

Exploring conceptual legal knowledge building in law students' reflective reports using theoretical constructs from the sociology of education: what, how and why?

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ABSTRACT

The substantive content of the undergraduate law curriculum in the UK is currently under scrutiny as a result of forthcoming changes in the entry level requirements of the legal profession. As a result LLB curriculum designers are evaluating what knowledge should be included in the curriculum, how students should access this knowledge, and which pedagogic approaches to adopt. This study will analyse student submissions for an assessment item at York Law School called the reflective report to explore how students are building their conceptual legal knowledge, and what this means for curriculum designers. The data analysis will be informed by the theoretical constructs of three sociologists of education, Michael Young, Basil Bernstein, and Karl Maton, including their respective concepts of social realism, hierarchical and horizontal knowledge structures, and semantic gravity. It develops themes exploring how students can weaken the semantic gravity of knowledge to make meanings that reach beyond the learning context. It draws some conclusions about the implications of the research on future curriculum design and the importance of developing students' engagement with powerful knowledge in the delivery of legal education in an academic environment.

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Introduction

Law is a wide-ranging subject that impacts on everybody, whether they have knowledge of it or not. As with all disciplines, it is shaped by society and, in the view of Apple, Ball and other critical theorists, the prevailing message, be it from textbooks, journal articles or primary sources, is of orthodoxy.¹ In this view, much of the legal knowledge that forms the basis of the LLB curriculum has canonical status and we, as the conduits of this knowledge to our students, are potentially complicit in the preservation of the status quo.² For this reason, the legal knowledge taught in higher education institutions should be open to scrutiny using

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¹Michael Apple, *Official Knowledge: Democratic Education in a Conservative Age* (London, Routledge, 1993) and Stephen J. Ball, *The Education Debate* (2nd ed., Bristol and Chicago, IL, Policy Press, 2013).

²R. Moore, "Knowledge Structures and the Canon: A Preference for Judgements", in R. Moore and K. Maton (eds), *Social Realism, Knowledge and the Sociology of Education* (London and New York, Continuum, 2010), pp. 131–153.

sociological theories and research methods so as to analyse the influence of policy and pedagogy on the potential practice of social reproduction. This approach contributes to the ongoing debates in legal education between proponents of liberal or vocational legal education, and about the perceived purpose of an undergraduate law degree.³

These debates are currently taking place both inside and outside higher education institutions in the UK following the 2013 Legal Education and Training Review.⁴ The findings from this have led to consultations by both the Solicitors Regulation Authority and the Bar Standards Board on proposed new routes to legal qualification. The outcomes of these exercises have the potential to lead to changes to the academic stage of training, which has traditionally taken the form of an LLB degree. Together with the “tyranny of relevance” that comes from other market-driven influences on higher education, this has led law schools, including mine, to give focused consideration to what knowledge is being taught in law schools, and how.⁵

At York Law School (YLS) we use guided discovery problem-based learning (PBL) throughout the undergraduate curriculum. There is no single definition of PBL but there are common principles that govern its implementation.⁶ At YLS there is a weekly PBL cycle. The primary learning events, known as PBL sessions, have two phases. The first event is where students are given a legal scenario or problem and, through a structured brainstorming activity, they uncover their learning outcomes. The second event, which takes place a week later, is a student-led discussion or task on the learning outcomes based on both supported and independent research. PBL sessions are facilitated by designated PBL tutors who have guidance notes provided to them by the relevant module leaders. In each weekly cycle, the students are provided with additional learning events and resources, including module specific large group sessions (which are referred to as plenaries, rather than lectures) and a module “block guide”, which includes signposting to suggested readings and learning activities relevant to the learning outcomes.⁷

Much of the qualitative research into students’ experiences of PBL has been conducted through a constructivist lens, which is seen to provide ideological weight for the use of PBL as an educational approach.⁸ As Young identifies, constructivist methodologies adhere to an “undifferentiated” view of knowledge, where the relevance of all knowledge depends on the situation for which it is required.⁹ For Wheelahan, in her extensive study of knowledge building in vocational education in Australia, this makes constructivist approaches, including PBL, particularly inaccessible to certain demographics of students

³See Fiona Cownie, *Stakeholders in the Law School* (London, Hart, 2010); Fiona Cownie, “Twining, Teachers of Law and Law Teaching” (2011) 18 *International Journal of the Legal Profession* 121; and Jessica Guth and Chris Ashford, “The Legal Education and Training Review: Regulating Socio-legal and Liberal Legal Education?” (2014) 48 *Law Teacher* 5.

⁴Legal Education and Training Review (LETR) (2013) www.lettr.org.uk (accessed 22 August 2016).

⁵See Margaret Thornton, *Privatising the Public University: The Case of Law* (London, Routledge, 2012).

⁶See Maggi Savin-Baden and Society for Research into Higher Education, *Facilitating Problem-based Learning: Illuminating Perspectives* (London, Society for Research into Higher Education & Open University Press, 2003).

⁷For more details about the model of PBL at YLS, see Richard Grimes, “Delivering Legal Education through an Integrated Problem-based Learning Model – the Nuts and Bolts” (2014) 21 *International Journal of Clinical Legal Education* 228.

⁸Terry Barrett, “The Problem-based Learning Process as Finding and Being in Flow” (2010) 47 *Innovations in Education and Teaching International* 165.

⁹Michael Young, “From Constructivism to Realism in the Sociology of the Curriculum” (2008) 32 *Review of Research in Education* 1.

within society.¹⁰ As an alternative, both she and Young advocate pedagogical approaches using a social realist construction of knowledge. As Wheelahan explains:

Social realism is social in arguing that all knowledge is socially produced by communities of knowledge producers, while it is realist in arguing that that knowledge is about an objective world, one that exists independently of our social construction of it.¹¹

Social realism is a far more useful approach to the development of legal pedagogy and the analysis of legal knowledge building in higher education, as both the subject of law and the curriculum are socially produced by “communities of knowledge producers” and have, indisputably, an objective reality separate from the “knower”.

I am the module leader for public law at YLS, which is delivered in both the first and the third year of the LLB programme. I am responsible for designing the PBL problems in collaboration with the other core module teams, delivering the majority of the plenary sessions, writing the block guide and designing the assessments. Public law modules provide opportunities for students to enhance and develop sophisticated and critical engagement with both established and emerging knowledge about the objective reality (to use the terminology from above) of the interactive relationship between the citizen and the state.¹² This includes the traditional canon of public law concepts, such as rule of law, separation of powers and parliamentary sovereignty, but also the critiques of these concepts from, amongst others, Marxist, feminist and social justice scholars.¹³ Such knowledge is an example of what Young refers to as powerful knowledge, and there is a responsibility in its transmission.¹⁴

I am particularly concerned with how students research and build what I refer to here as conceptual legal knowledge in law generally, and public law specifically. This is in part because at YLS conceptual legal knowledge is primarily discussed in PBL sessions without the involvement of subject specialists. This means that it is difficult to evaluate whether and how the curriculum design has been successful in attempts to “make it stick”, as advocated by Brown *et al.*¹⁵ As Ashwin identifies, there has been relatively little research into the ways in which particular forms of knowledge are positioned in higher education curricula and the ways in which students come to engage with these forms of knowledge.¹⁶ This article works within this research gap by analysing the location and effectiveness of conceptual legal knowledge building in

¹⁰Leesa Wheelahan, *Why Knowledge Matters in Curriculum* (London, Routledge, 2010). See also Jennifer Case, “Problematising Curriculum: Contemporary Debates in Engineering Education”, in Michael Young and Johan Muller (eds), *Knowledge, Expertise and the Professions* (Routledge, 2014), pp. 143–156 and Sigmund Tobias and Thomas M. Duffy, *Constructivist Instruction: Success or Failure?* (New York and London, Routledge, 2009).

¹¹Wheelahan, *supra* n. 10, p. 7.

¹²Barbara Mauthe, “Public Law, Knowledge and Explanation: A Critique on the Facilitative Nature of Public Law Analysis” (2006) 2 *International Journal of Law in Context* 377.

¹³See, for example, Susan Millns and Noel Whitty (eds), *Feminist Perspectives on Public Law* (London, Cavendish Publishing Limited, 1999).

¹⁴Michael F.D. Young, *Bringing Knowledge Back In: From Social Constructivism to Social Realism in the Sociology of Education* (London, Routledge, 2008); Young, *supra* n. 9; John Beck, “Powerful Knowledge, Esoteric Knowledge, Curriculum Knowledge” (2013) 43 *Cambridge Journal of Education* 177 and Michael Young, “Powerful Knowledge: An Analytically Useful Concept or Just a ‘Sexy Sounding Term’? A Response to John Beck’s ‘Powerful Knowledge, Esoteric Knowledge, Curriculum Knowledge’” (2013) 43 *Cambridge Journal of Education* 195.

¹⁵Peter C. Brown, Henry L. Roediger III and Mark A. McDaniel, *Make It Stick: The Science of Successful Learning* (Cambridge, MA and London, Belknap Harvard, 2014).

¹⁶Paul Ashwin, *Analysing Teaching-Learning Interactions: Accounting for Structure and Agency* (London, Continuum, 2009).

a specific LLB programme. It also considers the impact of a PBL approach on students' engagement with this knowledge and applies theories from the sociology of education to the discipline of law. Owing to the wealth of external factors that have the potential to influence the curriculum within higher education, it is important that more research like this on the content of law programmes is undertaken.

The evidential underpinning of this paper will be the qualitative data analysis of the reflective writing of one cohort of students at YLS during two of their years of study, with particular emphasis on their reflections on conceptual legal knowledge building. Some insights from the work of Young and Bernstein will be used to provide a theoretical frame for the study, and the concept of "semantic gravity" from chapter 6 of Maton's book *Knowledge and Knowers* will be used to provide a loose thematic structure for the data analysis.¹⁷ Although of use, Maton's concept of semantic gravity does not include any reference to reflective practice as a contributory factor in students' conceptual legal knowledge building. It is this extension of his concept, and the possibilities it presents for future curriculum design, that will hopefully be developed further by law teachers in different institutions.

Theoretical insights into knowledge building in legal education

This paper aims to bring a social realist perspective to the study of knowledge building in legal education. To do this, it needs to review the literature on the theoretical underpinning of both social realism and knowledge building.

Young's book *Bringing Knowledge Back In* can be regarded as seminal in the way it repositions the sociology of knowledge away from the relativist tendencies of social constructivism towards the more useful framework of social realism.¹⁸ Building on the work of a wealth of earlier writers, including Durkheim, Vygotsky, Bernstein and Collins, Young argues that the social realist approach recognises the "social" character of knowledge as intrinsic to its epistemological status because the logical reconstruction of truth is always a dialogue with others set within particular collective codes and values. For this reason, public law is a prime area for an exploration of social realism and its links with pedagogy and curriculum design, and the theoretical constructs from Young, Bernstein and Maton can enrich our understanding of what we are teaching, how we are teaching it, and why.

Public law, like many other areas of law, is, in its essence, "particular collective codes and values", a term which would extend to some of the customary practice we teach, such as the concept of ministerial responsibility. Much of public law is, to use the expression from Wheelahan above, "socially produced by communities of knowledge producers", including politicians, policymakers and judges. Engagement with this "social" foundation of the legal framework creates rich opportunities to explore another of Young's concepts, which he refers to as the dyad: knowledge of the powerful/powerful knowledge:

Knowledge of the powerful is defined by who gets the knowledge in a society and has its roots in Marx's (1964) well-known dictum that the ruling ideas at any time are the ideas of the ruling class.

¹⁷Karl Maton, *Knowledge and Knowers: Towards a Realist Sociology of Education* (London and New York, Routledge, 2014).

¹⁸Young, *supra* n. 14.

And

[Powerful knowledge] refers to what the knowledge can do or what intellectual power it gives to those who have access to it. Powerful knowledge provides more reliable explanations and new ways of thinking about the world and acquiring it and can provide learners with a language for engaging in political, moral and other kinds of debates.¹⁹

These definitions are worthy of deep consideration by anyone involved in legal education curriculum design, as they go to the heart of the subject. If the purpose of higher education is to create critical thinkers and to furnish our students with specialist knowledge, it is specialist powerful knowledge that has the greatest transformative value. This adds to what is meant by conceptual legal knowledge, and indicative of what we want law students to develop at their time at YLS.

In addition to thinking about the substance of conceptual legal knowledge, it is also important to think about the process that takes place to allow this knowledge to build. Legal education, like many other fields, is being affected by the access to information and the speed of knowledge production and dissemination in the “knowledge society”.²⁰ We focus our attention predominantly on showing our students how to research for accurate and appropriate knowledge of law, but seem to spend less of our time considering how their knowledge is built up over time, or how their knowledge is built upon what they already know.²¹ For this reason, it is important to consider how personal knowledge is built generally, before considering how conceptual legal knowledge is built within legal education, and specifically within a curriculum designed around PBL. The starting point for this is a review of the work of Basil Bernstein.

The contribution of the collected works of Basil Bernstein to the study of knowledge building and social reproduction is immense.²² He has, in effect, created the language and vocabulary that have been used and developed by a wealth of subsequent researchers in a wide range of discipline areas.²³ Much of this can be found on Karl Maton’s website where he has built up a knowledge bank of resources in applied sociology of education studies founded on Basil Bernstein’s work that he calls Legitimation Code Theory (LCT).²⁴

For the purpose of this paper, there are two key aspects of Bernstein’s work that are relevant. The first is his concept of “discourse” and the distinction he makes between “horizontal” and “vertical” forms of discourse. Horizontal discourse refers to everyday or “common sense” knowledge and “entails a set of strategies which are local, segmented, organised, context specific and dependent”.²⁵ Vertical discourse refers

¹⁹Young, *supra* n. 9, p. 14.

²⁰Gerard Delanty, *Challenging Knowledge: The University in the Knowledge Society* (Philadelphia, PA, Society for Research into Higher Education/Open University Press, 2001).

²¹Sally Power, “Disembedded Middle-class Pedagogic Identities”, in Rob Moore, Madeleine Arnot, John Beck and Harry Daniels (eds), *Knowledge, Power and Educational Reform: Applying the Sociology of Basil Bernstein* (New York and London, Routledge, 2006), pp. 94–108.

²²Basil Bernstein, *Pedagogy, Symbolic Control and Identity: Theory, Research, Critique* (revised ed., Oxford, Routledge, 2000); Basil B. Bernstein and Ana Morais, *Towards a Sociology of Pedagogy: The Contribution of Basil Bernstein to Research* (New York, Peter Lang, 2001).

²³See, for example, Johan Muller, Brian Davies and Ana Morais (eds), *Reading Bernstein, Researching Bernstein* (London, RoutledgeFalmer, 2004); Rob Moore, Madeleine Arnot, John Beck and Harry Daniels (eds), *Knowledge, Power and Educational Reform: Applying the Sociology of Basil Bernstein* (New York and London, Routledge, 2006).

²⁴<http://www.legitimationcodetheory.com/> (accessed 22 August 2016).

²⁵Bernstein, *Pedagogy, Symbolic Control and Identity*, *supra* n. 22, p. 157.

to specialised symbolic structures of explicit knowledge, or scholarly, professional and educational knowledge. Its meaning is less dependent on its context and instead related to other meanings hierarchically. Part of the role of LLB curriculum designers is to provide opportunities to assist students to develop their vertical discourse as well as engage them in the value of acquiring powerful knowledge.

The second aspect of Bernstein's work which is of value here is the distinction between "hierarchical knowledge structures" and "horizontal knowledge structures" within vertical discourse. As Maton explains:

Hierarchical knowledge structures "exemplified by the natural sciences, are explicit, coherent, systematically principled and hierarchical organisations of knowledge which develop through extending and integrating existing knowledge to embrace more phenomena. They thus exhibit a high capacity for cumulative knowledge building or verticality" (Muller 2007). In contrast, "horizontal knowledge structures" such as the arts, humanities and social sciences, comprise a series of segmented, strongly bounded approaches that develop by adding another approach alongside existing ones.²⁶

In recent LLB curriculum design, there has been a tendency to teach the core subjects on a modular basis, which lends itself to knowledge building being horizontal in nature. One of the intentions of curriculum design using PBL is to move towards a hierarchical knowledge structure by integrating module content and working towards a spiral curriculum.²⁷ To date, there has been little research on whether this is more effective in building students' knowledge, conceptual or otherwise, compared with more traditional approaches.²⁸

Maton postulates that working with an appreciation of Bernstein's concepts (which are multiple and, in addition to the two above, include the pedagogic device, code theory, classification and framing), helps curriculum designers to enable cumulative learning, which is central to the purpose of education.²⁹ In chapter 4 of *Knowledge and Knowers* he develops many of Bernstein's ideas to analyse the differences between what is taught and what is learnt. He develops Bernstein's work on knowledge structures to introduce what he refers to as knower structures, which can also be hierarchical or horizontal and which he believes provide the basis for a fuller typology of intellectual fields. In his terminology the temperament of scientists leads them to develop a horizontal knower structure whereas people working in the humanities tend to have a hierarchical knower structure. He states that too much of a focus on knowledge structures, and too little consideration of knower structures leads to "knowledge blindness". This change in focus in the sociology of education from knowledge to knower is the impetus in this paper for looking at the students' reflections on their knowledge building, rather than focusing only on the way that conceptual legal knowledge is presented in the YLS curriculum.

In addition to his work on knowledge and knower structures, Maton also builds on Bernstein's concept of discourse and code theory to introduce his concept of semantic gravity. This he visualises as being a continuum to incorporate degrees of context-dependence of meaning. In his terminology, stronger semantic gravity is where meaning

²⁶Maton, *supra* n. 17, p. 66.

²⁷Jerome S. Bruner, *The Process of Education* (Cambridge, MA, Harvard University Press, 1977).

²⁸For a review, in the context of medical education, see Henk van Berkel, Albert Scherpbier, Harry Hillen and Cees van der Vleuten (eds), *Lessons from Problem-based Learning* (Oxford University Press, 2010).

²⁹Karl Maton, "Cumulative and Segmented Learning: Exploring the Role of Curriculum Structures in Knowledge-building" (2009) 30 *British Journal of Sociology of Education* 43.

is more closely related to its social or symbolic context of acquisition or use; and weaker semantic gravity is where meaning is less dependent on its context. These are not static forms. Moving from abstract or generalised ideas towards concrete and delimited cases is referred to as strengthening semantic gravity, and weakening semantic gravity is moving the other way. Using this terminology, an LLB curriculum needs to work to weaken the semantic gravity of students to allow them to think critically and creatively about the world they live in so as to develop their conceptual legal knowledge.

In chapter 6 of *Knowledge and Knowers*, Maton analyses a dataset of student responses to an assessment task to create an external language of description for semantic gravity that works on a scale from stronger to weaker, through six codes. These are referred to as “reproductive description”, “summarising description”, “interpretation”, “judgement”, “generalisation” and “abstraction”.³⁰ These will be considered further below and applied to the data in the YLS students’ reflective reports. Maton makes reference to PBL as an example of an authentic learning environment, which can be explored for evidence of semantic gravity. He goes on to speculate that cumulative knowledge building and learning may be the capacity to master semantic gravity.

A number of scholars, including Samuel, and Breier and Ralphs, have written about whether legal knowledge is cumulative and applied some of Bernstein’s concepts to legal knowledge building.³¹ However, there has been no application of any aspects of the LCT framework to knowledge building within the discipline of law. This paper develops the concept of semantic gravity by analysing qualitative data and expands our understanding of how and what our students learn on LLB programmes.

The assessment of reflection on knowledge building in legal education

As set out above, at YLS public law modules are delivered in both the first year and the third year of the undergraduate degree. As the content is delivered using PBL, the material does not follow the traditional sequencing found in most public law textbooks. PBL problems can include combinations of learning outcomes covering constitutional law, administrative law and human rights, and these can be mixed with learning outcomes from the other core legal subjects, being property, obligations, criminal and EU law.

Alongside the substantive legal subjects, students at YLS undertake a legal skills module in which they are introduced to experiential learning theories and reflective practice as a way for them to understand the rationale behind, and benefits of, the PBL model.³² They are actively encouraged to explore their learning of legal concepts using a reflective learning cycle. This process is captured in the form of an assessment, known as a reflective report, which is submitted at the end of each year of study. This contributes 10% of the module mark for each of the core subjects, including public law.³³ The reflective reports are submitted anonymously and ethical consent for the study of extracts from the reports was obtained.

³⁰Maton, *supra* n. 17

³¹Geoffrey Samuel, “Is Legal Knowledge Cumulative?” (2012) 32 *Legal Studies* 448; Mignonne Breier and Alan Ralphs, “In Search of Phronesis: Recognizing Practical Wisdom in the Recognition (Assessment) of Prior Learning” (2009) 30 *British Journal of Sociology of Education* 479.

³²See, for example, David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice-Hall, 1984); Donald A. Schön, *The Reflective Practitioner: How Professionals Think in Action* (Ashgate, 1991).

³³Jenny Gibbons, “Oh the Irony! A Reflective Report on the Assessment of Reflective Reports on an LLB Programme” (2015) 49 *Law Teacher* 176.

The wording of the relevant year 3 reflective report task was as follows. (The year 1 task was similar, but did not include plans for the future, covered four modules (public law, obligations, property and criminal) and was 3000 words in length):

Task

You should identify one or more overarching concepts which have been relevant to your learning in **both** of your Foundation Stream modules and in your plans for the future. Please write a Reflective Report of no more than 1500 words on the development of your learning in relation to those concepts.

Assessment criteria

Your report will be assessed with reference to the quality of your reflection on:

- The interrelationships between law of the EU and public law 2
- The roles of different legal sources, and your ability to use them effectively, in analysing legal problems
- How your understanding of overarching concepts relating to the law has developed over the course of your studies in Year 3

In your Reflective Report, you **must** draw on your work associated with PBL and you **must** draw on your learning from **both** Foundation Stream modules, namely Law of the EU and Public Law 2. You should also personalise your account with observations about your plans for the future.

The process of reviewing and analysing the reflective reports provides a rich source of information on both what the students are doing to build knowledge, and how they perceive the effectiveness of their approaches. Such a review also has the potential to seek evidence of knowledge building, and explore this using the theoretical constructs introduced above.

For ethical reasons, I chose to look at the reflective reports produced by students who have now left YLS. I also chose to look at the reflective reports produced by the same cohort of students, as they would have had the same experience of delivered content and assessment tasks. This meant looking at year 1 reflective reports from the 2012–2013 academic year, and year 3 reflective reports from the 2014–2015 academic year. As there was an element of choice in what the students discussed in the reflective reports, I only included content from reflective reports that included the search terms “public law”, “constitution”, “sovereignty” and “rule of law”. I also screened out any personal identifiers from the year 3 sample relating to plans for the future. My year 1 randomly selected sample was 35 reports of which 16 had usable content. My year 3 randomly selected sample was 20 reports of which 14 had usable content. The research questions were as follows:

- What methods are LLB students using to research public law concepts?
- To what extent are these methods effective in knowledge building?

I first used grounded theory to read and reread the year 1 sample to get a sense of emerging themes.³⁴ From this I identified the events and activities where students located their knowledge building. These were both designed learning events, such as PBL sessions and plenaries; and independent events, such as independent legal research or peer-to-peer conversations.

³⁴Juliet M. Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (3rd ed., London, Sage Publications, Inc., 2008).

I then took a clean set of the sample sets and recoded them using Maton's six codes for semantic gravity, using his examples of what these meant from his dataset for guidance. These were:

- (1) Reproductive description: reproduces information directly from the [case/context] with no elaboration.
- (2) Summarising description: descriptive response that summarises or synthesises information presented in the [case/context], including rewording and restructuring of a number of events into one statement. Does not present new information from beyond the [case/context].
- (3) Interpretation: seeks to explain a statement by interpreting information from the [case/context] or adding new information. May include use of other literature or personal experience.
- (4) Judgement: goes beyond re-presenting or interpreting information to offer a value judgement or claim.
- (5) Generalisation: presents a general observation or draws a generalising conclusion about issues and events in the [case/context].
- (6) Abstraction: presents a general principle or procedure that moves beyond the [cases/context] to address wider or future practice.³⁵

Given that this was an assessment designed to capture the process of learning, I also added some codes where the students had identified the transformative effect of their knowledge and/or the value of reflection as a way to enhance knowledge building. These codes were beyond the defining terms of semantic gravity, but were relevant to my exploration of powerful knowledge and hierarchical knowledge and knower structures.

The extracts below are identified using the format ([number]:[letter]), where the number is 1 or 3, denoting the year group and the letter represents the place of the extract in the data sample (A-P in year 1, A-N in year 3). The extracts represent a small number of examples from the full dataset, and it can be seen that the categorisation can involve crossover examples. Of most interest for the purpose of this piece are the extracts indicating knowledge building, so these will be given the most attention in the discussion.

The location of knowledge building in legal education

It was encouraging that there were multiple examples in the reports of where conceptual knowledge building was linked to the designed learning events in the PBL model. These included the following:

Through public law plenaries I soon understood that the identity of a country is built through the people, their beliefs, culture, shared history and political formation. (3:C)

The exercises in Topic 2 of the Public Law Block Guide provided me with a basis to critically analyse the topic and introduced me to the report by the Commission on a Bill of Rights. This informed my views, although engaging with a document of that length can be intimidating. (3:M)

³⁵Maton, *supra* n. 17.

In addition to the designed learning events, YLS students are actively encouraged to undertake their own independent research. The amount of scaffolding is reduced through each year of study, as the intention of the curriculum design is to create autonomous learners. Examples of independent learning included the following:

In order to improve my understanding I looked at the block guide and lecture notes on rights and did some research of my own on the constitution. This introduced me to A. V. Dicey and concepts like the rule of law and the equal application of the law, which state all individuals, are equal before the law and not even those in power are above the law. (1:L)

However, upon a deeper reading of this article, I noticed that in a footnote Tushnet references the book "The Network Inside Out" for a "sceptical view of the effects of transnational networks, focusing on nongovernmental organizations". ... I decided to undertake further research. (3:B)

One of my Law colleagues was especially vocal on the topic of EU Law challenging sovereignty. My awareness of this and other challenges grew throughout my learning in the Public 2 and EU modules, largely thanks to continued debate with my colleague on the topic. (3:D)

One aspect of particular concern to me, and which became apparent through the first iteration of the analysis of the reflective reports, is that some students seem to disregard the importance of a credible research trail in law when knowledge building. The following, which was the only example I found of this type, is a particularly candid piece of reflective writing that, although encouraging towards the end, did little to alleviate my concern:

The way that I approach a legal problem is completely different from the way that I used to approach them in the past. Previously I would type my learning outcome word for word into a google search and find the most relevant answer and then copy this word for word into a google document. This took very little time at all and I could often have the whole PBL problem done within 30 minutes of starting it. When doing assessments I would go to wikipedia and type in the case that I was looking for and read the wikipedia page on it. I became slightly better in second year, instead of relying heavily on wikipedia to tell me all about a case I would search it through westlaw and lexis but still I did not read the full case judgement, instead I would find a summary and read this. It wasn't until this year that I realised that by reading a full case I could get a lot more than just the facts, I could also understand the rationale for the decisions which were made. (3:E)

This extract indicates that in some instances the location of the students' knowledge building is online, using sources and materials that are unfamiliar to curriculum designers, and that have insufficient credibility to create vertical discourse. This is of grave concern in higher education. Discovering this extract has provided the impetus for a new research project, which is looking at the theoretical and practical impact of students' use of the internet on conceptual legal knowledge building. There is significant scope for further research in this area.³⁶

The effectiveness of knowledge building in legal education

With the exception of extract 3:E, I was reassured by the evidence of knowledge building found in the reflective reports. Most extracts could be used to overcome the criticism of experiential learning generally, and PBL specifically, which states that such over-reliance on constructivist approaches to education leads to a weakness in

³⁶Please contact the author if you would like to be involved in this project.

knowledge building.³⁷ It was also encouraging to read in the reflective reports that some students do encounter learning events that are transformative, and have the effect of building a hierarchical knower structure, enhancing their engagement with powerful knowledge and weakening the semantic gravity. A selection of extracts is set out below, and is followed by an explanation of their significance:

The instinctive reaction from myself and my firm was that the law against assisted suicide must not rigidly apply. I suddenly became aware of the difficulty to strike a balance between morally and legally right, and whilst at this early stage in my legal career I maintain a highly humanitarian and moralist approach, I concede that over time I expect to become “case-hardened” and focus almost entirely on the “hard and fast” law and not the emotive context. As budding lawyers, we were conscious of not falling into the trap of over-sentimentality in place of application of the law, which has become our main interest. (1:D)

My knowledge, and understanding, in this area significantly increased whilst I was researching for the Public Law exam. Although I had first come across the identity issue on week 7 PBL, I had not completed enough research to understand the conflicts that can arise between national identities and collective ones. I now understand that this concepts definition will remain contested, as it is a subjective principle. I have learnt upon reflection that the idea of identity is one that will evolve over time, with constitutional convergence being the driving force behind the changes in national identities. (3:C)

Although I did not realise at the time, my personal research later established that this reasoning followed an Austinian view of Parliamentary sovereignty. (3:D)

This was when I shocked myself for the first time by actually getting involved in a political type of debate and being able to back up my ideas with points from things that I had read outside of the course material due to my grown interest on the material which we discussed in the course. (3:E)

My studies genuinely placed me in a much more informed place politically and socially. In fact, I often found myself somewhat dismayed during the course of my studies that I had to take a law degree in order to hear the reality of the state of the UK with regard to the EU and asylum seekers. With an election approaching, I genuinely remember wondering what kind of perception of the EU and of migrants people would be going to the polls with. (3:G)

I found it interesting to have a debate covering controversial such opinions as to whether freedom of speech should prevail over the right to privacy, or even take precedence where matters of national security ought to be concealed for public safety. Prior to the session, I was negative towards that argument; however, after much deliberation on the subject, my opinion changed to the affirmative. (3:K)

My reflective diary details how I considered it unlikely that vulnerable persons would receive the same level of protection if safeguards were at the discretion of each national legislature. Indeed, I expressed a fear that an absence of cooperation could lead to a legislative race to the bottom as governments sought to create the least favourable conditions in order to avoid a disproportionate influx of asylum seekers. Such reflection led me to question the appropriateness of a “Diceyan” conception of sovereignty within a globalised world. (3:I)

The second coding approach, which used Maton’s six codes for semantic gravity as a guide, was informative, but did not cover all the aspects of the extracts that were of interest. This was not a problem because, as Maton stresses, the approach is neither a definition of semantic gravity nor the only way to enact the concept in empirical research. My interest is in evidence of weaker semantic gravity, that is, evidence of

³⁷See, for example, Case, *supra* n. 10 and Young, *supra* n. 14.

students making meanings that reach beyond the learning context, as this is of most relevance in knowledge building and in the development of powerful knowledge. The focus will therefore be on the final seven extracts from which I have identified six key themes, three of which are adapted from the weaker end of the semantic gravity continuum from Maton, one of which is linked to one of Bernstein's concepts, and two which appear to be unique to this study. In this analysis these themes will be introduced in outline, but in future studies they will be explored further:

- (1) There is evidence of students making a "judgement" in Maton's terminology, that is, going beyond re-presenting or interpreting information to offer a value judgement or claim. This is evident in 3:D and 3:I.
- (2) The next code up for Maton is "generalisation", and this is also evident here. 3:G and 3:K provide examples of where students present a general observation or draw a generalising conclusion about issues and events in the case/context.
- (3) Extracts (including 1:D and 3:C) indicate that students are considering the developmental and future benefit of their knowledge building. This picks up on the "wider or future practice" aspect of the "abstraction" code in Maton's research.
- (4) There is evidence of genuine student interest in the subject matter of their studies which builds on their previous interests and dispositions rather than being evidence of strategic learning. This is most notable in 3:E and 3:G. This is potentially an example of what Bernstein refers to as "gaze", and which is expanded by Maton into four knower gazes, "born", "social", "cultivated" and "trained".³⁸ There is not space to expand on this further here.
- (5) There is evidence of where students have changed their position as a result of their learning. This can be linked to the potential transformative impact of education with an emphasis on the acquisition of powerful knowledge. Examples here are found in 3:E and 3:K.
- (6) The final theme picks up on the importance of reflective practice in knowledge building and there is evidence here of how structured reflective practice has contributed to the building of knowledge, for example in 3:C and 3:I. This is of course no surprise in a dataset taken from a reflective assessment task but it would be fruitful for further studies to explore the link between reflective practice and knowledge building more closely.

Maton's terminology, although of use as a way to code the reflective reports, did not capture everything of significance. I also missed potential content on the development of hierarchical knower structures by not tracking reflective reports from the same student in their first and third years of study. LCT and its concepts, including semantic gravity and gazes, is a theoretical model in its infancy, which is both its limitation and its strength.³⁹ Despite the disconnect between the model and the findings, there was value in the exercise and I intend to build on this study by using

³⁸Karl Maton, Susan Hood and Suellen Shay, *Knowledge-building: Educational Studies in Legitimation Code Theory* (London, Routledge, 2015).

³⁹For a critique of LCT, see Parlo Singh, "The Knowledge Paradox: Bernstein, Bourdieu, and Beyond" (2015) 36(3) *British Journal of Sociology of Education* 487, and a response from Karl Maton: <http://www.legitimationcodetheory.com/confusion.html> (accessed 8 September 2016).

different search terms to analyse further the students' reflections on conceptual legal knowledge building.

Discussion

Law within higher and vocational education, arguably more than any other subject, has historically been constructed and taught to preserve the status quo of a class-based society, as a way to reinforce the knowledge of the powerful.⁴⁰ If there is no engagement from the legal academic community with the rationale behind their choices about the content of the curriculum, this orthodoxy will remain. This is despite the myriad of views counter to the canon, including those from feminists, Marxists and social justice scholars, who raise what Moore and Muller rather dismissively refers to as voice discourse arguments.⁴¹ In *Bringing Knowledge Back In*, Young argues persuasively against both constructivist approaches to education and the previous "epistemological dilemma" between postmodernism and positivism, otherwise articulated as essentialism and relativism.⁴² He advocates social realist approaches to knowledge building, that incorporate both acknowledgement of the objective reality in which knowledge is located, but also recognition that it is socially produced by "communities of knowledge producers". This is of particular resonance in the discipline of law.

This study has shown that, even within a PBL model, there is a place in the curriculum for a social realism approach to conceptual legal knowledge building, which can include a social justice agenda and learning events designed to develop powerful knowledge. The benefits of this can be seen in the reflective report extracts, for example 3:G. To paraphrase Moore, there is a false choice in sociology between essentialism and relativism which obscures a third position: working critically *within* a canonic tradition.⁴³ This is the place we find ourselves in as legal educators, and one that we can use to develop law students' engagement with powerful knowledge by using experiential learning theories, reflective practice and an understanding of theoretical concepts from the sociology of education.

This echoes some of the findings in Young's more recent book *Knowledge, Expertise and the Professions*.⁴⁴ He asserts that there are two principal kinds of specialist knowledge that together make up a professional knowledge base. These are conceptual knowledge codified in disciplines – which would include the conceptual legal knowledge that is the focus of this study – and the practical "know-how" of knowledge, which is specialised to a contextual purpose. In law this includes the "know-how" of contemporary legal research.

One of the implications for curriculum designers identified by analysis of the reflective reports is the growing need to embed the teaching and training of legal research within the curriculum to avoid knowledge building being distorted by the pervasive accessibility of Google. This is a way for students to maintain academic

⁴⁰Young, *supra* n. 14.

⁴¹Rob Moore and Johan Muller, "The Discourse of 'Voice' and the Problem of Knowledge and Identity in the Sociology of Education" (1999) 20 *British Journal of Sociology of Education* 189.

⁴²Young, *supra* n. 14. See also Jeffrey C. Alexander, *Fin de Siècle Social Theory: Relativism, Reduction, and the Problem of Reason* (Verso, 1995).

⁴³Moore, *supra* n. 2.

⁴⁴Michael Young and Johan Muller (eds), *Knowledge, Expertise and the Professions* (London and New York, Routledge, 2014).

credibility (and avoid the pitfalls set out in 3:E), and to have an awareness of how fact and context specific research is conducted in professional life. Students on law programmes are constantly reminded that legal information, its classification, and forms of retrieval are at the heart of legal thinking, and that legal information informs legal structure. As Berring and Heuval explain, the way research is done profoundly affects the information itself, and this has implications for current and future generations of knowledge builders.⁴⁵ This raises questions about who holds the power in the “knowledge society”, which can be explored in future studies using the dyad: knowledge of the powerful/powerful knowledge.

When considering the importance of research skills, curriculum designers must themselves learn to have an awareness of how research is conducted in professional life, and this needs to be a two-way education process. In one direction, students need to be able to lift their knowledge above the everyday knowledge, or horizontal discourse, that is readily available online. As Kinsella explains, the distinction between “expert” and “lay” knowledge is social as well as epistemological.⁴⁶ It indicates important differences in how knowledge is produced, how its relevance and validity are bounded by the conditions of its production, and how it can be utilised appropriately within the implied boundaries of the relevant discipline. In the context of legal education, if students are unable to raise their knowledge above lay knowledge due to inappropriately slapdash approaches to research, they will fall short of the expectations of the academic community and the legal profession, and fail to build their specialist knowledge, or vertical discourse.

In the other direction, students, helped by input from vocational placements, need to work with academic lawyers to help them to embrace alternatives to the traditional doctrinal research methodology framework through the greater use of empirical research and policy document analysis, as are increasingly found in judicial decisions.⁴⁷ This would help in generating a dialogical approach to education, and potentially narrow the gap between academic teaching and the professional practice of law.

Conclusion

This study has shown that we have a lot to learn from the students’ experiences of law school as articulated in the reflective reports. For example, the frequent reference to the PBL sessions in the reflective reports highlights the intrinsically social and collective character of knowledge building, and (potentially) the benefit of experiential learning approaches to curriculum design. It is interesting that legal educators in the UK appear to be offering rather strong resistance to PBL, as only a handful of law schools and practical legal training institutions have incorporated it into their curriculum. Whether this is due to scepticism on pedagogic grounds, or more prosaic managerial constraints, is however not clear. This study shows that a guided discovery

⁴⁵Robert C. Berring and Kathleen Vanden Heuvel, “Teaching Advanced Legal Research: Philosophy and Context” (2009) 28 *Legal Reference Services Quarterly* 53.

⁴⁶William J. Kinsella, “Problematizing the Distinction between Expert and Lay Knowledge” (2002) 10 *New Jersey Journal of Communication* 191.

⁴⁷Kylie Burns and Terry Hutchinson, “The Impact of ‘Empirical Facts’ on Legal Scholarship and Legal Research Training” (2009) 43 *Law Teacher* 153.

approach to PBL can avert some of the limitations of a constructivist open discovery model, as it can be strongly framed by module leaders and other curriculum designers, and be founded in social realism.

Analysis of the data here also demonstrates that we need to give greater consideration to the location and effectiveness of conceptual legal knowledge building in LLB programmes. I am not alone in my fear that our control of the curriculum content is being undermined and distorted by the students' internet access. Whether it is or not, we need to give greater consideration to the pedagogic identity of the "knower" as well as the approaches we adopt in the transmission of knowledge. This includes a consideration of some of the social factors that influence our students' decisions to study law, and how we may be perceived by them to be the conduits of the canon.

This brings me back to where this started: what is the purpose of studying law in a higher education institution? As Wheelahan observes, while education needs to prepare students for work, it also needs to prepare us all to live in the world in which we take part – a point that is particularly relevant in legal education.⁴⁸ There is power from within the legal education academy to deflect "the tyranny of relevance" as it is defined by and through the market and the regulators, so as to maintain our role in helping our students build their conceptual legal knowledge and access powerful knowledge. In the present climate, that is perhaps the most important implication of them all.

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⁴⁸Wheelahan, *supra* n. 10.