenon).

Secondly, it could not be absolutely asserted that within this hierarchy the higher level conceptions do supersede and include the lower level. The most straightforward example is that the 'negativity' associated with the first conception is largely subsequently dismissed. A sense of argument (the third category) may still have some underlying association with negative comment but at least by the fourth category such perspective has disappeared. In this respect the ideal inclusive hierarchy could be said to be lacking in my analysis. Nevertheless the variation and relationship between the categories remains as clear and significant in helping to demonstrate the learner's view of what is without doubt a complex and contested concept.

Chapter 7

Students Learning Law - critically?

While the explicit aim of this research was to discover and reveal some aspects of Law students' perceptions of critical thinking, in the process of interviewing the students some interesting insights were offered into perceptions of learning Law itself. In several instances where these insights have been closely enmeshed with those on critical thinking, these have been discussed above, in Chapter 5, as constituting the phenomenographic analysis which is the focus of this dissertation. Some comments have been less easy to disaggregate in this way, however, while still offering some reflections on student perceptions which may be significant for the teaching of law. It is the intention below to summarise these key features as an interesting and useful adjunct to the main research findings on critical thinking.

To do this serves further the purpose of embedding the students' view on critical thinking and related aspects within the context of specifically legal education and may also help to point towards the conclusions outlined in the final chapter in relation both to curriculum and delivery.

The key features identified have been grouped around the following three themes; students' personal (emotional?) reactions to learning law, using case-law, and Mooting.

Personal reactions to learning law

Em, I find it's [Law] more of a personal subject for me, I find that it affects me in what I think like the debates about law and the Internet I think ooh maybe you'll have to be careful! Whereas in English I've read books – criticism – and that was the end of that it didn't affect me, it didn't get into my heart, my mind yeah.

(E, p4 l14)

... there are a lot of different perspectives and there's like a big contrast between the legal and the moral – I think sometimes the legal isn't very moral!

(H, p3 l29)

[Interviewer] ... do you find almost you have to unlearn some preconceptions about things?

- Yes I think so mm because as I say when you're learning something that you've never done before you've always got to think of that because your way of doing things could not be the right way to do it so you have to take things away to add more things ...

(D, p6 l15)

You assume straight away though 'cos it's Law you've got to criticise and argue both sides ...

(K, p3 l3)

Here are four direct examples of students' subjective experience of learning Law in the context of preconceptions and other academic experiences.

Preconceptions deriving from cultural sources (as were discussed briefly in Interview D) may be particularly interesting to follow up – in other words, the extent to which some students may need to 'unlearn' aspects of Law that they have previously gleaned and internalised for example from the mass media and entertainment.

The very personal engagement with Law identified in E above, and the recognition of a disjunction between Law and morality in H are both issues which are also played out elsewhere, particularly in relation to discussion of future legal careers. Other students noted, for example, the potentially distressing scenarios they were likely to encounter and the need to be involved both critically and dispassionately.

To some extent such comments reflect the concern evinced in some quarters to introduce more emphasis on legal Ethics earlier into the academic curriculum (see, for example, o'Dair, 2001).

Case-Law

... like Contract it's getting used to the cases that you can use for your different types of areas and not just using them for the sake of using them.

(D, p5 l33)

I'm a bit confused as to how many cases I should try and remember ... particularly with Contract Law so many of them and I'm not sure which ones I should try and remember the names and which ones I should just forget, because if I'm sat there all night trying to remember to the names of the cases and it comes to an exam I've got loads of cases but I've got no opinion to go with it or I've got no understanding of the topic but I can quote fifty-two cases on it – it's finding a balance.

(M, p4 l15)

Yes ... I mean again with the case law somebody says in a case law you know critically analyse it and I'd probably look at it and think okay where did they go wrong, you know where did they – didn't do this bit very well ... in the judgement

(B, p6 l29)

You need to sort of be able to sort of think outside right, sort of outside the box and not be sort of possibly afraid to bring in stuff from er which sort of like you originally think is irrelevant say a case for Contract-Law in say I don't know different bits ... bringing stuff in from other parts of Law to use in other bits ...

(G, p4 l20)

Several students focussed on case-law method, particularly in the context of Contract Law, as part of their discussion on how Law was 'different'. Using and remembering cases appeared in the students' perceptions to be a particularly important aspect of the experience of learning Law, and as these quotations indicate, managing case-law is perceived as both a technical issue (D and M) and as being related to the more critical analytical approach (B and G).

M perhaps especially seems to provide an astute reflection on the mechanics and pitfalls of learning this kind of Law, and M's observations raise interesting pedagogic questions for anyone teaching Common-Law, case-based subjects. This question has arisen in my own teaching experience – put simply, whether to teach fewer cases and try to indicate and inculcate principles, or (as one of my colleagues with whom I was sharing lectures preferred), to teach large numbers of cases in the anticipation that students will then know a huge body of relevant case-law and be able to derive principles and sense from that body.

Quotation B is interesting in that it clearly indicates a perception of a judgement being 'wrong' as well as not being done very well. The former could be interpreted as indicating what probably many lecturers intuit, that several

students come in to learning law (possibly particularly having done it at 'A' Level) with a rather definite sense of a 'right and wrong answer' to be discovered in response to legal questions (again as mentioned above, perhaps partly due to cultural preconceptions).

The quotation from G led on to some discussion about the practice of Law being a 'creative' process and also a more perhaps sophisticated recognition of the nature of Law:

... in Law both sides could be the right answer ... use your ideas and your opinions to find your own sort of answer so you need to sort of critically er analyse and think about what you do by reading books and cases and have your own opinion.

(G, p5 l6)

Mooting

When I did the mooting that helped because I had to think critically about the question, I worked my way through it and then try and apply what I knew to the cases ... I think it [mooting] helps when I'm doing my coursework because I can apply what I've learnt and try to put it in – thinking through it more than just writing it down.

(L, p6 l22)

... I thought you know you're arguing the wrong points here and I was just like you know just thought but where is your logical thinking ... they [other students] put their argument forward put a case which had nothing to do with it and then they just like contradict themselves at the end ...

(N, p7 l17)

I actually quite I thought that was quite good I quite enjoyed mooting yes I think because I actually read up on how to do it because like I've never done Law before I didn't really know what it was, I looked up on it and I really sort of got into it and how to

speak correctly and use the correct terms ... I think having your case or your arguments put forward and doing it so it's fluent and people can understand it as well as arguing against someone else, taking different aspects I suppose to make sure others can understand it and you yourself can understand it so you can put it forward well ...

(D, p9 l1)

... we just did one moot and then we have like feedback from the tutor and a third year student and they also gave feedback which was very useful but none of it was negative ... I mean I was so worried and it was like it is a quite scary situation ... I think it's really good 'though, you know that you have to do that especially in the first year.

(N, p7 l31)

Several students mentioned mooting activities and all in an extremely positive light. What these quotations appear to indicate is a truly reflective aspect of student learning which mooting can help to address and develop. As student L notes, the activity brings in critical thinking, personal initiative and application – but with an emphasis on thinking it through rather than just writing it down, to paraphrase slightly. This suggests a recognition of a more active style of learning, as is also suggested by quotation D above. Having to make sure others can understand it makes sure that there is personal understanding by the student concerned so that the argument can be put forward compellingly and lucidly. Such sentiments from the students appear to endorse the positive pedagogic attributes of mooting.

The benefits and practices of experiential learning feature often unwittingly in UK Law schools ... Mooting, for example, conforms to many of the characteristics of experiential methodology ... Its effectiveness as an educational tool is often overlooked as it is valued for its mimicry of a rite of practice.

(Burridge in Burridge *et al*, 2002 Ch.2 p30)

The acknowledgement that mooting can be 'scary' (second quotation from N) and the noting of the importance of positive feedback – both from tutors and from and to peers, ("I felt really bad ... I didn't like to say you know – your arguments are crap" N, p8 l 2) perhaps also serve as salutary reminders of the student experience. But it does appear that there is a recognition of the benefits mooting can bring, the students' comments on this appearing overall more clearly reflective and articulated than on almost any other topic which emerged during discussion. Mooting most commonly emerged in response, directly or indirectly, to questions which prompted students to talk about what 'fired them up', effectively, so that (at least for some) it would seem that self-esteem as well as legal education were being enhanced through this activity.

It is against this background, then, that the conclusions relating to critical thinking in first year Law students will be considered.

Chapter 8

Conclusion

In my introduction I referred, at least in outline, to some of the reasons why critical thinking is important in relation to higher education, and the study of Law. I made reference, for example, to the QAA Law Benchmark statements, to the new tests for critical thinking, and to notions of liberal education, together with local examples of the need to demonstrate critical analysis for real academic success. In this concluding chapter I aim to revisit and develop some of these, consider the findings described in Chapter 5 in relation to some of the existing literature, and suggest some practical ways forward in terms of curricular and pedagogic development.

While noting the existing tensions and debates about the likely, and/or desirable directions and content of legal education, it would appear that the concept of “the liberal Law School” (Bradney, 2003) is surviving and even thriving. Much recent literature identifies the continuing importance and desirability of such an approach to law teaching. Liberal education is of course a term and concept fraught with difficulties – Bradney, for example, notes, it can be undermined from perspectives of associations with elitism (Newman’s “education that is suitable for ‘gentlemen’” (Bradney, 2003, Ch.2 p.48), and from post-modernist perspectives:

...post-modernism, in denying the possibility of a foundational significance being properly attached to any series of arguments, exposes, it seems, basic theoretical shortcomings in the idea of liberal education.

(Bradney, 2003 Ch.2 p.45)

The Enlightenment 'project' itself has been critiqued by, amongst others, some of the Frankfurt school of Critical Social Theory and some poststructuralists, and the ideals of liberal education which in some sense flow from that Enlightenment thinking are certainly not unproblematic, particularly in the modern political context. Within legal education itself, it can be argued that liberal education is being challenged by various pedagogic and political agendas – skills, vocationalism, influence of the professions, consumer/student demand, political and funding pressures and so on - see for example Twining (1994); Birks (1996); Bradney (2003); Cownie (1999) and Toddington (in Birks, 1996).

Without actually arguing that the world of legal education is a site of internecine struggle - see for example Leighton (2001), Savage and Watt in Birks (1996), it would be missing the point to suggest that there is an easy consensus about what constitutes the purpose and content of Law as a discipline within higher education.

Arguably it has been the 'skills agenda' in particular which has driven recent pedagogic developments in legal education and contributed to interesting creative tensions, but other more recent educational developments have also

contributed to such tensions. As Sherr has put it:

Apart from Fiona Cownie's almost lone voice in this country, it has been the skills school largely which has promoted the educational discipline as a teaching approach. Academics and teachers interested in educating legal skills and promoting good lawyering behaviours ... have also promoted more of a competence based approach to teaching and assessment, looking at learning outcomes, objectively measurable systems of assessment, learning objectives, and all the other concepts and argot of the new educational theory.

(Sherr, 1998, p44)

This, and further statements, seem best to mirror the findings as to students' perceptions of critical thinking as set out in Chapter 5. While not coming strictly within the body of critical literature as reviewed in Chapter Two, there are several comments within this article which appear to reflect most closely one of the more frequently-encountered perspectives of the students; as expressed above in Chapter 5 that they are following "a set of criteria for success".

However, as has been suggested:

The majority of contemporary British university Law Schools and the majority of academics within those Law Schools hold themselves out as providing a liberal education.

(Bradney, 2003, Ch.2
p.31)

and there are perhaps enough indications both within legal educational literature and the external world to suggest that a liberal legal education, *tout court*, with its concomitant givens of critical approaches and critical thinking, can, as has been suggested above, survive and thrive. Further evidence for

this might be found for example in Twining's advocacy of the development of postgraduate courses in law, the increasing emphasis on scholarly research (as compared to say fifty years ago) - "legal scholarship is now a large-scale, burgeoning enterprise" (Twining, 1994, Ch.6 p.123), and the continuing phenomenon that law firms :

...were often justified in preferring non-law graduates to law graduates, for some undergraduate legal education as currently practised can seriously damage one's intellectual health.

(Twining, 1994, Ch.7
p.164)

That may seem paradoxical for a number of reasons but what seems to be the case is that at the very least the wider critical perspectives offered by other subject disciplines appeal even to the legal profession itself.

Very much in outline, then, here are some of the reasons why what is being termed a critical, liberal legal education can be seen as a vivifying and relevant approach. Of course, there is a need to note that the "skills v. liberal legal education" characterisation is often an over-simplistic one, as has been pointed out:

The problems raised by the idea of legal education and the development of legal skills are as intellectually rich as any in the fields of philosophy and the various social sciences.

(Toddington, in Birks,
1996, Ch.6 p.76)

How then can this be linked with the issue of critical thinking as demonstrated by students, or, more pertinently, their views of critical thinking in terms of curriculum development? For whether one takes the liberal education view as suggested above, or the Law Benchmarking statement, or the Dearing or Leitch Reports as referred to in the introduction, or other indicators of 'graduateness' it appears that there is a need and a desire to develop critical thinking, whatever that may mean in these contexts, in our students, and we therefore need to consider both what the term connotes and how this relates to students' conception and experience, in order to develop better-adapted pedagogy. For, as has been suggested:

The context of learning should, according to him [Marton], be described in terms of what is in the students' minds rather than what is in the textbook.

(Hedegaard and Hakkarainen in Ashworth et al, 1986, Ch.6 p.131)

This research, then, could provide the beginnings of a more developed awareness of what students bring to bear on the notions of critical thinking to which they will be exposed through academic study.

The writings of Sherr (1998) and others in this respect appear more closely related to my findings on student perceptions than the critical thinking literature *per se*, with its emphases for example on problem solving and formal logic.

Sherr appears both to identify, and caution against, the “skills and competencies and learning outcomes approach”... [which] “is useful, but only so useful” (1998, p.45). The view of critical thinking identified as instrumental in my findings could be said to conform to what he terms:

...reductive lists of skills. There is only a certain amount of information or analysis which can be reduced to an outcomes or competencies basis and be measured as such.

(1998, p.45)

Whether or not one accepts his argument, it is clear that from one set of student perspectives, critical thinking is seen as another “skill” or “competency” which needs to be demonstrated for success.

Other academics who have discussed competence-based, and vocational learning within the context of legal education include Webb, (1999), and Johnstone, (1999) for example. The former cites Lyotard's concept of 'performativity' (deriving from Political Writings, 1993), relating this to increasing flexibility and vocationalism in education, as well as to competence-based learning. Again, the significance of this here is how this analysis relates to the students' perspectives on critical thinking, while again noting that such writing appears not to form part of the substantive body of literature on critical thinking as such:

This approach [occupational competencies] has been dominated by the so-called 'standards methodology' of the NCVQ, whereby measurement of learning is defined in terms of criterion-referenced performance outcomes which are derived from the functional

analysis of occupations ... It is emerging in a not wholly dissimilar form in higher education through attempts to define generic skills and attributes indicative of 'graduateness' ... It is quite difficult to generalise the position of the law schools in this debate. Skills-based learning is undoubtedly fashionable, though so far it has mostly eschewed the narrow emphasis on competence-based learning ... identified in other domains...

(Webb, in Cownie, 1999,
Ch.9 p.241) (NCVQ :
National Council for
Vocational Qualifications)

These sources, then, offer some illumination of and relationship with some of the data findings set out above. The ideas expressed by the students as to critical thinking reflect, to some extent, what Webb calls (albeit referring to skills), "yet another discrete knowledge area to bolt-on to the curriculum" (*op. cit.* p.242).

The extent to which the data relates to the 'fundamental' critical thinking literature reviewed in Chapter 2 is perhaps more problematic. To some extent the perceptions mapped within categories Two, Three and Four in Chapter 5 reflect the approach taken by Ennis ("aspects" and "abilities" - see above, Chapter 2).

In terms of speaking of the use of 'evidence' (Category Four) there is some meshing with the ideas of Dewey, as referred to in Chapter 2, although 'evidence' is another word which could assume very different significance in different contexts. Nevertheless the references by the students to approaches such as use of evidence, comparison, looking at sides of arguments and

analysis suggests if not a familiarity then at least an awareness of these sorts of basic tenets of critical thinking which Dewey, for example, touches on.

The term logic, in connection with critical thinking and as emphasised by Ennis for example, would seem to pose more problems in the context of student perceptions. Where students do refer to logic their comments are generally uncertain or doubtful:

I don't understand the term logic. People do things logically that other people don't it's just who they are ... I mean logic I think differs between different people, it's the same as morals – people's moral views change.

(O, p6, l3...)

The formal logic referred to in Chapter 2 then would not appear to have much relevance or significance in terms of these students' experience.

As described in Chapter 5, the fifth category of student perception (critical thinking as a way of being) bears some relationship with the views expressed by Brookfield and Barnett, but only to a limited extent. While some students referred to, for example, being sceptical about some aspects of society there was no evidence of a thoroughgoing "calling into question [of] assumptions" (Brookfield, 1987, part 1 p.1) as quoted above in Chapter 2. With these insights in mind, it now remains to outline some possible pedagogic developments within the legal curriculum.

Curriculum Development and Critical Thinking

The aim here is not to attempt to describe and comment on the large and growing body of literature on how to improve legal education (see for example Stuckey 2007). Rather the aim is to outline some possibilities for curriculum development both in terms of delivery and content in relation to critical thinking. It is not the intention here to give the *minutiae* of implementation but rather to suggest some practical possibilities which can be linked to the findings on students' perceptions. The first, and most obvious, is to create a set of seminars or workshops where the skills of critical thinking and analysis are specifically addressed. While this inevitably appears 'bolt-on' and is dubious in that it may set up the idea of critical thinking as a separate entity, unrelated to anything else in particular, from the student perspective it may appear as a useful, constructive and meaningful activity (some interviewees did comment positively on such an idea). Critical analysis would thereby appear in a sense privileged and prioritised, being given an explicit and articulated place in the Law diet.

This would to some extent address the student perception that critical thinking is important but that it is not necessarily explained, demonstrated or integrated explicitly into their learning. Where expressed student reaction was favourable to the idea, and it is something which is being tried elsewhere on Law courses, for example at the University of Central Lancashire.

...it would be good if you know seminars one week how to critically analyse because do you know I've got a friend who goes to another Uni and they have a specific seminar tutor who actually teaches them how to do these kind of things and how to critically analyse and critical thinking ... they do like it because it sets out kind of what is expected of you as a student ...

(B, p7 l8...)

The problem with the apparent 'bolted-on' nature of such classes can be dealt with by paying careful attention to the contexts in which the critical thinking skills are developed. It would probably be the case, as one student suggested, that critical thinking is best 'taught' within the context and ongoing development of legal knowledge, so, for example, one class could approach the critical dimensions within Constitutional law, another within Contract, so avoiding too much ill-defined generality and skills-for-skills-sake, which students may find more off-putting. Critical thinking and ways of approaching it would therefore be grounded in the everyday subject-matter with which the students are having to become familiar and therefore cognitively, pedagogically and psychologically there is less likely to be any perceived (or real) disjunction between the information, or matter, as it were, and the bringing to bear of critical analysis. For this was an issue potentially identified by some of the students – put simply, the 'how can you criticise it until you know it' conundrum, referred to in Chapter 5. And while this should not necessarily be such a problem:

It is a short step from insisting on a sharp distinction between description and prescription to maintaining that one should describe before one ventures to criticise. It is only a slightly larger step to move on to say that legal scholars, and especially law students, should only be concerned with description.

(Twining, 1994, Ch.7
p.155)

nevertheless if it appears so in students' eyes then a better way forward may be explicitly to link the growing ability to be critical with the growing of confidence within a body of knowledge.

This kind of activity, then, either as a series of discrete seminars, or with at least one explicit 'critical thinking' seminar built into each module (at least on the first year) should have the effect, then, of raising the profile of this approach to academic work; giving students an appreciation of why critical approaches might be important, and, to some extent, some frameworks and ideas as to how critical thinking in specific contexts can start to be developed.

Another approach, (and none of these are necessarily mutually exclusive) would be for lecturers to build critical approaches much more explicitly and consciously into lectures. Many will already be adopting this approach but a shift in emphasis, together with an explained and justified critical framework for the lecture (or whatever method of teaching delivery is being adopted) will help to normalise and inculcate such academic critical approaches. Lectures would become critical analysis in action rather than mere conveyances of information.

This of course begs some questions as to the nature of law as compared to

other disciplines, the purpose of lectures in an arguably over-stretched, heavy curriculum and the issue of student satisfaction, to name but three. However, the benign and developing influence of the 'research-informed teaching' movement could be harnessed here, together with other pedagogic developments such as enquiry-based learning and, possibly, autonomous learning developments. Associated activities might include the implementation of the meta-learning approaches already employed elsewhere; not just introduction to learning styles inventories but a familiarisation or at least an overview of what, in Glanville Williams' (2006) term, "learning the law" actually means (*pace* Chapters 5 and 7).

Another suggestion for developing critical thinking within the law curriculum derives from Bradney (2003, Ch.4). In that chapter he describes:

...the way in which a liberal education can change the direction of that which is done in the curriculum whilst at the same time continuing a tradition of law being a technical training.

(p.91)

He does this with reference to the case of *Donoghue v Stevenson* [1932] AC 562, a Tort Case with which law students rapidly become familiar and which is in several senses a landmark case. Without rehearsing Bradney's approach in full, what he sets out is an approach which would combine the technical mastery the student needs to acquire together with "questions of values" (p.97) "the start of an education in sensibility" (p.92).

In referring to this approach there is a necessary elision between the idea (I) of a liberal education and the attempt to instil features of critical thinking in Law students. However the key point from a pedagogic perspective is Bradney's assertion:

What matters is what the student is expected to see in the passage.
(p.92) (emphasis added)

The onus here is on the reflective, critical teacher as much as on the student to become aware of the several cultural and other connotations of certain passages in this or other cases, of aspects of law in order to give rise to a critical understanding of "the structures and values that permeate and underpin law" (p.86). Bradney really stresses this point:

Land law can serve as well as legal history, commercial law as well as critical legal studies, as a basis for a liberal education in the Law school. What matters is not the subject studied but the attitudes of those who are teaching and studying the subject ... It is thus not what is studied but the manner in which something is studied that matters

(pp 86-87).

The continuing tradition (in some quarters) then, of what can be characterised as the black letter, or doctrinal approach to law teaching is thus absolutely challenged. It is beyond the scope of this research to ascertain the extent to which such modes are still present or even dominant within at least the academic stage of legal education. A fair assumption would probably be that there is a mixed picture in Britain.

A not unrelated idea to that of illuminating students' understanding of law texts both in terms of technical understanding and broader appreciation, would be to introduce the notion of 'keywords', probably at each level of study. Such keywords could be selected after consultation with staff, (and possibly, students), but would need to reflect the kinds of concepts with which students struggle yet which are crucial in underpinning certain subjects within the legal curriculum. Examples could include 'policy' and 'public policy' (Tort and Administrative Law); 'commerce' (Contract Law); 'accountability' (Constitutional and Administrative Law); 'justice' (all law subjects) and 'legitimacy' (English Legal System, Constitutional and Administrative Law). These are only initial suggestions. What matters is that students would be introduced to these concepts at an early stage (although as suggested above, probably tailored to the appropriate levels of study) in a form which relates both to some of the particular areas of study but which also explicitly creates and directs a critical stream of thinking – encouraging students again to see both how such concepts directly relate to the technical legal curriculum but also how they can lead into more critical, discursive and academic aspects. It is not that these are necessarily ignored currently but such curriculum development would emphasise and articulate these issues more transparently and explicitly. As with critical thinking *per se* it may be that, as students indicated, they perceive that there is an assumption that they will pick these ideas up, as if by osmosis. In concentrating largely on the teaching of 'technical' law cases, statutes and principles, it may be that these broader concepts become obscured and

obscure in the students' perception. Reading judgements, say, in Administrative Law ought to give students a sense of such concepts, and in so doing they are, almost inevitably, engaging in critical thinking. However a more explicit and perhaps more example-driven approach to teaching approaches to case-reading may help to focus students engagement with cases (the data described in Chapter 5 certainly indicates students' liking of 'examples'), so promoting both technical mastery and critical reflection.

Another, perhaps less formal suggestion for the development of critical thinking derives from ideas discussed in a workshop session at the Higher Education Academy Conference, 2004 (Quinton and Smallbone, 2004). This is the idea of 'lunchtime' reading class, where students participate in the critical reading of journal articles, and are introduced to and familiarised with frameworks for reading and assessing such articles, and, it is anticipated, develop greater awareness of the connections between such reading and deep learning. This, or similar activity could for example be generated through the idea and practical development of learning hubs in higher education, and the extent to which these ideas could be practically incorporated into the legal curriculum may form a useful source of discussion.

Concluding Remarks

What I have aimed to achieve in this research is some illumination of what First year Law students expect of and how they perceive the notion of critical thinking and analysis, which constitute an important aspect of performance in higher education. I have shown that there is some relationship between students' perceptions and the notions of critical thinking set out in key literature but that overall it is not something which students can easily define, shape or recognise as an integral aspect of academic (or indeed, external) life. There is a tendency to see it as part of a set of skills they need to deploy to do well.

There are several possible ways in which this initial research could be taken further. Two perhaps most significant would be to work on perceptions of learning law itself. There is some existing literature on this but it seems not a large amount, and frequently relating to experience in other countries. The other potential work would concentrate more on cognitive processes associated with critical reading in law, building on Säljö's work and applying it within a specific subject discipline.

This final quotation appears to sum up the thinking behind this piece of doctoral research :

...there clearly is a need for complementing main-stream research with approaches that regard the educational field and the world of teachers and students as yet to be discovered and conceptualized

... For instance, when a physicist or biologist realises that it took mankind several hundred years to move from one conceptualization of the world to another, he or she is in a much better position to understand the learning difficulties of his/her students who may only have a few hours to bridge the same gap.
Reflection on such issues leads to change ...

(Säljö, in Ashworth *et al*,
1986, Ch.5 pp.121,127)
(emphasis added).

Finally, some further reflections on positionality would appear valuable and necessary. Reflection at this stage particularly in relation to the rationale for the research in the legal context, the findings, and implications for practice, should mean that some pervading themes can be brought together and that their relationship with professional practice may be made more explicit.

In Chapter 1 I talked about some of the reasons why critical thinking is key, in relation for example to assessment in higher education, within the ethos of higher education generally and in the context of legal education. It is clear that such higher-order cognitive skills are valued and seen as being a core aspect of 'graduateness'. To a considerable extent my findings suggest that students have largely absorbed this message (although they may still be uncertain as to how to deploy and demonstrate critical thinking and analysis). What was perhaps disappointing in my findings was the degree to which students, implicitly or explicitly seemed to regard such critical activity somewhat instrumentally, rather than seeing it as an interesting or satisfying or important 'way of being' in its own right. Of course, as I mentioned earlier (Chapter 1) this view reflects my own (acknowledged) position, as someone who would have

espoused the views incorporated in the fifth category (critical thinking as a Way of Being) in Chapter 5. Nevertheless, the question may be raised as to why the students' perceptions were thus constituted. Clearly several reasons could broadly be advanced: an educational history of 'teaching to the test' in recent times, perhaps; media and cultural influences and trends; the often-heard claims of a decline in political awareness or interest in young people, and shifting trends in vocational and intellectual motivation, to give some possible examples. A question arises though, for those involved in legal education, of what could be done within the curriculum better to inspire and initiate a more inherently critical approach to academic study, professional practice and adult life as a member of civil society? There has been some discussion more recently in legal education as to the extent to which values or values-based learning should be developed in Law schools (see for example the work in progress on the affective domain in legal education – (Bates, Bradney, Claydon *et al*, 2009)).

Such an approach may help to engender desirable attributes in future legal and professional personnel, such as empathy, emotional intelligence, reflectivity and greater awareness of the social context in which legal decision-making and policy development take place. It may also help to enthuse and revivify students who may otherwise be in danger of regarding the legal educational diet as consisting of, if not sawdust (*pace* Franz Kafka) then as not being particularly nutritious – if not actually damaging:

Much of the current legal literature suggests that legal education harms students in a combination of ways ... The literature also suggests that the content and curriculum of legal education is problematic. It is driven by our current understanding about 'legal knowledge' which is an epistemology of objectivism ... There is also some concern about the absence of legal reasoning, ethics and judgment in the Law school curriculum.

(Fitzgerald, 2008, pp62-63)

Earlier, in Chapter 2, I touched on the development of reflectivity and commented on its relationship with critical thinking. It could be argued that reflection, and its building-in to the legal curriculum, is key. It may be that the act of reflection is something which (like critical thinking) all too often comes across as another 'box to be ticked' within the progress of a person's education, but when incorporated from the beginning, as an integral and foundational aspect of legal education, it can help to 'humanise' and make real and vital (and critical) the 'orthodox' legal curriculum (see on this, for example, Hinett 1995).

The claims made for the benefits of a values-based legal curriculum, or the incorporation of reflective practice are also to be found within some other initiatives within the sphere of legal education, such as the Law and literature movement, or clinical legal education.

Studies in Law and literature to date have rested on two related claims: first the instrumental view that literature can help to produce better lawyers by teaching lawyers how to read, speak and write more effectively; and secondly the humanistic belief that literature can make lawyers better persons by giving lawyers a sense of the complex nature of the human condition as depicted in 'great' books. Literature, it is said, can broaden and enhance the students' 'ethical consciousness' by exposing them to and reminding them of the value judgements implicit in their work, widen the dimensions of a

problem, de-mystify law's claims, encourage self and social criticism, give an impetus for change and reform, in short, 'liberate'!
(Aristodemou, 2000, Ch.1 p.5)

Of course, as Aristodemou goes on to discuss, such claims are problematic.

Clinical legal education, while seeming to be rooted in a more practitioner-based or vocational ethos, also has advocates for its value as a 'humanising' or re-vitalising influence on Law students:

Sometimes it seems that curiosity is drummed out of our undergraduates rather than cherished ... The signs of curiosity in a young child, who is programmed to learn as part of his or her genetic inheritance, are the constant repetition of the question words: Why? What? When? How? Where? Who?

Which of these questions do we emphasise in legal education? Law is about the way society regulates itself. Society is made up of people. What effect does a particular decision have on real people? In other words, who does this Law affect? Ignoring the 'Who?' is a long-standing tradition during the Law degree. People are reduced to caricatures, often given ridiculous names and unreal circumstances, and the effect of legal doctrine on their lives is of no interest.

(Brayne *et al*, 1998, Ch.2 pp27-29)

These, then, might represent some possible responses to the question raised above, as to how legal educators could be 'remotivating' or inspiring students to develop a new 'take' on critical thinking within a (broadened) legal curriculum.

There is, however, a potential tension here which should be pointed out. A Law Department's ability successfully to incorporate what may appear as unfamiliar, or unorthodox, approaches to legal education, may be compromised for example by the (perceived) requirements of the profession, and by incoming

students' expectations of and amenability to what they may perceive as irrelevant or peculiar curriculum content or teaching methods (especially given the contemporary 'Student as Consumer' model).

Having noted that, some other implications for curriculum development stem from some changes within the legal profession itself. Some of these are developed further below, but essentially these drivers for change derive from, initially at least, the 'Clementi' Report (2004) and the Training Framework Review, initiated in 2001. Some further interesting insights are offered, particularly in relation to the latter, by Webb and Fancourt (2004) and Leighton and Owen (2005).

It is intended that the above comments, then, provide a further degree of reflection on the rationale for the research and development of findings within an overall legal educational context. I shall now turn to look more specifically (initially at least) at the implications for practice locally.

In terms of my own practice, at lecturer level, there are several ways in which this research could be used to inform pedagogic and curricular development. Currently, I am working (with a small team of colleagues) on a CETL/CPLA (Centre for Excellence in Teaching and Learning / Centre for Promotion of Learner Autonomy) project entitled "Introduction to Academic Skills", intended for incoming first-year students. One aspect of this relates to the exposure of

students to the importance and development of critical thinking and analysis within higher education. It is intended that this project will be piloted in Autumn 2009. Over the years I have been involved with other such small project developments, relating mainly to initiatives within learner autonomy, but always with the desire and aim of enhancing the critical dimension of the legal curriculum. I have also been responsible for the initiation, development and operation of a first-year module "Law and Contemporary Society" which, in terms of its approach assessment and general ethos aims to introduce students to and engage them with a range of contemporary legal issues and topics, from an explicitly critical perspective.

My teaching has, in recent years, been exclusively on first-year (Level 4) modules, and, as has been indicated above, my research and pedagogical interests and work have been in the area broadly termed "Teaching, Learning and Assessment", working with CETL and other such small project development, and fulfilling the role of the Law Group Teaching, Learning and Assessment Co-ordinator for some years now. This role, and range of interests, has also led to my involvement, albeit briefly, with, for example, task groups on student attendance and engagement, the Special Interest Group on Critical Thinking and the Student Writing Group (both recent Faculty of Development and Society initiatives).

Such activities, together with the work I have undertaken for this Doctorate, have prompted me to think more carefully and perhaps more empathetically, about the perspectives and perceptions of students, particularly at what is generally termed the 'transition' stage of entry into higher education, still most commonly at age eighteen/nineteen (some similar but also some considerably different issues attend, say, mature students entering higher education, whether for the first, or subsequent time). Whether looking at the perspectives of students from the starting-point of their problems with academic writing (my most recent involvement), or, as in this research, their engagement with critical analysis and critical thinking, or learner autonomy and independent learning, for example, it appears to me that I have become much more conscious of the differing preconceptions, concerns and motivations of students. To some extent this has emerged in any case through the 'routine' of teaching and assessment over the years, but my research and other such activities and involvements outlined above have sharpened and highlighted my awareness of the student mind or 'lifeworld'. Often, this will be in the context of the 'pathological' – what is 'wrong' (for example in the context of an inability to write in a sufficiently academic style, or grasp what critical analysis might mean) but it is important not to overstress this negative, or 'deficient' model of student ability and behaviour. Becoming more involved, if not immersed, particularly for this present research, has I believe given me greater understanding, or at least awareness, of a range of views, preconceptions and 'baggage' which students will carry. In some respects this has made me more confident and relaxed with

students on a day-to-day basis – working with students in the interviewing process, for example, enabled me to glimpse a set of more personal worlds which helped to break down some of my barriers to understanding and conceptualisation of their world. In terms of my practice at an individual level, then, this research and related activities have helped to shift my own perceptions and I do believe, enhanced my empathetic understanding of students, as well as potentially strengthening the more practical and pedagogic developments which may be set in train.

What is needed now is some thought to be given to the implications of this research at Law Programme level. There are clearly limits as to what can be said here, as so much of practice and continuing development at this level will be contingent on a very wide range of factors. What follows are some suggestions for, say, underpinning future discussions within Law around the time of re-validation of the suite of Law Degrees or validation of any new Awards.

We would need, I believe, to be looking at some form of curriculum model for integrating the various aspects of skills development, including critical thinking and analysis, and linking these to the Law subjects or modules being taught, ideally. What would be desirable, I feel, is if each module (or at least a majority, certainly at level 4), could be designed to incorporate key aspects of academic

skill development in an explicit, continuing and integral manner (by this I mean linked to the subject matter of the module).

Practice in some other university Law Schools could be usefully surveyed; there is evidence that several institutions are increasingly developing such approaches – either for example through the 'values-based' theme mentioned above (Bates, Bradney, Claydon *et al*, 2009), or through a more explicit basis in critical thinking and analysis (Doherty, 2009), or by providing 'humanities'-type options within the legal curriculum (Pawlowski and Greer, 2009).

Whichever curricular approach or theme is adopted, however, what might be most important is the raising of students' awareness of the expectations and principles inherent in learning in the context of higher education. One colleague recently referred to the idea of developing in students a 'meta-language', in other words a heightened or more conscious and explicit set of terms and concepts which they could then bring to, for example, critical thinking, academic writing and reflective activities (to a great extent these could be said to be inseparable). Such more personalised and student-focussed approaches may prove to be more mutually rewarding than a set of 'skills' classes *per se*.

In terms of the wider legal policy context, then certain more recent initiatives need to be borne in mind. The Clementi Report (2004) and Training Framework Review as mentioned above, marked a clear shift within the legal profession

and attendant training policy. The current work-based learning pilot programme being run by the SRA (Solicitors' Regulation Authority), sets outcomes in the context of business awareness but, most significantly for immediate purposes, also stresses the need for trainees to have self-awareness and develop skills of reflection and self-evaluation - critical thinking in a professional context.

More recently the Legal Services Act (2007) seems set to bring about further changes in the ways legal services are provided and overseen. The Act is not yet in force (this is expected in approximately 2011), but its proposals are clear, and follow a lengthy period of consultation with, for example, the legal professions and consumer organisations. From one legal education / training policy perspective probably the most significant measure is the potential for Alternative Business Structures, where lawyers and non-lawyers will be able to be combined in one business. In the interim, before full implementation of these new structures, up to 25% non-lawyer partners will be allowed in a legal service firm. What is envisaged, then, is an increasing number of inter-professional or multi-disciplinary practices developing, between, for example, solicitors, barristers, accountants and other related service providers.

Given such impending 'shake-ups' in professional practice, it may be that the Law Degree curriculum could and should be being adapted to reflect such changes. A 'critical' curriculum, or at least one which enables Law students to become more enlightened, aware and outward-looking (seeing Law as one part

of a much wider, if interconnected set of professional, as well as socio-cultural systems) would, it might seem, enhance student employability as well as the more diffuse desirable personal attributes more traditionally claimed by advocates of 'liberal' education (see for example Chapter 2 and above). The challenge is to begin to develop more distinct, more reflexive and more critical (giving this its widest sense) curricula within legal education – in other words, re-framing legal education to reflect what is in some respects a much-changing profession, as well as to satisfy the intellectual and cognitive developments explicitly required by higher education.

Finally, in order further to bring themes together and to suggest a contribution to professional practice in the light of the implications of the findings of this research, what is needed is some reflection on the categories or description themselves (Chapter 5) and the ways in which these inter-relate with the key features I have identified in Chapter 7.

It may initially be worth pointing out that I was not aware of having any particular preconceptions about the findings, apart from being conscious of my own views on critical thinking, as outlined in the 'positionality' section in Chapter 1. I arrived at the categories of description through several re-readings of the data – themes emerged with differing levels of generality, which I noted, checked and then used to construct the categories. There was no formalised coding of units or language, for example (it seems to me that that process may

put the coder in the position where s/he displaces or ignores context – discussed a little above in Chapters 3 and 4). The findings, both in terms of categories of description, and the other key features which emerged from the interviews (referred to in Chapter 7) emerged as relatively common themes or concerns from the students' talk. It seemed to me that it was important to capture the key features (which I identified as relating particularly to personal reactions to learning Law, using Case-Law, and Mooting) as although they did not 'fit' neatly into the five categories of description, nevertheless these comments constituted important and rich data relating to perceptions of the (critical) learning of Law.

On reflection, what is most apparent is the degree of awareness and reflection being demonstrated by these students in making the comments relating to, for example, their 'relationship' with studying Law, or the beneficial effects of Mooting. Aspects of critical thinking and reflection are both expressed here. It is clear that when given the opportunity, space and time some students at least will become actively involved with this reflexive or critical consideration of the legal and educational context in which they find themselves.

It could also be pointed out, however, that I did have some difficulty in the initial 'recruitment' of student interviewees for this project. I went about it by talking, firstly to my personal tutor group and then to the first year in general. I also gave out a briefing document giving basic information as to what their

involvement would entail, contact details in case of queries and information as to anonymity, 'consent' and the ability for students to withdraw at any point if they wished.

The observations and perceptions demonstrated in these three 'key feature' areas cannot be simply disentangled from my main research concern which has been critical thinking in the widest sense. In commenting on, for example, a personal view of Law as a discipline, a student is almost by definition demonstrating a form of critical thinking, whether consciously or unconsciously. Perhaps (and relating back a little to Chapters 5 and 6) this difficulty in creating categories of description from such rich and multifarious data represents an issue within the phenomenographic approach, where the emphasis is generally placed on the construction of five or six identifiable and cogent categories.

To sum up, then, this work and these findings can point towards potential change or shifts in emphasis within the legal education curriculum; to a recognition of the student 'lifeworld' with attendant implications for the practice of teaching; and to a fundamental re-evaluation of the relationship between academics' and students' views of critical thinking - its purposes, rationale and value.

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Appendix A

Interview Prompt Questions

1. (Going back to A Level/AS level if not further) Has a teacher ever talked to you about being 'critical' or critical thinking' ?
If we were to do that here, what would you think they meant/were talking about ?
2. (Show Assignment Feedback sheet - highlight critical thought/analysis sections) When you read those sections, what do they suggest/mean to you ?
How would you try to respond, in your own work ?
3. What might critical thinking mean to you in relation to studying Law, particularly?
4. Are you able to describe a situation where you or someone else were being completely illogical in their thinking ?
5. Have you ever been aware that you had been 'taken in' by an argument you subsequently realised was really weak ?
6. Can you think of and describe a situation were you were really thinking hard, 'firing on all cylinders', being critical and confident ?

FEEDBACK SHEET - ASSIGNMENT ASSESSMENT

STUDENT NAME:

MODULE:

1st
70% and over

2:i
60 - 69%

2:ii
50 - 59%

3rd
40 - 49%

FAIL
Below 40%

		Introduction			
INTERPRETATION OF TITLE AND INTRODUCTION		Excellent introduction showing a sound grasp of the question and providing a clear outline of the assignment	<input type="checkbox"/>	Has addressed the purpose of the assignment with some attempt to display critical thought	<input type="checkbox"/>
LOGICAL DEVELOPMENT	Develops a logical argument and marshalls ideas clearly	Generally logical and most ideas clearly marshalled	<input type="checkbox"/>	Could be better organised. Sequencing of some materials inappropriate	<input type="checkbox"/>
INSIGHT AND ORIGINALITY	Clear evidence of insight, imagination and innovative thought	Clear evidence of insight and imagination	<input type="checkbox"/>	Large portions of assignment out of sequence. Poor development of theme	<input type="checkbox"/>
SUBJECT RELEVANCE	All material relevant to the subject	Most material relevant to the subject	<input type="checkbox"/>	Only a limited attempt to define scope or assignment	<input type="checkbox"/>
UNDERSTANDING OF TOPIC	Very well informed and demonstrates deep understanding	Well informed and demonstrates sound understanding	<input type="checkbox"/>	Launches straight in with little or no attempt to introduce or define the question	<input type="checkbox"/>
LEGAL CRITICAL ANALYSIS	Demonstrates understanding of awareness and appropriate theory. Consistent use of critical analysis well integrated into the text	Evidence of critical analysis	<input type="checkbox"/>	Question misunderstood. Does not answer question.	<input type="checkbox"/>
USE OF EVIDENCE AND SOURCES	Critical and wide ranging use of relevant cases and materials	Appropriate use of evidence from a variety of sources	<input type="checkbox"/>	No evidence. Reliant on rhetoric and bias	<input type="checkbox"/>
		Key sources and reference material covered	<input type="checkbox"/>	Available evidence not well used or lacking evidence	<input type="checkbox"/>

Conclusion

CONCLUSION	Excellent concluding section drawing together the various points made and adding an original perspective	Cogent and intelligent conclusion generally	Conclusion attempted but some points missing	Conclusion rather perfunctory or repetitive or comes to an abrupt end without proper concluding section	No proper concluding section
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Other Features

PRESENTATION OF REFERENCES	References properly and appropriately cited and listed	References generally cited correctly	References not always properly cited	References poorly cited	No attempt at references or citation. Weak Bibliography
SPELLING, GRAMMAR AND SYNTAX	Very few errors of grammar, spelling or syntax. Articulate and persuasive use of English	Few errors of grammar, spelling or syntax. Effective use of English	Occasional errors of grammar, spelling or syntax. Style generally effective	Frequent errors of grammar, spelling or syntax. Style too casual, too colloquial and careless	Grammar, spelling and syntax need urgent attention
OVERALL PRESENTATION	Carefully organised, structured and excellently presented	Well organised structure and presentation	Organisation, structure and presentation generally satisfactory	Careless organisation, structure and presentation	Weak presentation

Please note that each section does not carry the same weighting. The final mark reflects the academic worth of the assignment as a whole.

ADDITIONAL TUTOR FEEDBACK

MARK AWARDED

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Interviewer: So in a sense I just want to ask you a few general questions. First of all going back to what you were just saying about being at school.

Student: Yes

Interviewer: Mmm particularly perhaps when you were doing your A Levels - A Levels and AS Levels but perhaps before that as well. Em did any of the teachers ever talk to you about being critical or the need to be critical in your thinking?

Student: Mmm Yeah, teachers did yeah, it was mostly when I did my English, I mean I did A Level English it was mostly in that. It was more the subjects that involved more English rather than, because I did do Biology and Physics but then

Interviewer: I was going to say was English combined or English Lit or?

Student: I did English Lang and Lit, I did Law and I did Biology and Physics and General Studies.

Interviewer: Gosh, all for A level? Well done.

Student: Yeah

Interviewer: Can you tell me a bit more particularly about critical thinking in the kind of English you did

Student: Yeah and in the Law

Interviewer: Can you recall what, you know what kind of, when teachers went on about critical thinking, what were they sort of, what message were you getting, what were they saying ,what were you learning ?

Student: When they said critical thinking I heard analyse in depth and basically scrutinise it in everyway you know, what is it, what's good or bad about it you know how are things are portrayed and stuff like that.

Interviewer: Yes, yes, did they give you any kind of help or advice or skills as to how to go about this kind of thing?

Student: No I just got lots of work sheets, follow the work sheets that's all I really got

Interviewer: Mmm so you don't feel that they kind of taught it.

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Student: No by the time I got to A Level I didn't think that it was taught, but I thought it was just do this, basically do it on your own you know books, mainly learning from books, it was all down to books.

Interviewer: And in that sense I suppose what kind of, what books of practical criticism?

Student: Yes it was mainly A Level books I had to go out and buy specific A Level books like you know how to do revision; you know they were kind of revision guides the Letts.

Interviewer: Yes - so you kind of absorb it?

Student: Yes they didn't spend a lot of time teaching it as a skill

Interviewer: And do you think, I mean this is perhaps a bit more difficult question, do you think, do you think you could have done with a bit more explicit guidance on that kind of work ?

Student: Yes, I could have definitely; definitely once you get on the right you know, once you know what track you're on, where you want you know. I mean they did like, initially this is very early AS you know kind of term one they did examples like here's the text how would critically analyse it, we did that but towards the end it was what was like you know you should know how to do it by now.

Interviewer: You all get on with it. So a sort of learning curve?

Student: Yes.

Interviewer: And did, was that say you'd say that was mainly to do with English and Law?

Student: Mmm

Interviewer: In a sense I'm pre-empting one of my own questions here but it can come in now. That's how it came into English - can you sort of say a bit more about how perhaps it came into Law?

Student: Law it was. It was very brief. They weren't pressurising you. It was more descriptive Law but there were like aspects that you know to look at a statute and how does it fit into this scenario, critically analysing you know - how do you do that?

Interviewer: And again in a sense the same question how were you expected to sort of acquire this critical faculty?

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Student: To be honest when I did my A Level Law we did it through video links and we got one lesson a week and the rest was down to you.

Interviewer: Really! (laughter)

Student: So I had to do it all. But it was all right in the end.

Interviewer: Can I ask how you did? Just out of interest.

Student: I got an 'A' in my Law, it was my strongest the others I didn't do so well in. I got a 'D' in English and I got 'E' in General Studies, 'U' in Physics.

Interviewer: There was a lot going on there.

Student: I mean I found Law was my strongest subject. I went for it.

Interviewer: Yes. Right mmm I may come back to that a little bit in a minute. Ok well moving on to your experience here so far I mean it's still relatively early days but I mean when tutors here em talk about in a sense we can bring in this now (shows feedback sheet) you're really already a bit familiar with it but when they talk about things like critical analysis. In a sense what I'm asking you is in your life here what do these things suggest to you, what do you think we are sort of looking for? As I say there's no right answer, it's not a catch.

Student: Mmm I thought at first I still haven't got my head round the whole critical analysis, I still haven't yet, but since I've been here I have taken it on board a bit more because I've heard it a lot more since I've been here make sure you're critically analysing so I've taken it on board a bit more but when people say to me when people say critical, I think I have to almost pick out faults to see where you know, that's the way I look at it, you know where's it going wrong, not going wrong but you know look at it in a, I can't think of the word in a critical way you know just criticise it you know where do you think, it's hard to describe it but I know what I'm saying.

Interviewer: Mmm so for example if I mean it doesn't really matter which area of Law you're talking about mmm but in the sense of if you have let's say for example this kind of comment back on the essay 'some evidence of critical thought needs to be more analytical' how do you think you might try to respond and build on that in your work? What practical, what practical and academic steps do you think you'd need to take?

Student: I think I learned that, I'd know that you know I've got to stop describing what it is and I've got to start explaining, I think that's what I'd start doing rather than just say what's it's like.

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Interviewer: Mmm right and what other words you know I think you know if you're contrasting describing with other words what other words might come into it- I know this is all out of the blue, off the top of your head I'm conscious of that

Student: Mmm

Interviewer: I mean for example I don't want to put words into your mouth but for example would you think comparing or some kind of?

Student: Yeah

Interviewer: Or some comparative kind of thing. So you've got a topic and you're told you've got to be critical about it. OK you've got to perhaps describe it a bit but then explain it you've got to.

Student: Yeah I'd just maybe compare it to you know how does it fit in to the whole you know just fit it into everything - the big thing

Interviewer: The big picture yeah right. That I can see. And I think going back to what you were saying am I right in interpreting what you're saying but it's the idea of looking at the kind of mmm what's almost a bit sort of wrong with something.

Student: Mmm

Interviewer: I mean I can only think of a constitutional law example. What's good and what's perhaps bad.

Student: Yeah, how does it work very well, how doesn't it.

Interviewer: Yes there's a sense of what are the strengths and weaknesses

Student: Yes rather more than

Interviewer: Right I mean I think having said there's no right and wrong answer I mean clearly that is you know partly from our point of view I think the kind of thing that we are increasingly looking for the kind of awareness in that sense as you say of context, of these are strength and weaknesses rather than just saying well it's a piece of legislation like this

Student: Yes strength and weakness - critical analysis where now I mainly think of the weaknesses more than the strengths.

Interviewer: Interesting now is that because to you

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Student: I think it's the word critical that does it to me

Interviewer: Yes that's what I was going to say

Student: some of us think critical. I don't know why I think it's because of the word.

Interviewer: That's something I think that's interesting because I think people hear, this is quite you know often the case you hear the word critical as if it is automatically a negative connotation - like a critical person-like my sister's a critical person.

Student: Yes, yes

Interviewer: I mean in a sense would it be what might be from a student's point of view then possibly a more helpful term?

Student: If you're looking at both strengths and weaknesses.

Interviewer: Yes to convey what we're looking at.

Student: I'd probably say analyse it rather than critical because you know I'd focus more on the weaknesses being critical than just analysing it I think right, well, the strengths I can't think of the word now but I mean probably just analyse itself.

Interviewer: And of the two in that sense analyse conveys a similar kind of meaning but without the negativity?

Student: Yes.

Interviewer: But the two you'd expect the two to mean apart from that roughly the same

Student: Yes mm

Interviewer: Because I think we tend to use don't we these words kind of fairly interchangeably in dialogue.

Student: I mean the way I've always seen it especially from A Level is if you're not critically analysing it you're describing it. And like I've learnt now that you're not supposed to describe any more.

Interviewer: That's right yes. Or only to a minimum. I mean it's a good, off the point a little a bit I suppose but in a sense that I think it's often a good question that students ask there's no simple answer because you've got to

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show in a way you've got to show the examiner enough description to show you know what you're talking about.

Student: To show what you're talking about yes.

Interviewer: That's right but then especially in a short essay you need to cut to the chase. Mmm moving on a little bit then and in a sense harking back to A Levels but more about now mmm can you just develop a little bit what you were saying about what critical thinking might mean especially in relation to studying Law. If you want to pause, you know, pause for thought you know that's fine. Silence is data! But you know what, just to put it under way having started here and doing Law as a degree specifically might, what might critical thinking mean in relation to Law as opposed to what you were saying for instance about you know, analysing characters or whatever.

Student: Yes, I think in Law, is that what you're asking me to do. I'd probably possibly ask like going back to constitutional questions I said that like critically analysing the judiciary then I'd probably start looking at all the weakness in there, why you know in all three branches of Law you know the weaknesses of that in relation to the Law. Or if I had a statute I'd start by saying well you know this statute is all very nice and everything however, it doesn't cover this part of you know the Law it's trying to ... or look at the negative things

Interviewer: So I mean what I suppose the obvious thing would be discrimination legislation oh well you know the work that's been done on it's better than nothing but there are all sorts of big gaps still to go, that kind of thing, ok. Mmm what about, anything else you can think of that's critical, specifically in relation to law as a separate discipline in terms perhaps of specifically legal skills that you're learning. I think the legislation is a good example, anything else that you can think of perhaps how you can apply criticality or critical thinking specifically to studying Law. You know thinking of the things you do on the Law Degree case law for example

Student: Yes I mean again with the case law somebody says in a case law you know critically analyse it and I'd probably look at it and think ok where did they go wrong, you know where did they -didn't do this bit very well

Interviewer: In the reasoning?

Student: Yes you know - in the judgement

Interviewer: So you can criticise the judges. So you see that as part of a kind of case law and method that's it's part of you actually looking at the reasoning what are the strengths and weaknesses, in a sense that's part of it.

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Student: Yes but I tend to look at the weaknesses more than strengths you know because like I said the word critical just brings the whole negative thinking into it.

Interviewer: Again almost what's wrong with it, what's lacking in the reasoning or perhaps what social effect of a decision might be or that kind of thing.

Student: That's maybe because no-one's really ever sat down and said well this is what it is and this is what you have to do so you just end up going on using your own initiative thinking -it says that so it must mean this

Interviewer: I mean again that kind of begs the question, we do a tiny bit of it here but I mean do you think from your perception as a first year law student, do you think a lot more in a sense formal teaching about analysis or critical thinking whatever you want to call it would be helpful or do you see it primarily as something that in a sense if you've got half a brain you just kind of pick it up-I mean that's a big question for us.

Student: I think when, I mean now I'm starting to get a lot of assignments to do and stuff and I think nearer the time when you're about to do your assignments and you need to know these kind of things it would be really useful rather than me asking what's this about it would be good if you know seminars one week how to critically analyse because do you know I've got a friend who goes to another Uni and they have a specific seminar tutor who actually teaches them how to do these kind of things and how to critically analyse and critical thinking and they have exams and stuff.

Interviewer: Really,

Student: Yes and he was telling me that he's recently had an exam on it and they actually get taught how to do these specific things that actually come up in their exams, it's a skill that they have to meet.

Interviewer: Do you know off the top of your head is it the kind of critical thinking, it is kind of actually kind of almost like logical problem solving type,(yes) because again part of my brief in this PhD generally to look at that because it can mean a lot of different things but in a sense of like almost like formal logic and the application of that to cases that kind of thing.

Student: Yes

Interviewer: Mmm so they do that, do they do in a sense the kind of critical thinking in terms of analysis in essays as well or is it very much too kind of formalistic kind of, or just the logical problem solving or do they do a lot of other work as well?

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Student: They do a lot of other work as well. They'll spend like every week in the seminar and talk about other critically analysing and about problem solving and you know then applying it to the topics the subjects that you are doing.

Interviewer: So it could be what a contract problem one week

Student: Yes and then the following week you could have a constitutional problem

Interviewer: So it's very integrated.

Student: Mmm

Interviewer: Is your impression that the students like that?

Student: They do and they do like it because it sets out kind of what is expected of you as a student rather than you kind of looking at a sheet and you've got to do this. What you find is you don't know you've got an idea of what they want but to what extent.

Interviewer: It's a bit abstract at the start. I think that's good, I think that's a fair comment, I mean I think that people get, well they get kind of familiar with this I mean I think it does kind of get embedded into people's consciousness as they go along but I think that's interesting.

Student: Yes.

Interviewer: Because we've talked here about doing a bit more about that I think you know there are two schools of thought. I'd like to teach them. Mmm ok now the next two questions are a bit more kind of challenging in a sense. If you really can't think of anything it really, really doesn't matter. Can you think of a situation where either yourself or a friend, either you or a friend would be you realise, would be being completely illogical in your thinking? This is a difficult one especially if you can't think of a situation but think of a situation where you suddenly thought oh yeah, oh god I've been talking rubbish or that a friend or something, or it doesn't necessarily need to be a friend, it could be you know a relative or somebody on the tele or a politician or any media figure. When you thought, hang on, that doesn't add up, (yeah) that kind of thing. If you can't it doesn't matter, that's quite a tricky one.

Student: Oh I can't.

Interviewer: Like a politician or something or some

Student: Someone that's been talking

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Interviewer: Yes, yes

Student: That they don't make sense?

Interviewer: Yes

Student: Mmm, Tony Blair!

Interviewer: Think of an example. Which one? (laughter). No seriously think where there are something you can think of and you think oh

Student: I think actually with my assignment if I start them then I think I don't know what I'm talking about.

Interviewer: It doesn't matter you can be political as you like. I mean it's interesting you say Tony Blair because its obvious something triggered off, some kind of gut reaction mmm If you can think of something. In a sense the converse is my other sort of question, have you ever been aware that you've been, do you know what I mean by being taken in er sort of duped by way of an argument that you've subsequently realised is very weak?

Student: Yes

Interviewer: Can you think of an example! If you're prepared to talk?

Student: I can't remember the argument but I can remember I think it was when the Elections were going on I was very much into Michael Howard, yes he was totally talking sense then he went onto viewers question time and then people asking him questions and he was just like, he was totally not answering the question and going on, and I'm just thinking ok so maybe you're not as strong as you come out to be, you just kind of walking your way through it.

Interviewer: What did you think, bluffing ?

Student: Oh no, no, no, it's not like that and

Interviewer: And then when somebody actually pinned him down, questioned him. Can you remember what topic it was just as a general question?

Student: I can't remember it was ages ago. But I can remember thinking ok, I got some the wrong idea about that. Because Tony Blair came on afterwards, he did a really good job, he did a really good job and he answered and you know he was very strong about what he said, you know.

Interviewer: When you saw that you thought?

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Student: I'm in the wrong one.

Interviewer: Ok. In a sense my last formal question, can you think of a situation, I mean it could be here, it could be in I don't know some other aspect of life you know didn't you say you worked in the House of Lords?

Student: My uncle stood as an MP

Interviewer: Right I remember you saying something about some, some political background but I was thinking

Student: Yes, he's been running as MP for a while, he's been in the elections for a while.

Interviewer: But I was thinking about whether again this could cover a variety of possibilities either academic work here or in your school or some other capacity. Can you think of a situation when you feel that you were really demonstrating critical thinking you know that feeling you get of kind of firing on all intellectual cylinders.

Student: Actually me and my uncle, he's a grown man he's done loads of different things he's doing law now; he's finding it interesting. We were playing, at Christmas we were playing you be the judge, a game and me and my uncle were on one team, we thought we were like brilliant and actually we were like when they read out a case and you have to decide who's guilty and who's not guilty. And when we were looking at the case we were like proper, that's when I found I was like, hang on a minute you've got to take this bit into account and really critically really analyse it, you have to, to kind of get the answer. Then I would say!

Interviewer: What you're kind of looking at evidence?

Student: Yes, you've got to look at you know what happened, you know, what the person did and whatever and what the jury found them

Interviewer: You didn't see Judge John Deed on Friday. It's such rubbish! In the jury room you know he kept saying we must look at the evidence. Yes, and that gave you that feeling that you were really sort of being logical and being logical and being methodical, all those things.

Student: Mmm but when you think if you don't you're not going to do very well.

Interviewer: Mmm is there anything else that strikes you either about in a sense to rounding things off a bit I mean is there anything else you want to say about what comes into your mind about what critical thinking means in a sense perhaps for example moving away from the narrow academic you know,

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framework as it were. Is there anything else that, if I say you know like the old psychology thing, example, If I say this word what do you say kind of thing. If I say critical, what does critical thinking mean, what else might it mean to you?

Student: Well beyond academic I've not really thought about it before. I would assume that it's all about assignments and you've got to write it in a particular way to get good marks other than that I've never really thought about it. But thinking about now I mean I suppose that if the Barrister have got a case on their hands I presume they will have to critically analyse it to kind of you know see its weaknesses.

Interviewer: Mmm, I mean that's a nice example, I mean one of my interviewees in a sense you've touched on this for example talked about, I don't know if you've ever experienced it you know when she reads newspapers or sees things on the tele she gets all in a rage you know kind of about what the politicians are saying. Do you see that as part of critical thinking, or is that just you know reacting to stupidity on the telly. I suppose what I'm trying to get at is, could you conceive as a kind of critical thinking of a kind of a world view a kind of almost the world's mad again I don't want to put words in your mouth a political critique to use a French word of a society we live in. I mean do you think it stretches that far? I mean I'm being a bit vague but do you see what I'm trying to say, would you definition of critical thinking stretch that far, a kind of engagement with the world in general?

Student: Probably not, like I said before I'd probably just associate it with academically. I've never really thought about it, as you know as thinking about society in that way. I never really have until today.

Interviewer: Right maybe sociology students would! Is there anything else you want to say about this or what might be helpful to you as first year students. You talked about that course for example.

Student: Yes, I would definitely, absolutely like that course because especially like you know when you come here and it's all very much you know, it's quite scary and you've been thrown in at the deep end I have been quite like obviously everyone's at university now, you're all on your own, I have been quite depressed with it. Actually you're not on your own and there's plenty of help. Obviously at the start I would say though it would be really helpful, even if it is one seminar, I'd just go and watch you know for assignments, it would really help.

TAPE E

Interviewer: OK. Thanks for coming. First of all though, first of all what I want to ask you taking you back to A Levels really & AS levels I'm assuming you came by that route (yes) Did any of the teachers ever talk to you about critical thinking or about being critical or critical analysis, any of those kind of words?

Student: Yes they never stopped! (laughter) It was particularly in English Literature we did a critical analysis of two novels and we compared them and then we'd go back and did a commentary at the end, critical thinking and analysis, I quite enjoyed that.

Interviewer: What A Levels did you do?

Student: Eh, English Literature, English Language, they were separate (yes) and I did Sociology.

Interviewer: And when the teachers endlessly went on about it -you were expected to somehow demonstrate it Did they tell you what they meant or did they give you any lessons on it or did they expect you to vaguely apprehend what they were on about ?

Student: It wasn't like a critical thinking lesson as such it was more like em usually he'd read the essays and then it came back but how do you come to this conclusion, could you analyse better and little comments like that, to try and build your argument - we looked at like model answers as well to see how they did it to try and get the gist of it

Interviewer: So it wasn't in any sense formalised

Student: No, no.

Interviewer: So when these kind of comments came back and you were perhaps told that you must be more critical more analytical that kind of thing

Student: Yes.

Interviewer: What I'm trying to get at is what was your response then, what was your perception that you needed to do - I know it was a long time ago !

Student: Em, I felt that I needed to instead of just saying this is this and that is that I needed to pull the arguments apart and work out why I thought it was like that, is there anything other that makes me think like that within your argument. (tape indistinct)

Interviewer: And would you say it was particularly the English Lit that came out with that kind of thing (em) or would you say it kind of manifested itself generally?

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Student: It was mostly em Literature and then followed by language working on different pieces, pulled it apart looked at the language structure, critical language We used to do peer assessment just worked out a coursework mark for it and then it was criticised , but it was constructive it did help in that sense

Interviewer: Did you find that helpful?

Student: Em it was hard at first when someone just jumps in and says it's not good (laughter) you have to try not take it to heart I thought it did help a bit with the perception of what I was writing.

Interviewer: It's something we're talking about perhaps introducing here I'm wondering in a sense if students would be able to take criticism off other students-like-what do they know?

Student: Yes I suppose that I'm a bit more respectful to this point of view. I'm not bothered -if it's not very good I'll say so

Interviewer: OK. Anything more that strikes you about the A level experience? Did anyone talk to you about you know in terms of critical thinking? Am I hearing you right? It was certainly in English at least you got it quite heavily

Student: I think it was a lot to do with my choice of A levels you wouldn't get it so much in some - I chose very writing - based subjects for A Levels generally like writing in different subjects

Interviewer: OK. I'm biased - did English! I think it's true - in terms of moving on to University life here you've had a quick look at this assessment feedback sheet with reference to critical thought In a sense there's two parts to this question, I mean first of all when you read the guidelines assessment criteria I mean what do they mean to you, you know, to put the question in another way how do you try and respond to that

Student: Em

Interviewer: Another side to that question- is it different here - is there anything in a sense that you know that so far that you think is different What I mean to be getting at is what these words mean to you

Student: That was like the first time I've seen it em

Interviewer: In a sense that when you look at, if you look at the legal critical analysis for example that box there

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Student: I think it's because like because it's difficult, coming to this subject you don't know anything and it's coming, definitely coming, (laughter) somewhere in my brain it's registering - I found I did A Levels in the second year especially in literature and I read the book and you had your views on it but I don't know I find it a little bit different here because I don't quite know what I'm doing here yet. If I knew, if it was already in my mind I'd be able to criticise it - I'd be able to write my report - but I just need more knowledge before I can start doing that

Interviewer: Right that's interesting because there's a big debate in education whether you can in a sense do that - criticise - others will argue that it's a process it's a kind of analysis you can start with relatively little knowledge

Student: I'm finding that in Cyberlaw especially about we're getting the topic of defamation getting an assessed seminar next week I'm able to criticise that because it relates to so many things especially cyberlaw it's all around and it does affect me so I feel I can deal with especially well because I can criticise it because it does relate to me but in Constitutional law I didn't have a clue when I came here what a constitution was (laughter...now you know !) and I didn't think I could like criticise it I feel a little bit I didn't really know enough a little bit for want of a better word inferior to argue about it but you know I'll give it my best shot

Interviewer: Yes well. What about I mean thinking along those lines does that occur to you I don't want to put words in your mouth does that ... in a sense critical analysis although always seems to be related to subject matter - would you say in a sense does it relate to yourself as well not just to the discipline out there but to yourself

Student: Yes I think em, it throws up the kind of issues that you have in your own mind and there's all sorts of controversies, legal moral debates and it makes me question what I think in my own mind when I hear these arguments

Interviewer: And would you call that critical thinking?

Student: Em, probably more of a debate but when you're criticising things - obviously you've got to appreciate what other people have said about it

Interviewer: Part of the idea of again seeing things in the round ?

Student :Mmm

Interviewer : Moving on a little bit from that is there anything specifically that critical thinking might relate to Law you know Is there anything that strikes you coming to Law fresh ? just developing that a little bit it's early days anything that's odd or peculiar ...as opposed to say...

TAPE E

Student: Em em I find it's quite different and I think it's back to what I said earlier about not having enough knowledge I think after I've got my knowledge I'll be confident to criticise it. Em but in another sense law's all around us it's not just in its box with the lid on. I will go and think about things and start to begin to criticise in my mind it's beginning ,when a lecturer says something it'll throw up in my mind what do I think about that but em, I never really expected to have a lot of you know analytical skills first off. (yes)

Interviewer: So again that is as you say relates to this notion of like 'feeling your way' before you start sounding off - not that you would! But in a sense is there anything else perhaps with one eye on lawyering as a job you know is there anything else as opposed to Law you know your own perceptions but in a sense is there anything in law and legal scholarship so far that you think are different ?

Student: Em, I find it's more of a personal subject for me, I find that it affects me in what I think like the debates about law and the Internet I think ooh maybe you'll have to be careful ! Whereas in English I've read books - criticism - and that was the end of that it didn't affect me, it didn't get into my heart, my mind yeah

Interviewer: Almost in a sense divorced from real life. (yes) - law - just be careful how you tread!

Student: Yes because a book you can close it and put it away on the shelf whereas Law (laughter tape indistinct)

Interviewer: Now this is perhaps a bit more difficult em, again there's different ways of thinking about critical thinking Can you perhaps first of all talk about a situation em, where either you or someone else was being kind of pretty illogical, you realised a flaw in their argument you know but can you see what I'm getting at can you think of anything, that's difficult coming to this cold but in a sense can you think of any situation where that kind of thing emerges and it could be you it could be a friend or a relative or someone on TV- a politician, a talking head as they call them

Student: Em, in one sense like discussing academically flawed you know in law teamwork sometimes I find it a little bit hard because somebody wants to do it that way. In Law & Contemporary Society last week we did about learning styles, talked about reflection I'm a Reflector I like to think, plan as well I don't want to be in there panicking I want to get back out ! - I find that illogical, completely illogical, can't be doing that whereas some people do

Interviewer: Can you say a bit more why? Can you say why you actually say that's illogical? Activists?

TAPE E

Student: Em, em. In my mind I've got my own way of doing things the way I think I start work I plan my time I've got my own research and structure the way I do things to me it seems illogical to just not have a structure, to not have a plan and to not prepare ...

Interviewer: And that's kind of illogical in the sense .-. illogical in the sense that you expect you know if you plan and reflect in advance you improve you're likely to have a better outcome - that kind of logic - process

Student : Yes logic, process and structure like in exams, prepare for seminars and the best coursework - I had a plan and with my A Levels and stuff (you do get enthusiasm) - people who jump in I - I'd just panic I think we're not going to do it, we're going to fail, this is going to happen and oh my god. It's like I never did Drama then we were you know forced to in year eight and then we'd got to choose it, I hated it. It was stand there in a group and then I don't know oh ten minutes make something up we could - first couple of minutes and then how we gonna do it, how we gonna you know open it how we gonna close it. Yeh that kind of thing (laughter)

Interviewer: I get the impression from that you like a clear line of planned activity, structure, process, purpose, clear relationships.(tape indistinct). Em, can I just ask you in a sense the opposite this is perhaps even more difficult but in a sense can you think of a situation where you or a friend were taken in by an argument-you know what I mean -duped-fallen for an argument you subsequently realised was weak.

Student: I found that like this year when it came to voting I found I was (tape indistinct) oh brilliant that's fine I was trying to work out what was going on I thought that was one party that I might actually vote for.

Interviewer: Yes anything else?

Student: Em

Interviewer: You know do you get involved with violent political arguments

Student: No I'm not interested in politics

Interviewer: Ok, can you think of a situation as well when in a sense the opposite was true I mean you talked in a sense about being the reflector in the group sort of situation but can you think of a situation perhaps where you did the opposite where you've been demonstrating a high level or a reasonably high level of critical thinking, critical analysis you know in terms of could be something academic or it could be sort of more general where you've brought your critical powers as it were to bear on a situation to good effect

TAPE E

Student: Where I've actually used critical powers

Interviewer: Yes.

Student: Em, I don't really tend to watch the news or buy a newspaper but when I do what it throws up I tend to criticise it and get right involved in it. I live with my boyfriend we have a newspaper every night - Where he tends to be like a very you know openly opinioned person I want to just sit and be quiet but newspapers drive me mad

Interviewer: And is that because in a sense that links back to what I was arguing just now is that because you disagree with the content, the dodgy sloppy thinking the one-sidedness that kind of thing

Student: Yes, it's not a rounded argument all right so somebody's done this so the newspaper thinks that but what about the other side of the story- and that's frustrating.

Interviewer: Am I right in thinking then that's again something to do with the idea of sides the idea of wanting to see the whole picture

Student: Yes the whole picture if there's something else that I can think of. I think well you know what if somebody just takes it as read and you end up in a seminar where people can't see the two sides of an argument or like have a debate that is how it is and that's the end of it. There's no way in, that's how it is and no one else has got the balance it winds me up I'm that kind of person you know - will challenge that

Interviewer: Is, I mean is it just two things really I mean there is the broad question I want to ask you is there anything else that occurs to you thinking about that I wanted to ask you I don't want to push you put words in your mouth is that something, I'm getting an impression from you that it's something not just about academic work not just about what this assessment sheet's about Is it more a kind of would you agree with this phrase a habit of mind

Student: I think it is yes I think yes I think I've got it in my personal life, your social life sometimes it's not even worth arguing the toss you know I try and suggest it but they won't have it but it's always there, I find it's always there in my mind as well as my life with Law it won't go back in the box I could do that more with Literature (as you were saying) it was just like lesson's over ! (laughter)

Interviewer: Do you think that just pushing that little bit harder what we call habit of mind or cast of mind is that something that you see, that you recognise it in other people

TAPE E

Student: I definitely recognise it in myself but I'm not sure about other people as such

Interviewer: Not like they've got a big spot on their face!

Student: No it's not like a badge of your critical thinking. Em, in my own mind you know I could have put it forward then and people probably might not know what's going off in my mind if I'm having an argument but maybe it's going on in their mind and they're not telling me

Interviewer: And do you think you are kind of you know think you were kind of born with it?

Student: I think it's there (and your parents kind of foster it?)

Interviewer: Coming out

Student: (tape indistinct) I just come out with it

Interviewer: Do you think it's linked to the reading that thing of being an avid reader?

Student: Probably I think I do kind of I've been conscious of it since I started at secondary school sometimes I find things in my mind a bit too much - won't get out - it's a bit too much

Interviewer: In a sense do you think it would be desirable would the world be a better place if people demonstrated more critical faculties are you saying it would make the world a better place?

Student: I think sometimes people do things that they don't really think about the consequences and that - I read about protests against 4 by 4s - first thing I thought - who owns these 4 by 4s? People with money? Professionals? Doctors? What about their patients? I get right wound up about that.

Interviewer: All right then that was great. Thank you very much.