TEACHING AND LEARNING IN CANADIAN LEGAL EDUCATION: AN EMPIRICAL EXPLORATION

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ABSTRACT

This dissertation is an exploration of law teaching in Canada. Through an empirical study, it aims to describe the teaching and evaluation methods used in Canadian law faculties, and to explain the pedagogical choices of law professors. The findings suggest that the dominant method of teaching in Canadian law faculties is lecturing, although this is often used with other, more interactive methods such as discussion, question-answer or some form of Socratic method. The findings also suggest that law professors' pedagogical choices are influenced by their conception of teaching, as well as other factors such as institutional requirements, culture, and students. Finally, by comparing the teaching and learning literature with the findings, the dissertation concludes that if we want to improve student learning in legal education, we must make learning the focus of teaching. In order for this to happen, we should also pay close attention to law teachers' conceptions of teaching and to their teaching context.

Cette thèse de doctorat en droit constitue une exploration de l'enseignement du droit au Canada. À travers une recherche empirique, elle cherche d'abord à décrire les méthodes d'enseignement et d'évaluation utilisées dans les facultés de droit au Canada et ensuite d'expliquer les choix pédagogiques des professeures et professeurs de droit. Les résultats suggèrent que la méthode d'enseignement qui prédomine dans les classes de droit est celle du cours magistral, même si celui-ci est souvent complété par une autre méthode plus interactive, notamment la discussion, un échange question-réponse ou encore une forme de méthode Socratique. De plus, l'analyse des entrevues suggère que les choix pédagogiques des professeures et professeurs sont influencés par leur conception de l'enseignement, ainsi que par d'autres facteurs comme les contraintes et la culture institutionnelles et les étudiantes et étudiants. En comparant ces résultats avec la littérature, la thèse conclut que l'effectivité de l'enseignement du droit doit se traduire et se mesurer par l'apprentissage des étudiantes et étudiants. Pour arriver à cet objectif, il nous faut examiner de plus près (et changer) les conceptions de l'enseignement qu'ont les professeures et professeurs, ainsi que le contexte dans lequel ils se trouvent.

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CHAPTER 1 - INTRODUCTION: CANADIAN LEGAL EDUCATION AND ITS CONTEXT

(1)   Introduction

Whether we believe that law schools prepare students for the practice of law or educate them to be engaged citizens, legal academics think that Canadian legal education plays an important role in society. Canadian legal scholars are engaged across the country in the production and understanding of legal knowledge in increasingly nuanced and interdisciplinary ways. In the last three decades, new fields of legal scholarly enquiry have dramatically opened up. The question of what law means is more contentious and more richly imagined than ever. However, in contrast to the richness and diversity of Canadian legal scholarship, there is a comparative absence of adventurous scholarship on legal education in this country (in contrast to the UK, Australia and the US).   In the twenty-one years since the *Arthurs Report*,[1] almost no research has been conducted on the nature, effectiveness and theoretical underpinnings of legal pedagogy in Canadian law programs. Even the *Arthurs Report*, entitled *Law and Learning*, dealt very little with the 'learning' part of legal education.[2]

Canadian legal scholars have examined certain issues relating to legal education: research and scholarship, curriculum, admission policies, teaching, diversity and privatization.[3] We

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[1] Consultative Group on Research and Education in Law, *Law and Learning in Canada: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: Council Press, 1983) [the *Arthurs Report*, after the group Chair, Harry William Arthurs]. This report was the most significant empirical research study about Canadian legal education. It did a comprehensive review of law school curricula (undergraduate and graduate) and of legal scholarship.

[2] Diana Majury "Teaching is Part of Legal Education" (2003) 18 Canadian J. Law & Society 51 at 51.

[3] See for example, Roderick A. Macdonald, "Still 'Law' and Still 'Learning'?" (2003) 18 Canadian J. Law & Society 5-32; Julie MacFarlane, "What Does the Changing Culture of Legal Practice Mean for Legal Education" (2001) 20 Windsor Yearbook of Access to Justice 191-210; Constance Backhouse, "The Changing Landscape of Legal Education" (2001) 20 Windsor Yearbook of Access to Justice 25-34; Natasha Bakht et al., "Counting Outsiders: A Critical Exploration of Outsider Course Enrolment in Canadian Legal Education" (2007) 45 Osgoode Hall L.J. 667; Dawna Tong & W. Wesley Pue, "The Best and the Brightest?: Canadian Law School Admissions" (1999) 37 Osgoode Hall L.J. 843;

can also find some empirical studies about the changing demographics of law students,[4] student course selection[5] or legal scholarship.[6]

However, considering the fact that legal scholars spend a good part of their weekly lives in the classroom or preparing for it, it is surprising to realize that Canadian legal academics have not researched or written a great deal about pedagogy. Canadian legal scholarship dealing specifically with teaching is largely based on personal experiences and assumptions about legal education, such as the assumption that the majority of law courses are taught by lecturing and evaluating with a 100% final examination.

The scholarship on Canadian legal education might be constrained by the ongoing debate or 'unhealthy dichotomy'[7] between the professional and academic aspirations of legal education.[8] This debate, which can be explained by the history of Canadian legal education, has limited the discussion to questions of 'what' legal education should accomplish to the exclusion of questions of 'how' it should be accomplished. If legal academics cannot agree on the mission of legal education, then how can they move past the impasse to discuss teaching and learning? The result of this impasse has been very little discussion about teaching, learning and evaluation, or about what "actually happens in legal education."[9]

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[4] Larry Chartrand et al, "Law Students, Law Schools and their Graduates" (2001) 20 Windsor Yearbook of Access to Justice 211-310.

[5] Annie Rochette & W. Wesley Pue, " 'Back to Basics?' University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Yearbook of Access to Justice 167-190.

[6] Theresa Shanahan, *A Report on Legal Scholarship: Law Professors' Research Activities in Ontario's English-Speaking Common Law Schools* (Vancouver: Centre for Policy Studies in Higher Education and Training, Faculty of Education, UBC, 2002); Theresa Shanahan, "Legal Scholarship in Ontario's English-speaking Common Law Schools" (2006) 21:2 C.J.L.S. 25.

[7] I am borrowing the term 'unhealthy dichotomy' from Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983).

[8] John E.C. Brierley, "Quebec Legal Education since 1945: Cultural Paradoxes and Traditional Ambiguities" (1986) 10 Dalhousie L.J. 5 at 15-17.

[9] Rochette & Pue, *supra* note 5 at 167; Diana Majury, *supra* note 2 at 51.

(II) Aims of study

Because this is the first empirical study of teaching and learning in Canadian legal education, [10] the first goal of this research project is therefore to *empirically* describe and explain the teaching and evaluation methods used by law professors across Canada. In chapter 4, therefore, I paint a picture of Canadian legal education by presenting the results of a web-based questionnaire in which Canadian law professors answered questions about their teaching and evaluation methods. The quantitative data is enriched with my own observation notes; themes such as lecturing and questioning are thus explored in further detail. I also compare my findings with the literature on adult learning and share some of law professors' stories and creative ideas about teaching.

The second major goal of this research project is to get a richer understanding of law teaching by exploring, through qualitative interviews, the reasons behind individual professors' pedagogical choices. Through the analysis and interpretation of interview data, I offer some explanations about what motivates, hinders and influences law teachers when they choose teaching and evaluation methods. Three interrelated sets of factors emerged from the data, which I explore in chapters 5 and 6: conceptions of teaching, institutional factors and students. For each of these sets of factors, I present my findings and compare them with the literature in order to offer some explanations for Canadian law teachers' pedagogical choices.

A third and final goal of this research project, which will be achieved in chapter 7, is to identify the lessons we can learn from this empirical study about teaching and learning in Canadian legal education and to give some consideration as to how to move ahead in

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[10] The *Arthurs Report* of 1983, which was the result of a wide consultation among Canadian legal academics and institutions, does not deal empirically with teaching, although it does concern itself with curricular issues and the educational goals of legal education: See *Arthurs Report*, *supra* note 1. In England, on the other hand, Cownie has conducted a qualitative study of legal academics, which includes a large teaching component: see Fiona Cownie, *Legal Academics : Cultures and Identities* (Oxford ; Portland, Or.: Hart, 2004). In the United States, the recent Carnegie Report, for which the Carnegie Foundation conducted a qualitative study, describes and challenges legal education's signature pedagogy of the case method and gives strong recommendations as to the future of American legal education: William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007). Prior to that, other studies make an inventory of teaching methods in American law schools: Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development* (New York: Clinical Research Institute, New York Law School, 2003); Steven I. Friedland "How We Teach: A Survey of Teaching Techniques in American Law Schools" (1996) 20 Seattle U. L. Rev. 1.

order to improve it. The objective is not to prescribe specific actions or methods for legal education but to encourage dialogue and reflection about teaching and learning in Canadian law programs.

What this research project does not seek to do, however, is to determine the educational goals of Canadian legal education, although I do explore Canadian law professors' own educational objectives in chapter 4. There have been endless debates on what should be the goals of legal education but this question remains largely unresolved. In my opinion, there can never be a set, determined and timeless set of goals and objectives for Canadian legal education; objectives should vary depending on the institution, the faculty, each individual professor, the students, the broader societal context, and the relationship each institution has with the profession. On the other hand, the question of *how* we reach those educational goals is important, because no matter how inspiring our educational objectives are, if we do not pay close attention to teaching and especially to learning, they will remain words on paper, with no real impact on students and through them, on society.

(III) Research questions

The purpose of this project is thus to explore teaching and learning in Canadian legal education by asking the following research questions:

1.   What are the educational objectives of Canadian law professors? What are they trying to accomplish in their teaching?[11]

2.   What teaching and evaluation methods do Canadian law professors use? Which of these are predominantly used? What variables determine similarities and differences across the country? How do these methods compare with principles of adult education?

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[11] I am not looking at institutional or program objectives because it is difficult to compare program learning objectives with what individual law teachers are doing in the classroom.

3.   Why do Canadian law professors choose the teaching and evaluation methods that they choose? What are some of the factors that explain their pedagogical choices? What is the relationship between teaching and scholarship?

4.   What lessons can we learn from this analysis in order to improve legal education? Can we address some of the barriers or obstacles identified by law professors in order to improve teaching and learning in Canadian law programs?

(IV) Review of the literature

(A)   Introduction

The review of the literature will investigate three main bodies of literature. The first main body of literature examined is the literature relating to Canadian legal education, complemented by some English, Australian and American authors where necessary.   For example, very little of the Canadian literature deals with teaching and learning in law programs, but this question has been investigated in more depth in the Australian and American legal education literature. However, it is important to keep in mind that the context and the aims of American legal education are very different than those of Canadian legal education. Thus the American legal education literature is of limited value to our analysis. Similarly, in Canada, there has been extensive writing on clinical legal education: its aims and objectives, the teaching and learning methods appropriate for clinical education, and encouraging reflective practice, professionalism and a sense of ethics in students.[12]   However, as pointed out by Pue,[13] clinical legal education, although it is a kind of experiential learning that should be encouraged in legal education, is very resource and labour intensive. For this reason, access to clinical legal education is somewhat limited. When we talk about student learning, therefore, we cannot simply

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[12] See for example, James C. Hathaway, "Clinical Legal Education" (1987) 25 Osgoode Hall L.J. 239; Kathryn Munn, "Clinical Legal Education Through the Looking-Glass: Clinical Legal Education Programme at the University of Western Ontario" (1989) 12 Dalhousie L.J. 505; Rose Voyvodic, ""Considerable Promise and Troublesome Aspect": Theory and Methodology of Clinical Legal Education" (2001) 20 Windsor Yearbook of Access to Justice 111; Rose Voyvodic & Mary Metcalf, "Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor" (2004) 14 Washington University Journal of Law and Social Policy 101; Lucie E. White, "The Transformative Potential of Clinical Legal Education: (paper delivered at a symposium at Osgoode Hall Law School)" (1997) 35 Osgoode Hall L.J. 603. See also the following journals: Clinical Law Review and International Journal of Clinical Legal Education.

[13] W. Wesley Pue "Legal Education's Mission" (2008) 42 The Law Teacher 270 at 289.

rely on clinical legal education and ignore or downplay the rest of the legal education experiences of our students because that would let law professors off the hook with respect to student learning.

As we will see, the Australian legal education literature is rich with reflections about teaching and especially learning. The context of Australian legal education is somewhat different than the context for common law legal education in Canada (it is an undergraduate degree, for one thing), but the Australian literature about learning objectives, teaching and learning, and reflective practice is applicable to Canadian legal education and can assist to answer the questions raised in this dissertation.

The second body of literature explored in this chapter concerns higher education generally. Since legal education takes place in the setting of the university, this literature sets out the *toile de fond* for looking at legal education. First, the higher education literature situates the university and its aims in a broader socio-economic context, which includes a knowledge-based economy, academic institutions driven to accountability and efficiency, students as consumers, and the other ever increasing external pressures on academics in their teaching and research duties. This context and most importantly, its consequences on higher education, on academics and on teaching and learning, are thus closely examined by this literature and resonates with much of what law professors told me in interviews.

Secondly, this corpus examines the debates around the mission and objectives of higher education. As we will see, the existential crisis that we find in Canadian legal education is also related to the present existential crisis of higher education. It is therefore a context that shapes the debates about legal education. This body of literature thus sets out the broader context of higher education, which is relevant to the study of factors related to Canadian law professors' pedagogical choices. Some of the issues we will look at in setting the stage for this study are globalization, mass education, student diversity, the commercialization of the university, and the new form of governance of higher education institutions. As we will see, this changing context has affected the way in which we define

the mission and objectives of university education. As we mentioned earlier, conversations about Canadian legal education have historically been defined by the dichotomy between academic and professional aims. More recently, the changing setting of higher education has also spurred debates about whether its goals should be academic or vocational.

In chapter 2, we will turn to the theme of learning and explore the third body of literature, which concerns learning theories and more generally teaching and learning in higher education. Learning theory is diverse and enlightening, and it can tell us many things about learning that we can then apply to Canadian legal education. It is through the lens of learning that we will explain the findings of the empirical study. Moreover, since I have been familiar with this literature for a long time and have changed my own teaching in order to take learning theories into consideration, these theories influenced my research questions, research design, and the way that I analysed the results. It is therefore crucial to briefly summarize this body of literature before coming back to it in the discussion of the results in chapters 4-6.

(B)   The context of Canadian legal education

(i)   The place of legal education - a historical perspective

Canadian legal education is shaped both by its history and by external and internal pressures that result from its place within the university, in society as an institution of higher education and from its relationship with the legal profession. Indeed, Canadian legal education has its historical origins within both the profession and the university. As Harry Arthurs observes, "legal education… is located in the borderlands between two powerful suzerains, the higher education sector and the legal profession."[14]

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[14] Harry W. Arthurs, "The Political Economy of Canadian Legal Education" in Anthony Bradney and Fiona Cownie (eds.), *Transformative Visions of Legal Education* (Oxford: Blackwell Publishers, 1998) 14 at 21.

In common law Canada, the training for the practice of law began as an apprenticeship and remained under the tight control of the profession until the end of World War II.[15] In Ontario, the apprenticeship model continued until the opening of the new Osgoode Hall Law School in 1889, although from the 1840s, the Law Society of Upper Canada used 'law clubs' as informal educational experiences composed of lectures, moots and essay competitions.[16] McLaren argues that the Law Society of Upper Canada thus maintained a hold on legal education for a long time, although its model lost its prime position in the 1870s with the creation of university legal education in the US and England.[17] McLaren describes the revival in 1870 of the Harvard law school under the Deanship of Langdell as a major development in the history of legal education, as this model had spread all over North America by the 1920s:

> Langdell…saw his school satisfying at one and the same time the scholarly pursuit of establishing law as the object of scientific study, and the practical objective of producing the finest legal minds for service as lawyers in the top corporate law firms and the highest echelons of government. Langdell's firm belief… was that the way to mastering the law school's laboratory, and the analysis of cases through the pointed medium of the socratic method in the classroom.[18]

The Dalhousie law school opened in 1883 and adopted an approach to teaching that was closer to the Harvard model than to the Ontario model of legal education, but its approach to legal education was not to become the norm in Canada for a long time because of the hold the legal profession of Ontario maintained on legal education until at least the 1920s.[19]

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[15] *Arthurs Report*, *supra* note 1 at 12-14.

[16] For a comprehensive account of the history of legal education in common law Canada, see John P.S. McLaren, "The History of Legal Education in Common Law Canada" in Mr. Justice Matas & Deborah McCawley, eds., *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba* (Montreal: Federation of Law Societies of Canada, 1987) 111; see also G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in D. Flaherty ed, *Essays in the History of Canadian Law* (Toronto: University of Toronto Press, 1983) 49 more specifically for the history of legal education in Ontario.

[17] McLaren, *ibid* at 118-119.

[18] *Ibid* at 119-120. Lebrun & Johnstone also state that the view of Langdell of law as science was a major influence on legal education in common law countries: see Marlene Lebrun and Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law*, vol. 1994, (Sydney: The Law Book Company, 1994) at 20.

[19] McLaren, *supra* note 16 at 121-123. See also Harry W. Arthurs, "The Tree of Knowledge/The Axe of Power: Gerald LeDain and the Transformation of Canadian Legal Education " (2010) 55:2 McGill L.J. (forthcoming).

In Québec, legal education has almost always taken place in the context of a university, long before it was in the rest of Canada, although the three year university law course only became a requirement for entry into the legal profession in 1948.[20] However, Brierley explains that until the 1960s, law faculties had an uneasy position in the university setting because their curriculum and teaching were still under the control of the profession.[21] Thus the place of legal education within the university did not save it from the tensions between its academic and professional missions that plagued common law faculties in the rest of Canada.[22]

The 1960s marked another era in legal education. Osgoode Hall Law School moved to York University in 1968, symbolically marking a break from the control of the Law Society.[23] In 1964 the law professors of Québec called for a new vision of legal education away from the profession's control and the Québec École du Barreau opened its doors shortly thereafter in order to supplement the academic education of graduates for entry into the legal profession. Then began a period of proliferation of law faculties across the country and a growing body of full-time law professors.[24] As Arthurs explains, a "new generation of legal academics with graduate degrees, training in the social sciences, and activist ambitions soon outnumbered the small cadre of black-letter scholars and part-time practitioners which had dominated most law schools…", resulting in new research agendas, new curricula and new pedagogies.[25] The *Arthurs Report* concluded that in the 1960s, law faculties had launched a new kind of legal education comprised of three elements: learning legal rules, learning legal skills and developing a

[20] Brierley, *supra* note 8 at 7 & 41.

[21] *Ibid* at 15-16.

[22] Brierley, *ibid* at 15-17; Brierley identifies 3 stages of Québec legal education: 1) period of non-university study followed by a professional entrance exam; 2) period of study followed by an apprenticeship, or exceptionally, in a university; and 3) university study as a universal requirement followed by an articling period. Thomasset and Laperrière argue that because of the profession's monopoly over the legal field, law schools are constrained in their curriculum because the profession exercises at least indirect control over it: see Claude Thomasset & René Laperrière, "Faculties Under Influence: The Infeudation of Law Schools to the Legal Professions" in Fiona Cownie, ed., *The Law School - Global Issues, Local Questions* (Aldershot: Ashgate Darmouth, 1999) 190-227. For an account of very early Québec legal education, when it first started within colleges, see David Howes, "The Origin and Demise of Legal Education in Quebec (Or Hercules Unbound)" (1989) 38 U.N.B.L.J. 127; R. St.J. Macdonald' "Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada" (1988) 11 Dalhousie L.J. 721.

[23] Arthurs, *supra* note 14 at 15-16.

[24] *Ibid.* See also Brierley, *supra* note 8.

[25] Arthurs, *supra* note 14 at 17.

humane perspective on law and an understanding of the social context of law.[26] Despite these gains, the *Arthurs Report* concluded that legal education remained mostly professional.[27]

Many things have changed since the *Arthurs Report.* At the time this study began in 2005 there were 21 law faculties in Canada: fifteen common law faculties and five civil law faculties (four in Québec and one in Ottawa), plus the faculty of law at McGill university that offers transsystemic education in both common and civil law.   It is increasingly difficult to get a position in a law faculty without holding or having started a doctorate degree. More importantly, many of these doctorate degrees are from a range of disciplines including philosophy, political science, history or economics.[28]   Faculty scholarship has thus exploded beyond the confines of doctrinal scholarship and into other disciplines.[29]   However, the curriculum of law faculties has remained largely the same, with the same mandatory "core" first year subjects as those that were taught when law schools first opened their doors: torts, contracts, property, criminal law, constitutional law and a legal research and writing course.[30]   By and large, law faculties have also maintained both their liberal and professional educational objectives.

Although this study focuses on university legal education, it is important to remember that there are four components to the Canadian legal education continuum:

1.   a law degree from a Canadian law faculty;
2.   completion of a bar admission course and examinations;
3.   an articling period;
4.   continuing legal education of lawyers called to the bar.

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[26] *Arthurs Report*, *supra* note 1 at 16.

[27] *Ibid* at 153. See also Arthurs, *supra* note 14.

[28] Backhouse, supra note 3 at 30.

[29] *Ibid*.

[30] Rochette & Pue, *supra* note 5 at 187. See also Margaret Thornton, "Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same" (1998) 36 Osgoode Hall L.J. 369.

There is also a requirement of two years of pre-law studies in all provinces but Québec, where law is considered an undergraduate degree as in England and Australia.[31]   The duration of the bar admission courses varies from province to province (anywhere from two weeks to a full year), as does the length of the articling period. Articling may take place before or after the bar admission course, or it can be split up in two periods with the bar course taking place in between. Some bar admission courses take place during the articling period.

The different actors involved in Canadian legal education thus include law faculties, universities, the provincial law societies, the Federation of Law Societies,[32] students and alumni. All these actors have a stake in what goes on in Canadian law faculties and have some influence on legal education.

(ii)   Relationship with the profession

Perhaps the most influential factor on legal education in Canada has been the uncomfortable but necessary relationship between law faculties and the legal profession.[33]   The necessity of this relationship can be explained historically, but it can also be explained pragmatically. Traditionally, law societies have accepted the Canadian law degree (from any province) as evidence of sufficient knowledge of the law and have admitted all Canadian law graduates to their bar admission programs.[34]

The profession has nevertheless tried to varying degrees to dictate curricula, whether directly, as is currently the case with the Federation of Law Societies' national requirement (as we will see below), or indirectly by recommending a list of courses that students should take in law school if they want to succeed in their bar admission

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[31] See Federation of Law Societies of Canada, *Final Report of the Task Force on the Canadian Common Law Degree* (Federation of Law Societies of Canada, 2009), available at: www.flsc.ca/en/pdf/CommonLawDegreeReport.pdf (accessed 5 July 2010) at 5.

[32] The Federation of Law Societies of Canada (FLSC) is the national coordinating body of the Canada's 14 law societies mandated to regulate Canada's 95,000 lawyers and Quebec's 3,500 notaries. See the Federation's website at http://www.flsc.ca/ .

[33] Arthurs, *supra* note 14 at 21.

[34] Federation of Law Societies of Canada, *supra* note 31 at 16.

programs.   In Québec, Thomasset and Laperrière argue that because the Barreau du Québec has a monopoly over the legal field, it has exercised explicit or at least implicit (through student demands because of the list of recommended courses) control over law school curricula and teaching methods, which has also had an impact on teaching and evaluation methods:

> The consequences of this pressure from the legal profession on the law school curricula are detrimental to any attempt to develop an alternative approach to law teaching and to alleviate the pressure from the dominant positivist paradigm. It restrains law schools from adopting innovative teaching methods and alternative student assessment.[35]

In 1957, the Law Society of Upper Canada and other provincial bars imposed a list of 23 subjects on the curriculum of law faculties, eleven of which were to be compulsory.[36]   In 1968, the law societies reduced the number of compulsory core courses, thus freeing up law faculties and enabling them to innovate in their curriculum offerings, which most faculties did. Much of the basic core, consisting of first year subjects such as torts, property, constitutional law and criminal law has however remained constant throughout the years.[37]   The *Arthurs Report* notes the result of this paired-down core curriculum:

> ...a growing emphasis on interdisciplinary work; a commitment to legal research and writing programs; the proliferation of new courses and seminars, including some in non-traditional areas such as poverty law; the teaching of legal skills; and new concepts of teaching such as clinical programs, intensive full-term programs in specific areas, and opportunities for individual, directed research.[38]

Thus since 1968, law faculties have been relatively autonomous from the legal profession. However, in 2008, the Federation of Law Societies reopened the debate of a core law school curriculum by putting together a Task Force on the approved law degree, which looked at the possibility of approving law degrees in Canada, thus breaking with decades of recognizing the degree from Canadian law faculties as a sufficient entry point into bar

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[35] Thomasset & Laperrière, *supra* note 22 at 192.

[36] *Arthurs Report*, *supra* note 1 at 15. See also Rochette & Pue, *supra* note 5; D.H. Clark, "Core vs Elective Courses: Law School Experience Outside Québec" in Mr. Justice Matas & Deborah McCawley, *supra* note 16, 214. See Arthurs, *supra* note 19 for a historical and critical look at the relationship between law faculties and law societies in legal education.

[37] Rochette & Pue, *ibid* at 175-176. See also Arthurs Report, *supra* note 1 at 16.

[38] Arthurs Report, *ibid*.

admission courses. The "approved law degree" was the preferred option considered in the Consultation Paper in order to ensure that law school graduates meet the new "national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education."[39] The final list of required competencies looks much like a list of mandatory courses and is as follows:

> The Task Force's recommendations reflect its view that every Canadian law school graduate entering a bar admission program or a recipient of an NCA Certificate of Qualification should understand,
>
> • the foundations of law, including principles of common law and equity, the process of statutory construction and analysis and the administration of the law in Canada;
>
> • the constitutional law of Canada that frames the legal system; and
>
> • the principles of criminal, contract, tort, property and Canadian administrative law and legal and fiduciary principles in commercial relationships.[40]

The Federation justifies this interference with individual law faculties' mission for two reasons. The first reason concerns applications to provincial law societies for new law faculties to open in Ontario and B.C. The second reason is related to the requirements of transparency and fairness introduced by recently passed fair access legislation regarding the qualification of foreign-trained candidates.[41] Canadian legal academics resisted the move by the profession to intervene in their academic mission.[42] In the end, the Task Force recommended that instead of approving law degrees, law faculties should demonstrate that their graduates had acquired the required "competencies".[43]

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[39] Federation of Law Societies of Canada, *supra* note 31, at 4.

[40] *Ibid* at 5. The recommendations also include skill competencies such as legal problem solving, legal research, oral and written legal communication, competencies in ethics and professionalism: *ibid* at 8-9.

[41] *Ibid* at 18-19 for an explanation of fair access legislation. For example, see *Fair Access to Regulated Professions Act*, S.O. 2006, c.31 (Ontario); *The Fair Registration Practices in Regulated Professions Ac*t, S.M. 2002, c.21 (Manitoba); and *Fair Registration Practices Ac*t, S.N.S. 2008, c.38.

[42] See, for example, The Canadian Law and Society Association/Canadian Association of Law Teachers *Joint Response to the Consultation Paper of the Task Force on the Canadian Law Degree of the Federation of Law Societies of Canada*, December 15th, 2008, available at: http://www.acpd-calt.org/english/About/ .

[43] Federation of Law Societies of Canada, *supra* note 31, at 11. The law schools also have to meet certain institutional requirements regarding the length and delivery of the program, adequate faculty and library resources, etc..

The reality is that the relationship between law schools, the local bar and the local community have influenced the development of each law program in Canada, as is explained by Arthurs:

> [d]iffering rates of political, economic, professional, and educational development in each province, and the effect of local circumstances and personalities in what were often relatively small and new communities also helped to ensure that each law school followed a somewhat different path of development.[44]

These initiatives characterize the uneasy relationship that law faculties have had with the profession since the beginning of university legal education. They demonstrate a long-running dissatisfaction and mistrust of the profession towards law faculties,[45] but also the extent to which law faculties are constrained by the same profession in their program and pedagogical choices. The nature of this relationship influences how much power the the legal profession of a given province has over a given law faculty, as explained by Arthurs:

> Legal education, then, remains subject to influences emanating both from the profession and from the university. Although these influences seldom take the form of explicit directions, law schools respond to them in part to avoid negative consequences…. Thus, the internal political dynamic of Canadian law schools is often destabilized by the competing visions of legal education of its 'suzerains'…. But in the end, the two visions are different: at any given moment, they do not project equal power and influence, and whichever is ascendant in a particular law school will shape its teaching program and intellectual ethos.[46]

Unfortunately for legal education, the profession holds a very narrow view of legal knowledge as a set of black letter rules of law and treats it instrumentally, "as being more a matter of specific content rather than process of learning and ways of knowing."[47] As we will see in chapters 5 and 6, the view of legal education as the transmission of a large amount of content has also characterized most of law teaching in Canada to the detriment of learning. Moreover, as was demonstrated by Rochette and Pue in a study on course selection at one law faculty over the period of ten years, it seems that

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[44] Arthurs, *supra* note 14 at 15.

[45] See Rochette & Pue, *supra* note 5 at 171-179 for a more detailed account of the profession's attempt at dictating curriculum to common law faculties in Canada. See Thomasset & Laperrière, *supra* note 22 for an account of the relationship between Québec law faculties and the Barreau du Québec.

[46] Arthurs, *supra* note 14 at 23.

[47] Rochette & Pue, *supra* note 5 at 186.

students have well integrated this narrow view of legal education by selecting to take mostly those courses that are considered "core" by the profession,[48] which adds yet another layer of constraints to legal education.

(iii)   *Commercialization of legal education and higher education*

The close and uneasy relationship that university legal education has with the profession is not the only influence on how it defines its mission and objectives and purports to achieve them. According to Boyd, trends of neoliberalism, corporatism, privatization and the commodification of education also define legal education.[49] The corporatism of legal education is closely linked to the present context of higher education, characterized by its commercialization, a knowledge or ideas-based society,[50] a globalized economy and newly required standards of accountability and efficiency.   Arthurs identifies this phenomenon as the "globalization of the mind" and summarizes it as follows:

> Government grants are falling, tuition fees and student indebtedness are rising, private sector research partnerships are being encouraged, the state's monopoly on higher education is being questioned, and new procedures and performance standards are being introduced to ensure greater accountability, productivity and "value-added" in our universities.[51]

Light, Cox and Calkins explain this new situation as the result of a changing relationship between higher education, knowledge and society.[52] Higher education "no longer simply resides in society; it is of society, increasingly subject to society's prevailing ideologies, ways of viewing the world, its transitions and upheavals."[53] Higher education no longer

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[48] *Ibid*.

[49] See Susan Boyd, "Corporatism and Legal Education in Canada" (2005) 14:2 Social and Legal Studies 287. See also Rochette & Pue, *ibid* at 168-169; Arthurs, *supra* note 14; Harry W. Arthurs, "Poor Canadian Legal Education: so Near to Wall Street, so Far from God" (2000) 38 Osgoode Hall L.J. 381; Margaret Thornton, "Among the Ruins: Law in the Neo-Liberal Academy" (2001) 20 The Windsor Yearbook of Access to Justice 3; Backhouse, *supra* note 3.

[50] George Fallis, *Multiversities, Ideas, and Democracy* (Toronto: University of Toronto Press, 2007) at 4.

[51] Harry W. Arthurs, "Globalization of the Mind: Canadian Elites and the Restructuring of Legal Fields" (1997) 12 C.J.L.S. 219 at 236. See also, Arthurs, *supra* note 14.

[52] See Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009). See also Readings, who goes further and argues that the place of the university in society is no longer clear and that this shift in the role of universities results in a crisis: Bill Readings, *The University in Ruins* (Cambridge, MA: Harvard University Press, 1996) at 2-3.

[53] Light, Cox & Calkins, *ibid* at 2.

shapes society but *is* shaped by it. [54]   Higher education research and learning must be *useful* to society.[55]   This new relationship is based on the vague notion of excellence, which makes the university accountable to society.[56]   Indeed, the "discourse of excellence", imported from industry, "focuses on 'excellent' delivery and 'excellent' performance, and presumes a new way of thinking and talking about higher education."[57] This notion of excellence is characterized by competition, efficiency and effectiveness and "is replete with notions of competitiveness in terms of number, expansion and retention of student numbers, expansion of knowledge base, competitive advantage, efficiency gains, employee productivity and so on."[58]   The autonomy of academic institutions and of academics from the society it is located in is now shrinking.[59] Academic institutions now have to account to governments about their scholarly productivity and teaching quality.[60]   Of course, accountability also means more paperwork, the result being a heavier administrative load on academics without the necessary resources. [61]   The time and energy dedicated to administrative tasks are not being spent on teaching and research.[62]   This regulation of academic life is also "antithetical to our conception of the very nature of academic work within a university environment", thus creating tensions within academic themselves between accountability and academic freedom. [63]   This is even more so for legal academics, who have often chosen an academic career instead of a more lucrative career in private practice, and

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[54] *Ibid* at 2-3.

[55] Ronald Barnett, *The Idea of Higher Education* (Buckingham: Society for Research into Higher Education: Open University Press, 1990) at 11.

[56] Light, Cox & Calkins, *supra* note 52 at 3.

[57] *Ibid* at 3. See also Readings, *supra* note 52, chapter 2.

[58] Light, Cox & Calkins, *ibid* at 4.

[59] Fallis, *supra* note 50 at 8. See also Tony Becher & Paul R. Trowler, *Academic Tribes and Territories*, 2nd ed. (Buckingham: SRHE and Open University Press, 2000) at 10-14.

[60] In England, this has taken the form of the RAE, the Research Assessment Exercise and audits by the Quality Assurance Agency: Light, Cox & Calkins, *supra* note 52 at 4-8. See also Paul Ramsden, *Learning to Teach in Higher Education*, 2nd ed. (London; NY: RoutledgeFalmer, 2003) at 3-4; Becher & Trowler, *ibid* at 18. In Europe, this trend is now so engrained in higher education that there is even a journal (Quality in Higher Education) dedicated to it! For how this trend plays out in Australia, see Lebrun & Johnstone, *supra* note 18 at 15.

[61] Ramsden, *ibid* at 4.

[62] *Ibid* at 4.

[63] Lebrun & Johnstone, *supra* note 18 at 17.

who might then wonder why they should stay in academia if their work is to be closely monitored as they if they were working in a large law firm.[64]

As Boyd[65] and Backhouse,[66] among others,[67] have pointed out about legal education, higher education is thus "big business". [68]   Knowledge is a commodity to be produced, sold and "used" by society[69] and students are consumers, clients or customers, especially when they are paying higher and higher tuition fees to attend law school.[70]   The university, which should be a place driven by the "desire to explore truths in an open and critical manner through scholarship and research"[71] has thus become what Aronowitz calls a "knowledge factory". [72]

With this new relationship between higher education, society and the market comes a new form of governance for universities: managerialism, which Becher and Trowler say is a framework of values and beliefs that provide an orientation for managers geared towards efficiency, economy and effectiveness.[73]   Some of the key elements of managerialism are an orientation towards the consumer and the market, an emphasis on top management and its legitimate right to change the institutional cultures and

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[64] I*bid* at 17.

[65] See Boyd, *supra* note 49.

[66] Backhouse, *supra* note 3.

[67] See, for example, the many articles of Harry W. Arthurs on this, including Arthurs, *supra* note 51; Arthurs, *supra* note 14; H.W. Arthurs, supra note 49; Harry W. Arthurs, "The Word Turned Upside Down: Are Changes in Political Economy and Legal Practice Transforming Legal Education and Scholarship or Vice Versa?" (2001) 8 Int'l J. of the Legal Profession 11. In the Australian context, see the critique of Margaret Thornton: Thornton, *supra* note 30; Margaret Thornton, "Gothic Horror in the Legal Academy" (2005) 14:2 Social and Legal Studies 267.

[68] Light, Cox & Calkins, *supra* note 52 at 4.

[69] Fallis, *supra* note 50, chapter 9 for a very thorough analysis of the commercialization of universities and research. In the context of legal education, Boyd explains that "[e]ducation is constructed as a commodity, with students (and their future employers) as the consumers, demanding results to warrant increasingly high tuition fees": See Boyd, *supra* note 49 at 288. See also Backhouse, *supra* note 3. See also Richard Taylor, Jean Barr & Tom Steele, *For a Radical Higher Education After Postmodernism* (Buckingham: Society for Research into Higher Education & Open University, 2002) at 83.

[70] For the impacts of tuition fees on legal education, see Jo-Anne Pickel, "What Will Rising Law School Tuition Fees Mean for Law and Learning?" (2003) 18:1 Canadian Journal of Law & Society 67. See also Taylor, Barr & Steele, *ibid* at 92.

[71] John Strain, Ronald Barnett & Peter Jarvis, eds., *Universities, Ethics and Professions: Debate and Scrutiny* (New York: Routledge, 2009) at 15.

[72] Stanley Aronowitz, *The Knowledge Factory: Dismantling the Corporate University and Creating True Higher Learning* (Boston: Beacon Press, 2000).

[73] See Becher & Trowler, *supra* note 59.

structures through top-down direction, and a conceptualization of knowledge and of learning that is "atomistic, mechanistic and explicit."[74] Becher and Trowler explain what this new form of governance has meant for universities:

> Within university institutions this has meant the development of corporate strategies, strong central management teams, a proliferation of cross-institutional support units concerned with quality assurance, teaching and learning, staff development and so on. The result has been to shift the focus away from the academic department in terms of initiatives and to impose a greater scrutiny of the department's documents, practices and policies from the centre, including the appointment of committees to monitor departmental research activities and strategies. Increasingly departments and academics are expected to meet corporately determined standards.[75]

Eastman adds that this has also meant "decentralising resource allocation to expose faculties to resource scarcity and allocation" in order to encourage them to seek new revenues.[76]

(iv) The changing nature of knowledge

The nature of knowledge, and with it the role of the academic, have also changed dramatically in the last few decades. Knowledge is now a commodity in a globalized market system. Universities no longer have a privileged position for the production and the dissemination of knowledge, as it is produced by governments, private entities, interest groups, the media, and even individuals[77] and disseminated globally with ever increasing ease and speed. Becher and Trowler note that the special status of academic knowledge has thus become outdated.[78] Knowledge is also changing from disciplinary-based knowledge towards "trans-disciplinary knowledge located in a context of

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[74] *Ibid* at 10.

[75] *Ibid* at 11 (references omitted).

[76] Apparently this worked amazingly well, the institution having decentralised its budget the most increasing its non-government revenue by 335% between 1990/91 and 2001/2002 compared with 197% and 80% for the other three institutions: Julia Antonia Eastman, "Revenue Generation and Its Consequences for Academic Capital, Values and Autonomy: Insights from Canada " (2007) 19:3 Higher Education Management and Policy 1 at 10-11.

[77] Light, Cox & Calkins, *supra* note 52 at 8-9.

[78] Becher & Trowler, *supra* note 59 at 13.

application".[79]   Boyd also warns against the commodification of knowledge, where applied knowledge is sought after and encouraged as it can be exported around this globalized world.[80] Governments now show a preference to support applied research instead of fundamental or basic research,[81] thus sending a strong message as to the (non) value of knowledge for its own sake.   Moreover, in an accounting perspective on excellence, the quantity of knowledge produced matters as much if not more than the quality of it. [82] Theoretical and critical scholarly reflections thus become marginalized.

In an increasingly privatized higher education context, Boyd explains, the consumers of this commodified legal knowledge, most likely business interests or law firms, are also invited to financially support university-based legal education, and are thus more likely to influence the shape of legal education.[83]   For example, because most university buildings were constructed about fifty years ago, law faculties are doing extraordinary feats in attracting private funding in order to finance new buildings,[84] because funding for infrastructures no longer comes from universities or governments.

This neoliberal context also leads to competitive environments, both within the university between different faculties, between law schools, and between law students. Law faculties thus compete to hire the "best" scholars (and thus faculty members), for research funding and for private funding. Moreover, law schools increasingly compete for

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[79] Light, Cox & Calkins, *supra* note 52 at 9 citing M. Gibbons et al, *The New Production of Knowledge: the Dynamics of Science and Research in Contemporary Societies* (London, SAGE, 1994). See also Becher & Trowler, *supra* note 59 at 7.

[80] Boyd, *supra* note 49 at 288. As an example of the commodification of knowledge, Boyd cites the SSHRC's transformation from a "granting council" to a "knowledge council".

[81] Fallis, *supra* note 50 at 10. A good example of this are the recent changes to SSHRC rules of funding, which show a preference to research that is based in the community, carried out with community partners instead of individual research projects. The Harper government also recently created 19 Excellence Research Chairs in order to attract the best researchers with $10 million each over 7 years, but all of these 19 chairs were in applied sciences (more specifically in environmental sciences and technologies; natural resources and energy; health and related life sciences and technologies; and information and communications technologies) and none in social sciences or the humanities,: see "Canada's $200-million lure pulls in 19 big-name researchers", Globe and Mail, May 17, 2010,
http://www.theglobeandmail.com/news/politics/canadas-200-million-lure-pulls-in-19-big-name-researchers/article1572362/ ; see also http://www.cerc.gc.ca/hp-pa-eng.shtml (accessed 8/6/2010) for a description of the program. It is also important to note that out of 19 Chairs, NONE went to women.

[82] Ramsden, *supra* note 60 at 3.

[83] Boyd, *supra* note 49 at 288.

[84] Examples include: McGill, UBC, University of Saskatchewan.

higher rankings in national surveys such as *Maclean's* or *Canadian Lawyer* in order to attract the "brightest" students. Backhouse notes that this competition among law faculties has drastically changed since the *Arthurs Report*, which noted that there was little hierarchy between law schools, and leads, among other things, to huge marketing budgets directed at potential students, donors and alumni.[85]   Fallis notes that the trend is also present in higher education where Canada's multiversities now compete with each other and with institutions worldwide for students, funding and partnerships.[86]

(v)   Globalization

Globalization[87] also constitutes an external pressure on higher education. It means that universities are competing not only against other national universities, but with institutions globally.[88] Fallis notes that globalization has changed the face of education in internationalizing the curriculum[89] and the student body,[90] who now come from all over the world, even at the undergraduate level. Even though this is less so the case in the study of law at the undergraduate level in Canada, it becomes apparent at the graduate level where law faculties are recruiting more and more international students for their ever increasing Masters' programs. Fallis also notes that globalization challenges the idea of a liberal education and its central values of citizenship, national community and

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[85] Backhouse, supra note 3 at 28. She states that "over the past decade, the environment within which law schools function has started to transform from a fundamentally egalitarian structure into a competitive, hierarchical model": ibid, at 33. See also Margot E. Young, "Making and Breaking Rank: Some Thoughts on Recent Canadian Law School Surveys" (2001) 20 Windsor Y.B. Access Just. 311.

[86] Fallis, *supra* note 60, chapter 10. Fallis defines a multiversity as "..sprawling conglomerates providing undergraduate liberal education, graduate education, and professional education. They are the core of society's research enterprise, the source of innovation and ideas. Often called research universities, the multiversities average more than 20,000 students each and have become the dominant institutional form for universities in the Anglo-American world and powerfully influential institutions in our society." *Ibid* at 3.

[87] Becher and Trowler define it as "the development of global flows of information and resources along networks transcending nation states' influence and disturbing nationally-organized systems and practices. Such networks intimately connect the local and the global and may have any combination of physical, social and economic characteristics.": See Becher & Trowler, *supra* note 59 at 2. See also Strain, Barnett & Jarvis, *supra* note 71 at 16-21 for different definitions of globalization.

[88] Fallis, *supra* note 50 at 10, and chapter 10.

[89] This means more international content across the curriculum, the objective of preparing graduates who are internationally knowledgeable and interculturally competent, students taking more language courses, opportunities to study abroad: see Fallis, *ibid* at 314. We have seen this in law programs in Canada, with an explosion of international law courses and numerous opportunities to study one or two semesters abroad in Europe, South America and Asia.

[90] Fallis, *ibid* at 314.

national culture.[91] Bill Readings explains the impact of globalization on national culture and, as a result, on the function of the university:

> ...since the nation-state is no longer the primary instance of the reproduction of global capitals, "culture" - as the symbolic and political counterpart of the project of integration pursued by the nation-state - has lost its purchase. The nation-state and the modern notion of culture arose together, and they are, I argue, ceasing to be essential to an increasingly transnational global economy. This shift has major implications for the University, which has historically been the primary institution of national culture in the modern nation-state.
>
> ... The University no longer has to safeguard and propagate national culture, because the nation-state is no longer the major site at which capital reproduces itself. Hence, the idea of national culture no longer provides an overarching ideological meaning for what goes on in the University, and as a result, what exactly gets taught or produced as knowledge matters less and less. [92]

There is no doubt that globalization is also one of the many causes of the decline of the welfare state[93] and has thus contributed to the commercialization of higher education.[94] However, Fallis also mentions the positive effect that globalization can have on higher education:

> Globalization requires higher spending on universities and calls upon the scholars of the multiversity to better understand other nations and cultures and also to explain the turbulent dynamics of globalization. Education and research become more valuable with globalization. The challenge is to realize the opportunities without sacrificing the ideals.[95]

(vi) Students

An encouraging change in the demographics of legal education and of legal practice has also accompanied the corporatisation of legal education and of higher education.

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[91] *Ibid* at 330.

[92] Readings, *supra* note 52 at 12-13.

[93] Fallis downplays its importance in the creation of the "constrained welfare state": Fallis, *supra* note 50.

[94] See Fallis, *ibid* at 299. See also Sheila Slaughter and Larry L. Leslie, *Academic Capitalism: Politics, Policies and the Entrepreneurial University*, (Baltimore: John Hopkins University Press, 1997) for the critique of globalization and its creation of academic capitalism.

[95] Fallis, *supra* note 50 at 319.

Women, visible minorities, aboriginals, disabled persons and gays and lesbians have gained greater access to legal education and to the law professoriate in Canada, and have thus influenced perspectives on law and pedagogy.[96] On the other hand, wider access to higher education, although positive, has also meant that teachers are faced with larger and more diverse groups of students with a huge range of abilities and backgrounds.[97] McInnis has shown that for a great proportion of academics in Australia, this can hinder the quality of their teaching.[98]

Moreover, individual students as well as students as a "stakeholder" group in higher education represent a considerable pressure on academics. Students are now considered consumers or clients of higher education institutions. They demand more of their teachers for the education they pay higher and higher tuition fees for and institutions of higher education have largely been attentive to student satisfaction.[99] Ramsden summarizes what this trend has meant for teachers:

> It is little exaggeration to say that these changes, taken together, mean that the average university teacher is now expected to be an excellent teacher: a man or woman who can expertly redesign courses and methods of teaching to suit different groups of students, deal with large mixed-ability classes, apply information and communication technology appropriately, and inspire students with zero tolerance for delay whose minds are probably on their next part-time job rather than on the pleasures of learning. [100]

In legal education, this rising consumerism results in student demands for "skills-based training, curriculum that reflects the globalization of the marketplace, and greater access

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[96] See Arthurs, *supra* note 14 at 25. For an empirical study of law students in Canadian legal education, see Chartrand et al., *supra* note 4. See also Pue & Tong, *supra* note 3 for an explanation of admission policies and diversity. Although the numbers have increased, there is still a huge discrepancy between what those numbers are and what they should be, especially for visible minorities, aboriginal and disabled students and faculty. For example, as we will see in chapter 3, in order to protect the anonymity of participants, I could not identify them by race or disability in this study.

[97] Ramsden, *supra* note 60 at 4. See also Fallis, *supra* note 50 at 168-169; Noel James Entwistle, "Taking Stock: An Overview of Key Research Findings" in Julia Christensen Hughes & Joy Mighty, eds., *Taking Stock: Research on Teaching and Learning in Higher Education* (Montreal & Kingston: McGill-Queen's University Press, 2010) 15 at 38.

[98] In a survey of 2609 Australian academics carried out in 1999, 50% said that the wide variety of student abilities is a problem for their teaching and 46% said having too many students in their classes constitutes a hindrance to their teaching: see Craig McInnis, "Changing Academic Work Roles: The Everyday Realities Challenging Quality in Teaching" (2000) 6:2 Quality in Higher Education 143 at 147. See also Fallis, *ibid* at 169.

[99] This was confirmed in an empirical study of revenue generation in 4 Canadian universities, and especially in the professional schools (although law is not named specifically): See Eastman, *supra* note 76 at 6.

[100] Ramsden, *supra* note 60 at 4.

to extra-curricular programming"[101] such as career placement.[102] Ensuring "consumer satisfaction" with current and past students has therefore become an increased area of concern for law faculties. For example, the Law School Student Engagement (LSSE) survey has found its way into many law faculties starting in 2005.[103] In 2007, eleven law faculties participated in the annual survey.[104] Ironically, Bill Readings points out that students who consider themselves as consumers rather than as members of a community are less likely to give back to their institution once they graduate.[105]

More recently, the generation of students who sit in higher education classrooms also present new challenges for teaching and learning. Light, Cox and Calkins describe the "millenials", those students born between 1982 and 2002:

> Millenial students tend to have lived more sheltered and protected lives and, as such, to be more rule-abiding and conventional, and more likely to expect authorities to intervene when problems arise. They look for structure and answers, and expect the terms of their learning to be clearly defined. Although team-oriented they also feel pressured to perform individually to succeed. Moreover, they are more technologically literate than any generation that has preceded them, and expect to be able to connect virtually with others at any time. Finally, they are more likely to be socially aware of diversity and the importance of social and civic engagement, and expect a college to provide them with a sense of purpose.[106]

Oblinger lists the following additional characteristics of millenials:
- they identify with their parents' values and feel close to their parents;
- they spend more time doing homework (or on the internet!) than watching TV ;

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[101] Backhouse, *supra* note 3 at 28.

[102] Margaret Thornton, speaking about a similar Australian trend in legal education has written about the move from the liberal to the "technocentric" approach: Thornton, supra note 30 ; Margaret Thornton, "The Idea of the University and the Contemporary Legal Academy" (2004) Sydney L.Rev 36.

[103] The LSSE is an annual survey of law students in the US and Canada that "collects information directly from law students about how they spend their time, what they experience during their legal training, and how they benefit from the law school experience": See LSSE 2006, at 1.

[104] Council of Canadian Law Deans, *An Overview of Canadian Common Law Education (LL.B./J.D.): Report to the Task Force on the Approved Law Degree*, May 2008 at 7 (see footnote # 10). These 11 schools are: UBC, Dalhousie, New Brunswick, McGill, Osgoode, Ottawa (Common Law), Saskatchewan, Toronto, Victoria, Western and Windsor.

[105] Readings, *supra* note 52 at 11.

[106] Light, Cox & Calkins, *supra* note 52 at 10 citing Neil Howe & William Strauss, *Millenials Rising: The Next Great Generation* (New York: Vintage, 2003). See also Diana Oblinger, "Boomers, Gen-Xers and Millenials: Understanding the New Students" (2003) 32:4 Educause Review 36 at 38.

- they believe 'it's cool to be smart';

- they are racially and ethnically diverse and often have at least one immigrant parent;[107]

The millenials, who grew up playing Nintendo games, take a trial and error more than logical approach to learning, they see multi-tasking as a way of life and prefer typing to handwriting.[108]   Because they are so technologically savvy, they consider computers as part of their natural environment and often perceive the use of technology in schools as inadequate or even "uninspiring"![109] They also communicate and create social networks using technology; they use instant messaging to keep in touch and e-mail and instant messaging to contact teachers or classmates about school work.[110] At the university level, 19% of students use e-mail to communicate with professors although 55% use e-mail to arrange meetings with professors, and 75% use it to clarify assignments.[111]

Light, Cox and Calkins also describe the new "student-as-product" approach which is also part of the discourse of excellence mentioned above:

> Collectively, the student-product needs to be larger in number and more diverse. Individually, students need to have developed a range of key transferable and higher-order thinking skills, including meta-learning, the ability to learn from learning.[112]

Oblinger also mentions that because of their competitive desire to attract the best students, institutions of higher education have attempted to meet students' expectations, for example by the reduction or elimination of delays in student services,

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[107] Oblinger, *ibid* at 38.

[108] Oblinger, *ibid* at 39, citing Jason Frand, "The Information Age Mindset: Changes in Students and Implications for Higher Education" (2000) 35:5 Educause Review 15.

[109] Oblinger, *ibid* at 38-39.

[110] *Ibid* at 39.

[111] *Ibid*.

[112] Light, Cox & Calkins, *supra* note 52 at 10.

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constant and rapid customer services, and the creation of online laboratories.[113] Although there should be limits to what institutions of higher education do to adapt to these students, the reality is that because of the consumerism entrenched in higher education students put yet more pressure on institutions and on professors. As we will see in chapter 6, students are a huge factor in professors' pedagogical choices, and not always in their best interest or in the interest of legal education.

(vii)　Decreased government funding

Unfortunately, the increased involvement of government and society in the business of higher education and the increase in the number of people accessing it have not meant increased public support of higher education. On the contrary, the trend since the 1990s has been a withdrawal of government spending in higher education.[114] The consequences on higher education are described by Fallis:

> As the rising demand for university education confronts the public sector spending limits, the squeeze in the pincers will be intense. The imperative to find new money will be inescapable and increasing. Multiversities, individually and collectively, will lobby politicians, civil servants, and voters to increase operating grants. Tuition fees will increase. Professors will aggressively pursue research grants and contracts. Sophisticated fundraising campaigns will increase private donations. No doubt each revenue source will be increased by these extraordinary efforts. But across the entire system of multiversities, it will not be enough to prevent a decline in real expenditures per student. The casualty will be the quality of education and research.[115]

These external and internal pressures have huge impacts on the day to day lives of academics and on the nature of professorial work, including teaching and learning. These forces have also dramatically increased pressures and demands on their time and their workloads, as explained by Light, Cox and Calkins:

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[113] Oblinger, *supra* note 106 at 43-44.

[114] See Fallis, *supra* note 50, chapter 8. Fallis refers to this as the "Constrained welfare state". See a report by the OECD: OECD, *On the Edge: Securing a Sustainable Future for Higher Education*, OECD/IMHE-HEFCE project on financial management and governance of higher education institutions, (Paris:OECD, 2004), available online: www.oecd.org/dataoecd/20/24/38309943.pdf (accessed 10/06/2010)

[115] Fallis, *supra* note 50 at 166.

The demands on their time and the complexity of those demands are changing and escalating almost exponentially. Academics have been overwhelmed with a rapid expansion in both the number and diversity of students, without a corresponding boost in staff or resources... Pressures to increase research and scholarship activities have mushroomed as they have taken unprecedented priority in university preoccupations, while research funds have become more fiercely contested, more difficult to attain and often the realm of already powerful departments.[116]

The results for many academics are decreasing work conditions, levels of job satisfaction and career outlooks,[117] and well-being generally.[118] McInnis documented that the pressures on academics, increases in student bodies and decreased government funding all have a negative impact on the quality of teaching and warns that the gap between the rhetoric on quality and the reality is likely to widen.[119] Rhodes argues that these changes to the context of higher education are also "eroding the sense of shared mission and collective responsibility that sustain a well-functioning professional community."[120] In her empirical study of academics, she found that new professors are disappointed in the lack of collegiality and common purpose.[121]

Moreover, universities and academics have to become more and more businesslike,[122] for example, by developing abilities such as marketing oneself, one's research and one's teaching.[123] Some academics I talked to have integrated this higher-education-as-business

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[116] Light, Cox & Calkins, *supra* note 52 at 2. See also Ramsden, *supra* note 60 at 3-5 . Becher & Trowler, *supra* note 59 at 13. Studies have shown that the search for resources is one of the most important factors in the increased workload of academics: See Slaughter & Leslie, *supra* note 94; Craig McInnis conducted a survey of 2609 Australian academics in 15 universities: see McInnis, *supra* note 98 at 143.

[117] McInnis, *ibid* at 143. See also Becher & Trowler, *ibid* at 13.

[118] Becher & Trowler, *ibid* at 18.

[119] McInnis, *supra* note 98 at 143-144.

[120] Deborah L. Rhode, *In Pursuit of Knowledge: Scholars, Status, and Academic Culture* (Stanford, CA: Stanford University Press, 2006) at 27.

[121] *Ibid* at 26.

[122] Ramsden, supra note 60 at 3. Slaughter and Leslie have named this "academic capitalism": Slaughter & Leslie, *supra* note 94. See also Sheila Slaughter & Gary Rhoades, *Academic Capitalism and the New Economy : Markets, State, and Higher Education* (Baltimore, Md.: Johns Hopkins University Press, 2004).

[123] Light, Cox & Calkins, *supra* note 52 at 6. Or, as Fallis puts it, the commercialization of knowledge is now a responsibility of the multiversity: see Fallis, supra note 50 at 10. He documents that in 1999, the federal Ministry of Industry, Science and Technology created an Expert panel which recommended that commercialization become the fourth responsibility of universities, after teaching, research and service! (*ibid*, at 279.) Becher and Trowler refer to this as "marketizing knowledge": See Becher & Trowler, *supra* note 59 at 8-9.

view perspective into their own activities; they indeed consider themselves more like a small business then they do as being part of an institution.[124] Fallis notes that professors have taken on "new entrepreneurial tasks" by contracting with private firms, setting up their own sideline companies to commercialize their research (mostly in the sciences) and taking on consulting engagements.[125] To the expected scholarships of "integration, discovery, application and teaching",[126] Becher and Trowler tell us we must now add the "'scholarships' of leadership, management, administration and entrepreneurialism".[127]

Fallis tells us that the danger of this trend is what he calls "conflict of commitment" between one's duties to the university and one's outside duties.[128] Eastman, who conducted an empirical study on revenue generation in four Canadian universities also notes that the "teacher-scholar" model is "under great stress."[129] The ideals upon which the university was founded are most likely to suffer from the commercialization of multiversities. First, the commercialization of research means a radical shift from conceiving of ideas as being public to seeing them as private and for-profit,[130] and from the disinterestedness of research to the corporate support of research;[131] Fallis argues that these changes are fundamentally in contradiction with the aims of university research and higher education.[132]

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[124] Eastman also noted that decentralising budgets led to faculty empowerment but also faculty gaining more and more autonomy from the institution, thus identifying less with the institution: Eastman, *supra* note 76 at 11.

[125] Fallis, *supra* note 50 at 279-280.

[126] See Ernest L. Boyer, *Scholarship Reconsidered: Priorities of the Professoriate* (Princeton: Carnegie Foundation for the Advancement of Teaching, 1990).

[127] Becher & Trowler, *supra* note 59 at 18.

[128] Fallis, *supra* note 50 at 282-283.

[129] Eastman, *supra* note 76 at 7.

[130] Fallis, *supra* note 50 at 284.

[131] *Ibid* at 285.

[132] *Ibid*. See also Eastman, *supra* note 76 at 13, who says that devaluation of academic capital will lessen the university's autonomy and endanger academic freedom and therefore "lose their claim on society's resources" as they will no longer be able to provide disinterested information.

(C)   The goals of legal education

(i)   The legal education literature

The external pressures discussed in the previous section have had an influence on legal education and on higher education.[133]   Because of its historical context, its university setting and the forces mentioned above, Canadian legal education is also in a constant existential crisis in relation to its mission and educational objectives. For this reason, it is not my intention here to determine what the goals of Canadian legal education are or should be, but to explore what legal academics have written about what those goals are or should be.

As we saw above, the scholarship on Canadian legal education has unfortunately been constrained by the ongoing debate or 'unhealthy dichotomy' between the professional and academic aspirations of legal education.[134] Should law schools aim at giving students a liberal education or are they training technicians of the law? Or, in the words of Le Brun & Johnstone, are we 'educating' or 'training'?[135] If so, what does that mean when it comes to defining curricula, designing programs and defining hiring priorities?   In Canada, considering the history of the development of legal education, this has been the central question, a question that the stake holders in legal education still cannot answer definitively. Thus the aspirations and goals of individual law faculties and programs[136] reflect the dichotomy in that they embrace both the liberal and the professional orientations of legal education.

Indeed, at least since the publication of the *Arthurs Report* in 1983, one of the goals of Canadian legal education has been to provide to its students a liberal or a "humane and

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[133] Lebrun and Johnstone even say that in this context, "our individual and faculty concerns about the direction of legal education may appear somewhat insignificant.": see Lebrun & Johnstone, *supra* note 18 at 15.

[134] Brierley,*supra* note 18 at 15-17.

[135] Lebrun & Johnstone, *supra* note 18 at 13.

[136] These goals can be found faculty websites, more particularly mission statements, Deans' messages and, when they are listed, educational objectives.

professional legal education"[137] and not simply a vocational education. Whereas "classical" legal education, previous to the 1960s and 1970s, had aimed at knowledge of doctrine and basic analytical skills, "humane professionalism", states the Report, aims "to explore the legal system from the perspectives of other disciplines or to question the assumptions underlying legal rules, reasoning or institutions."[138] Lebrun and Johnstone criticize the focus of legal education on doctrinal teaching (i.e. the teaching of legal rules) and argue that it should be more theoretical and practical.[139]

Similarly, Bradney, writing from a UK perspective, argues that the ideal to which all law schools should aspire to is a liberal legal education:

> For Newman and for other writers on liberal education, a student may learn a great mass of technical information and still be wholly uneducated if they have not acquired the character and knowledge of connections that goes with that learning; if students cannot, in Nussbaum's phrase, 'call their minds their own' they will not, however much they know, be learned.[140]

For Martha Nussbaum, this means that liberally educated students should "have looked into themselves and developed the ability to separate mere habit and convention from what they can defend by argument. [Thus] [t]hey have ownership of their own thought and speech, and this imparts to them a dignity that is far beyond the outer dignity of class and rank."[141] For Barnett, the true aims and values of higher education are the pursuit of truth and objective knowledge, research, liberal education, institutional autonomy, academic freedom, a neutral and open forum for debate, rationality, the development of the student's critical abilities, the development of the student's autonomy, the student's character formation, providing a critical centre within society and preserving society's intellectual culture. [142]

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[137] See Arthurs Report, *supra* note 1 at 47.

[138] *Ibid*.

[139] Lebrun & Johnstone, *supra* note 18 at 26.

[140] Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Portland, Oregon: Hart publishing, 2003) at 40 citing John H. Newman, *The Idea of a University* (New York: Holt, Reinhart and Winston, 1960) and Martha Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education*. (Cambridge: Harvard University Press, 1997).

[141] Nussbaum, *ibid* at 293.

[142] Barnett, *supra* note 55 at 6-7.

Many legal academics[143] also incorporate the goal of citizenship to the vision of legal education expressed in the *Arthurs Report*. Brownsword defines citizenship as "intelligent participation in the politico-legal life of the community".[144] In fact, in Canada, educating for citizenship as well as for practice is one of the main reasons why legal education moved to the university; "[l]awyers need to be educated, in other words, not simply trained as technicians."[145] For Burridge and Webb, citizenship also means emancipation, which is defined by these authors as an education that "enables students to develop a shared, deep, understanding of, and to engage in critical discourse about, the values and achievements of their (or any) society."[146]

According to the literature, legal education should also ensure that law students develop an ability to think critically about the law. Critical thinking has also traditionally been a goal of higher education.[147] As mentioned in the *Arthurs Report*, there are "practical" advantages to the academic and critical study of law:

> ...while the cultivated ability to stand at a distance from conventional wisdom, to view it critically, must be defended on its intrinsic merits as being the essence of education, it also has at least three important "practical" benefits. It enables lawyers to adapt to changes when they occur, to assist in bringing about such changes through law reform and other public activities, and to accomplish change themselves in the limited context of serving individual clients whose interests do not coincide with accepted solutions.[148]

Legal education should also encourage students to situate law in its broader socio-economic and historical context. Susan Boyd argues that law schools have a responsibility "to ensure that students and those entering the legal profession understand that law is not simply a neutral set of norms, but rather, a site of struggle

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[143] Roger Brownsword, "Law Schools for Lawyers, Citizens and People" in Fiona Cownie, ed., *The Law School: Global Issues, Local Questions* (Darmouth: Aldershot, 1999) 26; Roger Burridge & Julian Webb, "The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in Law Schools" (2007) 10:1 Legal Ethics 72

[144] Brownsword, *ibid* at 29; Burridge and Webb adopt Brownsword's definition: Burridge & Webb, *ibid* at 74.

[145] Rochette & Pue, *supra* note 5 at 187. Rochette and Pue point out that educating citizens has always been an aspiration of Canadian legal education: see references in footnote #55.

[146] Burridge & Webb, *supra* note 143 at 78-79.

[147] Ramsden, *supra* note 60 at 22. Ramsden cites studies and surveys dating back to the 1970s that demonstrate that this is an important objectives of most lecturers and academics.

[148] Arthurs Report, supra note 1 at 49-50.

over social meanings."[149] As Bakht et al point out, the ability of students to situate law "in its multiplicity of contexts" is central to law faculties' mission.[150] These authors argue that "outsider pedagogy" is important because it "ensures that the relationship between law and marginalized groups is the focus of some attention in legal education",[151] which is in turn important to society for the following reason:

> Because law schools are training tomorrow's legislative policy makers, politicians, lawyers, judges, and legal scholars, it is imperative that students be educated to think in rigorous and sophisticated ways about outsider communities and the law.[152]

Legal academics have also argued that legal education should teach about professionalism and legal ethics. Although ethics teaching has been considered an important part of legal education for a while,[153] the initiative by the Federation of Law Societies to impose a mandatory course in ethics and professional responsibility in university legal education[154] has prompted many legal academics to write about it.[155] British and some Canadian authors have also debated on the very different meanings of "ethics" in a liberal legal education or a professional context. [156]

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[149] Susan Boyd, "Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law" (2001) 20 Windsor Y.B. Access Just. 141 at 143.

[150] In a recent study on "outsider" course selection, Bakht et al demonstrate that some "outsider" courses, although they experienced an increase in enrollment in the late 1980s and early 1990s, have been declining in the last few years: See Bakht et al., *supra* note 3 at 682.

[151] *Ibid* at 674.

[152] *Ibid* at 680.

[153] See W. Brent Cotter, *Professional Responsibility Instruction in Canada: a Coordinated Curriculum for Legal Education* (Montreal: Conceptcom, 1992) ; Alvin Esau, "Teaching Professional Ethics and Responsibility at Law School: What, How and Why?" in Mr. Justice Matas & McCawley, *supra* note 16, 224.

[154] For an interesting debate about the place of ethics and professionalism in university education generally, see Strain, Barnett & Jarvis, *supra* note 71.

[155] See, for example, Richard F. Devlin, Jocelyn Downie & Stephanie Lane, "Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools" (2007) 65 Advocate 671; Adam M. Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46 Osgoode Hall L.J. 32; Bruce P. Elman, *Creating a Culture of Professional Responsibility and Ethics: A Leadership Role for Law Schools* (University of Western Ontario: The Law Society of Upper Canada, 2007); Stephen G.A. Pitel, "The Teaching of Legal Ethics: Recent Developments in Ontario" (2005) 55 J. Legal Educ. 592; Alice Woolley & Sara Bagg, "Ethics Teaching in Law School" (2007) 2 Canadian Legal Education Review 85; Lorne Sossin, "Can Ethics Be Taught" (2007) 26 The Lawyers Weekly 5; Volume 4 of the Canadian Legal Education Annual Review is also dedicated to teaching legal ethics.

[156] See for example, Burridge & Webb, *supra* note 143; W. Wesley Pue, "Educating the Total Jurist?" (2005) 8:2 Legal Ethics 208; Fiona Cownie, "Alternative Values in Legal Education" (2003) 6 Legal Ethics 159; W. Bradley Wendel, "Value Pluralism in Legal Ethics" (2000) 78 Wash. U.L.Q. 113.

Ironically, as Strain, Barnett and Jarvis point out, one of the key challenges to the "ethical authority" of universities have been the professions and the professional bodies:

> The professions are becoming increasingly the guardians of the public's ethics and to that extent they offer a challenge to what might be considered the ethical primacy of the academic arena of ethics.
>
> The difficulties universities face in responding to this challenge is exacerbated by two factors. First, there is pressure from the professions for ethics to be conceived as conformance with external demands, rather than as as the exploration of criteria by which such demands might be judged as beneficent, wise, or in various other senses, good. Second, the limited coherence between the demands made by external agencies risk fragmentation in the contribution of universities to ethical formation.[157]

Closely related to professionalism and ethics is the idea of reflective practice. Donald Schön and his followers have argued that legal and professional education should aim to encourage reflective practice in our students and graduates through an education that would promote reflection and emphasize the "development of responsiveness to change, flexibility and professional self-growth".[158] Putting all of these ideas together, Andrew Goldsmith argues for a critical and ethically-oriented understanding of lawyers' social role and responsibilities through self-examination and self-critique.[159]

According to the literature, these are some of the goals that legal education aspires to. However, for legal education and for higher education, the pressures described in the previous sections have huge impacts on the mission and ideals of higher education, as well as on the role of universities in society, as perceived both by the institutions of higher education and their stakeholders. The existential crisis of legal education thus finds its context in a higher education that is now facing, as Fallis puts it, a mission crisis.[160]

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[157] Strain, Barnett & Jarvis, *supra* note 71 at 7.

[158] Donald A. Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*, 1st ed. (San Francisco: Jossey-Bass, 1987); Donald A. Schön, "Educating the Reflective Legal Practitioner" (1995) 2 Clinical Law Review 231. See also Julie Macfarlane, "Assessing the 'Reflective Practitioner': Pedagogic Principles and Certification Needs" (1998) 5:1 Int'l J. of the Legal Profession 63 at 64. See also Rochette & Pue, *supra* note 5 at 188.

[159] Andrew Goldsmith, "'Failed Sociologists' in the Marketplace: Law Schools in Australia" (1998) 25 Journal of Law and Society 33 at 47. See also Rochette & Pue, *ibid* at 188.

[160] Fallis, *supra* note 50 at 7.

(ii)   Higher education's mission crisis

Fallis describes the university, or today's multiversity, as a conglomerate of four historically based ideas: the university as a place of undergraduate liberal education, for graduate education and basic research, for professional schools and as a place of accessible education and applied research. Fallis explains that these ideas still shape today's multiversity mission and its resulting tensions "between elite education and accessible education, between teaching and research, between withdrawal from the world and engagement, between knowledge valued for its own sake and knowledge valued for its utility, between specialized learning and generalized learning, between the humanities and sciences".[161] To these four ideas he adds a new and current idea: the university as an institution of the economy. Under this idea, universities offer educational services for improving "human capital". The new discourse, or grand narrative, he argues, conflicts with the other values of a university:

> The discourse, the grand narrative - of the entrepreneurial multiversity responsible for commercializing its research - is new. It conflicts with other parts of the multiversity's mission, with other discourses, and other narratives - narratives of liberal learning, disinterested scholarship and social citizenship.[162]

Further, Fallis argues that this new idea of the university is likely to overwhelm the other four because universities today need to justify their existence to society and because commercialized research will increase revenues for universities desperate for new sources of funding.[163] This new discourse will also shape the way we look at education, where "attendance at a university is described as the acquisition of human capital" in order to increase future income.[164] In this kind of discourse, there is no place for knowledge for its own sake, no place for education for citizenship and "no place for

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[161] *Ibid* at 34.

[162] *Ibid* at 294.

[163] *Ibid*.

[164] *Ibid* at 295.

educating professionals to be sensitive to the public interest".[165] Fallis also explains how this new idea is changing even the language of the essence of higher education:

> Also, in this model, our language has changed: the relationship in the classroom is no longer between professor and student, engaged in teaching and learning; rather, it is an economic exchange between a provider of education and a customer who wants to invest in human capital.[166]

Writing in 1990, Ronald Barnett states that the dominant view on higher education and its aims is the functionalist view, which he describes as follows:

> There are a number of elements to the functionalist view: it is not so much a particular view as a general perspective. It includes the tendency to understand higher education in terms of the values and goals of the wider society, and the drive to evaluate the effectiveness of higher education in terms of its demonstrable impact on the wealth-generating capacity of society. As a result, the costs of higher education and its contribution to the economy through supplying qualified personnel come to the fore.[167]

Becher and Trowler also highlight that there has been government policy emphasis on making the higher education curriculum more vocationally-oriented, which has meant "the de-emphasizing of its other roles, those concerned with the general development of individuals' minds and capabilities, contributing culturally to the community and enhancing knowledge and understanding for their own sakes rather than for utilitarian ends." [168] They deplore the use of learning outcomes as being "the unit of currency" and the fact that academics "may be viewed as exchangeable deliverers of learning outcomes rather than as subject specialists with unique contributions to make."[169]

Becher and Trowler might then disagree with Hativa, who argues that the goal of university education is "to prepare students for their adult life, particularly for their

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[165] *Ibid*.

[166] *Ibid*.

[167] Barnett, *supra* note 55 at 4. Fallis also mentions that many outside the university think the goal of the university is to prepare students for a job: see Fallis, *ibid* at 6.

[168] Becher & Trowler, *supra* note 59 at 5. See also Taylor, Barr & Steele, *supra* note 69, chapter 8.

[169] Becher & Trowler, *ibid* at 10.

professional life", [170] although Hativa rejects the view of university education as the transmission of knowledge. However, they might agree with what she thinks about teaching, which is that it should promote students' understanding, that is, "their capacity to apply new knowledge to a variety of tasks and situations"[171] and encourage them to think "by explicitly teaching them to use organizers of thoughts, decision-making approaches and reflection, and by promoting their tendencies for thinking."[172] Entwistle argues that the purpose of higher education goes beyond the acquisition of knowledge and skills and that graduates "need to have acquired a personal conceptual understanding of the main ideas and ways of thinking in their area of study so as to experience learning that lasts."[173] He also adds that students should be able to recognize what is required of them when they meet a new challenge or task, "to monitor their own processes of thinking" in order to tackle the task, and to "be aware of the opportunities available to them within their current environment to help" in accomplishing the task. [174] As he explains, this depends on having sophisticated conceptions of knowledge and of learning (see Figure 2-4) and a disposition towards deep approaches to learning, [175] as we will see in chapter 2.

Voices of resistance to the utilitarian view of education have however been numerous and vocal, in both the higher education and the legal education literature.[176] Barnett argues for a return to a liberal education, the ideal espoused by Plato, then by Cardinal Newman, that of "a higher form of understanding, gained through self-reflection on what is taken for knowledge."[177] According to Barnett, higher education should have three key objectives:

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[170] Nira Hativa, *Teaching for Effective Learning in Higher Education* (Boston: Kluwer Academic Publishers, 2000) at 38.

[171] *Ibid*.

[172] *Ibid*.

[173] Entwistle, *supra* note 97 at 43.

[174] *Ibid*.

[175] *Ibid*.

[176] In the legal education literature, see, for example, Pue, *supra* note 156; Rochette & Pue, *supra* note 5; Paul Maharg, *Transforming Legal Education : Learning and Teaching the Law in the Early Twenty-first Century* (Aldershot, England ; Burlington, VT: Ashgate, 2007); Anthony Bradney & Fiona Cownie, eds., *Transformative Visions of Legal Education* (Oxford: Blackwell publisher, 1998).

[177] Barnett, *supra* note 55 at 20.

to create epistemological and ontological disturbance in the minds/beings of students; to enable students to live at ease with this perplexing and unsettling environment; and to enable them to make their own positive contributions to this super-complex world.[178]

Close to Barnett's view of higher education, Taylor, Barr and Steele argue for a new, radicalized higher education devoted to principles of democracy and critical thinking, among other things. They reject the elitism associated with traditional liberal education, but hold on to some elements of its vision, and argue for "…a revitalized liberal social purpose approach, couched within a radical and egalitarian framework", collective rather than individualistic, and part of a movement for egalitarian social change.[179] They explain the purpose of higher education:

> The fundamental purpose of a truly higher education learning experience must centre on developing an understanding of the values of democracy and equality in social life, as well as personal development that hones critical expertise, the creative faculties and intellectual rigour.[180]
>
> …
>
> The new form of radical social purpose education, we argue, has therefore to attend to the kind of education that facilitates the development and growth of individuals capable of leading fulfilling and responsible lives and who have a reflexive grasp of what is in the best interests of themselves, their families, their communities and their society.[181]

On the other hand, Fallis argues for a re-examination of the "rationale for the liberal education in a postindustrial democratic society."[182] He thinks that we need a new idea of the university and that in addition to the five ideas of the university described above, the multiversity should be viewed as an institution of liberal democracy and it should have a mission to contribute to democratic life.[183] Fallis therefore does not completely reject the idea of the university as an institution of the economy. He also argues that as

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[178] Light, Cox & Calkins, *supra* note 52 at 68, citing Ronald Barnett, *Realising the University* (Buckingham: Open University Press and Society for Research into Higher Education, 2000) at 160. See also Bradney, *supra* note 140.

[179] Taylor, Barr & Steele, *supra* note 69 at 103-104.

[180] *Ibid* at 159.

[181] *Ibid* at 161.

[182] Fallis, *supra* note 50 at 65.

[183] *Ibid* at 343.

an institution of liberal democracy, the university should therefore be held accountable.[184] He explains that for professional education, this means an education that is attentive to issues of client interests and public interest.[185]

In summary, the literature in Canada on what the goals of legal education should be is rich, diverse and plentiful. In fact, the debates on this issue, largely maintained because of the continued dichotomy between the professional and the academic aspirations of legal education, have dominated the conversations about legal education and limited the discussion to questions of 'what' legal education should accomplish to the exclusion of questions of 'how' it should be accomplished. In order to be able to analyse our findings as to the "how", we therefore need to turn to the teaching and learning literature which we explore in the next chapter.

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[184] *Ibid* at 347.

[185] *Ibid* at 346.

CHAPTER 2 - TEACHING AND LEARNING

(I) Introduction

Without giving into the neoliberal and consumerist view of legal education and higher education about preparing students for employment in the market, there are many reasons why we should, in legal education, pay attention to and encourage good teaching. The first reason we should care about good teaching is that institutionally and individually we want our students to be able to achieve our educational objectives. Even though learning is something that happens in students, good pedagogy is important because it helps students to learn. As Leamnson points out, the brilliant and highly motivated students do not need teachers in order to learn; they only need to be told what is important and they will by and large learn it on their own.[1] However, that is not true for most of the other students sharing the same class, who need our teaching and assistance in order to achieve our educational objectives. Secondly, Ramsden encourages all teachers to want to improve their teaching simply because "good teaching, though never easy, always strenuous, and sometimes painful, is nevertheless its own reward."[2]

In this chapter we look more closely at teaching and learning. First we look at the literature on teaching and learning more specifically in legal education (Part II). Then we look to the teaching and learning literature (Part III) in order to define teaching, to establish some criteria with which to measure effective or good teaching (section (A)), and to explain what learning is and how it occurs, which we do in section (B). Finally, in order to be able to connect teaching with student learning, we look at to the literature on conceptions of teaching (section (C)).

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[1] Robert Leamnson, *Thinking about Teaching and Learning: Developing Habits of Learning with First Year College and University Students* (Sterling: Stylus, 1999) at 2.

[2] Paul Ramsden, *Learning to Teach in Higher Education*, 2nd ed. (London; NY: RoutledgeFalmer, 2003) at 6.

(II) Teaching and learning in legal education

We saw in chapter 1 that the literature on Canadian legal education has been somewhat hijacked by the debate as to its fundamental mission, more specifically on whether legal education should have liberal or vocational aims. The result of this emphasis on the mission of legal education is that there is little research and even less empirical research on teaching and learning in Canadian legal education, although this is beginning to change with the new Canadian Legal Education Annual Review, which aims to encourage the scholarship of teaching and learning among Canadian legal academics. Most of the literature in Canada centers around the debates on the goals of legal education[3] or explores issues of diversity, equity and access to legal education.[4] Of the literature that discusses learning in legal education, three main kinds of scholarship emerge. The first kind applies learning theory to legal education to question the status quo and/or offer some suggestions for improving teaching in Canadian legal education.[5] The second kind of scholarship is mostly anecdotal and allows legal academics to share best practices or teaching stories. Although this type of sharing goes a long way to encourage conversations about teaching and learning, it is rarely empirically-based and often not

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[3] See, for example, Constance Backhouse, "The Changing Landscape of Canadian Legal Education" (2001) 20 Windsor Y.B. Access Just. 25; Constance Backhouse, "Revisiting the Arthurs Report Twenty Years Later" (2003) 18:1 C.J.L.S. 33; H.W. Arthurs, "Globalization of the Mind: Canadian Elites and the Restructuring of Legal Fields" (1997) 12 C.J.L.S. 219; Harry W. Arthurs, "The Political Economy of Canadian Legal Education" in Anthony Bradney & Fiona Cownie, eds., *Transformative Visions of Legal Education* (Oxford: Blackwell Publishers, 1998) 14; H.W. Arthurs, "Poor Canadian Legal Education: so Near to Wall Street, so Far from God" (2000) 38 Osgoode Hall L.J. 381; G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in D Flaherty, ed., *Essays in the History of Canadian Law* (Toronto: University of Toronto Press, 1983) 49; Susan Boyd, "Corporatism and Legal Education in Canada" (2005) 14:2 Social and Legal Studies 287;W. Brent Cotter, *Professional Responsibility Instruction in Canada: a Coordinated Curriculum for Legal Education* (Montreal: Conceptcom, 1992); Mr. Justice Matas & Deborah McCawley, eds., *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba* (Montreal: Federation of Law Societies of Canada, 1987); John P.S. McLaren, "The History of Legal Education in Common Law Canada" in Mr. Justice Matas & Deborah McCawley, *ibid*, 111-141; W. Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water" (1996) 23 Manitoba L.J. 654; W. Wesley Pue "Legal Education's Mission" (2008) 42 The Law Teacher 270; Theresa Shanahan, "A Discussion of Autonomy in the Relationship Between the Law Society of Upper Canada and the University-Based Law Schools" (2000) 30:1 The Canadian Journal of Higher Education 27.

[4] See for example, Hugh MacAuley, "Improving Access to Legal Education for Native People in Canada: Dalhousie Law School's I.B.M. Program in Context" (1991) 14 Dalhousie L.J.133; Natasha Bakht et al., "Counting Outsiders: A Critical Exploration of Outsider Course Enrolment in Canadian Legal Education" (2007) 45 Osgoode Hall L.J. 667; Larry Chartrand et al., "Law Students, Law Schools and Their Graduates" (2001) 20 Windsor Yearbook of Access to Justice 211.

[5] See for example, Julie Macfarlane, "The Legal Skills Movement Ten Years On: Triumph or Compromise?" (1997) 29 J. of Law and Society;Julie Macfarlane, "Assessing the 'Reflective Practitioner': Pedagogic Principles and Certification Needs" (1998) 5:1 Int'l J. of the Legal Profession 63; Julie MacFarlane & John Manwaring, "Using Problem-Based Learning to Teach First Year Contracts" (1998) 16:2 Journal of Professional Legal Education; Shelley M. Kierstead and Erika Abner, "A Preliminary Exploration of the Elements of Expert Performance in Legal Writing" (June 6, 2009). CLPE Research Paper No. 7/2009. Available at SSRN: http://ssrn.com/abstract=1415369; Gillian Calder, "Embodied Law: Theatre of the Oppressed in the Law School Classroom" (2009) 1 Masks: Online Journal of Law and Theatre 1.

even grounded in learning theory.[6] The third kind of scholarship that discusses learning focuses on clinical legal education, although the focus of this literature is usually on diversity and social justice, and not learning *per se*.[7]

However, in the United States, where the aims of legal education have long been established as preparing law students for their career in the legal profession, the literature on teaching and learning has been extensive and continues to evolve.[8] For example, there have been extensive writing on the "signature pedagogy"[9] of American legal education, the case method.[10] Also, the work of Donald Schön[11] and those who have taken it up in legal education,[12] can bring some food for thought about making changes to legal education in order to encourage law students to become reflective

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[6] Entwistle agrees with this point when he says this generally about studies carried out by academics:
> "While there are vast numbers of studies carried out by academics about teaching within their own disciplines, they are mostly anecdotal reports of innovations in practice, often with little knowledge of the existing literature on teaching and learning, or sufficient expertise in educational research methods."

See Noel James Entwistle, "Taking Stock: An Overview of Key Research Findings" in Julia Christensen Hughes & Joy Mighty, eds., *Taking Stock: Research on Teaching and Learning in Higher Education* (Montreal & Kingston: McGill-Queen's University Press, 2010) 15 at 30.

[7] This is surprisingly a large body of literature in Canada. See for example, James C. Hathaway, "Clinical Legal Education" (1987) 25 Osgoode Hall L.J. 239; Janet E. Mosher, "Legal Education: Nemesis or Ally of Social Movements?" (1997) 35 Osgoode Hall L.J. Shin Imai, "A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering" (2002) 9 Clinical Law Review 195; Rose Voyvodic, ""Considerable promise and Troublesome Aspect": Theory and Methodology of Clinical Legal Education" (2001) 20 Windsor Yearbook of Access to Justice 111; Rose Voyvodic & Mary Metcalf, "Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor" (2004) 14 Washington University Journal of Law and Social Policy 101; Lucie E. White, "The Transformative Potential of Clinical Legal Education (paper delivered at a symposium at Osgoode Hall Law School)" (1997) 35 Osgoode Hall L.J. 603. Recently a Canadian Clinical Legal Education Association was created.

[8] See for example the following annotated bibliographies for a long list of articles and books on teaching and learning in American legal education: Arturo Lopez Torres, "MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom" (1998) 77 Nebraska L.Rev. 132; Arturo Lopez Torres & Mary Kay Lundwall, "Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching" (2000-2001) 36 Gonzaga Law Review 1; Gerald F. Hess, "Monographs on Teaching and Learning for Legal Educators" (2000-2001) 36 Gonzaga Law Review 63.

[9] See the Carnegie Report: William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

[10] See for example, C.C. Langdell, "Harvard Celebration Speeches" (1887) 3 L.Q. Rev.; Russell L. Weaver, "Langdell's Legacy: Living with the Case Method", (1991) 36 Villanova L.R. 517; Aine Hyland & Shane Kilcommins, "Signature pedagogies and legal education in universities: epistemological and pedagogical concerns with Langdellian case method " (2009) 14:1 Teaching in Higher Education 29.

[11] Donald A. Schön "Educating the Reflective Legal Practitioner" (1995) 2 Clinical Law Review; Donald A. Schön, *The Reflective Practitioner : How Professionals Think in Action* (New York: Basic Books, 1983); Donald A. Schön, *Educating the Reflective Practitioner : Toward a New Design for Teaching and Learning in the Professions*, 1st ed. (San Francisco: Jossey-Bass, 1987).

[12] See for example, Julie Macfarlane, *supra* note 5; Richard K. Newmann Jr., "Donald Schon, The Reflective Practitioner, and the Comparative Failures of Legal Education" (2000) 6 Clinical Law Review 401.

practitioners. American law teachers have also written extensively on the pedagogical bases and benefits of clinical legal education.[13]

In the UK and Australia, where legal education is an undergraduate degree and where its aims have also long been established as offering students a liberal legal education that is not aimed exclusively towards the practice of law (although this goal has come under challenge lately), there have been many conversations about teaching and learning. The work of Marlene Lebrun and Richard Johnstone on applying learning theories to legal education is especially noteworthy. Their book, *The Quiet Revolution*, which was written in 1994, is still very relevant today, 16 years later, as the changes in legal education they advocate, such as defining learning-centered objectives, ensuring instructional alignment and promoting student learning have yet to be implemented in both Australia and Canada.[14] In the UK, Paul Maharg wrote a provocative book on transforming legal education so that it would promote experiential learning, an interdisciplinary approach to teaching and learning and the use of technology-enhanced learning (eg. simulations).[15] The UK Centre for Legal Education also contributes to the scholarship on teaching and learning in legal education with its numerous publications such as those on reflective practice or assessment.[16]   Fiona Cownie has also contributed to the literature on legal education[17] by doing an extensive empirical study on legal academics.[18] For this study, Cownie interviewed English legal academics from old and new institutions and talked to

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[13] See for example, G.M. Dickinson, "Moral Development Theory and Clinical Legal Education: The Development of Professional Identity" (1984) 22 U.W.O.L.Rev. 183; Margaret E. Johnson, "An Experiment in Integrating Critical Theory and Clinical Education" (2005) 13 Am.U.J. Gender Soc. Pol'y & L. The US Clinical Legal Education Association (CLEA), "advocates for clinical legal education as fundamental to the education of lawyers". It published the Best Practices for Legal Education, based on clinical legal education: see Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007), available at: http://www.cleaweb.org/index2.php#/info2/2/ (accessed October 15, 2010).

[14] Marlene Lebrun & Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (Sydney: The Law Book Company, 1994)

[15] Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century* (Burlington, VT: Ashgate, 2007.

[16] See UK Centre for legal education, part of the UK Higher Education Academy, http://www.ukcle.ac.uk/resources/index.html (accessed July 6th, 2010).

[17] Anthony Bradney & Fiona Cownie, eds., *Transformative Visions of Legal Education* (Oxford: Blackwell publisher, 1998); Fiona Cownie & Anthony Bradney, "Gothic Horror? A Response to Margaret Thornton" (2005) 14:2 Social and Legal Studies 277; Fiona Cownie, "Alternative Values in Legal Education" (2003) 6 Legal Ethics 159; Fiona Cownie, "(Re)Evaluating Values: A Response to Burridge and Webb" (2008) 42:3 The Law Teacher 302.

[18] Fiona Cownie, *Legal Academics: Cultures and Identities* (London: Hart Publishing, 2004).

them about their research and teaching. This study is interesting because it carries the debate about the aims of legal education from the macro level (i.e. the aims of legal education generally) to the micro level, that of law professors or what Cownie calls the "private life" of law schools.   More recently, Cownie published a follow-up to this study which included interviews with 22 Canadian legal academics where she focuses on the teaching aspect of the professional identities of Canadian legal academics. [19] This article explores the aims and attitudes of law professors towards teaching and compares with those of British legal academics.   In these empirical studies on legal academics, Cownie takes a sociological approach based on identity, performance, and disciplinary culture to contribute to an "ethnography of the discipline".[20]   Cownie has also written extensively about learning and improving teaching in legal education although this scholarship is not empirically based.[21]   Building on her work, therefore, the present research project seeks to explore the possible relationships between what she calls the "private life" of law professors and student learning.

In summary, the Canadian literature on teaching and learning in legal education is scant and not often empirically based.   We can look at the Australian, UK and American literature although this literature is also often limited to the application of already existing learning theories to legal education.   Therefore, in order to analyse our findings with the goal of achieving effective teaching, it will also be helpful to look at the original literature on teaching and learning in higher education.

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[19] Fiona Cownie, "Teaching, Professional Identify and Academic Lawyers: Canada and England - a Comparative Perspective" (2009) 3 Canadian Legal Education Annual Review 37.

[20] For these studies, Cownie relies on the work of Erving Goffmann, *The Presentation of Self in Everyday Life* (London: Penguin Books, 1990); reference to an ethnography of disciplines is based on Clifford Geertz, *Towards an Ethnography of the Disciplines* (Princeton, NJ: Princeton Institute for the Advanced Study, 1976).

[21] Fiona Cownie, "The Importance of Theory in Law Teaching" (2000) 7 Int'l J. of the Legal Profession 225.

(III) Teaching and learning

(A) *Effective teaching defined*

First, let us define what we mean by "teaching". Leamnson defines teaching as "any activity that has the conscious intention of, and potential for, facilitating learning in another."[22] Pedagogy, he explains, is the set of activities and behaviours of the teachers when they teach or prepare to teach.[23] Teaching is done by one person, the teacher, and learning by the other, the student (thus teaching is not done *to* the students).[24] Of course, teaching is not limited to classroom interaction and also includes activities outside the classroom that contribute to student learning, such as the development of materials, assessments, and the out-of-class interactions with students,[25] but the focus of this study is classroom teaching.

Secondly, we must establish what good or effective teaching is. As Leamnson explains, there are many schools of thought on what good or effective teaching is. One school believes that good teachers are born that way. Anyone who does not have the teaching genes will therefore never be very good at it.[26] The other school of thought is that good teaching is a matter of "doing the right things in the appropriate circumstances" and that this can be learned.[27]

Whether good teachers are born that way or learn to become that way, teaching and learning scholars agree that we must measure good or effective teaching in relation to effective and successful learning on the part of the students.[28] Good teaching is thus "an

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[22] Leamnson, *supra* note 1 at 3.

[23] *Ibid.*

[24] *Ibid* at 52-53.

[25] See Nira Hativa, *Teaching for Effective Learning in Higher Education* (Boston: Kluwer Academic Publishers, 2000) at 2.

[26] Leamnson, *supra* note 1 at 52.

[27] *Ibid.*

[28] Hativa, *supra* note 25 at 1. See also Ramsden,*supra* note 2 at 8; Michael Prosser & Keith Trigwell, *Understanding Learning and Teaching: The Experience in Higher Education* (Berkshire: The Society for Research into Higher Education & Open University Press, 2009) at 11.

evocative process that aims to involve students actively in their own learning and to elicit from them their best learning performance".[29]   Ramsden goes further and says that good teaching "implies engaging students in ways that are appropriate to the deployment of deep approaches" to learning.[30]   Effective teaching thus depends on student learning, which in turn implies "learning about students' learning".[31]   Drawing on Shulman's *pedagogical content knowledge*, Entwistle and Walker did a study of effective teaching which suggested that effective teachers had three different kinds of knowledge bases: knowledge of the subject, knowledge about the range of teaching methods they could use, and knowledge about how students learn their subject.[32]

For Prosser and Trigwell, good teaching is about three things:

> First, it is about teachers developing a coherent and well-articulated view of what they are trying to achieve and how they are planning to achieve that outcome. Second, it is about teachers discovering the variation in the ways students perceive that planned learning context. And third, it is about working towards bringing their students into relation with, and understanding of, that articulated view.[33]

Just as "learning in educational institutions should be about changing the ways in which learners understand, or experience, or conceptualize the world around them",[34] Ramsden argues that improving teaching "implies changing how we think about and experience teaching - it involves changes in our conceptions, in our common-sense theories of teaching as they are expressed in practice."[35] Good teaching is therefore not about acquiring teaching techniques, but it is rather "understanding how to use them that

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[29] P.K. Cross, "College Teaching: What do we know about it? " (1991) 16:1 Innovative Higher Education 7 at 12.

[30] Ramsden *supra* note 2 at 60.

[31] *Ibid* at 8.

[32] Entwistle, *supra* note 6 at 31, citing N.J. Entwistle and P. Walker, "Strategic Alertness and Expanded Alertness with Sophisticated Conceptions of Teaching" in Nira Hativa and P. Goodyear, eds., *Teacher Thinking, Beliefs and Knowledge in Higher Education* (Dordrecht: Kluwer Academic Publishers, 2002) and Lee S. Shulman, "Knowledge and Teaching: Foundations of the New Reform" (1987) 152 Educational Researcher 1.

[33] Prosser & Trigwell, *supra* note 28 at 11.

[34] Ramsden, *supra* note 2 at 6.

[35] *Ibid* at 7.

takes constant practice and reflection."[36]   Just as the interdependence of research and teaching is "a foundation stone of higher education",[37] although as we saw above this interdependence is endangered, teaching and learning are also interdependently related.[38]

From this perspective, therefore, we can say that without learning, there is no point in teaching. In a study of teaching in Canadian legal education, the criteria with which we look at teaching and evaluation methods must be first and foremost student learning.[39] In order to be able to analyze Canadian law teaching, we must therefore define what we mean by learning.

(B)   Learning defined

What is learning?   How can we help our students learn? Here is where some learning theories are helpful. Adult learning theory literature is abundant and includes several different schools and disciplines such as the behaviouralists,[40] the cognitive psychologists,[41] the humanists, the relational theorists.[42] In this section, we look at a few of these theories to highlight some things we know about learning. The goal here is not to be exhaustive about the multiple learning theories, but to highlight elements that will be useful in our analysis of teaching and evaluation methods used in law faculties.

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[36] *Ibid* at 10. See also Leamnson, *supra* note 1 at 8; Lebrun & Johnstone, *supra* note 14 at xii.

[37] Ramsden, *ibid* at 8.

[38] Ramsden, *ibid*. Or, as Lebrun and Johnstone put it, two sides of the same coin: see Lebrun & Johnstone, *supra* note 14 at 50.

[39] Because this study on teaching is already ambitious in scope, it does not empirically explore student learning. Nevertheless, we do take into consideration already established research on student learning in analyzing Canadian legal education.

[40] Behavioural psychologists have shown that actions that are practices with feedback are likely to be repeated: See Entwistle, *supra* note 6 at 20.

[41] The cognitive psychologists have explained the role of short term memory and long term memory in learning, the biological brain processes of learning and understanding: See Entwistle, *ibid* at 21-22. See also Leamnson, *supra* note 1, chapter 2 for an explanation of the biology of learning.

[42] Relational theorists such as Ramsden and Biggs focus on the relationship between learners, teachers and learning environments in order to produce conceptual changes of students in relating to their world. Relational theorists developed the theories on student learning approaches that we will examine later in this chapter. For an overview of the different learning theories, see Lebrun & Johnstone, *supra* note 14 at 54-97.

The definition of learning can change depending on the theory. Leamnson, who adopts biological theories of learning, defines learning as "stabilizing, through repeated use, certain appropriate and desirable synapses in the brain."[43] To teach, therefore, we must force students' brains to form these new paths instead of using the ones they are already familiar with. This, he says, is a difficult business. Leamnson decries efforts at making learning easy and fun because learning is inherently difficult. On the other hand, Kolb defined learning as "the process whereby knowledge is created through the transformation of experience".[44] For relational theorists, learning is also about changing the way in which learners understand or conceptualize the world around them.[45] Light, Cox and Calkins give the following succinct explanation of learning:

> Learning is not concerned with decoding and recalling information but rather with the process of social and practical understanding. It is an active and meaningful construction of facts, ideas, concepts, theories and experiences in order to work and manage successfully in a changing world of multiple and synchronous demands. It goes beyond the intellectual to encompass the personal, practical, and social dimensions of students' learning life.[46]

Light, Cox and Calkins also point out that learning is unstable and uncertain because knowledge is constructed within "both an increasingly globally connected world and an increasingly fragmented changing world."[47] Relational theories also focus on the nexus between theory and practice, experimentation and reflection by learners. [48]

According to the constructive learning theories, learning occurs when new knowledge is assimilated with previous knowledge- the learner uses previous knowledge to construct new knowledge. To constructivists, the central concepts to learning are *meaning* and *context*: "meaning constructed within the social context in which the learning encounter

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[43] Leamnson, *supra* note 1 at 5.

[44] D. Kolb, *Experiential Learning* (Englewood Cliffs, N.J.: Prentice Hall, 1984) at 38.

[45] Ramsden, *supra* note 2 at 6.

[46] Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009) at 69-70.

[47] *Ibid* at 47.

[48] Lebrun & Johnstone, *supra* note 14 at 59. See for example, Ramsden, *supra* note 2.

occurs." [49] Teaching, therefore, is not about transferring knowledge, but becomes an act of intervention in the learner's construction of knowledge.[50] As indicated by Hativa, this implies that students cannot learn effectively by being passive listeners:

> This theory implies that most students cannot learn effectively by being passive listeners, and they do not simply record and store what they are taught. Rather, they learn well only when they are active in the learning process, when they construct their own understanding, and when they use what they are taught to modify their prior knowledge. In this process they develop their own interpretation of the material presented to create a theory that makes sense to them.[51]

(i) Learning gaps

In understanding what learning is and how it occurs, Light, Cox and Calkins have designed a helpful conceptual framework, or learning matrix as they call it: *learning gaps* (see Figure 2-1). Learning gaps are found between the different steps or stages of learning, i.e. between recall and understanding, between understanding and ability, between ability and wanting to, between wanting to and actually doing, and between actually doing and changing.[52] As the authors explain, teachers often do not know why students are not able to achieve what they want them to achieve.[53] Motivation, whether it is intrinsic or extrinsic, characterizes the learning gaps, but plays out differently in each of the gaps.[54] Students are intrinsically motivated when the task intrigues them and extrinsically motivated when they perform the task to reach a specific outcome (i.e. a grade).[55]

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[49] Light, Cox & Calkins, *supra* note 46 at 69.

[50] Lebrun & Johnstone, *supra* note 14 at 7, citing R. Glaser, "Education and Thinking: The Role of Knowledge" (1984) 36 American Psychologist 93 and L.B. Resnick, ed, *Knowing, Learning and Instruction: Essays in Honour of Robert Glaser* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1989).

[51] Hativa, *supra* note 25 at 56-57.

[52] Light, Cox & Calkins, *supra* note 46 at 48.

[53] *Ibid* at 48.

[54] *Ibid* at 50-51.

[55] *Ibid* at 53, citing John Biggs & Catherine Tang, *Teaching for Quality Learning at University: What the Student Does,* 2nd ed. (New York: McGraw-Hill & Open University Press, 2003).

To explain each of these gaps and to help in bridging them, Light, Cox and Calkins use different learning theories. For example, the first gap, between recall and understanding, is the difference between remembering and reproducing facts and ideas and the ability to reconstruct them in terms of one's experience.[56]   Light, Cox and Calkins use the theories concerning students' learning approaches and conceptions of learning that we will see below to explain this gap.

Figure 2-1 Learning Gaps
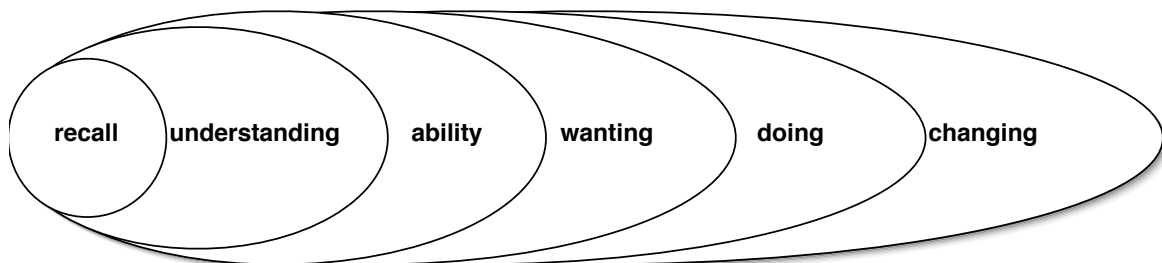
Source: Light, Cox & Calkins (2009:49)

Similarly, there can be a gap between understanding something and being able to put it into practice (i.e. practical understanding).[57]   In the context of legal education, this is the gap between understanding the law and taking that knowledge into the real world, i.e. of being able to transfer what one has learned into a practical context. The authors use theories of experiential learning to explain this gap and how to overcome it.[58] These theories hold that "learning is the process whereby knowledge is created through the transformation of experience",[59] as we will see when we look at learning styles below.

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[56] Light, Cox & Calkins, *supra* note 46 at 51.

[57] *Ibid* at 48.

[58] *Ibid* at 55.

[59] Kolb, supra note 44 at 38, cited in Light, Cox & Calkins, *ibid* at 55.

The third gap is between understanding a rule, having the ability to apply it, but not wanting to do so because the motivation or a commitment to the subject or to the work is lacking.[60]   Light, Cox and Calkins cite the work of Perry on intellectual and ethical development, which also concerns commitment,[61] to explain this gap. Later in this section we explore students' conceptions of knowledge, which are closely related to Perry's work on intellectual development. As Perry explains, there is an emotional development that is closely related to the intellectual development in moving from dualism to relativism.[62]   Students can therefore emotionally resist this development, which would then explain the gap between being able to apply knowledge and wanting to do so.[63]

The fourth gap characterizes students who are able to understand knowledge, apply it, have the commitment to doing it, but will still fail to actually do it for themselves. In order to explain this gap, Light, Cox and Calkins raise the issue of the learning environment and classroom culture, which can help or hinder students to seek the help necessary in order to bridge the gap.[64] Moreover, students will withhold their questions if they have a negative opinion of the teacher's expertise, knowledge or accessibility.[65] The reluctance to ask for help can also be explained by students not wanting to display a lack of competence in front of their peers.[66] As the authors explain, moving through this gap is also about self-directed learning:

> The failure of doing, of actual concrete action, is often an issue of whether the student has constructed a learning self which is truly self-directing within the social overlap of his or her experience and the experiences of the learning situation. As we noted above, the experiential overlap is critically important and

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[60] Light, Cox & Calkins, *ibid* at 48.

[61] *Ibid* at 62, citing William G. Jr Perry, *Forms of Ethical and Intellectual Development in the College Years: A Scheme* (San Francisco: Jossey-Bass, 1998). The authors also note that Perry's work has been criticized, by feminists and others, for representing white Harvard males. See for example, Mary Field Belenky et al., *Women's Ways of Knowing : The Development of Self, Voice, and Mind* (New York: Basic Books, 1986).

[62] Light, Cox & Calkins, *ibid* at 62.

[63] *Ibid*.

[64] *Ibid* at 64 citing the work of Ryan et al, on young adolescents: see Allison M. Ryan, Paul R. Pintrich & Carol Midgley, "Avoiding Seeking Help in the Classroom: Who and Why?" (2001) 13:2 Educational Psychology Review 93.

[65] *Ibid*.

[66] *Ibid*.

undermined by courses that ignore or marginalize student experience. The structure of the learning situation itself is also important, particularly the opportunities it affords the student to take responsibility and control of their learning and also of the methods, procedures and activities which structure the learning environment.[67]

The authors point out that the challenge of teachers in higher education is the development of self-directed learners.[68]

Finally, helping students bridge these gaps involves change in their knowledge base and in their conceptions of learning and knowledge. What is meant by this final gap, however, is "the integration of continuous change as an intrinsic aspect of learning and practice".[69]

In summary, the learning matrix offered by Light, Cox and Calkins thus constitutes a non-exhaustive framework with which to understand the relationships between students, learning and teaching and in that sense, constitutes a helpful conceptual tool for designing and implementing teaching and learning environments. Some of the elements of this matrix, such as learning approaches, conceptions of knowledge and learning and learning styles, will be explored in more detail later in this chapter.

(ii)   Bloom's taxonomy

In a conceptually different way, Bloom's taxonomy is also very helpful in understanding the different stages of learning. Bloom created a framework for classifying and creating instructional objectives composed of three learning domains (cognitive, skills, affective) and many levels of learning for each of these domains.[70]   In each of the three domains,

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[67] *Ibid* at 66. We will come back to the notion of independence and control in learning when discussing learning environments that foster deep learning approaches.

[68] *Ibid* at 67.

[69] *Ibid*.

[70] Benjamin S. Bloom, ed., *Taxonomy of Educational Objectives* (NY: Longmans, Green and Co., 1956); David R. Krathwohl, Benjamin S. Bloom & Bertram B. Masia, *Taxonomy of Educational Objectives: The Classification of Educational Goals, Handbook II: Affective Domain* (New York: McKay Company, 1964). David R. Krathwohl, Benjamin S. Bloom & Bertram B. Masia, *Taxonomy of Educational Objectives: The Classification of Educational Goals, Handbook I: Cognitive Domain* (New York: McKay Company, 1964) For a short but complete summary of all three domains, see David R. Krathwohl, "A Revision of Bloom's Taxonomy: An Overview" (2002) 41:4 Theory into Practice. Their work has been used in higher education and in legal education. See Andrew Petter, "A Closet within the House: Learning Objectives and the Law School Curriculum" in Neil Gold, ed., *Essays on Legal Education* (Toronto: Butterworths, 1982) 77; Lebrun & Johnstone, *supra* note 14.

Bloom, Anderson and Krathwohl have created a pyramid that explains how learners move up from the more basic levels to the more complex levels. In the cognitive domain, for example, we can identify learning objectives and learning tasks that move students up from remembering a piece of knowledge to evaluating it, and finally to be able to create (see Figure 2-2). Active learning helps students move up the pyramid in Bloom's taxonomy of levels of learning in the cognitive domain. The lecture method that does not include an active component will likely only leave the student at the levels of remembering (knowledge) and perhaps understanding (comprehension), but it is difficult to see how students will be able to move to analysis, synthesis, evaluation (i.e. critical thinking) and creation without being actively involved in the process.[71]   Bloom's taxonomy can also help us in designing teaching and learning strategies, effective questioning and assessment methods.

Figure 2-2 Bloom's taxonomy of educational objectives - the cognitive domain
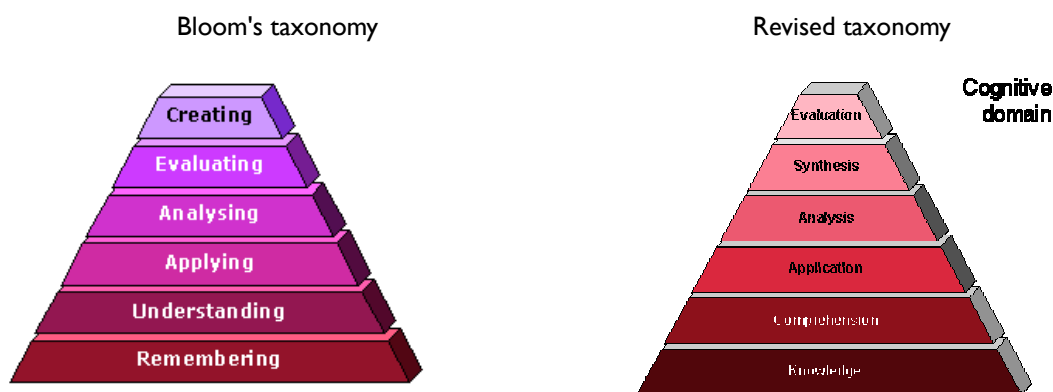
Source: Atherton (2005)[72]

Different theories of learning can help us to explain how and why students can move through each of the gaps identified by Light, Cox and Calkins, or from one level of Bloom's pyramid to the next. We discuss here some of these theories, such as those relating to learning approaches, students' conceptions of learning and learning styles.

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[71] Leamnson, *supra* note 1, chapter 2; Hativa, *supra* note 25 at 88.

[72] J.S. Atherton, "Learning and Teaching: Bloom's Taxonomy", Available at: http://www.learningandteaching.info/learning/ bloomtax.htm (accessed July 15, 2010).

(iii)   Learning approaches

Relational theories[73] have shown that learning is affected by a number of factors, including previous educational experience, curriculum, teaching and assessment and student approaches to learning. Studies have shown that learning approaches have a direct impact on learning.[74] These theorists have documented three main approaches to learning.[75] It is important to note here that all of these approaches can be used by the same learner at different times depending on the context and how learners perceive the relationship between themselves and their learning because learning approaches are grounded in the students' intentions.[76]

The first approach to learning is the *surface approach* to learning. Surface approaches are characterized by external and pragmatic motivation, where the sole intention of the learner is to satisfy the perceived requirements of the professor, even if they are remote from their own personal interests.[77] Students who adopt this approach can still be active, but they rely on identifying the elements within each learning task most likely to be assessed on an exam, and then memorizing that information through rote learning strategies.[78] These strategies include "separate treatment of related parts...; a focus on what are seen as essentials...; the reproduction of the essentials as accurately as possible; and rote memorizing information for assessment purposes rather than for

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[73] See generally Ramsden, *supra* note 2; F. Marton, and Säljö "On Qualitative Differences in Learning — 2: Outcome as a Function of the Learner's Conception of the Task" (1976) 46 Brit. J. Educ. Psych., 115-27 ; Noel James Entwistle, "Contrasting Perspectives on Learning" in Ference Marton, Dai Hounsell & Noel James Entwistle, eds., *The Experience of Learning: Implications for Teaching and Studying in Higher Education* (Edinburgh: University of Edinburgh, Centre for Teaching, Learning and Assessment, 2005) 3-22; John Biggs, *Student Approaches to Learning and Studying* (Hawthorne, Victoria: Australian Council for Educational Research, 1987); John Biggs & Catherine Tang, *Teaching for Quality Learning at University: What the Student Does,* 3rd ed. (New York: McGraw-Hill & Open University Press, 2007).

[74] Ramsden, *ibid* at 53. Light, Cox and Calkins use learning approaches to explain how to bridge the first gap between recall and understanding: see Light, Cox & Calkins, *supra* note 46 at 55.

[75] This literature has been criticized for failing to take account of the complexity of learning. See: G. Webb, "Deconstructing Deep and Surface: Towards a Critique of Phenomenography" (1997) 33 Higher Education 195; T. Haggis, "Constructing Images of Ourselves? A Critical Investigation into 'Approaches to Learning: Research in Higher Education" (2003) 29:1 British Educational Research Journal 89. However, as Entwistle argues, this framework is nevertheless pragmatically helpful in designing faculty development programs: see Noël Entwistle, "Reconstituting Approach to Learning: A Response to Webb" (1997) 33 Higher Education 213.

[76] Lebrun & Johnstone, *supra* note 14 at 59.

[77] Prosser & Trigwell, *supra* note 28 at 3. See also Biggs & Tang, *supra* note 73 at 22.

[78] Light, Cox & Calkins, *supra* note 46 at 52; Entwistle, *supra* note 6 at 23-35; Hativa, *supra* note 25 at 59-60.

understanding."[79]   This approach is also demonstrated by students "padding an essay, listing points instead of addressing an argument, quoting secondary references as if they were primary ones".[80] Students with this approach will likely forget everything after a few days.[81] Students who prefer this approach will "struggle with new material and feel pressured in their work".[82]   Ironically, students who take this approach will feel dissatisfied, even anxious and depressed and will generally have lower grades.[83] Ramsden summarizes surface learning approaches as follows:

> Surface approaches have nothing to do with wisdom and everything to do with aimless accumulation. They belong to an artificial world of learning, where faithfully reproducing fragments of torpid knowledge to please teachers and pass examinations has replaced understanding.[84]

In contrast, *deep learning approaches* are characterized by internal motivation. In using this approach, students interact critically with the material, engaging their own experience and previous knowledge and evaluating the logical steps in the reasoning.[85] Students with this approach seek to understand ideas and to uncover meanings, they look for patterns and underlying principles.[86] Learning is thus a transformative experience where the student constructs her own meaning of the material,[87] thus enabling her to establish relationships with other parts of the subject or even with different subjects.[88] They are also associated with a sense of involvement, challenge and achievement and feelings of personal fulfillment and pleasure.[89]   Students who take a deep learning approach will

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[79] Prosser & Trigwell, *supra* note 28 at 3. See also Lebrun & Johnstone, *supra* note 14 at 60.

[80] Biggs & Tang, *supra* note 73 at 22.

[81] Ramsden,*supra* note 2 at 46.

[82] Light, Cox & Calkins, *supra* note 46 at 53.

[83] Ramsden, *supra* note 2 at 53 and 57. Ramsden does add, however, that the grades depend on the assessment used. Students who take a surface learning approach may nevertheless succeed on an exam and one who takes a deep approach may not be able to show the extent of understanding if the assessment methods are not appropriate (*ibid*, at 59).

[84] *Ibid* at 59

[85] Light, Cox & Calkins, *supra* note 46 at 52; Hativa, *supra* note 24 at 59-60

[86] Prosser & Trigwell, *supra* note 28 at 3.

[87] Light, Cox & Calkins, *supra* note 46 at 52.

[88] Prosser & Trigwell, *supra* note 28 at 3.

[89] Ramsden, *supra* note 2 at 57.

therefore integrate the new knowledge with their previous knowledge. They will therefore not only remember what they have learned, but will be able to apply it, synthesize it and evaluate the new knowledge. Where evaluation methods are appropriate, deep approaches are thus related to better quality learning and better grades.[90]

Somewhere in the middle between surface and deep learning approaches we find the *strategic approach* to learning.[91] This approach is achievement–oriented and typified by competitive motivation.[92] Learning is "essentially an organizing experience in which effort and time are strategically managed to achieve the best grades".[93] The intention is to compete with peers to obtain better grades. Students using this approach orient their study methods to succeed in the particular type of exams that the particular professor assigns and to use study time effectively. Students with this approach will decide, based on their perception of the learning context, whether understanding or rote learning is the goal.[94] Based on their perception of the learning context, therefore, students with the strategic approach can use either a surface or deep learning approach to a given task.

The good news is that the type of learning approach that a student will take depends on different factors, including personality and learning style, but also the teaching and learning environment. Approaches to learning are thus not innate, which means that students can change their approach from course to course and from subject to subject[95] depending on their perceptions of the quality of the course (content, context and

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[90] Ramsden, *supra* note 2 at 53. However, Ramsden does add that although studies show that surface approaches never lead to understanding, deep approaches are necessary, but not sufficient, for high quality learning outcomes: ibid, at 59. See also Prosser & Trigwell, *supra* note 28 at 4.

[91] This has also been referred to as organized studying and effort management: see Sari Lindblom-Ylänne, "Students' Approaches to Learning and Their Perceptions of the Teaching-Learning Environment" in Julia Christensen Hughes & Joy Mighty, eds., *Taking Stock: Research on Teaching and Learning in Higher Education* (Montreal & Kingston: McGill-Queen's University Press, 2010) 63-80 at 64 citing Noel J. Entwistle & V. McCune, "The Conceptual Base of Study Strategies Inventories in Higher Education" (2004) 164 Educational Psychology Review 325.

[92] Hativa, *supra* note 24 at 59-60;

[93] Light, Cox & Calkins, *supra* note 46 at 53.

[94] Lebrun & Johnstone, *supra* note 14 at 60.

[95] Entwistle, *supra* note 6 at 24.

expectations).[96] The adoption of a deep approach depends on the student's interest in the subject matter, the nature of the academic task[97] and having the necessary prior knowledge to be able to make the necessary connection,[98] but it also depends on the teaching and learning environment.[99] The influence of the teaching and learning environment is key for teachers. In changing students' approaches to learning, we are not changing the students themselves, but their "experiences, perceptions or conceptions of something".[100] Moreover, Ramsden explains the interconnected nature between student approaches and their perceptions of the many different aspects of the learning environment:

> It may be helpful to think about the relation between students' perceptions and their approaches at several interconnected levels. These are the learning task itself (including students' previous experiences of dealing with similar tasks) the quality of interaction with lecturers, the curriculum and assessment, and, at the most general level, the atmosphere or 'ethos' of the course, programme of study or institution. Each of these levels suggests a point at which interventions can occur to change students' approaches.[101]

Therefore, it is possible and desirable to create teaching and learning environments that will foster deep approaches. Ramsden argues that we "must take special efforts to design learning contexts for first year students which rapidly develop more sophisticated approaches to academic learning."[102] According to Rogers, course characteristics that promote surface (and strategic) learning approaches include a heavy workload and anxiety-provoking evaluation methods that tolerate regurgitation.[103] On the other hand,

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[96] Light, Cox & Calkins, *supra* note 46 at 51-52; Ramsden, *supra* note 2 at 51.

[97] Ramsden, *ibid* at 49.

[98] Entwistle, *supra* note 6 at 24; Ramsden, *ibid* at 58.

[99] Biggs goes even further and states that the surface and strategic approaches are created by the institutional environment whereas the deep learning approach is the only natural one: See John Biggs, "What Do Inventories of Students' Learning Processes Really Measure? A Theoretical Review and Clarification" (1993) 63 British Journal of Educational Psychology 3. The more recent concept of "study orchestrations" combines the individual characteristics of the students, learning environment, and students' conceptions of learning and personal epistemology to explain learning approaches: see Lindblom-Ylänne, *supra* note 91 at 67.

[100] Ramsden, *supra* note 2 at 45.

[101] *Ibid* at 64. See also Prosser & Trigwell, *supra* note 28 at 4.

[102] Ramsden, *ibid* at 66.

[103] Pat Rogers, "Using Theories about Student Learning to Improve Teaching" in Newton et al eds, *Voices from the Classroom: Reflections on Teaching and Learning in Higher Education* (Aurora: Garamond Press, 2001) 118 at 122 .

characteristics that promote deep learning approaches include active learning activities, interaction among students and a well-structured knowledge base (see Figure 2-3).[104]

Figure 2-3   Learning environments for surface and deep approaches

Course characteristics that promote surface learning	Course characteristics that promote deep learning
▪ Heavy workload ▪ Huge quantity of course materials ▪ Lack of opportunity to study materials in depth ▪ anxiety-provoking assessment methods ▪ Assessment methods that focus on recall and trivial information ▪ Lack of effective feedback on progress	▪ Motivational context that encourages intrinsic motivation ▪ Active learning activities that also comprise reflection ▪ Interaction with others ▪ Well-structured knowledge base, giving students opportunity to integrate new knowledge to previous knowledge. ▪ Independence of students in choosing what is to be learned ▪ Clear awareness of the expectations and standards

Encouraging deep approaches is also done by designing teaching and assessments that act synergistically together to support student learning and understanding.[105] Biggs demonstrated that course alignment between objectives, teaching strategies and evaluation methods also foster deep approaches to learning.[106]

The teaching and learning environments we design are therefore significant in influencing the learning approaches that students take, but they are not sufficient to explain student learning. Students' learning approaches are also influenced by their conceptions of

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[104] *Ibid*. See also Prosser & Trigwell, *supra* note 28 at 4; Lebrun & Johnstone, *supra* note 14 at 63. See also the work of Lindblom-Ylänne and Lindblom-Ylänne and Lonka for a study of dissonance in student learning approaches in response to their perceptions of the learning environment: Sari Lindblom-Ylänne & Kirsti Lonka, "Individual Ways of Interacting with the Learning Environment – Are They Related to Study Success? " (1999) 9:1 Learning and Instruction 1; Sari Lindblom-Ylänne & Kirsti Lonka, "Dissonant Study Orchestrations of High-Achieving University Students" (2000) 15 European Journal of Psychology Education 19.

[105] Entwistle, *supra* note 6 at 28.

[106] See John Biggs, "Enhancing Learning: a Matter of Style or Approach?" in Robert J. Sternberg & L.F. Zhang, eds., *Perspectives on Thinking, Learning and Cognitive Styles* (Mahwah, NJ: Lawrence Erlbaum Associates, 2000) 73-102; Lourdes Rodriguez & Francisco Cano, "The Learning Approaches and Epistemological Beliefs of University Students: A Cross-Sectional and Longitudinal Study" (2007) 32 Studies in Higher Education 647 at 650.

knowledge[107] and of learning.[108] According to Perry's theory of intellectual development (i.e. conceptions of knowledge), students move from dualism, where knowledge is seen as absolute (there's a right and a wrong answer) and provided by "authorities" (parents, teachers), to "a realization of the contingent nature of knowledge, relative values, and the formation and affirmation of their own commitments"[109] (see Figure 2.4). King explains in more detail Perry's nine different positions[110] along the continuum as being grouped into four general categories: dualism, multiplicity, relativism, commitment to relativism.[111] Students who hold a dualistic conception of knowledge think in concrete and absolute categories in order to understand the world. Knowledge exists absolutely. Since there are right answers, the goal of the student is to master those answers. A multiplicity of views confuses students with this conception because they have not yet acknowledged the existence and legitimacy of alternative perspectives.[112] Students who view knowledge this way acknowledge that multiple perspectives on any given subject exist, thus willing to accept multiple answers to a problem.[113] However, students are not yet ready to evaluate the different points of view, which are equally valid to them.[114] As King explains, these students say things like "anyone has a right to an opinion" and "you can't judge opinions."[115] Students "who reason in this way are often critical of teachers' evaluations of essays ("I'm being graded on my opinions") and are only beginning to separate the

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[107] For the seminal work on conceptions of knowledge and learning, see W.G. Perry, *Forms of Intellectual and Ethical Development in the College Years: A Scheme* (New York: Agathon Press, 1970). Some studies have also established that the design of classes is an important variable in students' intellectual development: see patricia m. king, "William Perry's Theory of Intellectual and Ethical Development" (2006) 1978:4 New Directions for Student Services 35 at 46. See, for example, B.W. Stephenson and C. Hunt, "Intellectual and Ethical Development: A Dualistic Curriculum and Intervention for College Students" (1977) 6 The Counseling Psychologist, 39.

[108] Entwistle, *supra* note 6 at 22. See also Rodriguez & Cano, supra note 106; Lourdes Rodriguez & Francisco Cano, "The Epistemological Beliefs, Learning Approaches and Study Orchestrations of University Students" (2006) 31 Studies in Higher Education 617.

[109] king, *supra* note 107 at 38. The author also explains the theories and studies that have built on Perry's scheme, as well as the critiques of it, although she reasserts the validity of the scheme because it explains what we have all observed about our own development and those of our students ("face validity").

[110] Perry used the term "position" and not "stage" because "stage" refers to a relatively stable and enduring pattern, whereas "position" does not make any assumptions about its duration: see Patrick G. Love & Victoria L. Guthrie, "Perry's Intellectual Scheme" (1999) 88 New Directions for Student Services 1.

[111] king, *supra* note 107 at 38.

[112] *Ibid.*

[113] *Ibid.*

[114] *Ibid.*

[115] *Ibid.*

conclusion of an argument or opinion from its basis in fact." Moving along the continuum, however, students can begin to distinguish between an "unconsidered belief and a considered judgment."[116]

When they move along the continuum to the next category of relativism, students recognize that knowledge is contextual and relative. The multiple perspectives are now integrated into a larger whole and the context within which these perspectives are grounded is relevant.[117] Students with this view of knowledge are able to see "the big picture", think analytically, and can evaluate their own ideas and those of others. They value rather than resist the views of teachers and authorities.[118] However, relativists have trouble making decisions and choosing between the different perspectives because this would "sacrifice the appreciation for the other views".[119] When students reach the last category, commitment to relativism, they are able to make "an active affirmation of themselves and their responsibilities in a pluralistic world, establishing their identities in the process."[120] Therefore the last category is more concerned about ethical and identity development than about intellectual development.[121]

Research shows, among other things, that moving from dualism to relativism is difficult for students and that this fact is not fully appreciated by teachers.[122] King, again based on Perry's scheme, explains that students have different ways of coping with changing conceptions, including delaying or hesitating taking the next position, retreating back to dualism or avoiding the responsibility of commitment by taking refuge in dualism.[123]

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[116] *Ibid*.

[117] *Ibid*.

[118] *Ibid* at 39.

[119] *Ibid* at 39.

[120] *Ibid* at 39.

[121] *Ibid* at 40. This is probably the reason why Entwistle has left out the commitment to relativism in his theory on conceptions of knowledge.

[122] Entwistle, *supra* note 6 at 22; See also William G. Jr Perry, supra note 107.

[123] king, *supra* note 107 at 39.

However, some studies have shown that it is easier to change students' conceptions of knowledge than it is to move them from a surface approach to a deep approach.[124]

Development in students' conceptions of knowledge is paralleled by development in their conceptions of learning, which move along a continuum from seeing learning as simply reproducing to seeking meaning. Entwistle's diagram (Figure 2-4) demonstrates the relationship between the conceptions of knowledge and learning and how they lead to learning as a conceptual change in the learner.[125]

Figure 2-4   Conceptions of knowledge and learning

Conceptions of knowledge

Conceptions of learning
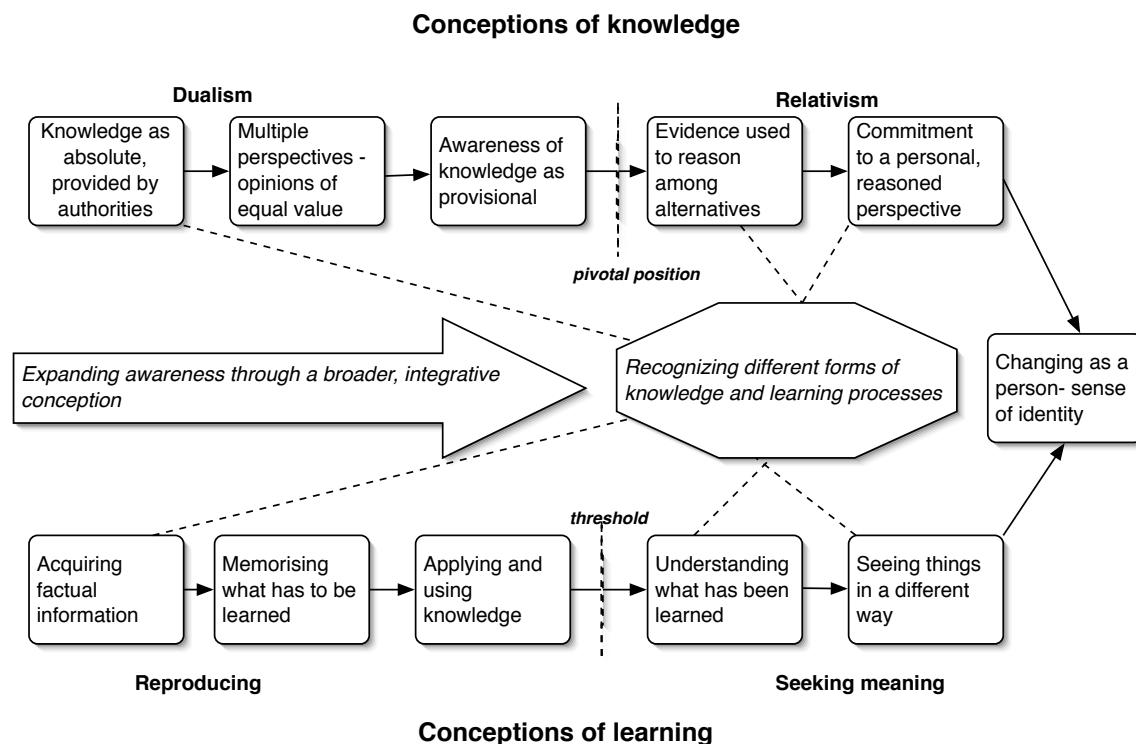
Source: Entwistle (2010) at 23.

Rodriguez and Cano have also pointed out a relationship between students' epistemological beliefs and their approaches to learning. They explain that "the more simplistic and naïve the former, the more superficial and reproduction-oriented the

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[124] Entwistle, *supra* note 6 at 25; Rodriguez & Cano, *supra* note 106.

[125] Entwistle, *ibid* at 23, also available at www.kcl.ac.uk/.../Entwistle-influencesonstudentlearning.pdf (accessed 8 July 2010).

latter; and the more mature and sophisticated the former, the deeper and more meaning-oriented the latter."[126] In their more recent longitudinal study, they examine the impact of post-secondary education on students' epistemological beliefs and learning approaches. The authors tell us that previous studies (these studies are not longitudinal, however) had generally shown that students in university used surface approaches to their studies as the demands of higher education (curriculum, course and reading loads, evaluation methods for example) required them to do so and that when these demands were decreased, student learning approaches tended to be more deep.[127] The authors conclude that tertiary education changes students' epistemological beliefs about knowledge, but not so much about learning.[128]

Learning is also influenced by students' individual *intelligences*, l*earning strategies and learning styles*. There have been many studies and theories on intelligences, such as Gardner's multiple intelligences,[129] and Myers-Briggs typology of personality types.[130] Pask describes learning strategies as holistic or atomistic.[131]   Learning strategies refer to the ways in which a learner organizes a task. The holists prefer to see the big picture of a subject matter in order to understand the parts. On the other hand, the atomistic, or serialists, learn better by focusing on the details and building their understanding bottom up.[132]   These strategies can combine with the approaches discussed above to refer to "deep-holistic" or "surface-atomistic" approaches.[133]

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[126] Rodriguez & Cano, *supra* note 106 at 651, citing their previous study: Rodriguez & Cano, "Epistemological Beliefs" *supra* note 108.

[127] *Ibid* at 650.

[128] *Ibid* at 662.

[129] See H. Gardner, *Frames of Mind: the theory of multiple intelligences*, 2nd.ed,(London, Fontana, 1993).

[130] See Myers-Briggs Type Indicator (MBTI) website: http://www.myersbriggs.org/type-use-for-everyday-life/type-and-learning/ (accessed July 11th, 2010); for an application of Myers-Briggs to law students, see Vernellia R. Randall, "The Meyers-Briggs Type Indicator, First Year Law Students and Performance" (1995-96) 26 Cumberland L.R. 63.

[131] G. Pask, "Learning Strategies, teaching strategies and conceptual or learning style" in R.R. Schmeck (ed), *Learning Styles and Strategies* (NY: Plenum Press,1988), 83-100

[132] *Ibid*; Entwistle, *supra* note 6 at 24-25.

[133] Ramsden, *supra* note 2 at 43; Ference Marton & Roger Säljö, "Approaches to Learning" in Marton, Hounsell & Entwistle, *supra* note 73, 39 at 46-47; Lebrun & Johnstone, *supra* note 14 at 60.

Learning is also influenced by individual learning styles. Kolb's learning style inventory represents students' preference for one of the four stages of his learning cycle: concrete experience, reflective observation, abstract conceptualisation and active experimentation.[134]   Kolb's theory on experiential learning helps us to understand how students move from the understanding stage of learning to having the skills and ability to practice. What makes experiential learning effective is getting the balance right between experience, reflection, theory and action.[135] Students should move through all stages of the cycle;[136] they can enter at any one of the four stages, but they usually show a preference for one or more of these stages.   Depending on what stage they are at, learners are then divided into four types of preferred learning styles:

- ✓ Accommodators: They are action, intuition, and people oriented. They learn best with hands-on experience.
- ✓ Divergers: These students enjoy gathering information, contemplation, and generating a variety of ideas.
- ✓ Assimilators: These students are idea, rather than people driven. They enjoy logic, abstract ideas and theories.
- ✓ Convergers: These students enjoy problem-solving and decision making, but enjoy the technical tasks more than the interpersonal and social matters. [137]

Kolb also showed that certain teaching and learning methods were more likely effective for a given learning style.[138] For example, assimilators learn best by sitting in on a lecture, while accommodators prefer learning by doing a task in small groups.[139]   However, although learners show a learning style preference, it is important for them to use the learning styles that they do not prefer in order to be able to adjust, in the future, to different learning situations. Moreover, is it fair to cater to the assimilators in the class but to force all the other learning styles to adjust? Effective teaching, therefore, means

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[134] Kolb, *supra* note 44.

[135] Light, Cox & Calkins, *supra* note 46 at 57. See also Lebrun & Johnstone, *supra* note 14 at 79.

[136] Lebrun & Johnstone, *ibid* at 78-79.

[137] Robert Loo, "Kolb's learning styles and learning preferences: is there a linkage?" (2004) 24:1 Educational Psychology 99 at 100. See also Kolb, *supra* note 44.

[138] Kolb, *ibid*. See also http://www.businessballs.com/kolblearningstyles.htm (accessed 15 July 2010)

[139] *Ibid*.

accommodating as many of these different learning styles as possible, and helping students to develop in their areas of weakness by using a variety of teaching methods.[140]

Other student characteristics that affect learning include previous knowledge and experience of learning,[141] general ability, personality traits, which students come into higher education with, as well as "specific abilities, self-confidence, interest, motivation, and learning strategies", which are affected by the university setting and experiences.[142]

In summary, there are three main points to pull from the discussion of the teaching and learning literature so far. First, because students construct knowledge by integrating new knowledge with previous knowledge, by going through the cycle of experiential learning, in order for learning to happen in our classroom, students must be *active* in learning. Hativa defines active learning as "… a process that involves students in doing things and thinking about the things they are doing.".[143] In active learning, students are engaged with others, there is less emphasis on knowledge transmission and more on developing higher level thinking, and student motivation is increased. Active learning also creates a classroom climate where students feel more comfortable to ask questions. In the context of a lecture, active learning means the ongoing involvement of students in thinking, reflecting and participating in activities that promote their construction of the material being presented.[144]

The second point is that diversity is the key. Because students' learning styles and approaches vary, because the appropriateness of teaching methods depends on the objectives and the circumstances, and because we want students to develop different learning styles and a deep approach to learning, there is not one "best" method of

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[140] Prosser and Trigwell challenge this proposition. While they agree that students have different learning styles and orientations, they mention studies that show that "a student's orientation can be totally overridden by his or her perceptions of the demands of the learning task.": Prosser & Trigwell, *supra* note 28 at 98.

[141] See Prosser & Trigwell, *ibid*, chapter 3 for an explanation of the relationship of previous learning experiences to learning approaches.

[142] Entwistle, *supra* note 6 at 25.

[143] Hativa, *supra* note 25 at 88.

[144] *Ibid*.

teaching.[145] As we saw above, good teaching is knowing when it is appropriate to use a particular teaching method.

Finally, we also know that learning approaches have a direct impact on learning outcomes, i.e. actual student learning, and that they are influenced by the teaching and learning environment and students' perceptions of it. We must therefore design teaching and learning environments that will foster deep learning approaches and more sophisticated conceptions of knowledge and of learning if we want our students to achieve at least some of the educational objectives we discussed in chapter 1. Our teaching and learning environments must instead encourage active learning, interaction, and some independence of the learners in what is to be learned. The way teachers design teaching and learning environments is partly determined by their teaching approach. This, in turn, is influenced among other things by their conceptions of teaching.

(C)   *Conceptions of teaching*

Numerous studies have studied the relationship between individual teachers' conceptions of and approaches to teaching and student approaches to learning and therefore to student learning outcomes.[146] In a comprehensive review of those studies, Kember designs a framework to explain the relationship between conceptions of teaching, teaching approaches and student learning (See Figure 2-5).[147] This conceptual framework is particularly useful in the context of this study on law teaching because it

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[145] Entwistle, *supra* note 6 at 16.

[146] Greg Light & Susanna Calkins, "The Experience of Faculty Development: Patterns of Variation in Conceptions of Teaching" (2008) 13:1 International Journal for Academic Development 27 at 28. For example, see L. Gow & David Kember, "Conceptions of Teaching and Their Relationship to Student Learning" (1993) 63 British Journal of Educational Psychology 20; David Kember, "A Reconceptualisation of the Research into University Academics' Conceptions of Teaching " (1997) 7:3 Learning and Instruction 255; David Kember & Kam-Por Kwan, "Lecturers' Approaches to Teaching and Their Relationship to Conceptions of Good Teaching" (2000) 28 Instructional Science 469; Bick-Har Lam & David Kember, "The relationship between conceptions of teaching and approaches to teaching" (2006) 12:6 Teachers and Teaching 693 Michael Prosser & Keith Trigwell, "A Phenomenographic Study of Academics' Conceptions of Science Learning and Teaching" (1994) 4 Learning and Instruction 217; Katherine Samuelowicz & John D. Bain, "Conceptions of Teaching Held by Academic Teachers" (1992) 24 Higher Education 93; Noel James Entwistle et al., "Conceptions and Beliefs about "Good Teaching": an Integration of Contrasting Research Areas" (2000) 19:1 Higher Education Research & Development 5; Keith Trigwell & Michael Prosser, "Changing Approaches to Teaching: a relational perspective" (1996) 21:3 Studies in Higher Education 275.

[147] Kember, "A Reconceptualisation", *ibid.*

includes all aspects of teaching and learning: teaching, learning, the teacher, the students and the institution.[148]

Before we demonstrate these relationships and discuss the different conceptions of teaching found in the literature, however, it would useful to define what we mean by the different parts of the framework. Unfortunately, the literature does not consistently use the same concepts or terminology in establishing the relationships in this framework.[149] Pratt, who does empirical research on conceptions of teaching, defines "conceptions" as follows:

> Conceptions are specific meanings attached to phenomena which then mediate our response to situations involving those phenomena. We form conceptions of virtually every aspect of our perceived world, and in so doing, use those abstract representations to delimit something from, and relate it to, other aspects of our world. In effect, we view the world through the lenses of our conceptions, interpreting and acting in accordance with our understanding of the world.[150]

Conceptions of teaching are thus basically how a teacher "experiences or understands the practice of teaching."[151]   Just as students have different conceptions of knowledge and of learning, teachers have different conceptions of teaching. In the studies exploring the conceptions of teaching and their relationship to student learning, some researchers use the term teaching conceptions and orientations interchangeably,[152]   others use the terms "teaching theories" or conceptions of teaching[153] to mean the same thing. John Biggs speaks about "levels of teaching".[154] Kember and Kwan use the term "conceptions

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[148] Dan Pratt's work on conceptions of teaching is worth noting here. Contrary to most studies on conceptions of teaching, Pratt's work does not establish a relationship between those conceptions and student learning. Although Pratt's five perspectives on teaching, as well as his inventory are interesting from the point of view of knowing ourselves as teachers, it has limited applicability here because it does not address the relationship between conceptions of teaching and student learning. See Dan D. Pratt, *Five Perspectives on Teaching in Adult and Higher Education* (Malabar, Fla: Krieger Publishing, 1999) and the Teaching Perspectives Inventory questionnaire at: http://teachingperspectives.com/ (accessed 02/08/2010).

[149] This terminological confusion is noted by Kane et al and by Pajares: Ruth Kane, Susan Sandretto & Chris Heath, "Telling Half the Story: A Critical Review of Research on the Teaching Beliefs and Practices of University Academics" (2002) 72:2 Review of Educational Research 177 at 180-181; M.F. Pajares, "Teachers' Beliefs and Educational Research: Cleaning Up a Messy Construct" (1992) 62 Review of Educational Research 307.

[150] Dan D. Pratt, "Conceptions of Teaching" (1992) 42:4 Adult Education Quarterly 203 at 204, cited in Kember, "A Reconceptualisation", *supra* note 146 at 256.

[151] Light & Calkins, *supra* note 146 at 28.

[152] See Gow & Kember, *supra* note 146.

[153] Samuelowicz & Bain, supra note 146.

[154] Biggs & Tang, *supra* note 73, chapter 2.

of teaching" and establish a relationship between those and teaching approaches, which they define as both motive and strategies.[155]

Figure 2-5   Relationship between conceptions of teaching, teaching approaches and learning outcomes
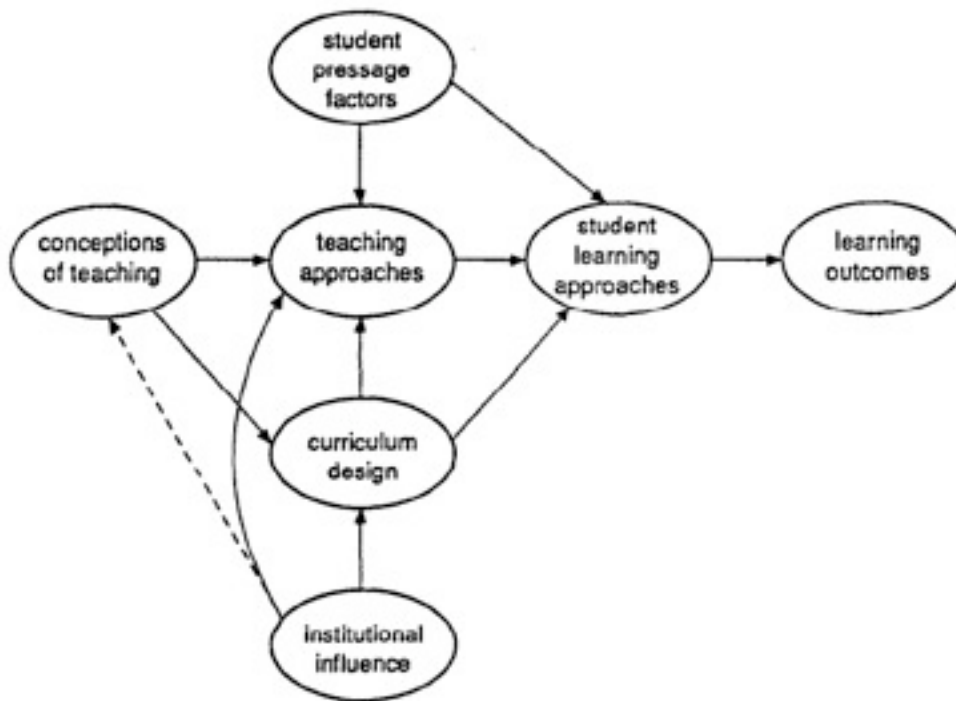
Figure 3. The relationship between conceptions of teaching, teaching approaches and learning outcomes.

Source: Kember(1997) at 269.

The lack of clear definitions is significant when trying to establish a relationship between conceptions of teaching and teaching *methods*, i.e. what teachers actually do in the classroom. None of these studies clearly establishes a relationship between conceptions of teaching and teaching *methods* or *practices*,[156] although some make some implicit links between conceptions of teaching and teaching practices, which include curriculum,

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[155] Kember & Kwan, *supra* note 146. See also Trigwell, Prosser and Taylor, who define teaching approaches as intentions and strategies: Keith Trigwell, Michael Prosser & Philip Taylor, "Qualitative Differences in Approaches to Teaching First Year University Science" (1994) 27 Higher Education 75.

[156] Kane et al, who did a comprehensive review of studies on teachers' conceptions and practices in higher education note that although there are numerous studies on the relationship between "beliefs and practices" in primary and secondary school settings, "there was no comprehensive critical analysis of current studies on university academics' teaching beliefs and practices." See Ruth Kane, Susan Sandretto & Chris Heath, "Telling Half the Story: A Critical Review of Research on the Teaching Beliefs and Practices of University Academics" (2002) 72:2 Review of Educational Research 177 at 178.

teaching methods and assessment.[157]   In his 1997 article, Kember acknowledges that the relationship between conceptions of teaching and pedagogical choices is not always clear-cut.[158]   Although those who have the conception of teaching as transmitting knowledge will not likely deviate from the lecture, the same does not hold true for all conceptions, as he explains:

> Those holding conceptions towards the opposite end of the framework will need to employ more interactive and student-centered teaching methods if they are to be consistent with their beliefs. They are also likely to use methods such as lecturing and spend a proportion of their time communicating content and bodies of knowledge. This does not imply, though, that while they are doing this they have changed or switched off their underlying beliefs. The lecturing would be just one element in a wider effort to facilitate learning.[159]

Figure 2-6   Comparison of terminology in the literature on conceptions of teaching

Study	Terminology used
Samuelowicz & Bain(1992)	Teaching theories and conceptions of teaching (interchangeably)
Samuelowicz & Bain(2001)	Orientations to teaching and learning
Gow & Kember (1993)	Teaching conceptions and teaching orientations interchangeably
Prosser & Trigwell (1994)	Teaching conceptions
Kember & Kwan(2000)	Conceptions of teaching (established a relationship between these and teaching approaches)
Biggs(2007)	Levels of thinking about teaching or teaching theories
Postareff et al(2008)	Conceptions of teaching and teaching approaches interchangeably
Light, Cox and Calkins(2010)	Conceptions of teaching

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[157] See Samuelowicz & Bain, *supra* note 146.

[158] Kember, "A Reconceptualisation" *supra* note 146.

[159] Kember, *ibid* at 270.

However, in an earlier piece he co-wrote with Gow, the authors seem to say that methods of teaching, learning tasks and assessment methods are influenced by teaching orientations (i.e. conception).[160]

For the purposes of this thesis, it may not be necessary to resolve this terminological confusion. We will use Light, Cox and Calkins' definition of conceptions of teaching as how a law teacher "experiences or understands the practice of teaching."[161] We will use Light and Calkins' explanation of the relationship between conceptions, approaches and practices:

> In our study, we employ the term 'conception' to describe the meaning an individual ascribes to his or her perception or experience of a particular practice or phenomenon... We focus here on the application of this concept as a key descriptor of more general phenomena – specifically, how a faculty member experiences or understands the practice of teaching in higher education. Conceptions of teaching are different from approaches to teaching, although the two are closely related. Approach to teaching is concerned with how the teacher plans to execute the practice and includes the nature of the intentions/ motivations and the strategies they plan to implement to achieve those intentions.[162]

We use teaching practices to refer to the teaching and evaluation methods. For the sake of clarity, however, I try to avoid much as possible[163] the use of teaching *approaches* because it is closely related to conceptions and because the data related to approaches is closely linked to the data related to teaching conceptions.

Let us turn now to the the different conceptions of teaching found in the literature. John Biggs developed three theories of teaching or levels of thinking about teaching, which are distinguished by what the teachers focus on mainly.[164] Teachers at Level I focus mainly on students and the differences between them. For teachers at Level I, their responsibility is to know the content and to transmit it clearly to the students. It is then

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[160] Gow & Kember, *supra* note 146.

[161] Light & Calkins, *supra* note 146 at 28. See chapter 5 for a detailed explanation of conceptions of teaching in the context of this study.

[162] Light & Calkins, *ibid* at 28 (references omitted).

[163] Except when discussing the literature which uses those terms.

[164] Biggs & Tang, *supra* note 73, chapter 2.

up to students to attends lectures, do the readings and take notes. Differences in learning are due to differences in student ability, motivation and prior education. The goal of assessment is to distinguish the "good" students (those who have the abilities, go to lectures, take notes and do the readings) from the "bad" students. For teachers at this level, the course syllabus is a list of content that, "once expounded from the podium, have been 'covered'."[165] Teachers at this level will develop a "blame-the-student" theory of teaching, which holds that if students do not learn, it is not because of the teaching but because they are incapable or unmotivated.[166]

Teachers at Level 2 focus on what teachers do.[167] Teaching is still viewed as transmitting knowledge, but it is more than transmitting information and includes concepts and understandings.[168] The responsibility for "getting it across" lies with the teacher, who then uses a variety of teaching methods to do this more effectively.[169] The focus is not on what students are learning, but on what the teacher is doing.[170] As Biggs points out, however, "[k]nowing what to do is important only if you know why, when and how you should do it."[171]

The third level of teaching focuses not on what the teacher does, but on what the student does.[172] A teacher at this level will define learning outcomes and design teaching and learning activities to ensure that students achieve them.[173]

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[165] *Ibid* at 16.

[166] *Ibid* at 17.

[167] *Ibid*.

[168] *Ibid*.

[169] *Ibid* at 18.

[170] *Ibid*.

[171] *Ibid*.

[172] *Ibid* at 19.

[173] Ibid.

As mentioned above, Kember carried out a comprehensive review of 13 research studies relating to conceptions of teaching.[174] Although he mentions Biggs' theory of teaching, he focuses instead on empirical studies. From his review of the research, Kember develops a model of conceptions of teaching (See Figure 2-7) that moves along a spectrum from teacher-centered/content-oriented to student-centered/learning-oriented. The teacher-centered represents the conception of teaching, while the content-oriented represents the approach to teaching. The second broad category encompasses the student-centered conception of teaching with a more learning-oriented teaching approach.

Figure 2-7   Kember's conceptions of teaching
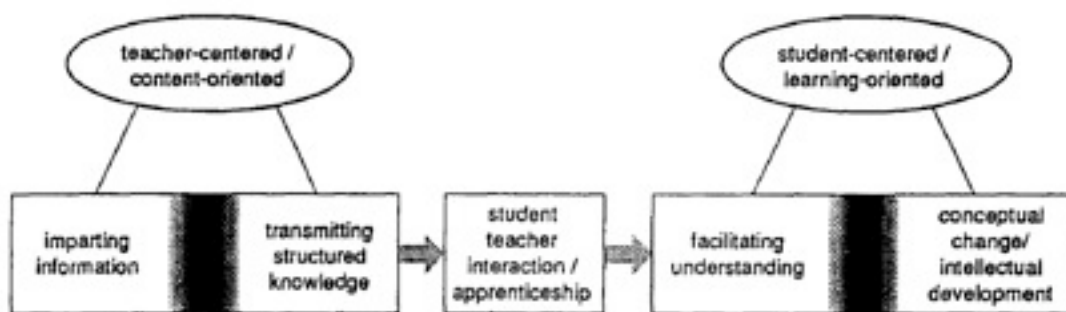
Figure 2. A multiple-level categorisation model of conceptions of teaching.

Source: Kember(1997) at 264.

How teachers see their role is depicted in the second level in the diagram. The most teacher-centered role is that of imparting information to passive recipients (students). The second conception is still that of transmitting knowledge, but the teacher sees her role as structuring that knowledge so that students receive it. As Kember explains, in this conception, "[s]ound academic knowledge is still the most important attribute of a good teacher, but there is now more emphasis on the quality of the presentation which can be viewed as a stage performance."[175]

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[174] Kember, "A Reconceptualisation", *supra* note 146.

[175] Kember, "A Reconceptualisation", *supra* note 146 at 266.

Next is the transitional conception where the interaction between student and teacher is seen as important. The teacher's knowledge of the content is not as important as the students' discovery and understanding of it.[176] In some of the studies reviewed by Kember, this conception was held by those who thought of themselves as an expert modeling for students.

Under the student-centered/learning-oriented umbrella, teachers see their role as helping the students learn. Teachers under this umbrella will focus more on the learning outcomes of students rather than content. Kember identifies two or possibly three (the last one is not in the diagram) conceptions under the student-centered/learning-oriented umbrella. Under the first conception ("facilitating understanding" in the diagram), teachers see their role as "facilitating the development of understanding or conceptions of knowledge".[177] These teachers recognize that they have a responsibility in student learning and that they can impact this learning with their teaching. The ultimate outcome of teaching is student learning, which the students demonstrate through application rather than recall.[178]

Under the conception of teaching as conceptual change, the goal of teaching is to change students' conceptions of the subject; since this is not easy for students, the teacher's role is to create a supportive environment and/or establish an interpersonal relationship with students to foster a "holistic developmental process".[179] One of the studies mentioned by Kember concludes that this conception is usually held in the context of supervising graduate students and not at the undergraduate level.[180] According to Kember, students can also have these conceptions of teaching.[181]

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[176] *Ibid* at 266-267.

[177] *Ibid* at 267.

[178] *Ibid* at 268.

[179] *Ibid*.

[180] *Ibid*.

[181] *Ibid* at 265.

In a later study, Kember revised his five categories to six conceptions of teaching: teaching as transmission of knowledge, teaching as passing information, teaching as making it easier for students to understand, teaching as learning facilitation, teaching as meeting students' learning needs, teaching as facilitating students to become independent learners, but then grouped them into two main categories: teaching as knowledge transmission and teaching as learning facilitation.[182]

Building on the work of Kember, others,[183] and their own previous research,[184] Light, Cox and Calkins present a similar but simpler framework to examine conceptions of teaching. The authors note that these conceptions are not based on the teaching strategies employed by teachers but rather on how they understand teaching and learning.[185] Their framework defines three main categories of conceptions of teaching, and for each, they identify how the dimensions play out differently (see Figure 2-8): teacher-focused, student-focused and learning-focused conceptions.

The teacher-focused conception holds that the professor is the expert and transmits information to passively receptive students. This conception is focused on content and good teaching is defined as having a solid base in the subject area, which is well structured and clearly delivered to students. Students are then expected to receive the knowledge thus imparted; learning is up to each individual student. A teacher holding this view might not understand or adhere to the social-constructivist nature of learning.[186]

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[182] Kember and Kwan, *supra* note 146.

[183] Prosser & Trigwell, supra note 28; Gerlese S. Akerlind, "Academic Growth and Development - How do University Academics Experience It?" (2005) 50:1 Higher Education 1.

[184] Light & Calkins, *supra* note 146; Susanna Calkins & Greg Light, "Promoting Student-Centered Teaching Through a Project-based Faculty Development Program" (2008) 26 To Improve the Academy 217.

[183] Light, Cox & Calkins, *supra* note 46 at 31.

[186] *Ibid* at 28-29.

Figure 2-8 Light, Cox and Calkins' conceptions of teaching

Categories of conceptions of teaching	Student learning	Student relationship to course content	Teaching	Focus of good teaching
Transmission Teacher-focused	student learning is no the teacher's concern	Passive-compliant acceptance	Transmission, soliloquy-monologue	Quantity, quality, structure and transmission of content
Acquisition Student-focused	Student learning as acquisition of course concepts and skills is teacher's concern	Compliant-active acquisition	Explanation, demonstration, active-monologue towards dialogue	Strategies and tips that help students acquire the course concepts and content
Engagement Learning-focused	Student learning as conceptual development and understanding is teacher's concern	Active-reflective construction	Facilitation, intersubjective - active-dialogue	Developing ways to help students improve and change their conceptual understanding

Source: Light, Cox and Calkins(2009) at 29, Table 1.1

Teachers with student-focused conceptions of teaching still want to transfer knowledge to students but recognize that "teaching needs to go beyond transmission to play a more active role in helping students acquire the content of that transmission."[187] The student is then perceived as being a more active participant in this learning situation. The teacher frames the knowledge and creates a learning environment in order for students to acquire the knowledge and skills determined by the teacher.   Teaching strategies therefore focus on explanation and demonstration rather than transmission.   Good teaching under this conception requires developing strategies for connecting the course

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[187] *Ibid* at 29.

content to students.[188] The authors mention the importance for these teachers to enter into a "dialogue with students and their minds."[189]

The third conception of teaching defined by Light, Cox and Calkins is learning-focused. Teachers who have this conception focus on the learners and promoting changes in the students' conceptions of the subject matter and of themselves as persons. Teaching is therefore helping the students construct knowledge for themselves. Teachers under this conception recognize the social-constructivist and the active and reflective nature of learning.   Good teaching means developing ways to help students change their conceptual understanding. As the authors explain, "meaning and knowledge are outcomes constructed by the students in an active dialogue within the socially rich situation of the course and programme".[190] There is a shared responsibility between teachers and students in this dialogue of shared meanings.

Other studies carried out on conceptions of teaching have, in slightly different ways, reproduced the two main categories or groups of conceptions of teaching: teacher-centered and learning-centered, or content-focused and learning-focused.[191]

In summary, there is a little bit of confusion in the terminology used in the literature on conceptions of teaching. However, without trying to resolve this confusion, we can say there are two main ways of looking at conceptions and approaches. One distinguishes between seeing teaching as the transmission of knowledge from teaching as learning facilitation. The other way of looking at conceptions of teaching is to distinguish between teaching-centered and learning-centered conceptions.[192]   Studies have also shown that

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[188] *Ibid* at 29-30.

[189] *Ibid* at 30.

[190] *Ibid*.

[191] See, for example, Liisa Postareff et al., "Consonance and dissonance in descriptions of teaching of university teachers" (2008) 33:1 Studies in Higher Education 49 who talk about learning-focused and content-focused conceptions; Prosser & Trigwell, "Phenomenographic study", *supra* note 146 use teacher-focused and student-focused; Katherine Samuelowicz & Joe Staten Bain, "Revisiting Academics' Beliefs about Teaching and Learning" (2001) 41 Higher Education 299 talk about teaching-centered and learning-centered teaching orientations.

[192] This dualistic and simplistic way of looking at teaching and learning has been criticized for failing to take account of the complexity "of the various academic discourses which faculty and students inhabit.": See Light & Calkins, *supra* note 146 at 29.

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conceptions of teaching are influenced by the context and the perceptions of teachers of their teaching and learning environment.

(D)   *Institutional factors*

Research indicates that conceptions of teaching are influenced by the context and the teaching and learning environment. Samuelowicz and Bain mentioned the possibility that course characteristics such as the type or the level of course, and students, can be factors that explain the disjunction between what they call the "ideal" conception of teaching and the "working" conception of teaching.[193]   Prosser et al carried out a research study to explore the possible relationship between teachers' perception of their environment and their conceptions of teaching (or in using their terminology, teaching approaches).[194]   They showed a positive relationship between a conceptual change/student-focused approach to teaching and such environmental factors as having control over what is taught and how, class sizes not being too large and departments valuing teaching. They also found a positive relationship between teachers' positive perception of their environments and conceptual change/student-focused approaches to teaching.[195]   Their framework expands on Kember's framework that we saw above in order to include teachers' perceptions of their teaching context (see Figure 2-9).

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[193] Samuelowicz & Bain, *supra* note 146 at 110.

[194] Michael Prosser & Keith Trigwell, "Perceptions of the Teaching Environment and its Relationship to Approaches to Teaching" (1997) 67 British Journal of Educational Psychology 25.

[195] Prosser & Trigwell, *ibid* at 33-34.

Figure 2-9 Prosser et al's framework of teaching and learning
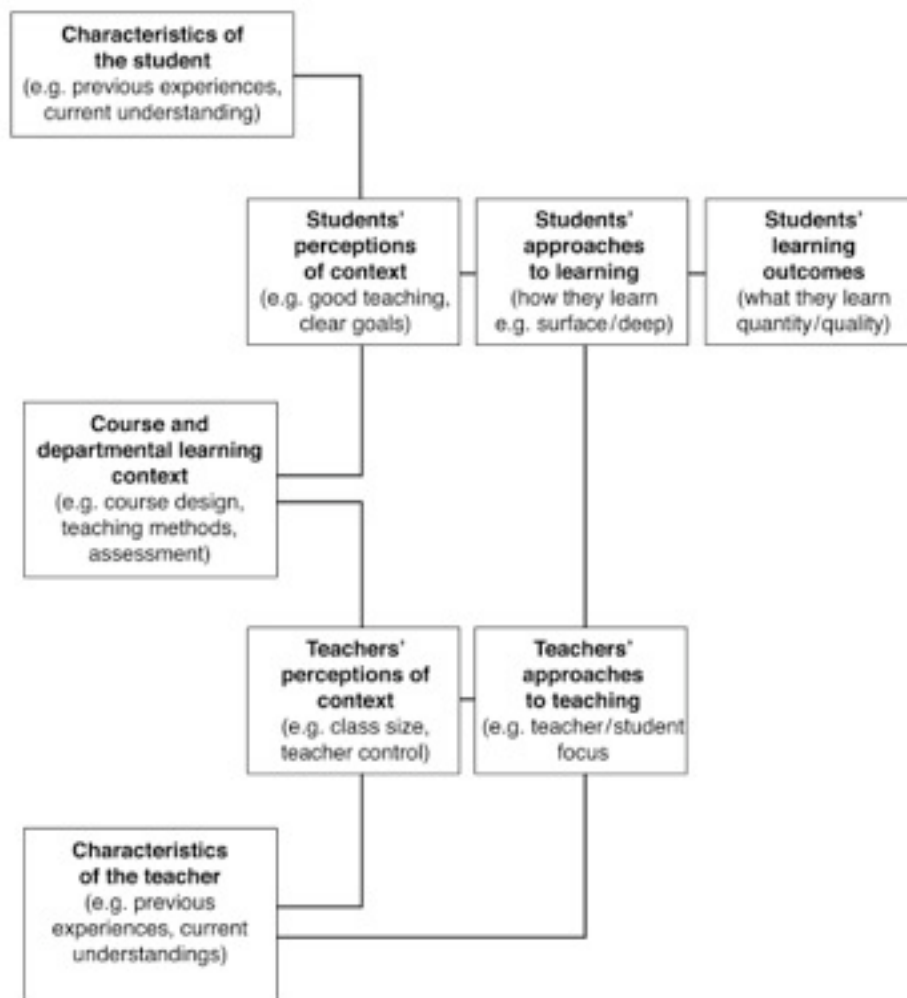
Fig. 1. Model of student learning.

Source: Prosser et al (2003) at 39

As to the relationship between institutional factors and student learning, Gow and Kember extend the relationship established between conceptions of teaching and student learning approaches to include departments or faculties. They show that in departments where a knowledge transmission orientation is predominant, the curriculum design and teaching methods are more likely to have "undesirable influences" on students' learning approaches (meaning they would be more likely to adopt surface learning approaches), whereas departments with a predominant learning facilitation

orientation are more likely to design courses and learning environments that encourage "meaningful learning".[196]

In order to understand institutional constraints from the perspective of learning, Barr and Tagg's framework is helpful. In a short but convincing article,[197] Barr and Tagg explain the difference between what they call the Instruction paradigm and the Learning paradigm and argue for a paradigm shift away from the Instruction paradigm and towards the Learning paradigm. Figure 2-10 below summarizes the differences between the Instruction and the Learning paradigms in a comparative table, but here are the most relevant points for our purposes.

The aim of an institution under the Instruction paradigm is the transmission or delivery of knowledge by "experts"; a law faculty under the Instruction paradigm therefore aims to offer programs and courses, and, as new knowledge develops, new courses.[198] On the other hand, the aim of an institution under the Learning paradigm is "... not to transfer knowledge but to create environments and experiences that bring students to discover and construct knowledge for themselves, to make students members of communities of learners that make discoveries and solve problems."[199] In the Instruction paradigm, teaching is envisioned mostly as lecturing by the knowledge experts[200] to fill the empty recipients (the passive students). This paradigm is very different from the Learning paradigm, in which we understand learning and knowledge to be co-constructed between the teacher and the student. In the Learning paradigm, students and teachers (and Barr and Tagg argue, institutions) thus share responsibility for learning.[201]

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[196] Gow & Kember, *supra* note 146 at 31. Although they do not specifically mention it, we can surmise that this means deep learning approaches.

[197] Robert B. Barr & John Tagg, "From Teaching to Learning: A New Paradigm for Undergraduate Education" (1995) Nov/Dec Change 13. See also John Tagg, *The Learning Paradigm College* (San Francisco, CA: Jossey-Bass, 2003) in which Tagg expands on the arguments put forth in this article.

[198] *Ibid* at 15.

[199] *Ibid* at 15. See also Ramsden, *supra* note 2 at 10.

[200] Barr & Tagg, *ibid* at 17.

[201] *Ibid* at 15.

Figure 2-10   Teaching and learning paradigms compared

CHART 1
COMPARING EDUCATIONAL PARADIGMS

The Instruction Paradigm	The Learning Paradigm
Mission and Purposes	
➤ Provide/deliver instruction	➤ Produce learning
➤ Transfer knowledge from faculty to students	➤ Elicit student discovery and construction of knowledge
➤ Offer courses and programs	➤ Create powerful learning environments
➤ Improve the quality of instruction	➤ Improve the quality of learning
➤ Achieve access for diverse students	➤ Achieve success for diverse students
Criteria for Success	
➤ Inputs, resources	➤ Learning and student-success outcomes
➤ Quality of entering students	➤ Quality of exiting students
➤ Curriculum development, expansion	➤ Learning technologies development, expansion
➤ Quantity and quality of resources	➤ Quantity and quality of outcomes
➤ Enrollment, revenue growth	➤ Aggregate learning growth, efficiency
➤ Quality of faculty, instruction	➤ Quality of students, learning
Teaching/Learning Structures	
➤ Atomistic; parts prior to whole	➤ Holistic; whole prior to parts
➤ Time held constant, learning varies	➤ Learning held constant, time varies
➤ 50-minute lecture, 3-unit course	➤ Learning environments
➤ Classes start/end at same time	➤ Environment ready when student is
➤ One teacher, one classroom	➤ Whatever learning experience works
➤ Independent disciplines, departments	➤ Cross discipline/department collaboration
➤ Covering material	➤ Specified learning results
➤ End-of-course assessment	➤ Pre/during/post assessments
➤ Grading within classes by instructors	➤ External evaluations of learning
➤ Private assessment	➤ Public assessment
➤ Degree equals accumulated credit hours	➤ Degree equals demonstrated knowledge and skills

Source: Barr & Tagg (1995) 16.

Under the Instruction paradigm, the quality of an institution is thus measured by the scholarship productivity and reputation of its faculty (i.e. the "knowledge experts"), the students it admits, the number of doctoral students on faculty. On the other hand, the success of an institution in the Learning paradigm is based on student learning outcomes. Teaching evaluations in the Instruction paradigm are based on, for example, whether the lectures are organized, whether the appropriate amount of material has been covered, and whether the teacher shows interest and an understanding of the subject matter. [202] On the other hand, in the Learning paradigm, "the power of an environment or approach is judged in terms of its impact on learning."[203]   Learning outcomes can be measured and

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[202] *Ibid* at 16.

[203] *Ibid* at 17.

would be the standard by which institutions are judged, rather than by "input measures."[204]

Barr and Tagg also discuss the institutional structures of the Instruction paradigm, where the entire structure system is based on a fixed period of time (50 minutes, or 1.5 hours or 3 hours) with one teacher in one classroom for three credits. Those of us who have tried to team-teach know exactly how difficult it can be to challenge this structure in order to change the learning environment. Thus, as they explain, "a 'college education' is the sum [of] the student's experience of a series of discrete, largely unrelated, three-credit classes."[205] Barr and Tagg also point out that this structure hinders students learning skills such as writing, reasoning, or critical thinking because under the Instruction Paradigm it is almost impossible to do it across the whole curriculum since each teacher's job is to "'cover the material as outlined in the disciplinary syllabus.'"[206] The role of the teacher, the expert, is to deliver knowledge to passive recipients "ingesting knowledge for recall on tests."[207] On the other hand, in the Learning Paradigm, as we saw above, students are discoverers and "constructors of their own knowledge".[208] The role of the teacher is then to create and structure the learning environments and activities, but she does not have to be participating in those activities.[209]

A law degree in the Learning Paradigm would therefore not represent a number of credit-hours spent in classrooms but the demonstrated achievement of identified knowledge and skills. Without accepting the merit of the profession's complaints about law school graduates, law schools under the Learning Paradigm might however be able to alleviate some of the profession's concerns about law graduates since these graduates

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[204] *Ibid* at 18.

[205] *Ibid* at 19.

[206] *Ibid* at 19.

[207] *Ibid* at 21.

[208] *Ibid* at 21.

[209] *Ibid* at 21-22.

would be able to show they had acquired knowledge and skills "competencies" (to use the Federation of Law Societies' own language).

Barr and Tagg's article discusses the paradigm shift for whole institutions, that is colleges or universities. Indeed, if the institutional changes that Barr and Tagg argue for in order to go from the Instruction paradigm to the Learning paradigm are not implemented, individual professors in the Learning paradigm will only be able to go so far before they run into institutional obstacles (class schedules, classrooms, size of classes, etc...) that will discourage them.

(V) Conclusions

In ending these two chapters reviewing the literature, let us briefly summarize the most important points for the purposes of this research project on teaching and learning in Canadian legal education. First, we saw in chapter 1 that the literature on Canadian legal education has been somewhat hijacked by the dichotomy between a liberal or a professional/vocational legal education and the never ending debate on the mission of legal education. This dissertation does not take a stand on this issue nor does it aim to resolve it, but rather encourages law professors to move past this impasse in order to pay attention to learning. If indeed the students are not learning, it does not matter if our educational objectives promote a liberal or a vocational legal education. Students will simply not achieve these objectives.

The second main point to take from this literature review is that the general context of higher education characterized by the commercialization of higher education, the commodification of knowledge, student consumerism, and resulting heavier workloads have impacted both the mission of higher education and legal education, and the lives of academics. We cannot forget this context when looking at teaching and learning in Canadian legal education because it will likely influence law professors' pedagogical choices.

In chapter 2, we explored the literature on teaching and learning. From this review we know more about student learning and how it is achieved and influenced. We looked at the concept of learning gaps to try to understand how student learning happens in different stages and that moving through these *gaps* can be explained by learning theories, such as student learning approaches and learning styles. Student learning is highly influenced by their approaches to learning. Surface learning approaches are not likely to lead to significant learning whereas deep approaches to learning will likely result in meaningful learning. In turn, learning approaches are influenced by teaching approaches, or the design of teaching and learning environments, which are in turn influenced by teachers' conceptions of teaching. Although the different terminology of the numerous studies on conceptions of teaching is confusing, the literature still shows that teaching-centered, knowledge transmission conceptions of teaching are related to surface learning approaches whereas learning-centered, facilitating learning conceptions of teaching are related to deep learning approaches. As many have argued, therefore, in order to improve student learning, we must pay attention to teachers' conceptions of teaching. However, we must also pay close attention to institutional factors such as class sizes, course level, students and the valuing or not of teaching in an institution because these are likely to influence conceptions of teaching. In order to explain and resolve some of the institutional issues raised by the literature on conceptions of teaching, we might have to seriously consider moving from the Instruction paradigm, which characterizes legal education and higher education today, to the Learning paradigm, where student learning would be the focus.

Finally, I take the same position as Light, Cox and Calkins, who argue that learning is "not merely a set of concepts or principles that teachers in higher education should be aware of and reflect upon in their own professional practice, but rather frames the whole academic enterprise."[112] This is why learning should drive our individual teaching, but also program and institutional decision-making and organization. But for this to happen, a paradigm shift must occur. The shift from the Instruction paradigm to the Learning paradigm.

(I)   Introduction

We saw in chapter 1 that although much has been written on legal education in Canada, the literature focuses mainly on the mission or general goals of legal education and rarely addresses issues of teaching and learning.   The research questions we identified in chapter 1 thus aim to empirically explore teaching and learning in Canadian law faculties first by determining the teaching and evaluation methods used and secondly by exploring the factors that influence law professors' pedagogical choices.

This chapter describes my journey through this project, more specifically the methodology chosen to investigate the research questions and the methods used to gather and analyse the data.   Since this is the first empirical study on Canadian legal education, the aim was to paint a broad and in-depth picture of legal education, as much as it is possible to achieve both in the same project.

(II)   Methodology - a qualitative look at law teaching

(A)   An inductive approach to research

Although this research project is undertaken in the context of a doctorate in law, it would have been difficult to explore and explain law teaching using legal methodology. Because of the empirical nature of this project, the methodology and the methods used to explore law teaching belong to the social sciences and not to law.

As stated by Kaplan, the aim of methodology is to "describe and analyse research methods, throwing light on their limitations and resources, clarifying their presuppositions and consequences, relating their potentialities to the twilight zone at the

frontiers of knowledge".[1] As explained by Gubrium and Holstein, methodology signifies a way of looking at the world as much as a technique or procedure to gather information.[2] There are two main types of methodologies in social sciences: quantitative and qualitative. This project is based on the epistemological and ontological assumptions of qualitative methodologies although it uses both quantitative and qualitative methods.

Although they acknowledge that the qualitative approach to research is difficult to define precisely, Denzin & Lincoln offer this definition, inspired by Nelson, Treichler and Grosserg's definition of cultural studies:

> Qualitative research is an interdisciplinary, transdisciplinary, and sometimes counterdisciplinary field. It crosscuts the humanities and the social and physical sciences... multiparadigmatic in focus...multimethod approach... committed to interpretive understanding of human experience...inherently political...
>
> Qualitative research embraces two tensions at the same time. On the one hand, it is drawn to a broad, interpretive, postexperimental, postmodern, feminist, and critical sensibility. On the other hand, it is drawn to more narrowly defined positivist, postpositivist, humanistic, and naturalistic conceptions of human experience and its analysis....[3]

The qualitative approach is concerned with meanings and to understand a phenomenon or a situation as it is constructed by the participants.[4] My goal in adopting a qualitative approach to explain law teaching is to see how law teachers themselves make sense of their teaching. Maykut and Morehouse labelled the qualitative research approach the 'alternate paradigm'[5] because it is so different from the dominant, positivist paradigm of research (the 'traditional method') characterized by a belief in "objective inquiry based

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[1] Abrahan Kaplan, *The Conduct of Inquiry: Methodology for Behavioral Science* (San Francisco, Chandler, 1964) at 23, cited in Margaret M. Fonow and Judith A. Cook, "Feminist Methodology: New Applications in the Academy and Public Policy" (2005) 30 Signs 2211 at 2213.

[2] Jaber F. Holstein & James A. Gubrium, *The New Language of Qualitative Method* (New York; Oxford: Oxford University Press, 1997) at 5. The authors use the term "method" (to be distinguided from "methods") to refer to methodology.

[3] Norman K. Denzin & Yvonna S. Lincoln, "Introduction: The Discipline and Practice of Qualitative Research." in Norman K. Denzin & Yvonna S. Lincoln eds., *The Landscape of Qualitative Research: Theories and Issues, Vol. 1* (Thousand Oaks; London: Sage Publications, 2003) 1 at 11, citing C. Nelson, P.A. Treichler & L. Grossberg, "Cultural Studies: An Introduction" in L. Grossberg, C. Nelson & P.A. Treichler, *Cultural Studies* (NY: Routledge, 1992) 1.

[4] Pamela Maykut & Richard Morehouse, *Beginning Qualitative Research: A Philosophic and Practical Guide* (NY: RoutledgeFalmer, 1994) at 18.

[5] *Ibid* at 10.

on measurable variables and provable propositions",[6] where reality is 'out there' to be understood and explained. On the other hand, the alternate paradigm, which Maykut and Morehouse say is still an emerging paradigm,[7] is characterized by a view of reality and knowledge as constructed.   This paradigm fits with my own interpretivist view of knowledge and of looking at the world.[8] By choosing to conduct a qualitative study on law teaching, I am looking for a richer, more in-depth and nuanced understanding of law teaching as it is experienced and constructed by law teachers themselves. For me, law teachers' stories represent the best sources of data for explaining the 'how' and the 'why' of legal education in Canada by taking fully into account its context and its complexities.

However, the choice of this approach has many implications for the kinds of findings that will result from the study and the conclusions that I will be able to draw. Ontological assumptions underlying the qualitative or phenomenological approach as opposed to the positivist/dominant approach dictate that reality is not 'out there' for me, the researcher, to objectively observe and describe, but that instead multiple realities are constructed and interconnected, forming a whole.[9]   At the same time, as Luker eloquently puts, "...writing about the social world is to fix an ambiguous, shifting, complex, multicolored reality into a single black and white sketch",[10] which unavoidably simplifies the phenomenon studied.   In order to explain law teaching in Canada using a grounded theory approach, which requires coding and the creation of categories, therefore, the complex realities of law professors, law students, and teaching and learning in law will have to be simplified. However, I have tried to include as many nuances as possible in the description of the findings.

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[6] *Ibid* at 3.

[7] *Ibid* at 10.

[8] Jennifer Mason defines 'interpretivist' as "concerned with how the social world is interpreted, understood, experienced, produced or constituted": See Jennifer Mason, *Qualitative Researching*, 2nd ed. (Thousand Oaks: Sage Publications, 2002) at 3.

[9] Maykut & Morehouse, *supra* note 4 at 13. See also Valerie J. Janesick, "The Choreography of Qualitative Research Design: Minuets, Improvisations, and Crystallization" in Norman K. Denzin & Yvonna S. Lincoln, eds., *Strategies of Qualitative Inquiry* (Thousand Oaks, CA: Sage, 2003) 46 at 56;

[10] Kristin Luker, *Salsa Dancing into the Social Sciences: Research in an Age of Info-Glut* (Cambridge, MA: Harvard University Press, 2008) at 8.

Epistemological assumptions of the alternate paradigm about the relationship between myself (the knower) and law teaching (the known) hold that knowledge is constructed.[11] Luker explains that by the very act of reporting, we are changing what we observe.[12] This means that I as a researcher cannot stand apart from my description or explanation of law teaching; along with my participants, I construct it.[13] We co-construct it. As Charmaz explains, both participants and I bring ourselves to the construction of meaning, but the difference is that the researcher has the responsibility of being reflexive:

> Researchers and research participants make assumptions about what is real, possess stocks of knowledge, occupy social statuses, and pursue purposes that influence their respective views and actions in the presence of each other. Nevertheless, researchers, not participants, are obligated to be reflexive about what we bring to the scene, what we see, and how we see it.[14]

In contrast to the dominant approach to research, epistemological postulates of the qualitative research paradigm also tell me that my own values will shape my understanding of law teaching, as well as the ways in which I carry out my observations and explain what I observed.[15] Denzin and Lincoln talk about the qualitative researcher as being "an interpretative *bricoleur*",[16] who understands "that research is an interactive process shaped by his or her personal history, biography, gender, social class, race and ethnicity, and by those of the people in the setting."[17] It is therefore important for me to continuously situate myself in relation to the participants, to what I observe, what I hear, how I interpret these findings and finally, what I choose to include in the text.[18] This is referred to in qualitative research as reflexivity. Lincoln and Denzin explain reflexivity:

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[11] Denzin & Lincoln, *supra* note 3 at 13.

[12] Luker, *supra* note 10 at 8.

[13] Maykut & Morehouse, *supra* note 4 at 3 and 11.

[14] Kathy Charmaz, *Constructing Grounded Theory : A Practical Guide through Qualitative Analysis* (London ; Thousand Oaks, Calif.: Sage Publications, 2006) at 15.On the relationship between researcher and participant, and the production of knowledge, see also Carolyn Ellis & Arthur P. Bochner, "Autoethnography, Personal Narrative, Reflexivity: Researcher as Subject" in Norman K. Denzin & Yvonna S. Lincoln, eds., *Collecting and Interpreting Qualitative Materials* (Thousand Oaks: SAGE Publications, 2003) 199 at 202.

[15] Maykut & Morehouse, *supra* note 4 at 13.

[16] Based on the work of Claude Lévi-Strauss, *The Savage Mind*, 2nd ed.(Chicago, University of Chicago Press, 1966).

[17] Denzin & Lincoln, *supra* note 3 at 9. See also Jamie Baxter & John Eyles, "Evaluating qualitative research in social geography: Establishing "rigour" in interview analysis" (1997) 22:4 Transactions of the Institute of British Geographers 505 at 505.

[18] See Esther Bott, "Favourites and Others: Reflexivity and the Shaping of Subjectivities and Data in Qualitative Research" (2010) 10:2 Qualitative Research 159.

> Reflexivity is the process of reflecting critically on the self as researcher, the 'human as instrument'... It forces us to come to terms not only with our choice of research problem and with those with whom we engage in the research process, but with our selves and with the multiple identities that represent the fluid self in the research setting.[19]

It is a delicate balance between being sufficiently reflexive so that readers are able to see where I am coming from in interpreting the data, and falling into Patricia Clough has called a "compulsive extroversion of interiority", thus subsuming the voices of participants to my own story.[20] Reflexivity can never be fully attained, but researchers should nevertheless strive for it.[21]

This story of law teaching is therefore told from the first person when designating my own actions; it is "my" analysis, "my" interpretation, "my" findings. In telling this story, I have tried to convey the choices that I have made in collecting and interpreting the data and to be as transparent as possible throughout the process. On the other hand, I use the "we" when taking my readers along with me through the analysis and the discussion of the findings.

(B) Implications of methodology for generalizability and causal relationships

As Maykut and Morehouse explain, the alternate paradigm also has implications for the extent to which I can draw generalizations from my findings. The dominant paradigm of research seeks to generalize explanations from a particular time and place to other

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[19] Yvonna S. Lincoln & Egon G. Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences" in Norman K. Denzin & Yvonna S. Lincoln, eds., *The Landscape of Qualitative Research: Theories and Issues* (Thousand Oaks: Sage Publications, 2003) 253 at 283. See also Lisa M. Given, ed., *The SAGE Encyclopedia of Qualitative Research Methods*, Vol. 2. (Thousand Oaks, CA: Sage Publications, 2008), "reflexivity" at 747-748 (*SAGE Encyclopedia*); Marilys Guillemin & Lynn Gillam, "Ethics, Reflexivity, and "Ethically Important Moments" in Research" (2004) 10 Qualitative Inquiry 261 at 274; Mason, *supra* note 8 at 5.

[20] Patricia T. Clough, *The End(s) of Ethnography: From Realism to Social Criticism* (Newbury Park, CA: Sage, 2002) at 63. See also Michelle Fine et al., "For Whom? Qualitative Research, Representations, and Social Responsibilities" in Norman K. Denzin & Yvonna S. Lincoln, eds., *The Landscape of Qualitative Research: Theories and Issues* (Thousand Oaks: Sage Publications, 2003) 167-207 at 169-170.

[21] Virginia L. Olesen, "Feminist Qualitative Research and Grounded Theory: Complexities, Criticisms, and Opportunities" in Anthony Bryant & Kathy Charmaz, eds., *The SAGE Handbook of Grounded Theory* (Los Angeles: SAGE, 2007) 417 at 425 (*Sage Handbook*).

times and places, while the alternate paradigm values context and therefore avoids generalizations; it seeks to advance only tentative explanations.[22]   This means that I cannot generalize the findings in this study to all of legal education, either in Canada or abroad.   However, by telling the stories of law teachers, the reader can draw the inferences that she wants to draw as a "story's generalizability is constantly being tested by readers as they determine if it speaks to them about their experience or about the lives of others they know."[23]   Resisting the temptation to draw generalizations was a difficult hurdle for me to overcome because of external expectations related to this study.   Since no empirical study of this kind has been conducted in Canada before, legal academics, who now know of this research study because they were invited to participate, will likely expect more generalized theories and conclusions about law teaching. This pressure, as well as the need for empirical data on law teaching, are the main reasons I have also chosen to include a widely based questionnaire in my study. Using the observations and interviews, I reach beyond the more quantitative aspects of the questionnaire to more nuanced but less generalizable explanations and propositions about law teaching.

The issue of causal linkages is closely related to the issue of generalization. As Maykut and Morehouse point out, while the dominant paradigm searches for causal connections, the alternate paradigm aims towards the discovery of propositions from observing and finding patterns of meaning.[24]   In contrast, the point of *legal methodology* is to argue, to persuade.   In the dominant research paradigm, being able to draw generalizations from the data is an advantage for making recommendations for change, or in legal methodology, for making more persuasive arguments for change. Although change may be part of the motivation to carry out the research in the first place, Gubrium and

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[22] Maykut & Morehouse, *supra* note 4 at 12; Anthony Bryant & Kathy Charmaz, "Grounded Theory in Historical Perspective: An Epistemological Account" in *SAGE Handbook, ibid*. The formal grounded theory method developed by Glaser, on the other hand, seeks to inductively have theory emerge through the constant comparative method, precisely because Glaser believes that generalizations can be made after a formal theory has been developed. Glaser has been criticized for this and more constructivist grounded theorists such as Charmaz instead advocate for a repositioned grounded theory method which "brings the social scientist into analysis as an interpreter of the scene, not as the ultimate authority defining it.": see Bryant & Charmaz, *ibid*; Barney G. Glaser, "Doing Formal Theory" in *SAGE Handbook, ibid*, 97.

[23] Ellis & Bochner, *supra* note 14 at 229.

[24] Maykut & Morehouse, *supra* note 4 at 13.

Holstein hold that it is not the main aim of the qualitative approach.[25]   Some feminists would disagree with this position as many argue that the whole purpose of doing research is to bring about social change and that researchers have a responsibility to empower their participants and fight for social change.[26]   I agree with both of these views; although the original goal of this research project was to describe and explain, and not change, law teaching in Canada, my findings urge me to at least make some recommendations for change. After what I have observed and heard from law teachers, I think it is my responsibility to participants, but also to students and to society more generally, to make some propositions for changing legal education.

As just mentioned, the original intention for this study was the discovery and explanation of the how and the why of legal education. Maykut and Morehouse describe this approach as the "interpretative-descriptive" approach to qualitative research, whereby the researcher is "primarily concerned with accurately describing what she or he has understood, reconstructing data into a 'recognizable reality'".[27]   However, this does not go as far as building theory, which is the approach to qualitative research developed by Strauss and Corbin[28] and which is the foundation and main purpose of grounded theory. Maykut and Morehouse also opt for the interpretative-descriptive approach to qualitative research and use the constant comparative method (developed from grounded theory) in analysing data even though they are not interested in theory-building.[29]   My methodology is thus inspired by grounded theory principles and uses the constant comparative method in analysing the data, as we will see in more detail below, but it does not aim to build overarching theories about legal education.

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[25] See Holstein & Gubrium, *supra* note 2 at 11. But see Mason, *supra* note 8 at 7 who thinks that qualitative research should aim to make arguments and not mere descriptions.

[26] See for example, Fonow & Cook, *supra* note 1 at 2213 who note that one of the guiding principles of feminist methodology is "emphasis on the empowerment of women and transformation of patriarchal social institutions through research and research results" See also Mary Margaret Fonow & Judith A. Cook, *Beyond Methodology: Feminist Scholarship as Lived Research* (Bloomington: Indiana University Press, 1991); Sarah Maddison, "Feminist Perspectives on Social Movement Research" in Sharlene Nagy Hesse-Biber, ed., *Handbook of Feminist Research: Theory and Praxis* (Thousand Oaks: Sage Publications, 2007) 391.

[27] Maykut & Morehouse, *supra* note 4 at 122. See also Janesick, *supra* note 9 at 73.

[28] See, for example, A. Strauss & J. Corbin, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (Newbury Park, CA: Sage, 1998).

[29] Maykut & Morehouse, *supra* note 4 at 126.

Applying grounded theory principles, I opted for a naturalistic open-ended inquiry and an inductive approach to data analysis in order to avoid as much as possible colouring this discovery with theoretical frameworks and already existing literature.   In grounded theory, a review of the literature before, during or after the collection and analysis of the data is called "theoretical sensitivity" and it is contested.[30]   Some grounded theory researchers say you should have good theoretical background before starting the analysis and others say to put it on hold.[31]   The danger with theoretical sensitivity is that the researcher will be tempted to "plug" the data into the categories developed in the literature and miss some possible new categories emerging from the data.[32] However, Dey argues that an open mind does not mean an empty head.[33]   Experienced researchers should be distinguished from novice researchers since the former have extensive theoretical knowledge prior to starting a project that will influence their collection and analysis of the data.[34] Kelle takes a moderate approach to the theoretical sensitivity issue:

> The idea that theoretical categories and propositions could be derived by simple ('inductive') generalization from observable data by researchers who have freed their minds from any theoretical preconceptions whatsoever before collecting empirical data manifests a rather outmoded view of scientific inquiry...[35]

Charmaz acknowledges the fact that researchers start with background assumptions and disciplinary perspectives and concepts, which, she explains, "give you initial ideas to pursue and sensitize you to ask particular kinds of questions about your topic."[36] The important point to remember is that these sensitizing concepts, as she calls them, can and must be discarded if they are not reflected in the data. These disciplinary

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[30] Anthony Bryant & Kathy Charmaz,, "Introduction – Grounded Theory Research: Methods and Practices" in *SAGE Handbook, supra* note 21, 1; Judith A. Holton, "The Coding Process and Its Challenges" in *SAGE Handbook*, *ibid*, 265 at 272.

[31] Bryant & Charmaz, *ibid* at 17. See also Ian Dey, "Grounding Categories" in *SAGE Handbook*, *ibid*, 167 at 175-176.

[32] Holton, *supra* note 30 at 272.

[33] Dey, *supra* note 31 at 176.

[34] Bryant & Charmaz, *supra* note 30 at 19-20, citing Dey, *ibid*.

[35] Udo Kelle, "The Development of Categories: Different Approaches in Grounded Theory" in *SAGE Handbook*, *supra* note 21, 191 at 197.

[36] Charmaz, *supra* note 14 at 16.

perspectives and concepts must constitute starting points in analysing the data in order to develop but not limit ideas.[37]

Having been a law professor myself for six years before starting this doctorate, and having written about legal education, I was already familiar with the legal education literature, which I then had to explore further for the purposes of my comprehensive examination. Before I started my fieldwork, I knew where my study would be situated and where the gaps were in the legal education literature. Then I spent over a year reading about social science methodology, which I knew nothing about. I was also a little familiar with principles of adult learning (e.g. active learning, meaningful assessment, instructional alignment) from my own experience as a teacher and teaching workshop facilitator, but wanting to take an inductive approach, I did not explore further the teaching and learning literature prior to determining my research questions, methodology and methods.

Throughout the processes of analysis and writing, I spiraled between the literature and my analysis of the data; I went back to the data when the literature would bring new perspectives to the data to see if it fit with my own analysis, and I went back to the literature to try and explain new discoveries in the data. Berg defends a spiraling model of research, not opting for either the theory-before-research or the research-before-theory models of research, but rather a combination of both, with a spiraling back and forth between the different stages of research (see Figure 3-1).

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[37] *Ibid* at 17.

Figure 3-1

Figure 2.1 The Spiraling Research Approach
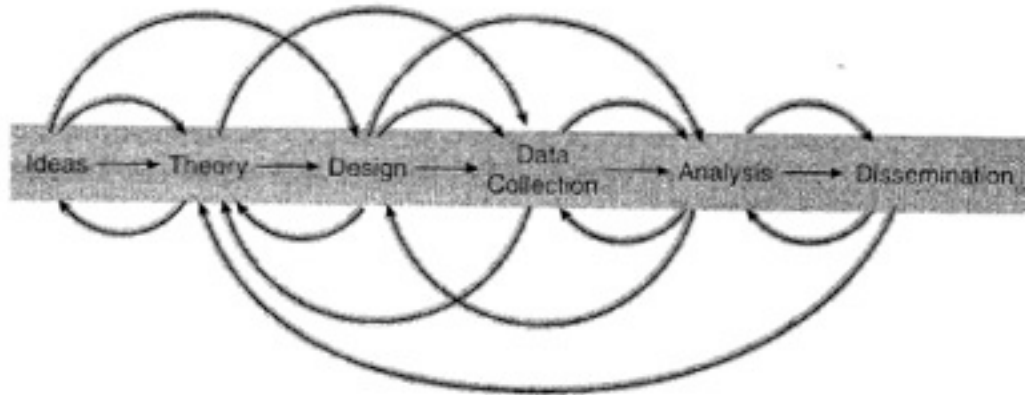
Source: Berg (2007) at 24.

(C)   *Validity in qualitative research*

The qualitative findings in this study constitute my own interpretation of the data collected. However, as Auerback and Silverstein point out, as long as my interpretation is supported by the data, it is valid, even if someone else could have had a different interpretation of the same data. [38]   The criteria to evaluate the validity of findings in qualitative research are different than the criteria applied in quantitative research.[39] Whereas quantitative research results are judged by the "trinity of validity, reliability and generalizability",[40]   qualitative research is judged by other criteria, such as

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[38] Carl F. Auerbach & Louise B. Silverstein, *Qualitative Data: An Introduction to Coding and Analysis* (New York: New York University Press, 2003) at 32.

[39] For a good historical overview of validity in qualitative research, see Robin Whittemore, Susan K. Chase & Carol Lynn Mandle, "Validity in Qualitative Research" (2001) 11:4 Qualitative Health Research 522. The authors explain that the concept of validity is contested in qualitative research because of its close ties with the positivist paradigm, but they argue that we should keep this term because it is well known by all researchers , as long as we define criteria appropriate for qualitative research.

[40] Janesick, *supra* note 9 at 69. To this we should add objectivity.

trustworthiness, authenticity, credibility, transferability, dependability, confirmability.[41] Trustworthiness seems to be the ultimate criteria which encompasses the others as it is defined in the *Sage Encyclopedia of Qualitative Research Methods* as "the ways in which qualitative researchers ensure that transferability, credibility, dependability, and confirmability are evident in their research."[42] Trustworthiness requires that the purpose and methods are described in rich details, open to the scrutiny of the readers,[43] who can then judge the credibility of the findings. As Janesick explains, validity in qualitative research is therefore related to whether description and explanation fit together and whether the explanation is credible.[44] In order to ensure validity, "bias, and inadequate portrayal of the participants/phenomenon are addressed".[45]

Credibility is the most important guiding principle of qualitative studies according to Baxter and Eyles.[46] Credibility and authenticity refer to the "conscious effort to establish confidence in an accurate interpretation of the meaning of the data"[47], i.e. that the representation of the findings reflects the experience of participants.[48] Concretely, this means that those who have had the experience would recognize it immediately by reading those representations.[49] Transferability refers "to the degree to which findings fit within contexts outside the study,"[50] but it does not refer to the generalizability of the findings.[51] Baxter and Eyles acknowledge that most qualitative researchers do not make

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[41] Yvonna S. Lincoln & Egon G. Guba, *Naturalistic Inquiry* (Beverly Hills, CA: Sage, 1985); Maykut & Morehouse, *supra* note 4 at 145. Confirmability " reflects the need to ensure that the interpretations and findings match the data. That is, no claims are made that cannot be supported by the data." See *SAGE Encyclopedia, supra* note 19, "trustworthiness" at 895. Other criteria include plausibility, relevance, appropriateness, completeness, credibility, applicability, consistency, etc... : see Whittemore. Chase & Mandle, *supra* note 39 at 529 for a table summarizing the different criteria to establish validity in qualitative research; see also Baxter & Eyles, *supra* note 17 at 512 for a similar table.

[42] *SAGE Encyclopedia, supra* note 19,"trustworthiness" at 895.

[43] Maykut & Morehouse, supra note 4 at 145.

[44] Janesick, *supra* note 9 at 69.

[45] Whittemore, Chase & Mandle, *supra* note 39 522 at 530; see also J.A. Maxwell, *Qualitative Research Design: An Interactive Approach* (Thousand Oaks, CA: SAGE, 1996).

[46] Baxter & Eyles, *supra* note 17 at 512.

[47] Whittemore, Chase & Mandle, *supra* note 39 at 530. See also Lincoln & Guba, *supra* note 41.

[48] Baxter & Eyles, *supra* note 17 at 512

[49] *Ibid.*

[50] *Ibid* at 515.

[51] *Ibid.*

claims as to the transferability of their research since qualitative research is context dependent, but the authors argue that researchers nevertheless have a responsibility with respect to transferability, which they can address in the following way:

> The original researcher must describe the study context as completely as possible because, at root, transferability involves the degree to which constructs are meaningful to other groups (as yet unstudied or not yet compared with the original group). Detailed, thick description (Geertz 1973) – as a methodological as well as interpretative strategy – of how constructs/ hypotheses are developed and what they mean, will be of use to the researcher or layperson who wishes to determine the degree to which they may be transferred to other contexts.[52]

Techniques for ensuring validity in qualitative research can be varied and adapted to both project and context.[53] These techniques include purposeful sampling, which we will explain later, triangulation and reflexivity. Triangulation, or the use of multiple methods of data collection, contributes to the trustworthiness of the results.[54] Richardson argues for "crystallization" instead of triangulation: the crystal represents the multiple methods and multiple perspectives through which we can look at the phenomenon under study. It replaces positivist notions of validity:

> Crystallization, without losing structure, deconstructs the traditional idea of "validity" (we feel how there is no single truth, we see how texts validate themselves); and crystallization provides us with a deepened, complex, thoroughly partial understanding of the topic. Paradoxically, we know more and doubt what we know.[55]

Another way of ensuring rigour in qualitative research is through reflexivity, as explained by Guillemin and Gillam:

> Reflexivity involves critical reflection of how the researcher constructs knowledge from the research process—what sorts of factors influence the researcher's construction of knowledge and how these influences are revealed in the planning, conduct, and writing up of the research. A reflexive researcher is one who is aware of all these potential influences and is able to step back and take a critical look at

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[52] *Ibid* at 516, citing Clifford Geertz, *The Interpretation of Cultures : Selected Essays* (New York: Basic Books, 1973).

[53] For a table summarizing the different types of techniques in ensuring validity in qualitative research, see Whittemore, Chase & Mandle, *supra* note 39 at 533.

[54] Maykut & Morehouse, *supra* note 4 at 146. See also Denzin & Lincoln, *supra* note 3 at 8.

[55] Laurel Richardson, *Fields of Play: Constructing an Academic Life* (New Brunswick, NJ: Rutgers University Press, 1997) at 92, cited in Lincoln & Guba *supra* note 19 at 279-280. Valerie Janesick has also adopted the concept of crystallization: see Janesick, *supra* note 9 at 67.

his or her own role in the research process. The goal of being reflexive in this sense has to do with improving the quality and validity of the research and recognizing the limitations of the knowledge that is produced, thus leading to more rigorous research.[56]

In this study, I have used all three techniques to ensure the validity of the research. Purposeful sampling strategies were used to select participants for the study, as we will see in the sampling section. Also, multiple methods for collecting data were used, and these will be described in detail in the methods section below. Finally, throughout this entire research process, I have reflected on and, where possible, explained the methodological choices that I made. Later in this chapter I state my positionality and assumptions with respect to this research project so that readers know exactly where I am coming from. I have also given "thick descriptions" of the context, the participants and of my thoughts throughout the process of analysing the data. Some of these reflections are found in this chapter, and others are found in my interpretations of the data, in chapters 4 through 6. However, an obsession with methods as a guarantee of validity can stifle creativity.[57] It is therefore important to keep a balance between creativity and analytical rigour.[58]

(C)   *Mixed methods in qualitative research*

It is important to note that my methodology is not exclusively qualitative as I used a web-based questionnaire to gather quantitative data on the teaching and evaluation methods used by law teachers in Canada. We could therefore qualify my study as mixed methods research. Mixed methods research can be defined as follows:

> Mixed methods research is the type of research in which a researcher or a team of researchers combines elements of qualitative and quantitative research approaches (e.g. use of qualitative and quantitative viewpoints, data collection, analysis inference techniques) for the purposes of breadth and depth of

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[56] Guillemin & Gillam, *supra* note 19 at 275; see also Whittemore, Chase & Mandle, *supra* note 39.

[57] Janesick refers to this practice as "methodolatry" or methodological idolatry: see Janesick, *supra* note 9. See also Whittemore, Chase & Mandle, *ibid* at 526.

[58] Whittemore, Chase & Mandle, *ibid*.

understanding and corroboration.[59]

Certain issues arise when using a mixed methods approach to research. The quantitative and qualitative approaches are epistemologically and ontologically different. Some would even say they were incompatible, the former belonging to the positivist paradigm and the latter to the alternate or constructivist paradigm.[60] However, mixed methods approaches are increasingly used in research.[61] After a total rejection of the positivist quantitative approach to research by certain qualitative researchers precisely because they are located within different paradigms,[62] the pendulum has swung back towards the middle and researchers increasingly use mixed methods. The "purist movement" in qualitative research has been superseded by a pragmatist and pluralist approach that matches research methods with the research questions.[63] Creswell and Plano Clark point out that it has been called "the third methodological movement."[64] As Whittemore, Chase and Mandle explain, critical multiplism "encourages the critical and exhaustive study of a phenomenon from multiple perspectives, recognizing the inherent strengths and limitation of all scientific methods."[65] Mixed methods research thus provides "a variety of choices, options, and approaches to consider"[66], as well as "multiple ways of seeing and hearing, multiple ways of making sense of the social world."[67]

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[59] R. Johnson, A.J. Onwuegbuzie & L.A. Turner, "Toward a Definition of Mixed Methods Research" (2007) 1:2 Journal of Mixed Methods Research 112 at 123. See also John W. Creswell & Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research*, 2nd ed. (Los Angeles: SAGE Publications, 2011) at 4 for a review of the different definitions of mixed methods research.

[60] On the question of mixed methods and paradigms, see J.C. Greene & V.J. Caracelli, "Defining and Describing the Paradigm Issue in Mixed-Method Evaluation" in J.C. Greene & V.J. Caracelli, eds., *Advances in Mixed-Method Evaluation: The Challenges and Benefits of Integrating Diverse Paradigms* (San Francisco: Jossey-Bass, 1997) 1-18.

[61] There is even a journal for it: Journal of Mixed Methods Research.

[62] Denzin & Lincoln, *supra* note 3 at 15-16. See also Whittemore, Chase & Mandle, *supra* note 39 at 524-525.

[63] Whittemore, Chase & Mandle, *ibid* at 525. See also Creswell & Plano Clark, *supra* note 59 at 7; J. Wheeldon, "Mapping Mixed Methods Research: Methods, Measures, and Meaning" (2010) 4:2 Journal of Mixed Methods Research 87 at 88

[64] Creswell & Plano Clark, *ibid* at 1. See also Wheeldon, *ibid* at 88, who says this approach suits the new generation of "postparadigm" researchers. She says that "...for a new generation of researchers the either/or approaches of the past must give way to a more nuanced, relevant, and socially useful considerations": ibid at 88.

[65] Whittemore, Chase & Mandle, *supra* note 39 at 525.

[66] Wheeldon, *supra* note 63 at 87.

[67] J.C. Greene, *Mixed Methods in Social Inquiry* (San Francisco: Jossey-Bass, 2007) at 20 cited in Creswell & Plano Clark, *supra* note 59 at 6.

As previously mentioned, this is the first empirical study of law teaching in Canada. Thus it was important to me to be able to give a quantitative description of the teaching and evaluation methods used in Canadian law faculties, which was the purpose of the web-based questionnaire. However, a quantitative approach would not likely be able to explain law teaching with sufficient nuance and complexity. Survey questions are mostly closed, which prevents people from giving rich descriptions of their teaching and of the learning environments they create for students. Survey questions are also inadequate to explore the experiences of law teachers and the possible reasons for their pedagogical choices. Observations and qualitative interviews were therefore included in the research design to give more depth to the description of teaching and evaluation methods and to be able to explain, and not only describe, teaching in Canadian law programs. In choosing a mixed methods approach, I therefore wanted to describe and explain law teaching with both breadth and depth.

(III) Methods for collecting data

To collect and triangulate data on my research questions, I used a combination of research methods consisting of a web-based questionnaire, in-class observations and qualitative interviews. I had just over one year to do my fieldwork and to visit 9 law faculties, spending about 2 weeks in each place. I used an emergent research design[68] for the observations and interviews, adjusting my interview questions, observation notes and sampling strategy as new leads for analysis emerged. During my fieldwork, I wrote daily in my research journal to keep track of these methodological decisions and to record ideas about possible leads to analysis.

(A) Web-based questionnaire

As mentioned above, the aim of the questionnaire was to get a broad idea of the variety of teaching and evaluation methods used by law professors across the country and to

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[68] Maykut & Morehouse, supra note 4 at 44.

see what variables explain similarities and differences. The questionnaire also contained opportunities for respondents to add short descriptions and explanations to their responses.

I used the website surveymonkey.com to conduct the questionnaire. All full-time law professors in Canada were sent an invitation with an individualized link to the questionnaire, which they filled out online. The questionnaire was made available anywhere between September of 2005 until June of 2006. Because some universities required that I obtained an Ethics certificate from their institution in addition to the certificate I had from my own institution, the invitations were sent out as I obtained these certificates. This means that the number of reminders to participate varied between faculties (i.e. for those I sent the first invitation to in September, I was able to send at least two reminders, but for those for which invitations were sent later, I was only able to send one reminder). The questionnaire was closed in June 2006.

(i) *Sampling strategy*

To find participants for this study, I drew from the pool of 797 full-time tenured and tenure-track law professors who taught in Canadian law faculties in 2005. By focusing on full-time professors I am excluding a huge portion of law teachers in faculties: adjuncts or sessional lecturers. This exclusion means that the picture I paint of the teaching and evaluation methods in Canadian law faculties and departments is not be a complete one. On the other hand, because adjuncts come from a wide variety of backgrounds and professional contexts (for e.g. private practice, government, non-governmental organizations, graduate programs) and likely have different concerns relating to teaching and learning than full-time professors, including them in the study would make it difficult to get a good idea of the teaching and learning context of legal education. My idea here is to start with a study focusing on full-time law professors, and carry out other studies with adjunct faculty.

For the web-based questionnaire, I sent a letter to all deans and chairs of law faculties and departments informing them of the project and asking their permission to contact individual faculty members to participate in the study. Once I had the deans' permission (only two deans out of 21 did not respond to my requests), I sent out individual e-mail invitations to law professors to participate in my study by completing a web-based questionnaire. My sample for the questionnaire is therefore largely random and self-selected; professors interested in teaching are more likely to participate in the study than professors who are not. I also suspect that professors who know me[69] were more likely to respond than those who did not.

(ii)   *Survey population*

Out of the 797 full-time law professors who were invited to participate in my study, 273 filled out the survey, 192 for the English-language survey and 81 for the French-language survey. These numbers correspond to a 34.3% participation rate. Each e-mail invitation contained an individualized identification number linked to an individual law professor, which permits me to know who filled out the survey.

I should note here that the part of the questionnaire on personal information and demographic characteristics was marked "Optional"; respondents were thus free to skip the demographic questions and go straight to the questionnaire. For the question on gender, respondents had to fill in the blank when asked to describe their "gender".[70] The gender breakdown of the survey population is roughly half and half: 50.8% of survey respondents were male and 49.2% were female.[71] As for minority group representation, respondents were invited to check if they identified as a member of a minority group, and if so, on what basis. 67% of respondents did not consider themselves to be a

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[69] I have been a legal academic for over six years and was the President of the Canadian Association of Law Teachers in 2004-2005.

[70] When designing the survey, my desire not to exclude anyone drove my choice to leave this as a fill-in-the-blank question rather than a multiple choice question. The answers were extremely varied in form, but basically referred to one of two genders. This type of question made it logistically more difficult later to cross-reference gender in order to be able to compared results based on gender.

[71] 12.8% of respondents skipped the question on gender. The numbers here are a percentage of the people who did answer the question. In the French survey, 9 people skipped the gender question – of those, 4 skipped the entire survey, 3 were female and 2 were male (I checked on the law profs master list to determine the gender). All of these results were somehow included in the "male" results. However, since only 3 females were included in the "male" results, overall, it does not make much of a difference.

member of a minority group. Out of the remaining respondents, 12.2% identified as a member of a minority group on the basis of race or ethnicity, 7.3% on the basis of sexual orientation, 5.3% on the basis of language, 3.7% on the basis of religion and 2% on the basis of ability. Another 7.8% of respondents checked "other"; this category included such responses as woman, woman-mother, class, immigrant, size; one respondent also indicated that many of these applied (see Figure 3-2). Men of race/ethnicity are in a slightly higher proportion than women who belong to a minority group based on race/ ethnicity,[72] but the opposite is true for sexual orientation where we find a larger proportion of women.

Figure 3-2 Representation of minority groups
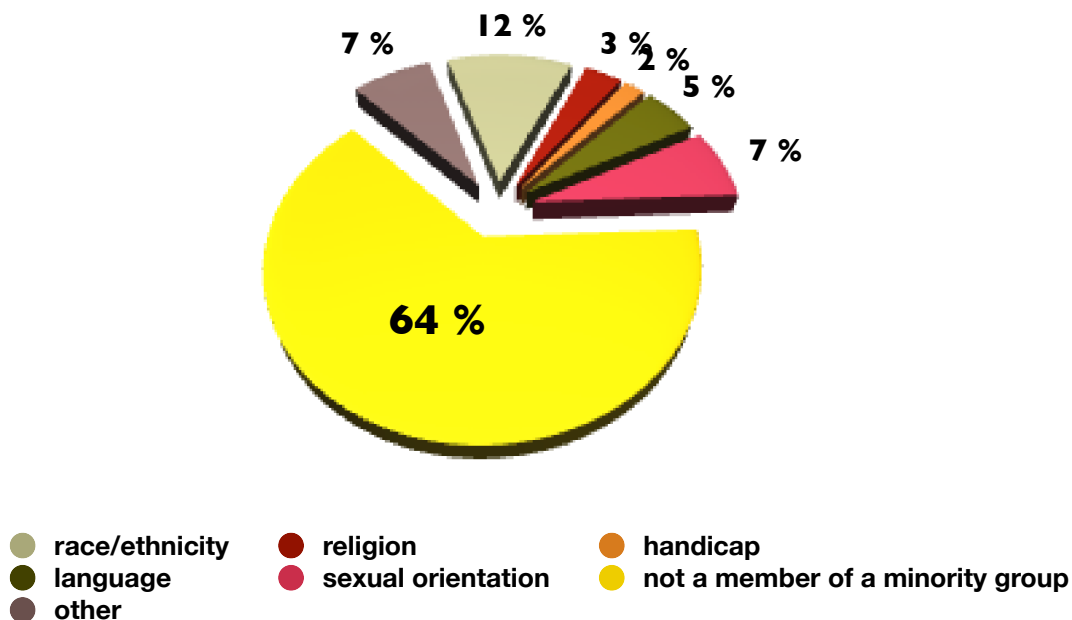
Of the total respondents, 41.2% were ranked as full professors, 23.7% as associate professors, and 30.2% as assistant professors (see Figure 3-3).

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[72] 7.2% of men and 5.5% of women said they were a member of a minority group based on race/ethnicity. For sexual orientation, 5.5% of women and 2.1% of men said they identified with that minority group.

Figure 3-3 Representation of respondents by rank

- Full professor
- Associate professor
- Assistant professor
- Full-time lecturer
- Other
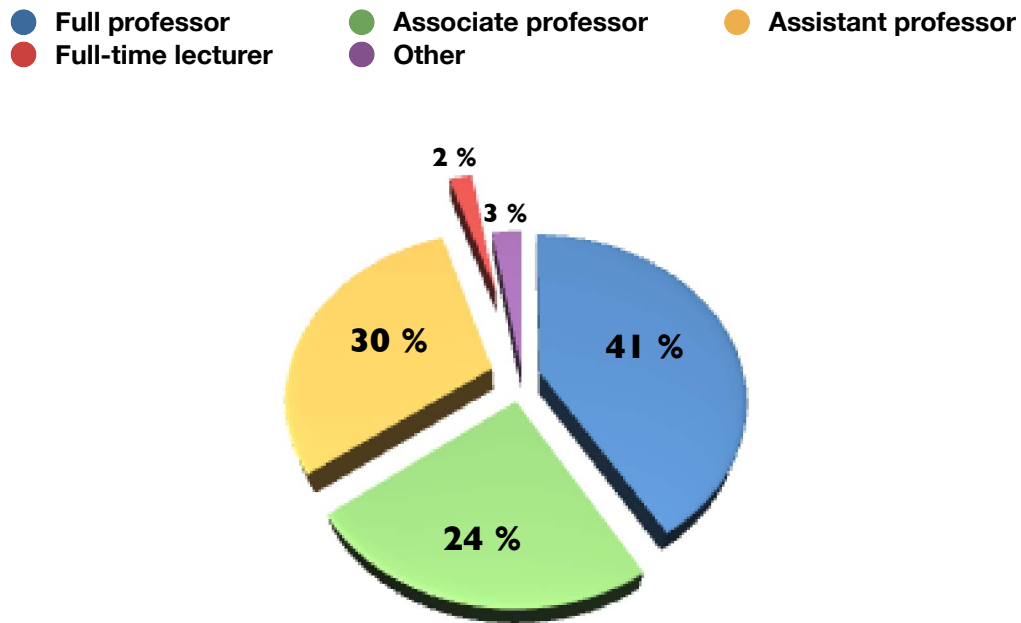
Many more women than men are ranked as assistant professors (19.8% of respondents versus 11.6%), and many more men are ranked as full professors (27.3% of respondents were male full professors whereas only 13.6% were female full professors) (see Figure 3-4). If we consider the years of experience of the respondents, the gender difference in rank makes more sense (see Figure 3-5). The biggest number of survey participants (30.5%) had 20 years or more of experience as a law professor, 23.3% had between 10 and 20 years, 21.8% had between 3-6 years of experience and 14.9% had less than 3 years experience, and only 9.9% of participants had between 7 and 10 years of experience. If we compare between male and female professors, 21.5% of respondents are men with more than 20 years experience, while only 8.7% of respondents were women with the same experience. Thus, between zero and twenty years of experience, women make up the greater proportion of the survey population. This can probably be explained by the hiring practices of law faculties and the candidates who were applying for those positions more than twenty years ago.

Figure 3-4 Rank and gender

Legend: ■ men ■ women

Y-axis: % of total respondents (30 %, 23 %, 15 %, 8 %, 0 %)

- Full prof: 27 % (men), 14 % (women)
- Associate: 9 % (men), 14 % (women)
- Assistant: 12 % (men), 20 % (women)
- Lecturer: 1 % (men), 1 % (women)
- Other: 2 % (men), 0 % (women)
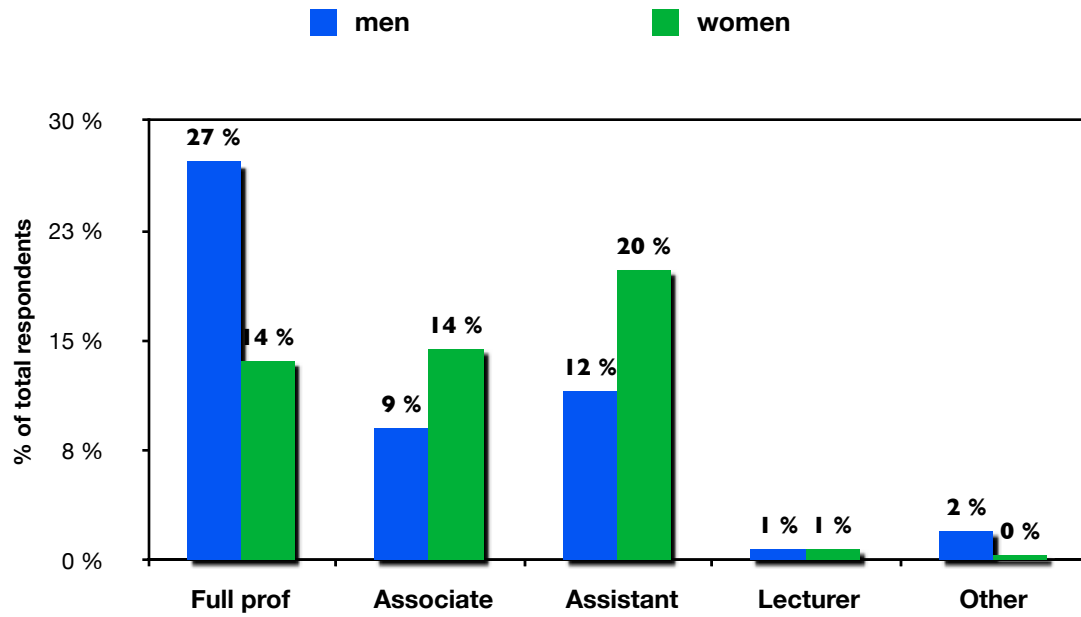
Figure 3-5 Years of experience

Legend:
● Less than 3 years
● Between 3 and 6 years
● Between 7 and 10 years
● Between 10 and 20 years
● More than 20 years

- 15 %
- 22 %
- 10 %
- 23 %
- 30 %
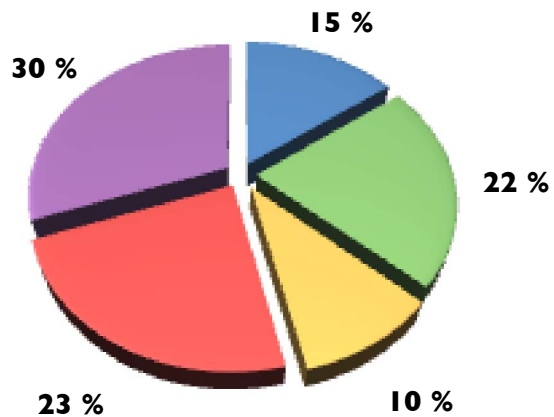
There was also a difference as to years of experience between francophone respondents and anglophone respondents.[73] Generally, the francophone survey population was older than the anglophone participants. For instance, in the over 20 years of experience category, 40.3% of respondents answered in French and only 26.5% answered in English. In all the other years of experience category, there were slightly more respondents from the English survey than the French. 17.3% of respondents with 3 years or less of experience answered the English survey, while only 9.1% answered the French survey. If we compare the percentages of years of experience within the same population (i.e. the francophones with the francophones and the anglophones with the anglophones), we find that 17.3% of anglophones and only 9.1% of francophones have 3 years or less of experience, while we find an overwhelming 40.3% of francophones and 26.5% of anglophones with 20 years or more of experience (see Figure 3-6).

Figure 3-6 Years of experience and language
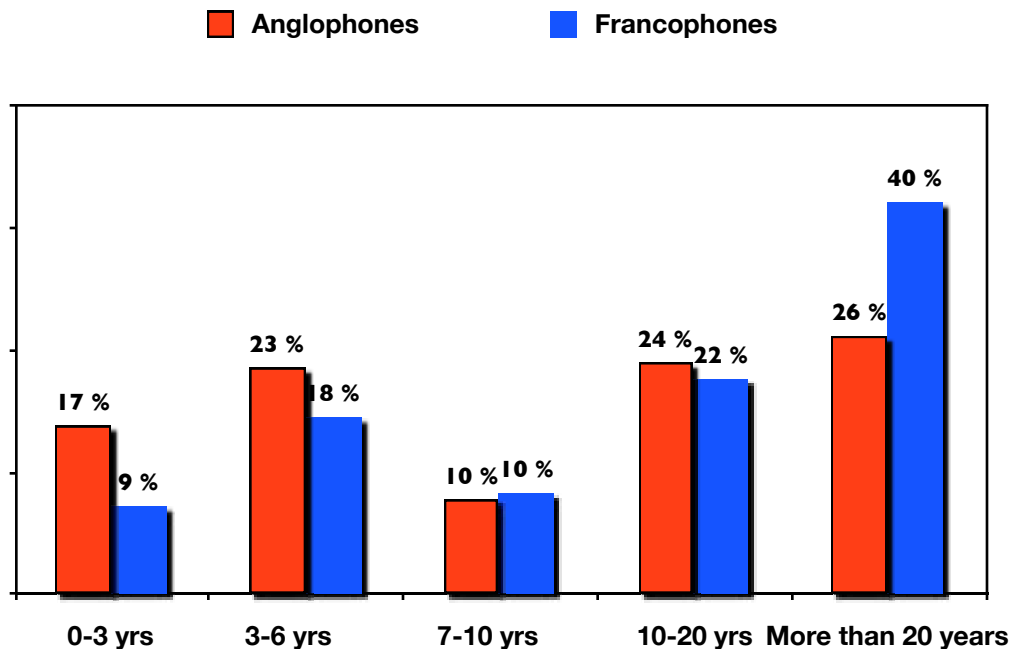
[73] For our purposes. anglophones are those who responded to the English language survey and francophones are those who responded to the French language survey.

As for status (see Figure 3-7), the great majority of survey respondents were tenured (65.3%), tenure-track (27.9%), while only a small proportion were either non-tenured (2.3%), or on a term contract (either limited or undefined)(3.8%). More men than women were tenured, and more women than men tenure-track.

Figure 3-7 Status

● Tenured ● Tenure-track ● Non-tenured ● Limited term contract ● Other
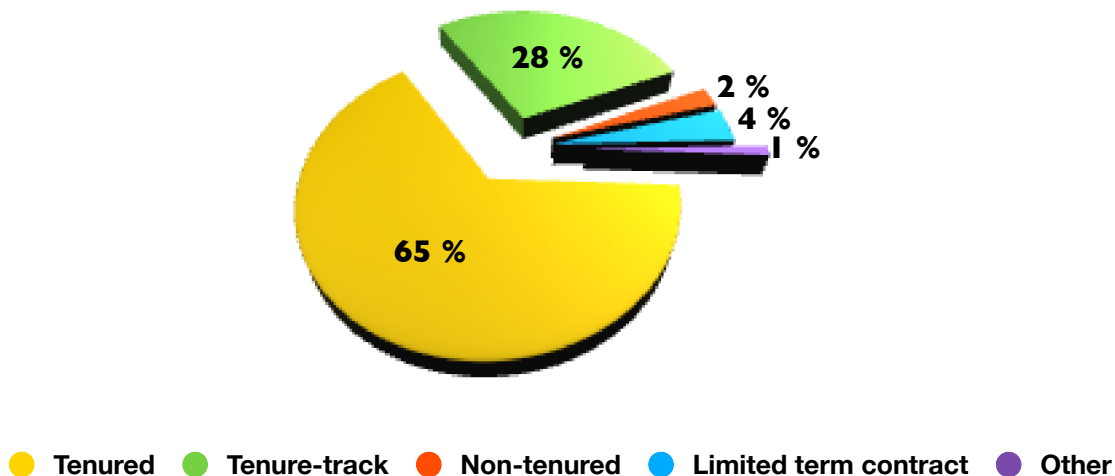
For the purposes of comparing geographic locations, I divided the survey population into five different regions:

1. Western: including UBC, University of Victoria, Calgary and University of Alberta
2. Prairies: including Saskatchewan College of Law and the University of Manitoba
3. Ontario: including Western, Queen's, Osgoode Hall, University of Toronto, Ottawa common law, Windsor and Carleton
4. Québec: including Laval, UQÀM, Université de Montréal, McGill, Sherbrooke, as well as the civil law faculty at Ottawa university.
5. Maritimes: including UNB, Moncton and Dalhousie

The survey population mirrors relatively closely the geographic representation of the 797 full-time law professors invited to participate (see Figure 3-8). Of the 273 respondents, 30.6% were from an Ontario law faculty (compared with 37% of the law professors in Canada working in Ontario), 29.5% worked in a Québec faculty (in the

same proportion of law professors), 18.5% were from the Western region (compared with 16.7% of law professors working in this region), 14% of the respondents work in the Maritimes (compared with 9.7% of law professors working in this region), and 7.4% worked at one of the two faculties in the prairies (compared with the 6.7% of law professors).

Figure 3-8 Geographic region representation of respondents
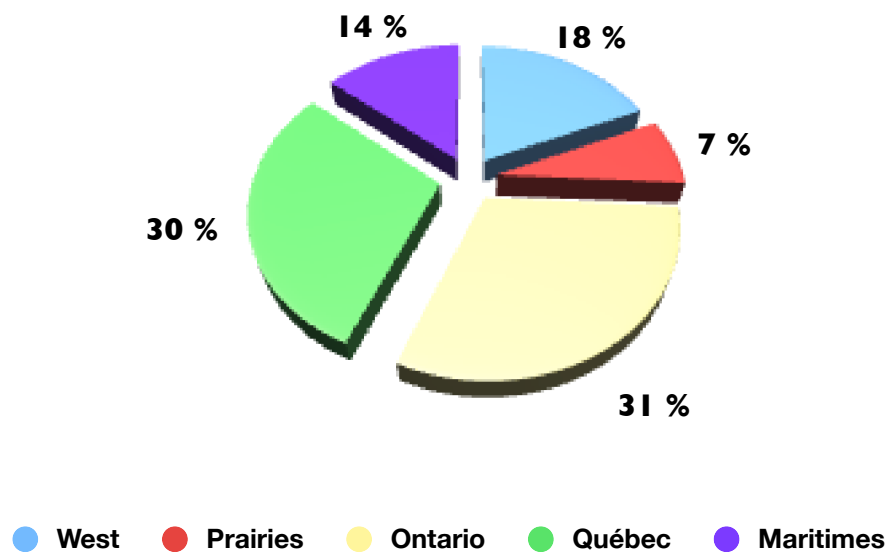
(C)   Observations & interviews

In order to triangulate the questionnaire results, I visited 9 different law faculties in four of the five different geographical regions where I conducted 51 in-class observations and 50 interviews.

(i)   Sampling strategy for observations and interviews

For the observations and interviews, I selected nine law faculties (there are 21 law faculties or departments in Canada) to focus on, based on criteria related to my project,

such as the size of the institution,[74] whether it is a common law or civil law institution, language and geographical region (Québec, Ontario, Prairies, and the West)(See Figure 3-9). Once on location, I was also able to categorize the faculties into teaching or research-oriented institutions. I aimed to interview about 5 participants in each of these institutions, resulting in a sample of between 40 and 50 participants, representing a range of contexts and characteristics such as gender, status, age group, ethnicity, culture, language, teaching approach and theoretical approaches to legal research. However, because of the difficulty or ease in getting faculty members to participate (this might have been due to the time of year I visited), I did more interviews and observations in some than in others as we can see in Figure 3-9.

Figure 3-9 Sample of law faculties

	Province/ Region	Size	research or teaching institution	# of observations	# of interviews
Law Faculty #1	West	large	Research	9	6
Law Faculty #2	West	small	Teaching	7	7
Law Faculty #3	Prairies	small	Teaching	6	6
Law Faculty #4	Ontario	large	Research	4	5
Law Faculty #5	Ontario	large	Research	7	4
Law Faculty #6	Ontario	small	Research	3	4
Law Faculty #7	Québec	small	Research	8	5
Law Faculty #8	Québec	small	Teaching	1	6
Law Faculty #9	Québec	large	Research	4	6

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[74] This distinction is based on numbers: Large faculties had more than 40 faculty members and small faculties had 40 or less faculty members.

I used a combination of volunteer, snowballing and purposeful sampling to recruit participants for this study. Snowballing sampling is when one participant leads to another.[75] Purposeful or theoretical sampling can be defined as follows:

> In its more general form, theoretical sampling means selecting groups or categories to study on the basis of their relevance to your research questions, your theoretical position and analytical framework, your analytical practice, and most importantly the argument or explanation that you are developing. Theoretical sampling is concerned with constructing a sample (sometimes called a study group) which is meaningful theoretically and empirically, because it builds in certain characteristics or criteria which help to develop and test your theory...[76]

As we saw above, purposeful sampling is one of the techniques used in order to ensure credibility in qualitative research. The steps I followed in recruiting participants are as follows. First, I asked the deans if I could invite their faculty members to participate in the study and if I could visit their institution. Once I had the deans' permission to approach their faculty members,[77] I included in my e-mail invitation to law professors the options to participate by completing the questionnaire, letting me observe a class and/or granting me a 60-90 minute interview. Participants for in-class observations and interviews were thus recruited from those who had indicated on their questionnaire that they are willing to be contacted for an interview, or who communicated directly with me after I sent out the invitation e-mail.

In addition to this method of gaining participants, I also asked the deans or associate deans to suggest a list of people who represented a variety of teaching approaches, research fields, ages and status. Some deans complied with my request, others turned it down. When I was on site, I also used snowballing to recruit more participants at some of the locations (not all) by meeting people in the hallways, the library, or through other participants. This was easier to do in the institutions where faculty offices were located within the same area and where people were around with their office doors open. Once

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[75] Irving Seidman, *Interviewing as Qualitative Research : A Guide for Researchers in Education and the Social Sciences* (New York: Teachers College Press, 1998) at 47.

[76] Mason, *supra* note 8 at 124.

[77] Two Deans never replied to my many e-mails. Since my e-mail to them was more out of courtesy than necessity, I contacted the members of those faculties without the Deans' approval.

I had a number of volunteers for observations and interviews, I selected those whom I thought, from what I knew about them, either personally or by reading their biography on the faculty website, represented a variety of research fields, teaching areas (ie courses), age, status and gender.

My sampling strategy was therefore based largely on a pool of volunteers from which I drew participants who represented a range of experiences (based on status, age, experience, gender, race), theoretical and teaching approaches. In that respect, my sample is somewhat self-selected but the pool of volunteers in each selected faculty was usually large enough to allow for purposeful sampling.[78]

In summary, between October 2005 and November of 2006, I visited nine law faculties in four different provinces, conducted 51 in-class observations and interviewed 50 participants. Because of time issues, I was not able to go to the Maritimes.

    (ii)   How observations were carried out

The purpose of carrying out classroom observations was to supplement the data found in the self-descriptions in the questionnaire responses. Observations included the following elements:

First, *what teaching and learning methods are used in what proportion of the class time?* In order to answer this question, I noted the different teaching methods being used, qualifying them as one of the following:

- ☑ discussion
- ☑ question-answer, either student-driven or teacher-driven
- ☑ lecture
- ☑ Socratic- when I saw a dialogue happening and some different levels of questioning.

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[78] Maykut & Morehouse, *supra* note 4 at 45.

I also noted the times at which different people were interacting. For example, I would note down the time when the teacher was talking or lecturing, then note down the time when a student would ask a question, or when the teacher would ask a question.[79]

Secondly, I noted the kinds of *questions* that were being asked and who was asking them (i.e. the professor, the students, which students?). Sometimes I noted down my own labels for questions (i.e. application questions, higher-level thinking questions, recall questions), but if I had the time, I wrote down the exact question asked by the professor or the student. My classifications of the questions are based on the different levels in Bloom's pyramid, which we saw in chapter 2.[80] Application, synthesis and evaluation questions, located at the top of the pyramid, therefore differ from simple "recall" questions where students are asked to remember information they have either read or learned in previous classes. I also jotted down when policy or context issues were being addressed in class and how they were being addressed, i.e. by lecture, the types of questions asked, by discussion, etc…

Thirdly, I observed and described the *learning environments* I found myself sitting in and my observations about how they seemed to affect teaching and learning. More specifically, I recorded as many elements of the physical setting of the classroom as possible when I first sat down in the class (for example, the number of seats, whether they were bolted to the floor or movable, how the room was laid out, blackboard or whiteboard, etc...). I also noted the approximate proportion of students who were using laptop computers, as well as the use of technology in the classroom (i.e. whether it was a smart classroom or whether the professor used blackboard or transparencies). The dress of the teacher was also jotted down. Was she or he dressed "smart casual", "casual", was he wearing a shirt and tie, a jacket? Was she wearing a pant or skirt suit? Fiona Cownie has studied dress in law teaching[81] so I thought it could be data I would

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[79] For the purposes of this dissertation, however, I did not calculate the proportion of time students are interactive in law school classrooms. Having collected this kind of data, however, it is my intention to do a separate article on this point.

[80] Benjamin S. Bloom, ed., *Taxonomy of Educational Objectives: The Classification of Educational Goals. Handbook 1: Cognitive Domain* (New York: David McKay, 1956).

[81] See Fiona Cownie, *Legal Academics: Cultures and Identities* (London: Hart Publishing, 2004), at pp.186-195.

eventually use. Finally, I noted certain things about interactions: did the teacher know students by name? For the francophone teachers, did they use "vous" or "tu"? Did teachers call students by name (first or last) or not?

Although I cannot assess the effectiveness of certain teaching and learning methods simply by observing classes, I nevertheless observed *what students were doing*. Are students taking notes, listening attentively, asking questions, or are they doing other things such as e-mail, chat, reading websites, doodling, or chatting with their neighbour? Who is participating in class discussions? Is participation gendered or racialized?

Thus most of my field notes for the observations carried out in the classrooms are descriptions of what is happening, i.e. what the teacher is doing and saying and what the students are saying and doing. In my field notes, I also expressed opinions about when I was impressed with what a professor was doing or when I thought what they were doing was problematic. However, I did not specifically use any of these personal impressions in my data analysis.

In order to get a sense of the institutional culture, my field notes also include observations on what I noticed outside the classrooms in the selected faculties and how I felt on a daily basis. My field notes thus include informal conversations I had with professors, students, deans and associate deans, as well as what I noticed in the hallways (e.g. are professors chatting with each other or students in hallways?) and about the physical surroundings (e.g. are professors' offices scattered in different buildings/floors or are they concentrated in one area of the same building?). These also include the general feeling I got from the place I was visiting. Of course the timing of my visit may be related to my experience of the environment. For example, if I visited a faculty in mid-October, the feeling would be different than visiting at the end of the semester, when everyone is scrambling to finish the semester and students are already stressed about exams.

(iii)   Qualitative Interviews

In order to obtain a richer understanding of the complexity and diversity of law teaching,[82] I also conducted qualitative interviews. As explained by Gubrium & Holstein, the object of the active interview is "not to dictate interpretation but to provide an environment conducive to the production of the range and complexity of meanings that address relevant issues, and not to be confined to predetermined agendas".[83]

In these interviews, I explored three broad themes with broad open-ended questions.[84] First, I asked participants about their teaching approach, which includes their teaching philosophy, learning objectives and methods, as well as the factors that influence this approach. Secondly, I asked them about the relationship between their scholarship and their teaching. The third theme explored with participants were their views on legal education and how they perceived their role as a legal educator in relation to their students and to society in general.

(IV) Ethical considerations

Guillemin and Gillam explain the ethical dimension of doing empirical research:

> Ethical dilemmas and concerns are part of the everyday practice of doing research —all kinds of research. Ethics is certainly not confined to qualitative research or necessarily to research that involves humans. Ethical issues are equally pertinent in clinical trials that are primarily quantitative, in research that involves animals rather than humans, in research that involves humans only indirectly (such as that which investigates human remains or documents that relate to people), and even in non empirical research where the indirect or long-term consequences can be significant.[85]

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[82] As Jennifer Mason points out, under the alternate paradigm, the ways in which social explanations can be constructed "lays emphasis on depth, nuance, complexity and roundedness in data" rather than broad surface patterns: Mason, *supra* note 8.

[83] Jaber F. Gubrium & James A. Holstein, *The Active Interview* (Thousand Oaks: Sage Publications, 1995). See also Charmaz, *supra* note 14 at 25-27.

[84] Charmaz, *ibid* at 26.

[85] Guillemin & Gillam, *supra* note 19 at 262.

The authors distinguish between "procedural ethics" or the demands of Ethics Review boards and "ethics in practice", or the "everyday ethical issues that arise in the doing of research."[86]

(A)   *Procedural ethics*

This research project involves humans.   The potential risks for law professors to participate in this study exist but are relatively minimal; in the reporting of findings, I did everything possible in order to safeguard the confidentiality of my participants. In order to carry out this study, I first obtained an Ethics Certificate from the Ethics Review Board of my own institution.[87]   However, some universities required that I go through their own Ethics Review boards as well. The others only required that I send them my McGill certificate.

The web-based questionnaire did not involve any risks for respondents. The questionnaire was filled out on a voluntary basis, and although the participants were identifiable by me (only) through their assigned number ID, their names and institutions do not appear anywhere in my final results.   Respondents were asked demographic information about themselves, but these questions were optional and anyone could choose not to answer them. All results are confidential and this was stressed at the beginning of the questionnaire.

The risks for the participants who agreed to in-class observations were minimal. Although participants may have felt some stress at being observed or feared the risks to their reputation by having the results of these observations disseminated, again the findings were reported in a way as to retain the full anonymity of those observed. Moreover, in order to reduce stress or discomfort, participants were not videotaped or

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[86] *Ibid* at 263.

[87] On the problems of applying ethical standards developed in the context of often biomedical but mostly quantitative research to qualitative research, see Guillemin & Gillam, *ibid*.

recorded during these in-class observations. For the purposes of analysis, I coded my observation notes on which participants were identified by a number ID only.

As for the interviews, although participants are potentially identifiable by their personal characteristics and the content of their declarations because the total population of full-time law professors in Canada is relatively small, I used abbreviations referring to gender and status in order to identify participants in the analysis and only used general characteristics of participants (gender, status, research orientation) and their institution (region, size, research/teaching) in the table of participants. Moreover, these different characteristics were treated separately in the analysis in order to minimize the risk of identification.

All participants signed (either electronically on the web-based questionnaire or on paper) an informed consent form after I had explained to them the steps I was taking to ensure confidentiality. Most participants, however, were not very concerned about people discovering their identity.

(B)   Ethics in practice

Guillemin and Gillam explain that ethical issues also arise as the research project is unfolding. They suggest ongoing reflexivity as a way of ensuring an ethical practice throughout the research process, and to be aware of "ethically important moments."[88]

Ethically important moments can arise in collecting the data while out in the field, but also in the analysis of the data. While doing fieldwork, the first possible ethical concern can arise in the relationship between the participants and myself during the observations and interviews. Being a feminist, I thought about issues of power in those relationships. However, when I did my fieldwork I was both an assistant professor and a doctoral student, but also a young (and younger looking) white woman; thus I do not think that

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[88] *Ibid* at 274-277.

these power relationships came to significantly colour the relationships I had with participants in an ethically important way. Also, participants were taken from a pool of volunteers and the themes explored in the interviews were not of a deeply personal nature; I think any possible ethical concern about power in the relationship with participants was therefore minimized. Some told me they were conscious of my presence in their classroom and felt a little nervous, but that was the extent of the discomfort. Everyone seemed comfortable and even enthusiastic about talking to me about their teaching. The two racialized women interviewed seemed comfortable telling me about the power dynamics present in their teaching lives as young, racialized women teachers. In order to safeguard their identity, however, I have left the racial aspects out of the analysis. My apologies to these women if I seem to be telling only part of the story.

I think that I encountered more ethically important moments during the analysis of the data, even though I was alone with the data I had collected. As the one carrying out the research on law teaching in Canada and interpreting law teachers' stories, I have a privileged position in relation to the participants. In order to lessen the effects of this privileged position in relation to the participants' stories, I have been as transparent and reflexive as possible throughout the process of interpreting the data and writing. I have also included as many direct quotations from the participants' teaching narratives as was necessary in order to stay as true as possible to the meanings they were trying to convey.

(V) My positionality

After discussing the ethical considerations of this study and before explaining the methodology used to analyse the data, let me introduce a brief interlude to situate myself in relation to this project.

In relation to this study on law teaching in Canada, I have multiple identities: I am a law teacher, a critical legal scholar, a feminist, a former law student. I am also a perfectly

bilingual québécoise who has studied, lived and taught law in both Québec and British Columbia, thus being familiar two very different cultures. I also have civil law, common law and Masters degrees. When I started the study in 2004, I had been teaching at UBC for six years. Upon finishing this doctoral project, six years later, I am a professor in the département des sciences juridiques at the Université du Québec à Montréal (UQAM), where I have been since January 2007.   Although I am very familiar with the context of law teaching as an "insider", I am however a "novice researcher", having never done any kind of empirical study in the past.[89] These identities and my past experiences, as well as my values and beliefs, are both the motivation behind the study and the influences that I bring to it.

I have always had an interest in teaching. In the third year of my legal studies, I came very close to quitting to go into education to become an elementary school teacher because I found the study of law to be particularly alienating. The teaching methods (lecture) and the evaluation methods (100% final examination) were extremely stressful and a blow to my self-esteem. Although I was highly motivated to learn at the beginning of my legal studies, I quickly became disengaged and began to 'play the game' of attending lectures, taking notes but never participating, never doing the readings and cramming three days before the examination. I focused my energies elsewhere doing volunteer work and working part-time.   As a result, my grades suffered, other than in smaller seminar courses. I was a consistent B- student in exam courses and an A student in seminars where I could write a research paper. I still remember what I wrote those papers on, whereas for exam courses, I had forgotten the course content within two weeks of writing the final exam.

When I was first hired as a full-time lecturer and director of the legal research and writing program at the UBC Faculty of Law, I hired a first year student to help me redesign the curriculum for the program. This student was a First Nations student who had taught adults before coming to law school. In one summer she taught me about

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[89] In our article "Back to Basics", Wes Pue and I did a statistical analysis of course selection at UBC for a period of ten years; however, the study was only quantitatively based and did not require us to do any fieldwork.

adult learning theories, learning-centered curricula, learning objectives, teaching strategies and active learning. I also found a passion in learning about teaching and learning, which I nurtured by attending numerous teaching and learning workshops and conferences over the next few years and completing a certificate in teaching in higher education. I became more and more critical of the dominant legal education model and its teaching and evaluation methods, but also realized that very little had been written about what actually happens in law classrooms.

One of the reasons I decided to do this study was therefore to find out what was going on in Canadian law faculties. I was also curious to find out from law professors themselves about why they teach the way they teach, hoping to identify both inspirations and barriers to effective teaching in Canadian law faculties.

The values and beliefs I bring to my research are shaped by my own experiences. First, I consider myself a dedicated and innovative teacher. I think that good teaching is crucial for two main reasons. First, because we have a responsibility to our students to genuinely care about their intellectual and personal development. Secondly, I believe we have a responsibility to the public to educate jurists who will acknowledge the privileged position they hold in society and to use their position in an ethical manner and for the improvement of society. I believe that we can improve the society we live in through teaching. I also believe that good teaching means active learning; students have to be motivated, engaged and challenged in order to learn. My conception of teaching is learning-focused; that teachers have the responsibility to create learning environments that will foster student learning. Based on my own experience as a law student, where the competitive learning environment contributed to my feelings of alienation, I also believe that learning should be collaborative, not competitive.

My experiences also shape the assumptions I started this project with. As we can see, these reflect a pretty negative view of law teaching and law teachers:

- Law teaching is not active, engaging or collaborative;
- Most law professors only 'transmit' information in the form of legal rules and only

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ask students to apply them on an examination;

- Most law teaching takes the form of lecturing;

- The 100% final examination is the predominant method of evaluation;

- Law professors do not care about teaching;

- Most of law teaching reflects a positivist and hegemonic view of law;

- Law teaching reinforces power and existing hierarchies;

As a law teacher myself, I am also in the position of doing "insider research".[90]   In a positive way, my experience as a law professor meant that I could understand what participants were saying because we share a common language.[91]   My visibility as a law professor and a champion of good teaching in law (I was the President of the Canadian Association of Law Teachers and organized the "Teaching and Learning Day" for many years) might have given this study more legitimacy in the eyes of potential participants and therefore encouraged more of them to participate.

Being an insider is also a disadvantage. I found myself being more active than I probably should have during the interviews. Because I shared similar experiences with participants, I often finished their sentences or completed their thoughts. Also because I thought I knew what they meant when talking about teaching, I did not recognize opportunities for probing them further, which would have enabled me to go deeper in their experience as a law teacher and meaning-making of teaching.   Also, because I am a well-known champion of good teaching, some of the participants might have wanted to say things to please me and to make themselves appear to be good teachers.

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[90] In her study on legal academics, Fiona Cownie discusses her experience an "insider researcher": Cownie, *supra* note 81 at 22-25.

[91] *Ibid* at 23.

(VI) Data analysis

(A) Questionnaire

As mentioned above, I used surveymonkey.com to run and manage the questionnaire on teaching and evaluation methods. I was able to run different "filters" right on the software. I did not want the questionnaire to be too "busy" with both French and English versions of the questions,[92] thus I decided to create two separate questionnaires: one in English and one in French. Because of this choice, which was essentially for the participants, I had to manually merge together the responses to both questionnaires. I therefore exported my results for each individual question into Excel, then merged raw numbers together, then worked out percentages. I had to do this for every single question, plus for any filters that I decided to run on the data. The gender filter was complicated to run because, again for reasons which had more to do with participants than with easy data analysis, I left the gender question with a blank space for people to fill in. The possible responses to this question were therefore numerous (f, m, F, M, female, woman, w, man, m and one person even responded 'boy'). In order to run a filter for women, for example, I had to think of every possible answer and make up a complicated logical and mathematical rule instead of having the software do it for me.

(i) Coding the observation and interview data

I began coding my data during, but mostly after collecting it. Coding means "categorizing segments of data with a short name that simultaneously summarizes and accounts for each piece of data."[93] Coding is the link between data collection and developing an emerging theory to explain the data.[94] Put simply for our purposes, a theory is "a description of a pattern that you find in the data"[95] or a general or more or less

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[92] There is also a political issue that I wanted to avoid in creating two separate surveys. Was I to put the English or French first?

[93] Charmaz, *supra* note 14 at 43.

[94] *Ibid* at 46.

[95] Auerbach & Silverstein, *supra* note 38 at 31.

comprehensive set of propositions about a particular phenomenon.[96] Coding is thus a procedure to organize the text of the transcripts in order to be able to see patterns that will then lead to some explanations to answer the research questions.[97]

The first step in coding is qualitative or initial coding where the codes selected describes closely the chunks of data that they are related to.[98] The second step is focused coding, where the most important categories are developed in large batches of data.[99] At the stage of initial coding, I used the software Atlas TI to code the data. In coding the data and developing categories, I used the constant comparative method, which is the core element of grounded theory. It consists in comparing the codes developed with other codes, categories with other categories, going back and forth between data and categories until patterns emerge.[100]

At the initial coding stage, I coded my observation notes for 39 of the 51 observations carried out[101] and for 11 interview transcripts using Atlas TI and came up with over 200 codes. Every part of every transcript and observation notes was coded. I was, literally, "adrift in a sea of data".[102] During the initial coding for the observations, my codes were mostly descriptive. For example, my entire analysis on questioning (see chapter 4) started out with the following codes: asking questions, students answering questions, students asking questions, student behaviour. Because, as we will see, law classes are quite interactive, my "asking questions" category contained an enormous amount of data, so I sub-divided it into different "types" of questions representing the nature of the questions, for example questions about the facts or holding of a case, questions that asked students to think critically about the law or questions that required short

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[96] Bruce L. Berg, *Qualitative Methods for the Social Sciences* (New York: Pearson, 2007) at 19.

[97] Auerbach & Silverstein, *supra* note 38 at 31.

[98] Charmaz, *supra* note 14 at 46-48.

[99] *Ibid* at 46.

[100] This method of analysis was first developed by Glaser and Strauss : Barney G. Glaser & Ansel L. Strauss, *The Discovery of Grounded Theory* (Chicago: Aldine, 1967).

[101] I stopped coding observation data when my categories were saturated.

[102] According to Auerbach and Silverstein, this is a natural step in the process of data analysis: see Auerbach & Silverstein, *supra* note 38 at 34.

answers. I also developed a sub-category for the ways in which professors asked questions such as whether they asked the whole class or a student in particular, or whether they answered their own questions. I also used clustering and diagrams on Atlas TI to see how the elements of questioning fit together. [103]

For the interview data, initial coding was more difficult to do, because it was difficult to forget about my research questions and my interview questions, which basically defined the themes I was to explore in this study on law teaching. My initial codes were thus not purely descriptive but also conceptual. Also, because I am very familiar with my research topic, I came to the data with my own assumptions. Charmaz acknowledges this situation but encourages the researcher to nevertheless look at the data from as many perspectives as possible. [104] My challenge in coding, therefore, was to "make the familiar strange".

At the second stage of coding, focused coding, I created families of codes and grouped many codes together. For example, one family of codes was "students" and grouped together the following codes: authority, descriptions of students, factors, student attitudes, student emotions/reactions, student engagement, student expectations, student perceptions, student resistance, students' previous knowledge, 1st year students,[105] students interested/not interested, students prepared/not prepared, what colleagues are doing. Another family of codes was "course characteristics", which grouped together course type, course format, course subject when these were factors in pedagogical choices.

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[103] Clustering is a "shorthand prewriting technique" similar to a concept map; it allows the researcher to draw relationships between codes and categories:: see Charmaz, *supra* note 14 at 86. Diagrams and/or concept maps are also used by grounded theorists as part of their method: see for example, Adèle Clarke, *Situational Analysis, Grounded Theory After the Postmodern Turn* (Thousand Oaks: SAGE publications, 2005); Strauss & Corbin, *supra* note 28; Charmaz, *supra* note 14 at 117. Concept and mind maps "focus on the meaning associated with visual representations of experience, knowledge, perception, or memory." They can help us identify relationships between various concepts: See Wheeldon, *supra* note 63 at 90-92.

[104] Charmaz, *ibid* at 46-47.

[105] This was a separate code because many participants clearly distinguished between 1st year students and other students and spent some time in interviews talking specifically about 1st year students.

In writing memos, I was able to give rich descriptions of these families of codes or core categories, for example for teaching methods, teachers' roles, or students (abilities, expectations, attitudes). Memo-writing is the essential step between data collection and writing.[106] As Charmaz explains, writing memos "keeps you involved in the analysis and helps you to increase the level of abstraction of your ideas... Memos catch your thoughts, capture the comparisons and connections you make, and crystallize questions and directions for you to pursue."[107] Memo-writing and clustering helped me to understand my categories and to make links between them.

Because I was looking at the data with the idea of finding explanations or factors for law teachers' pedagogical choices, I grouped many of the codes and families of codes into two main categories: 'internal' and 'external' factors. "Internal factors" included such codes as how law teachers viewed their role in relation to students and to society, their goals in teaching, how they described themselves as teachers, rationales for their teaching methods and strategies, descriptions of good teachers, descriptions of good classes and bad classes. In the external factors category, I had two main sub-categories: *institutional factors,* which included course characteristics (course type, course level, course format, class size), institutional requirements/constraints, physical learning environment constraints, and s*tudents*, which included at least 15 codes related to students, including student resistance, student expectations, student evaluations, difficulties with students and descriptions of students. These were to be my main categories or theoretical codes, as Charmaz labels them. Theoretical codes "conceptualize how the substantive codes may relate to each other as hypotheses to be integrated into the theory. They help the analyst maintain the conceptual level in writing about concepts and their interrelations."[108]

Some codes fit into more than one main category. For example, "coverage" fit into the internal factors category when the professor was concerned about coverage and into

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[106] Charmaz, *supra* note 14 at 72.

[107] *Ibid*.

[108] Holton, *supra* note 30 at 283.

the institutional factors category when this pressure for coverage was externally imposed. Another example is the research-teaching nexus and/or tension. When looking through the data, it became apparent that teachers felt a tension between their research and teaching duties. For some teachers, this was more of an internal factor, but for most, the tension was caused by an institutional culture that valued one over the other. On the other hand, there is a also a possible positive relationship between research and teaching; the synergy between these two aspects of higher education would fit more in the internal factors category.

Once I had my two main themes or categories (internal and external factors), I selected the codes and families of codes that would fit within those broad categories and let go of the codes and chunks of data that did not fit within them. Auerbach and Silverstein suggest doing this selection between "raw text" and "relevant text" earlier on in the process,[109] which would have saved me endless hours of coding, but I was afraid of leaving important things out.[110] By the time I had defined the two broad categories from the numerous codes and families of codes, however, it was easier to let go of some of the data.

(ii)   *Spiraling between the literature and the data analysis*

After developing these main categories, I revisited the literature on teaching and learning, where I decided to draw upon the notion of "conceptions of teaching". I was therefore able to group all of the codes I had developed under the "internal factors" category into one conceptual category of conceptions of teaching and I went back to the data and grouped together similar chunks of data for each of these codes. At this stage,

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[109] Auerbach & Silverstein, *supra* note 38 at 34. To decide what is relevant text, they suggest writing down on a piece of paper what the research concerns (or questions) are.

[110] The authors note this fear of novice researchers: "As you begin to read the text, everything seems important, and it seems impossible to omit anything a participant said. On the other hand, if you include everything, the amount of data will become unwieldy. With your statement of research concerns in front of you, you can check a portion of text against your statement.": See Auerbach & Silverstein, *ibid*.

I also reread through the remaining transcripts[111] to see if new or different categories emerged. Holton explains that as long as the analysis and integration of the literature is done after the core categories have been developed, the danger of fitting the data into the already existing categories is not as great.[112] Looking at data relating to the 'internal factors' broad category and grouping it into "pools of meaning",[113] concerning the relationship between teacher, student and content, different conceptions of teaching emerged from the data.

Kember and Kwan's research[114] establishes a relationship between conceptions of teaching and teaching approaches. I then decided to spiral back to the data to see if there was or not a relationship between conceptions of teaching and teaching practices (teaching methods and evaluation methods), in order to explore conceptions of teaching as a possible factor explaining law teachers' pedagogical choices. In order to do this, I compared each participant's conception(s) of teaching with their teaching practices. Looking at what they had told me about how they saw their role, their goals and intentions in teaching, ideas they had about teaching and learning, and comparing this data with their own descriptions of their teaching practices[115] I created a table comparing individual conceptions of teaching with teaching practices for each participant. When looking at the relationship between teaching conceptions and practices, four different groupings emerged, as we will see in chapter 5.

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[111] I was unable to use a certain number of interview transcripts, for different reasons. For some, the poor quality of the recording made it impossible to reliably transcribe the interview. For others, my novice interviewing skills meant the interview had gone on tangents far removed from the themes of this study. Overall, however, 37 interviews were transcribed and analyzed.

[112] Holton, *supra* note 30 at 272.

[113] This means that the "boundaries between individuals were thus abandoned and interest was focused on the "pools of meaning": see Ference Marton & Roger Säljö, "Approaches to Learning" in Ference Marton, Dai Hounsell & Noel James Entwistle, eds., *The Experience of Learning: Implications for Teaching and Studying in Higher Education* (Edinburgh: University of Edinburgh, Centre for Teaching, Learning and Assessment, 2005) 39 at 42.

[114] Kember & Kwan, "Lecturers' Approaches to Teaching and Their Relationship to Conceptions of Good Teaching" (2000) 28 Instructional Science 469. See also Keith Trigwell, Michael Prosser & Philip Taylor, "Qualitative Differences in Approaches to Teaching First Year University Science" (1994) 27 Higher Education 75.

[115] Descriptions of teaching methods and evaluation methods closely corresponded to the observation data I had for most participants (I did not observe all interviewees so I cannot say "all"). Because there was no major discrepancies between what participants told me and what I had observed, I analyzed their own descriptions of teaching as representing their actual practices.

In order to develop my framework to explain law teaching in Canada, I used a mostly inductive approach in analysing the data I had collected, although I spiraled between the data, my analysis of the data, and the literature in an ongoing process until all of it made sense and explained some aspects of law teaching in Canada.

(VII) Conclusion- a journey of learning about learning

This empirical research project was a journey into teaching and learning, but also more personally for me, a journey into learning about social science research methodologies. My motivations for carrying out this research project included learning about these methodologies but what I had not realized was that my novice status meant that the process took much longer than anticipated (I spent an entire year just reading up on social science methodology before deciding to take an inductive approach and grounded theory) and led me to make many rookie mistakes in the collection and analysis of the data, which in the end were not fatal mistakes but which contributed to the process taking longer. My novice status as a social researcher also meant that I was filled with self-doubt throughout the entire process, including in the stages of research design, data collection and mostly, data analysis. However, in the end, I think that my doubts led to a better analysis because I was careful to go back to the data every time doubts emerged.

When I teach legal research methodology to undergraduate law students, I get them to write a research journal to encourage them to reflect about their research strategies and to learn from their mistakes. In the context of this research project, I can compare myself to first year law students doing legal research for the first time. In following my own advice, therefore, I use this conclusion to make a list of the lessons I learned about social science research methodology throughout this process.

First, I chose an inductive approach to this research project because this was the first empirical research study into law teaching in Canada and I wanted to ensure I did not miss anything by focusing on certain aspects and thus forgetting others. The drawbacks of taking an inductive approach and not wanting to miss anything are that the amount of

data I collected was phenomenal, even for a seasoned social science researcher. However, because this is the first empirical study of its kind in Canada and because most law professors are not that familiar with social science research methods (and they, after all, are the ones who are going to read this), I felt that doing a large scale, mixed methods study was important. However, I am hoping that this first overall and general study will encourage law professors to carry out more focused, in depth studies of certain aspects or issues raised in this study.

The second drawback of an inductive, or research-before-theory approach, was that when I was reading the teaching and learning literature, I doubted my own analysis of the data, which was more descriptive than theoretical. I also realized that my questions to participants could have been more precise in order to make the connections more easily than I did. However, if I think about the purpose of this study, which was to explore law teachers' experience of teaching to give rich accounts of law teaching in Canada, the inductive methodology I chose was the most appropriate. My analysis does not fit perfectly with the literature, but as we will see in chapter 6, the reasons for these differences make sense and may bring a new perspective to those theoretical frameworks.

From my use of mixed methods (quantitative and qualitative), the second lesson I learned was how to collect and analyse data using two completely different types of methods for data collection and analysis.

I am looking forward to carrying out more focused research projects on certain aspects of what this thesis uncovered: research into law teachers' conceptions of learning, research into law students' learning approaches and how they relate to conceptions of teaching, and to specific teaching and evaluation methods. For these future studies, my acquired base of knowledge into teaching and learning will help in designing more focused research projects. However, this empirical study into law teaching in Canada was a crucial first step. The breadth of the data collected will also keep me busy for many years to come as I was not able to include every aspect into this writing project.

CHAPTER 4 – TEACHING AND LEARNING METHODS IN CANADIAN LEGAL EDUCATION

(I) Introduction

The purpose of this chapter is to consider the first two research questions concerning the educational goals and objectives of Canadian law professors, as well as the teaching and evaluation methods they use to achieve those objectives. The first question will be answered by analysing the interview data. The second question will be answered by presenting the results of the web-based questionnaire, supplemented by the observation and interview data.

As explained in chapter 3, my assumptions going into this study, which are based on my own experience as a law student and as a law professor, were that the lecture was the dominant teaching method used in law classrooms and that the sit-down 100% final examination was the main evaluation method. As we will see in this chapter, the survey results and my observation data confirm this assumption, although the findings suggest that professors use lecturing in conjunction with some interactive teaching methods such as question-answer or discussion. As for evaluation methods, it seems that sit-down final examinations are still the norm although a majority of law teachers use at least one other form of evaluation, whether it is a mid-term examination or a number of assignments.

(II) Objectives of teaching

(A) Findings

In interviews, I asked participants about their objectives in teaching, i.e. about what they want students to take away from their courses. In analysing the data, I divided those

educational objectives into three categories based on the literature[1]: knowledge, skills and attitudes.

(i)   Knowledge

To most law professors interviewed, knowledge of law and doctrine is an essential part of legal education, although the relative importance of doctrinal knowledge and the reasons why this was important varied between participants.   One professor admitted that it was important that students know the law, but thought there was too much emphasis on this in legal education because of habit, custom, inertia:

> *Well, a couple of things: one, just habit, custom, inertia. Right? That's the way it's always been. Despite our claim, and in many cases a justifiable claim, that we demonstrate remarkable capacity for critiquing traditional ways, I'm not sure we live it in the classroom, as well as we really know we ought to... (FPM2)[2]*

Doctrinal knowledge means knowledge of the rules or positive law, but also knowledge of basic legal concepts and principles. One civil law professor explained what he meant by "knowledge":

> *ce qu'on appelle le droit positif. Un droit positif intelligent et critique.*
> *...*
> *j'essaie de faire saisir aux étudiants les principes juridiques, les valeurs juridiques comme la bonne foi, ... la stabilité des contrats, la stabilité de la propriété immobilière, la protection des tiers, tout ça ce sont des thèmes qu'on retrouve à travers le Code civil... (FPM5)*

One participant qualified knowledge of the basic vocabulary and concepts of different areas of law as a "base de culture juridique solide". Also in the 'knowledge' category are objectives that focus on the relationship between law and society. Participants mentioned that it was important for students to understand the social context of law and the role of law in the larger society because law is a reflection of society and society's needs. As

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[1] See for example Marlene Lebrun & Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (Sydney: The Law Book Company, 1994); William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007)

[2] The codes used to identify the quotations are descriptive of status and gender. For example, "FP" refers to Full Professor, "AP" to Assistant Professor and "AsP" to Associate Professor; "M" refers to a man while "W" to a woman. For details on where each of these participants is from, and if they are more "doctrinal" or "law and society" scholars, see Appendix 2.

one participant put it, "law is a living organism". The following quotations summarize this view:

> *I hope that they leave with some sense about what the role of law is in the larger society. (APM1)*

> *Ils devraient être en mesure d'avoir une véritable connaissance des règles de succession au Québec et comprendre ou être capables de faire le lien entre le contexte social et les règles juridiques qui reflètent les besoins sociaux de la société dans cette matière. (FPM11)*

(ii)   Skills

The acquisition of certain skills, or of a set of tools, was also mentioned as a teaching goal by most participants. These skills include legal argument, legal reasoning, legal analysis, the ability to think, seeing and accepting different viewpoints, searching for answers, the ability to read and analyse a case.[3]   When I probed certain participants about what "argument" meant, it was further explained as listening, formulating an argument by making reference to authorities, creating arguments from those materials to persuade a judge or client, and using or manipulating the authorities to your ends. This participant, who uses the Socratic method, explained the skills he wants his students to learn:

> *Whether it's a statute, a case or an article, is being able to read it , and understand it, and analyse it and GLEAN from it. Because what you do as lawyers is you use all of this material as your tools, for building, creating arguments to persuade a judge, to persuade a client, to persuade the other client's lawyer, to persuade your own client. You're constantly trying to persuade someone to a particular point of view. There's a way to do that. And there's a way to do that in our legal system when you're in court and you have to learn how to do that. And that's what I spend most of my time doing; you might have seen in my class I always say "what's the legal argument? Where are you getting this from?" At the end of the day there might be two very good competing legal arguments that the court has to choose as between them and very often it has nothing to do with the quality of the legal argument but the end result the court wants to reach, but you still nonetheless have to go through this process. (AsPM1)*

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[3] In her survey of Canadian legal academics, Cownie found that the educational aims of Canadian law teachers were to teach students to think, to teach students relevant intellectual or legal skills, instilling passion or enthusiasm in their students and the importance of stimulating interest: See Fiona Cownie, "Teaching, Professional Identify and Academic Lawyers: Canada and England - a Comparative Perspective" (2009) 3 Canadian Legal Education Annual Review 37 at 49-51.

Communication skills, both written and oral, were also mentioned by a few participants as what they want students to learn in their class, as illustrated by the following quotation:

> *Je trouve que c'est beaucoup, ils sont capables de me prouver qu'ils sont capables d'écrire; ce que je veux privilégier par là c'est d'une part, le talent qui est d'après moi, l'habilité qui est la communication parce qu'en droit, il n'y a pas rien que de l'écrit, mais il y a aussi comment communiquer notre connaissance et notre savoir. Et donc, je privilégie ça au-delà de ça une communication publique justement pour forcer des gens qui ne parlent jamais. Dans une classe, il y a toujours ces gens qui lèvent la main, qui ont toujours la réponse ou qui l'ont pas mais qui vont en tous cas toujours prendre la parole. Il y a des gens qui ne prennent jamais la parole. Et à mon avis, c'est une erreur, on forme des juristes mais on forme des juristes qui vont être dans la société, ils ne sont pas tous dans des bureaux, ils ne sont pas tous perdus dans des trucs de recherche complètement abstraits, ils vont être à quelque part dans la société. Et si on ne les habitue pas à prendre la parole devant un groupe de leur pairs, de quoi vont-ils vont avoir l'air dans un an ou dans deux ans quand ils devront être devant des juges, des clients, ou enfin, je ne sais trop. Donc, l'habilité qui est visée c'est ça, d'abord la communication. (FMP12)*

Critical thinking was mentioned quite often in interviews as a goal of teaching. It was described to me as being able to ask "why" questions about the law: why it is the way it is, where it comes from, who it benefits, as these participants explain:

> *You have to let them know what the rules are, but I think that this is, for some, one of the only times when you're going to try to get them to think critically about how the legal system works. And why it's that way. And especially how contingent it is. That it has not always hasn't been this way, or it's the status quo, or it's necessary to be that way. That much of it is so recent. And there are so many other approaches in other countries, or other systems. So to try to really get them to understand that this is just one choice that's been made for various reasons. And that it has lots of benefits but it has lots of costs too, and just think about the overall system and how it really works. (APW3)*

> *Critical thinking was just about "let's just not accept everything that's said", "let's think critically about what these laws mean, who they affect"... And just to think critically about what we're saying and to try and identify contradictions. Do certain statements favour certain people, certain groups? Do certain assumptions favour certain people, certain groups? (AsPW5)*

Critical thinking also means to know how the rules change, why they change, why they are the way they are, as explained by this participant:

> *Well I think part of it is this kind of critical thinking stuff. I think that in a proper legal education, students are not just learning a bunch of rules. They're learning how to engage with those rules and constantly think critically about them. And you know I think that if you're going to be a good lawyer that's what you have to do too because rules are changing*

all the time right? You want to sort of figure out what the rationale behind them is and how they're likely to change. (AsPM2)

For some participants, critical thinking also means taking a critical approach to law in order to identify its strengths, weaknesses, and contradictions. It also means knowing different perspectives or critiques of the law and being able to apply them to a given situation, as is suggested by this participant:

> *... taking a critical approach, to understand what the [specific area] law regime is in Canada. But then to see what its strength and weaknesses are and the critiques from various perspectives. (APW3)*

This idea of critical thinking is different than students adhering to an alternative perspective and making it their own, which would be an attitudinal objective.

(iii) Attitudes

Participants also talked to me about their attitudinal objectives, which include ethics, some understanding of systemic oppression on grounds of gender, race or class, an understanding of the social responsibility that goes with (the privilege of) being a lawyer or a law student. Teachers also wanted their students to become citizens who would contribute to society, as is illustrated in this comment:

> *I would emphasize the responsibility. I would emphasize that in terms of just how much affluence and power as legally educated individuals they have, which is part of the privilege of being at law school. And with it comes the responsibility to exercise that respectfully and non-selfishly and part of that is looking to those who are more unfortunate and more marginalized and feeling that, you know, given what you've been given, you actually need to look out for these other people too. (AsPW2)*

Closely related to objectives concerning citizenship is the objective that students understand the consequences of decisions on power dynamics and the responsibility that comes with that power, as this comment explains:

> *Because it's not just, you know, getting the accuracy of the rules right, it's understanding the consequences and that means understanding the consequences in the context of all of the power dynamics that law either reinforces or, you know, can be used to disrupt if one thinks it's a good idea to disrupt them. But that's part of the responsibility that you have to decide*

that for yourself, you know? You have to decide whether law should be reinforcing this power structure or disrupting it, you know? (FPW1)

On the relationship between these various objectives, many participants believed that students must know the law before they can critique it. Formal legal reasoning thus comes before critical thinking as we can see from these statements:

Well, they need to understand what the law IS. And then I'll bring them back to, okay, why do we have the law this way? Right? ...You get them to read the case, THEN you explain to them, okay you know what the rule is. WHY would you want to do it this way? But I tend to do the why, as part of, here's what the rule is, as opposed to, let's take a broad overview of the political choices we make in the law of contracts. It's a perfectly valid way to operate, and some people prefer the big picture questions. And I don't shy away from them. I still do the "why does this rule operate". But I tend to do them on a rule by rule basis, rather than a sort of, you know, let's take really good look at the big picture. (APM2)

J'ai également des expectatives au niveau justement de, je parlais de par coeur, c'est plate à dire, ce n'est pas très sexy, mais c'est ça, c'est qu'à un moment donné, il y a une partie du droit qui est technique et je ne pense pas qu'on puisse prétendre qu'on va arriver avec un esprit critique en première session de droit. Ça prend des connaissances avant de pouvoir critiquer. (AsPW9)

One participant in Québec said that first year should only be about knowledge of the positive law; critical reflections and multidisciplinary views on law should be dealt with in the upper years only:

Je trouve qu'au baccalauréat, le droit positif comme on dit a encore sa place et l'étudiant a besoin de ça. Ce qui n'empêche pas de réfléchir sur certains aspects mais la réflexion, la réflexion critique, la multidisciplinarité, ça ne peut pas prendre toute la place dans un cours de baccalauréat, surtout pas dans les cours de baccalauréat de premier niveau. Il y a beaucoup de choses à installer avant de passer à ça, qui à mon avis, c'est plus à la maîtrise qu'on fait ça. (FPM6)

The following participant, who wants the classroom to be about critical discussion, still recognizes the importance of knowing the doctrinal pieces:

Yeah, with respect to wanting to have the classroom be a different kind of classroom than the one that I was socialized to as a law student. So wanting to have all this room for the critical discussion. But then worrying, that all that discussion around the critical discussion, doesn't work if they don't have the positivist pieces. (AsPW3)

When asked directly about the academic/vocational dichotomy discussed in chapter 1, participants usually responded that both were important, that we were training both

lawyers and "juristes", although the pressure from students to be more on the vocational side of the spectrum, especially as tuition fees rise, was acknowledged. However, some participants were opposed to considering law schools as professional schools if that meant getting students ready for practice. Many warned that we should also talk to those in our classrooms who do not want a career practising law. There also seemed to be a perception that to be more professionally oriented meant to teach the legal rules and not much else, as can be seen from this participant's comment:

> I actually think that we should be the school that caters to Law as an intellectual pursuit. As an education that leads to many things. And as a critical education as more than simply a professional absorption of rules. And we do do that, but I think in practice we fall short. And I don't think the students get that message. There's this constant tension between students and faculty over precisely that issue. (AsPW2)

One participant mentioned that in this neoliberal economy, the debate is moot:

> Yeah, I don't know, the thing is that, in a way I don't think that binary is relevant anymore because what we think of as the academic side has become more instrumental and careerist. Like, higher education is being restructured to be more responsive to the instrumental market objectives of knowledge production, rather than knowledge production because it's knowledge. (AsPW4)

As we can see from the above discussion, law professors who participated in this study have a variety of educational objectives and aims. Let us now turn to how law professors pursue those objectives in the classroom and how they evaluate if students have achieved them.

(II) Teaching in Canadian legal education - Findings

(A) Additional methodological notes

The survey population was described in detail in chapter 3. In order to understand the analysis of the survey results, it is helpful to mention that participants were asked to answer questions about their teaching and evaluation methods for two different courses. The rationale behind this methodological choice, based on my own experience as a law teacher, was that law professors usually teach at least a first year basic course or an

upper year mandatory course to a large class, and an upper year seminar that is usually closely related to their area of research. Others opt to teach upper year elective courses to larger classes rather than seminars. By asking them to describe their teaching and evaluation methods for two courses, I was giving professors an opportunity to describe their teaching and evaluation methods for different types of courses. For logistical reasons that are related to the website software, comparisons of the responses to the survey by course type are much easier to do by comparing Course #1 results with Course #2 results than by running a filter for course type.[4] For this reason, the description of findings will focus on the comparison of Course #1 with Course #2. When appropriate for the purposes of the analysis, however, specific filters such as course type and number of students were run, but the results were analysed for specific questions only and not for all questions.

(i) Course #1 characteristics

This course is in great majority a 3-credit course (46.9%), although 17.7% of respondents teach a 4-credit course, 10.7% a 6-credit course, 10.3% a 5-credit course, and a few indicated that this was a full-year course. In the "other" category, some respondents also indicated that the Legal Research and Writing component of their course (usually a first year course) increased the number of credits to 7 or 8.

As to the type of course (see Figure 4-1 below), 43.6% of respondents indicated that this was a first year basic course, 39.1% an upper level elective course, while for much smaller proportions of respondents, this was an upper level compulsory course (8.6%), a seminar (6.6%), a workshop (0.4%), or a clinical course (1.6%); others indicated that this was a semi-obligatory course (students must choose between a "basket of courses", or a course that was obligatory for some programs and elective for others).

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[4] In order to run a specific filter for course type, I have to manually add results for Course #1 and Course #2, in both the English and the French versions of the survey, for each question. Because this is an important comparison point, I did this manual data analysis for comparing teaching methods (as we will see later), but did not do it for every question on the survey.

Figure 4-1 Course type (Courses #1 and #2 compared)

Legend:
- First year basic course
- Upper level elective course
- Workshop
- Other (please specify)
- Upper level compulsory course
- Seminar
- Clinical course
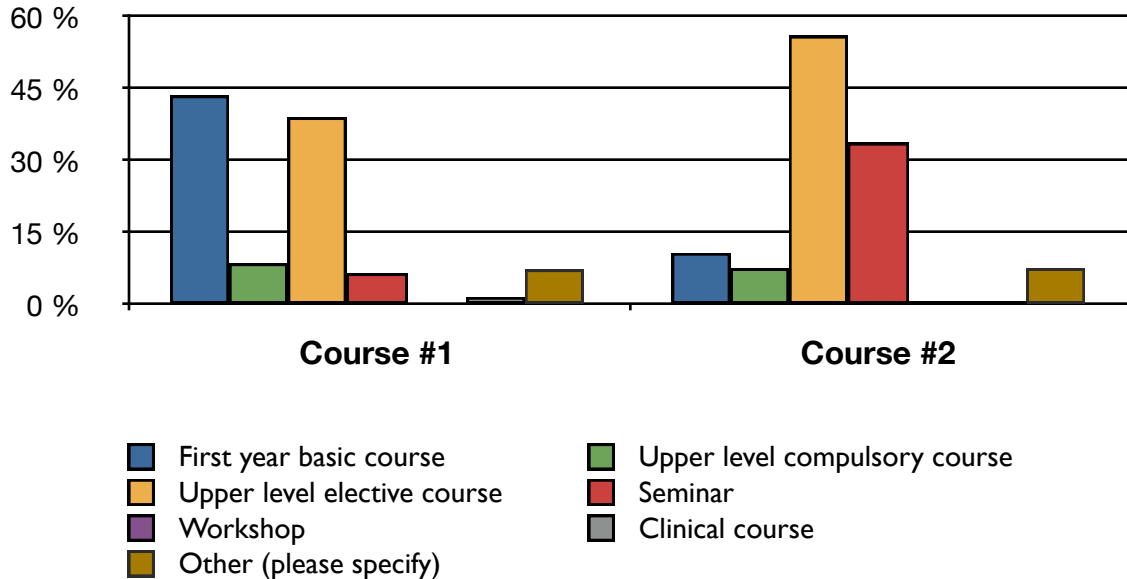
As to the number of students enrolled in Course #1 (see Figure 4-2), the greater number of respondents (34.6%) teach to a class of between 60 and 100 students, 30% teach to a class of 35 to 60 students, 13.2% teach to 20 to 35 students, and 12.8% to a small class of 12 to 20 students. Only a small proportion of respondents (2.9%) teach to a class of more than 100 students, although this number differs between francophone respondents (7%) and anglophone respondents (1.2%) (see Figure 4-3). Generally, then, large (over 60 students) classes are more common in francophone than in anglophone law schools.

Figure 4-2 Number of students (Courses #1 and #2 compared)

Legend:
- Course #1
- Course #2
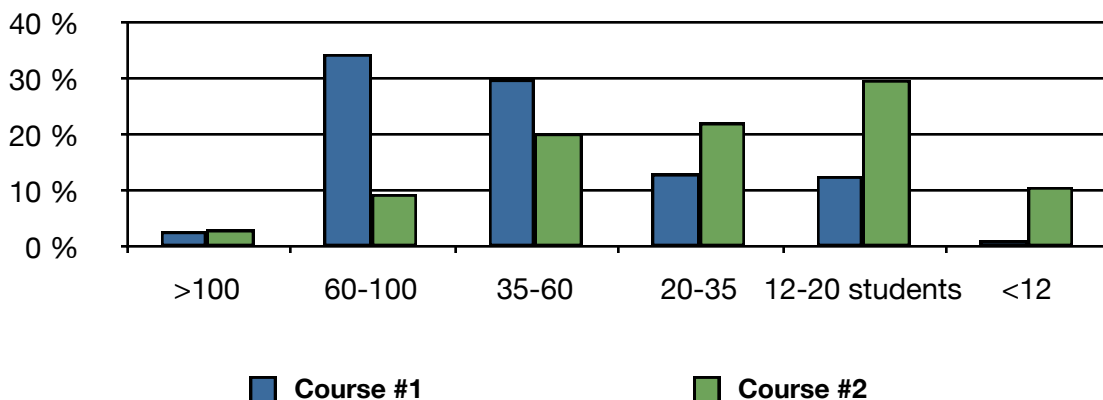
**Figure 4-3 Number of students for Course #1
(anglophones and francophones compared)**
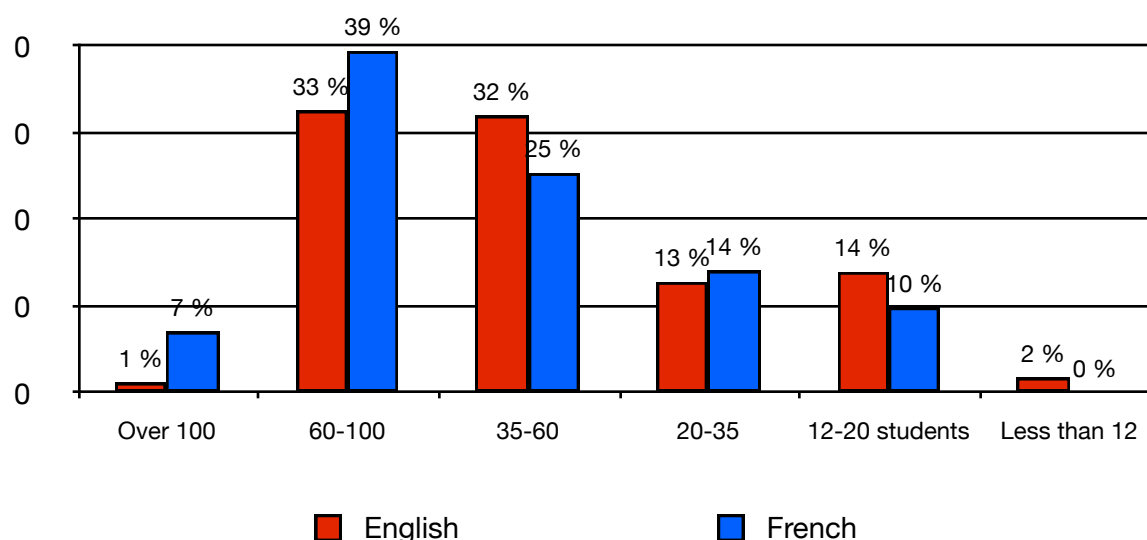
(ii)   Course #2 characteristics

Only 65% of respondents chose to answer questions in relation to Course #2, whereas 35% decided to skip questions on this course and move on to the general questions.[5] The credit value assigned to this course was similar as for Course #1, with 67% of respondents indicating that this was a 3-credit course. Whereas Course #1 was mostly characterized as a first year basic course (44%), 56% of respondents chose to answer questions for Course #2 for an upper year elective course, and 34% for an upper year seminar course, as compared with Course #1, where only 6% of respondents chose the seminar option. As to the number of students enrolled in Course #2, there are generally less students enrolled for Course #2 than for Course #1, with a good proportion (29.9%, as compared with 12.8% for Course #1) of these courses with 12-20 students.

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[5] The statistics that follow therefore represent percentages of those who did respond to questions for Course #2.

(iii)   Definitions and explanations

For the questions on teaching methods, respondents were asked to identify the teaching methods used in a typical class and in a typical course (i.e. over the entire semester or year), and to determine the proportion of time that each of these was used in a class or over the course of the semester.

In checking off the teaching methods that they used over the course of a semester for Course #1, participants could choose among the following options: lecture, small groups or pairs, class discussion, question-answer, Socratic method, role playing, field trip, guest speakers and pop quizzes.

I had conceptual difficulty with the "case method". Tribe and Tribe have the following description of the case method:

> The case method is the most famous and certainly the longest established of these alternative methods; it was introduced by Professor Langdell, Dean of Harvard Law School in the 1870s. The Socratic dialogue was said to be the model for this type of class discussion in which the student was called upon to summarise the relevant facts of cases which they had read earlier, respond to questions on the legal principles involved and apply them to hypothetical problems. In this way, students became active participants in the learning process, rather than passive note takers.[6]

Langdell "produced a conception of law... as a system of coherent, stable, certain and predictable rules - a science."[7] As Lebrun and Johnstone explain, this conception of law, along with the Socratic method and the case book comprised of appellate decisions now common place in common law legal education, "took hold of the mind of many legal educators."[8] However, the case method, although it was established as the "signature pedagogy" of law professors in the Carnegie Report,[9] was not included as a choice on the web-based questionnaire because it still has to be carried out by choosing one or

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[6] Diana M. Tribe & A.J. Tribe, "Lawteach: an Interactive Method for Effective Large Group Teaching" (1987) 12 Studies in Higher Education 299 at 300.

[7] Lebrun & Johnstone, *supra* note 1 at 20.

[8] *Ibid*.

[9] Sullivan et al., *supra* note 1.

many of the other teaching methods (either Socratic, lecturing, question-answer or discussion).

The following definitions of different teaching methods were therefore used on the web-based questionnaire:[10]

Lecture:	delivery of material by instructor in lecture format
Class discussion:	the emphasis is on interaction among students and on sharing of experience and points of view; the instructor acts as a facilitator
Question-Answer:	mostly fact or information-driven questioning by instructor
Socratic method:	teacher-driven dialogues with students; teacher tests students' hypotheses for clarity through artful questioning

(B)   Teaching methods used in Canadian law faculties

(i)   The lecture

The results for Course #1 show that the teaching methods used most often are lecture, class discussion and question-answer (see Figure 4-4 in light blue, brown and green respectively). Confirming my assumptions, the lecture method is the dominant teaching method used. Indeed, 55.4% of respondents use the lecture method in every class or very often[11] and 25.2% use it regularly (see Figure 4-5). As we will see later, role plays and small groups or pairs are rarely used by law professors.

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[10] Hativa gives the following definitions of the lecture: "a 'comparatively uninterrupted talk by a teacher on an academic subject, usually in a classroom setting', or, similarly 'a teaching period occupied wholly or mainly with continuous exposition by the lecturer'". Nira Hativa, *Teaching for Effective Learning in Higher Education* (Boston: Kluwer Academic Publishers, 2000) at 71 (references omitted). Upon reading this definition, I realize that my own is a bit circular, but it might be based on the assumption that everyone knows what a lecture is!

[11] For the purposes of this question, here are the definitions of frequency:
"Very often" means 75% or more of classes
"Regularly" means between 50-74% of classes
"Occasionally" means between 25-49% of classes
"Rarely" means for a quarter of classes or less

Figure 4-4   Teaching methods for a typical <u>course</u> (Course #1)
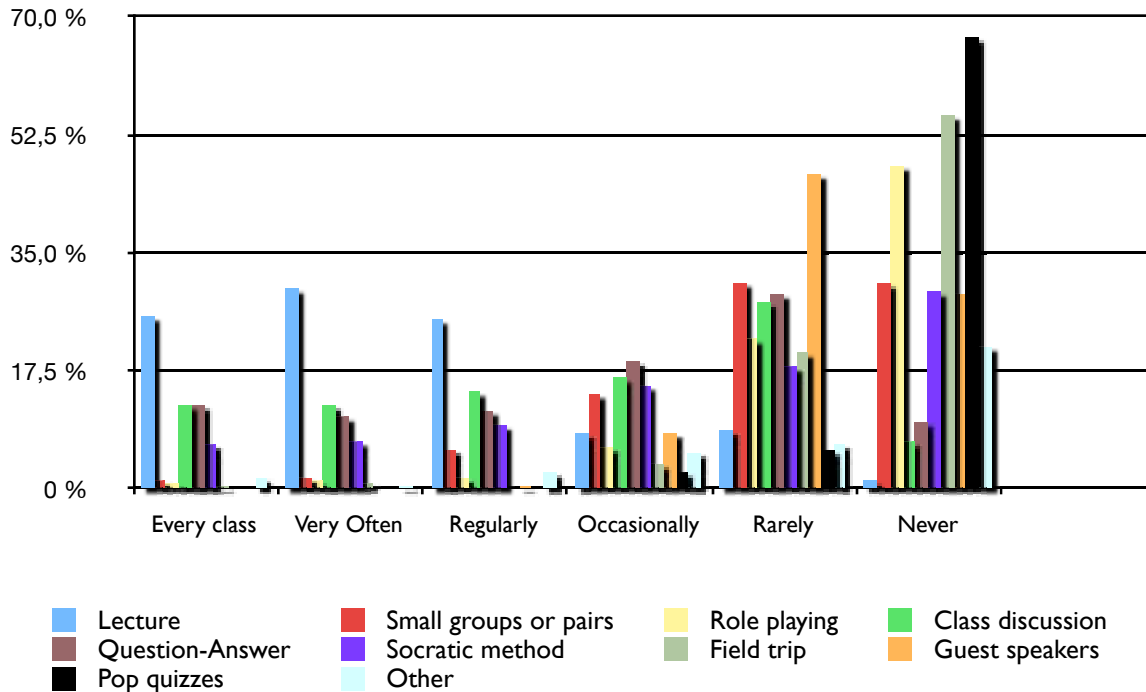
If we look at the amount of time spent on different teaching methods in a typical *class*, the results are quite similar. Lecture again takes up the majority of class time, with 29.4% of respondents using lecture for ¾ or more of class time, 28.2% using it for half to ¾ of class time while a small percentage (12%) use it for 10-25% of class time and only 2,1% never use the lecture method. In fact, the majority of law professors (57.6%) use lecture for at least *half* of class time (see Figure 4-6, light blue bars). [12]

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[12] Hativa notes a study carried out by Thielens in 1987 where 80% of the professors lectured for the entire class time, although 73% of this group paused now and then to take student questions and comments. Only 9% of respondents lectured for 15-25 minutes and then used other teaching methods, and 11% used alternative teaching methods for most of the class. See Hativa, *supra* note 10 at 73, citing W. Thielens Jr., "The Disciplines and Undergraduate Lecturing", paper presented at the annual meeting of the American Educational Research Association, Washington, D.C.. Thielens also found that teachers tend to underestimate the extent of their lecturing. In my study, one participant also mentioned that he never stopped during his lectures to ask questions of students, but let them interrupt him if they had any questions:

> *Ah si! Je suis interpellé par des questions et moi je n'interpelle pas les étudiants, je ne dis pas :« Mademoiselle, qu'est ce que vous pensez de la prescription de trois ans ou de la présomption de connaissance du RFVK. Quelle est votre opinion là-dessus? ». Fini. Jamais. ... Ça met les étudiants dans l'embarras.... mais ils peuvent me poser des questions quand ils veulent et ils en posent. (FPM5)*

Figure 4-5 Use of lecture method over the course of a term
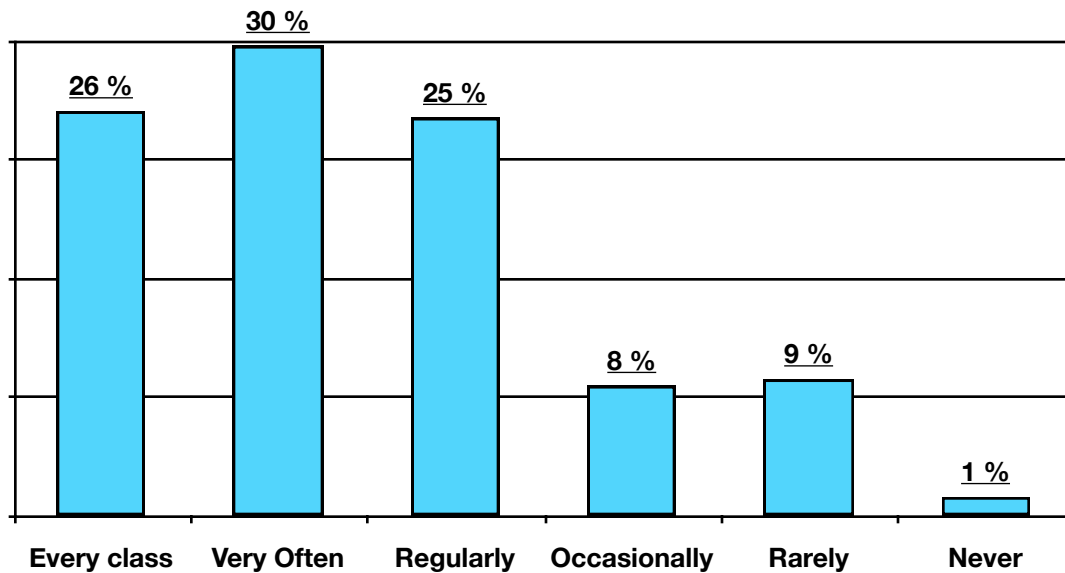
There is not much difference in the use of lecture between male professors and female professors. The only difference is that a slightly higher number of women respondents (16.8%) indicated that they use the lecture method very often (compared with 13.4% of men), while slightly more male respondents (13.8%) answered that they used it every class (compared with 11.2% of women). If we look at the statistics for those who use the lecture very often or in every class (i.e. for 75% or more of classes), then the numbers are almost identical for men and women (about 28%). Another small difference is that more women than men use small groups, but they usually tend to use them for a small proportion of class time.[13]

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[13] 24.3% of women use small groups for 10-25% of class time, compared with 15.4% of men; however, still 11.9% of women and 19.5% of men NEVER use small groups.

Figure 4-6 - Teaching methods for a typical class (Course #1)

Legend:
- Lecture
- Question-Answer
- Small groups or pairs
- Socratic method
- Role playing
- tests surprises
- Class discussion
- Other
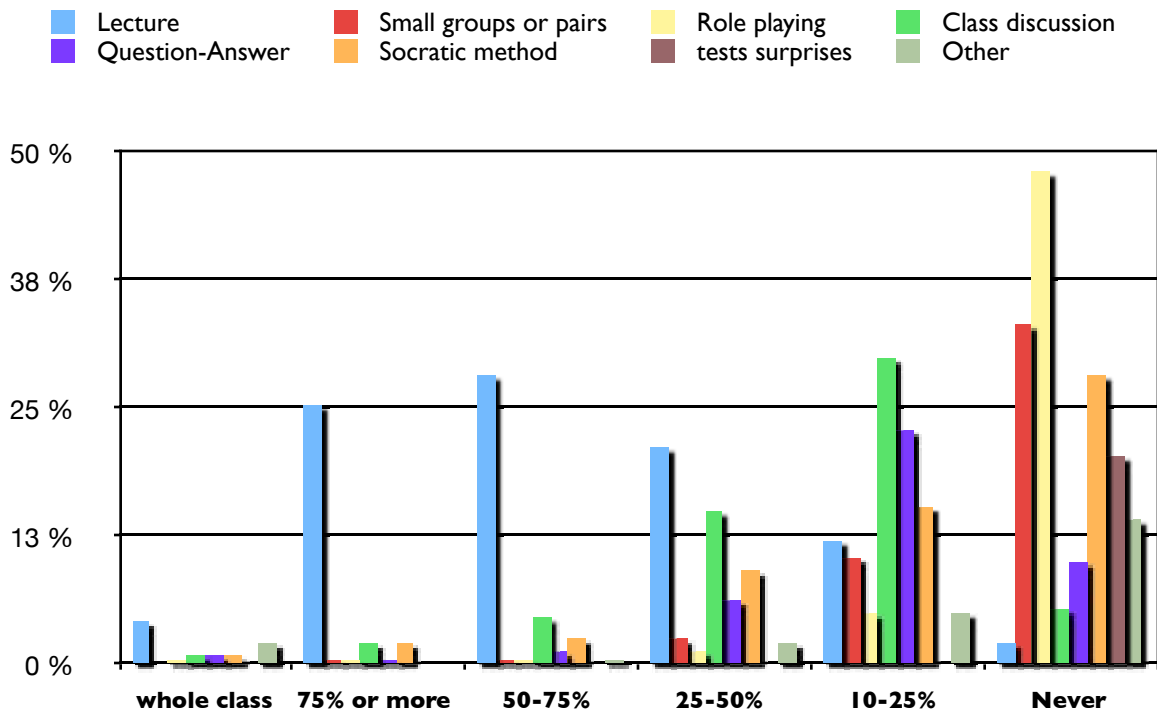
There is a small difference between professors with more than 20 years of experience and those with 3 years or less of experience in their use of lecture. 26.7% of respondents with 20 or more years of experience answered that they use the lecture method in every class, while 28% use it very often. For respondents with less than 3 years of experience, 25% of them, thus slightly less than those experienced professors, use lecture in every class, while 36.1% of them use it very often. However, only 8.4% of those with less than 3 years of experience said they use the lecture method for less than half of the classes, compared with 21.4% of professors with more than 20 years of experience. We can see therefore that professors with less than 3 years of experience use the lecture method more often and more consistently throughout the term than professors with more than 20 years of experience, although the majority of both these groups use the lecture method for at least 75% of classes over the term. There is also a noticeable difference in the use of lecture between francophone and anglophone respondents when looking at the proportion of class time spent on lecturing. 11.4% of francophone respondents answered they lectured for the entire class time, while only

1.2% of their anglophone colleagues answered the same on the survey. Overall, therefore, francophone respondents seem to use the lecture method for a greater proportion of class time (see Figure 4-7).

Figure 4-7   Use of lecture (anglophones and francophones compared)
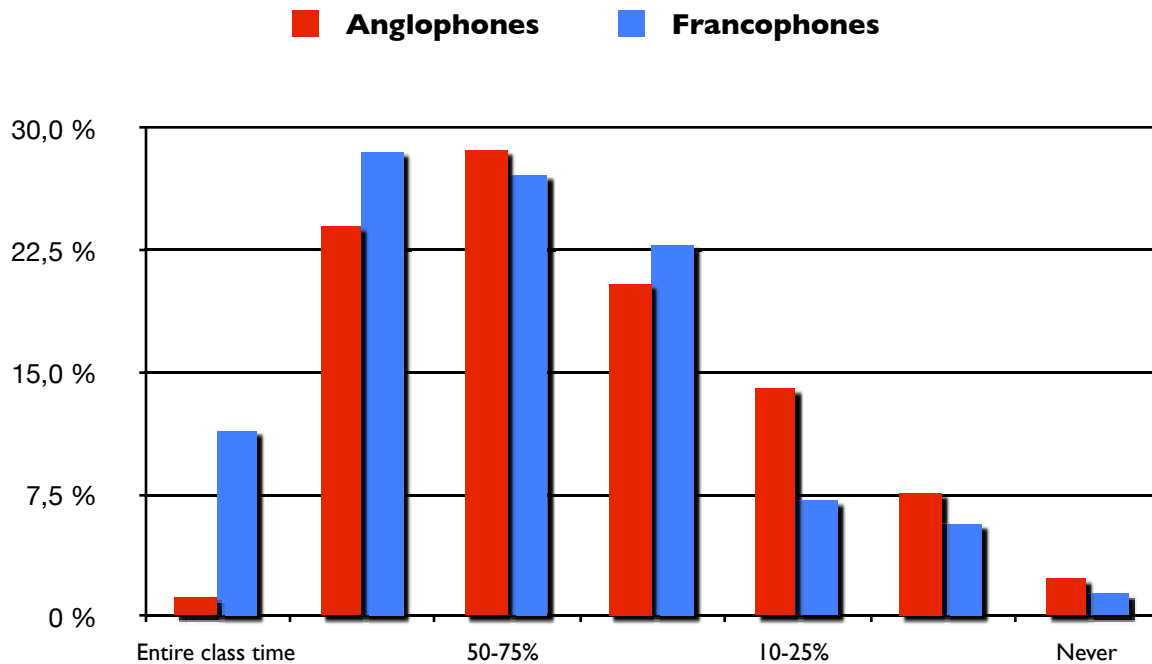
This difference might be due to the fact that, as we saw earlier, classes in francophone law faculties tend to be larger, or to the fact that individual classes in Québec faculties are also held in one 3-hour block rather than two 1.5-hour blocks. However, as we will see later, class format (i.e. the duration and scheduling of class time) was listed as a factor influencing pedagogical choices by only 20% of francophone respondents (although it was listed by 52.9% of anglophone respondents as a factor).

Also, most of the francophone respondents were from civil law faculties, and in Europe, where many received at least part of their education, civil law classes are typically

extremely large (a few hundred students!) and most civil law teachers lecture.[14] For example, this professor working at a Québec university but originally from France explained the phenomenon and the impact it had on her teaching:

> *En France, c'est forcément magistral.*
> *...*
> *Et c'est parce que j'aime pas [rires] mais c'est super difficile et c'est là qu'on voit à quel point on est formaté par sa culture... Si j'y pense pas, je tombe en mode magistral direct. (APW5)*

Some civil law participants I interviewed even said that you cannot avoid lecturing in a civil law course. This participant, for example, who teaches a civil law course, said there was a lot of material to cover and therefore the lecture was sort of a given method:

> *Alors, c'est sûr que nous, c'est pas juste moi personnellement qui pense ça mais*
> *dans notre secteur, on considère qu'il y a quand même beaucoup de matière et qu'il*
> *y a un effort de par coeur qu'ils doivent nécessairement faire. Si bien que la matière*
> *se prête assez bien à un cours magistral. Ça, c'est la prémisse de base. (AsPW9)*

Therefore, we can say that lecturing is the predominant teaching method in law classes in Canada, even if it is supplemented by other teaching methods, as we will see later. Lecturing is used to explain. As Behr points out, "[t]he art of explaining, that is, the ability to provide understanding to others, is the central activity of lecturing."[15] Lebrun and Johnstone list three forms of explanations: In a *narrative*, the teacher explains an event or case in the form of a personal story.[16] In my observations I noticed that when talking about cases, teachers often lecture about the "stories" of the cases (the facts, the ratio) and about the important passages of the cases reviewed. The question-answer period that follows the story usually deals with applications or implications of the case.

In an *anecdote*, teachers use amusing stories to illustrate important points.[17] Although used less often than the narrative, I did observe the use of anecdotes in law classes. For

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[14] I know this from conversations I have had with civil law professors in Québec law faculties, and from my experience as keynote speaker at the European Law Faculties Association conference in February 2006, where I was invited to speak about active learning in large classrooms. Some of the French and Swiss professors there were sharing the fact that they regularly teach to groups of over 500 students at a time!

[15] A.L. Behr, "Exploring the Lecture Method: An Empirical Study" (1988) 13:2 Studies in Higher Education 189 AT 189.

[16] Lebrun & Johnstone, *supra* note 1 at 263.

[17] *Ibid*.

example, professors shared some stories of their past life in legal practice, stories about past jobs or their own family, as we can see from this participant:

> Because I'm very happy to make it known to them that my family is very important to me. So for example, in class I think they find it very disarming when I just say, you know, like the other day, I used the microphone because it was too quiet, and I said, "Oh, I feel like I'm vacuuming" because there's a cord everywhere. And I said "I vacuum a lot, you know." And they all looked at me. I said, "I'm not obsessive compulsive, [chuckle] but I have a son who eats like he's raised like a cow all day. And he doesn't do it in one place. He eats everywhere. So I find thirty day old cookies in my telephone book. And so they laugh and everything. So I make it known that I'm human because I want them to feel like it's possible to be a law professional and have a human side. (APW4)

This participant explains that he uses anecdotes and jokes to entertain students:

> J'essaie de les distraire un petit peu, de raconter des anecdotes des fois ou des blagues. Je n'ai pas un grand talent pour ça mais en tous cas, ça les distrait et ils sont très contents, ils sont béats de gratitude, "bon ben là, il arrête d'enseigner il veut raconter une anecdote ça, on va dont être bien". (FPM5)

Finally, in a *conceptual* approach to explaining, the teacher provides "a series of principles or facts in a logical order".[18] This form of explanation was also frequently used to explain legal rules or concepts, and even to communicate a critical point of view, as is explained here by one participant:

> Et maintenant, je ne vois pas de raison de changer, le cours magistral ça fonctionne bien quand on sait comment quand on a l'habitude on peut passer, je pense non seulement des connaissances mais une réflexion sur la matière, une vue d'ensemble, une vue critique, etc. (FPM5)

Teachers also tend to lecture when starting on a new case or a new topic, probably to lay the groundwork, as is explained by this participant:

> Encore une fois on ne sort pas du cours magistral parce qu'au début, il faut exposer quels sont les enjeux et il faut placer tous nos pions et ça prend du temps pour dire « Écoutez c'est un peu ça que je veux faire, je veux que vous soyez attentifs à ceci à cela à cela ». Ensuite de ça, il y a toute une mise en contexte historique qu'il faut faire, et après, on peut commencer à examiner des décisions sur comment par exemple les juges interprètent des traités conclus il y a deux cents ans et quel quel rôle joue l'histoire là-dedans, quel rôle joue l'interprétation et ainsi de suite... (AsPM4)

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[18] *Ibid.*

Some of the other types of explanations reviewed by Hativa also resonate with my observation data.[19] Of the different types of explanations listed by Hativa, *teleological explanation*s, which point to the purpose or goal of something, were often observed when law professors explained the reasons or rationales behind certain legal rules.[20] *Analytic explanations* deal with procedures and propositions that clarify concepts and rules. In the classes I observed, lectures were used to explain rules, concepts (e.g. trespass), definitions, relationships between different cases, summaries of the readings. Hativa also notes *prescriptive explanation*s, which concern prescriptions for action, and divides those into social explanations, ethical explanations and procedural explanations, all of which were also observed when teachers would explain the law and its social or historical context.[21]

The ways in which teachers lecture are also interesting, and here there is a great variety of approaches. Some use notes, some read their notes, some write on the board, some read or talk to their slides, some draw charts or flow charts, some move around the room, some stay close to their notes mostly in one place, some speak fast while others speak clearly and slowly, stressing important points. I even saw one teacher do a dance at the front of the class!

According to the survey data, three teaching methods seem to be used quite regularly (although not necessarily every class) alongside the lecture. These are class discussion, question-answer and the Socratic method. In fact, lecture always seems to be used in conjunction with one of these three more interactive teaching methods. Out of the fifty observations carried out, I only saw one straight lecture where in the span of 90 minutes the teacher stopped talking only to answer student questions and to ask three questions of his own.

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[19] Hativa, supra note 10 at 82-83. She cites among others MacDonald's 3 types of explanations: descriptive, interpretative and reason giving: see Robert E. MacDonald, *A Handbook of Basic Skills and Strategies for Beginning Teachers:Facing the Challenge of Teaching in Today's Schools* (White Plains: Longman Publishing Group,1991).

[20] Hativa, *ibid* at 82. Hativa cites K.K. Metcalf & D.R. Cruickshank, "Can Teachers Be Trained to Make Clear Presentations?" (1991) 85:2 Journal of Educational Research 107 for these explanations, but the article she refers to does not deal with the different types of explanations. Hativa also mentions structural explanations, which point out the structure of something, classificatory explanations, which point out the class to which something belongs according to a given system, and aesthetic explanations.

[21] Hativa, *ibid* at 83.

For Course #1, class discussion is used very often or in every class by 24% of respondents, while another 14% use it regularly and 17% use it occasionally; however a significant 35% of respondents indicated that they rarely (1-25% of classes) or never use this method. For Course #2, class discussion is used more often during the term, with 42% of respondents using this teaching method very often or every class (almost double its use in Course #1)(See Figure 4-8 for a comparison of Courses #1 and #2).

Figure 4-8   Use of class discussion (course #1 and #2 compared)
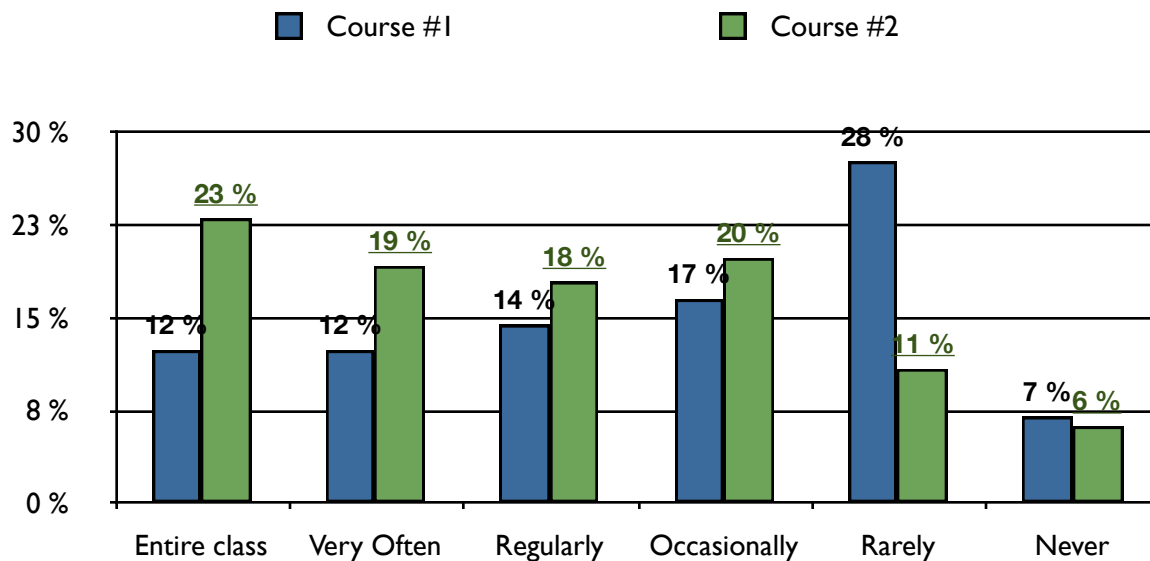
The use of question-answer is a little bit less frequent than class discussion, with 23.1% of respondents using it very often or in every class, 11.6% regularly and 19% occasionally. A significant 39% of respondents rarely or never use Q&A. The Socratic method is occasionally used by 15.3% of respondents, but 47.5% of respondents rarely or never use the Socratic method. If we take into account gender, again, there is not much difference between male and female respondents, except that women seem to prefer class discussion (i.e. it is generally used more often by women than by men), although only a very small number of them use it every class (see Figure 4-9).

Figure 4-9 Use of class discussion (men and women compared) (Course #1)
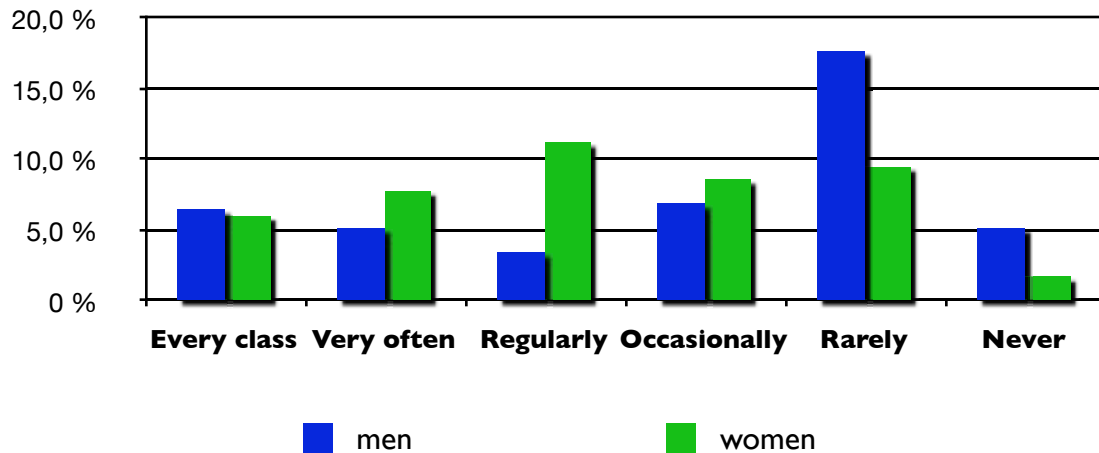
For a typical *class*, discussion seems to be used in conjunction with lecture, with 14.9% of respondents using this method for 25-50% of class time and 29.9% using for 10-25% of class time (see Figure 4-6, bright green bar). The same goes for question-answer, with 22.8% of respondents using it for 10-25% of class time only (see Figure 4-6, purple bar). For Course #2, class discussion and lecture take up relatively the same proportion of class time, with the lecture being used by slightly more respondents for a larger proportion of class time (see Figure 4-10, green and light blue bars respectively). Other methods used in Course #2 also include question-answer (purple bar), which is used by a great majority of respondents (60.5%) for 10% or between 10 and 25% of class time.

This participant explains the combination of lecture with questions:

> So, the last two years I've had a small group of students so, a first year class of twenty five, students and, I would say that [pause] in most classes, I would lecture probably 50-75% of the time, but that I would, [pause] constantly throw out questions to the class to answer them, like, "Please tell us the scenario of this case, and the facts." Others coming at the end of an analysis of a case saying, "Okay, does this decision sit well you?" Others along the way, saying, okay, "What is the judge trying to do here?" (APM1)

This participant explains why she uses a combination of lecture and discussion:

> I do feel uncomfortable when I just talk at students. Because I think it's un-engaging for them. And it doesn't give me a sense of whether they're getting the materials, nor does it make them invest in the materials in some way. So large groups, I do intersperse quite regularly with discussions, which I start either by asking questions, or by [pause] students starting and then, going from there. (AsPW2)

Figure 4-10 Teaching methods used in a typical class (Course #2)
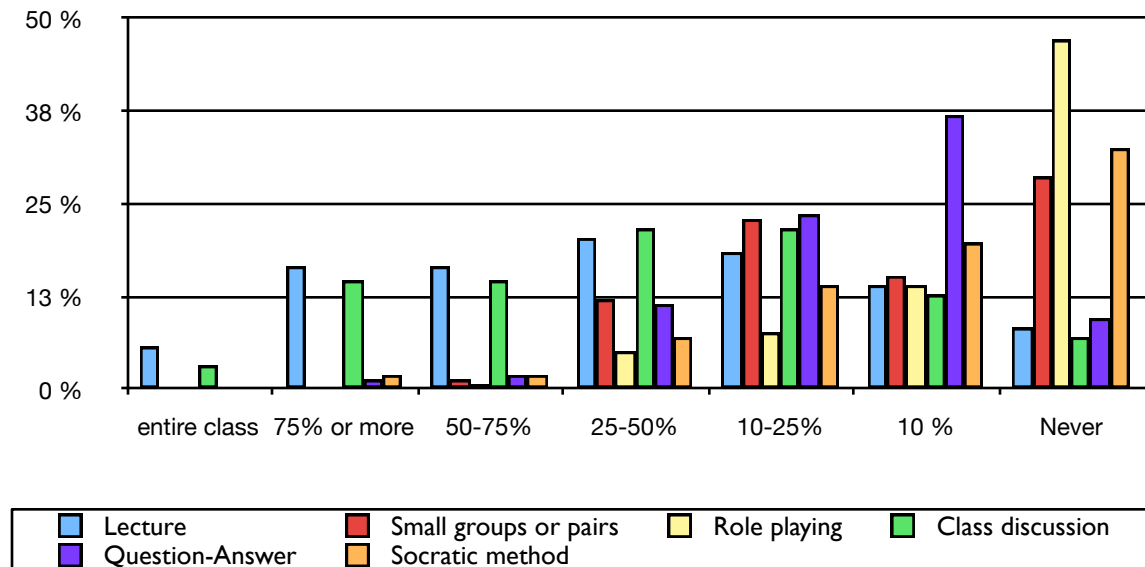
(iii)   Small groups, role plays and other teaching methods

In the "other" category, "student presentations" or "class presentations", or class discussions led by students were listed by an important number of respondents (12.7%). Video clips, guest lectures, problems and exercises and debates were also listed.

The survey results also tell us that some teaching methods commonly used in higher education such as pop quizzes, small groups and role plays are rarely used in legal education. A good number of law professors answered they never used small groups or role playing,[22] although a small number of respondents used these methods for 10-25% of class time.[23]   It is interesting to compare the use of lecture with the use of small groups to see just how unpopular small groups are (see Figure 4-11).   Figure 4-11 indicates that in a typical class (Course #1), the use of small groups only takes up a small proportion of class time, whereas lecturing takes up a large portion of class time (the majority of respondents using them for 10% or less of class time or never). If we look at

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[22] 33.2% of respondents never use small groups and 48.1% of respondents answered they never use role playing.

[23] 5% of respondents said they used role playing for 10-25% of class time in a typical class and 10.4% use small groups for 10-25% of class time.

the results over the course of the term, 61.2% of respondents indicated that they rarely or never use small groups, in contrast with a very small group of professors (2.9%) who use small groups very often or every class. 14% of respondents indicated they used small groups occasionally, i.e. in 25 and 50% of their classes.

Figure 4-11 - use of small groups and lecture compared (typical class)
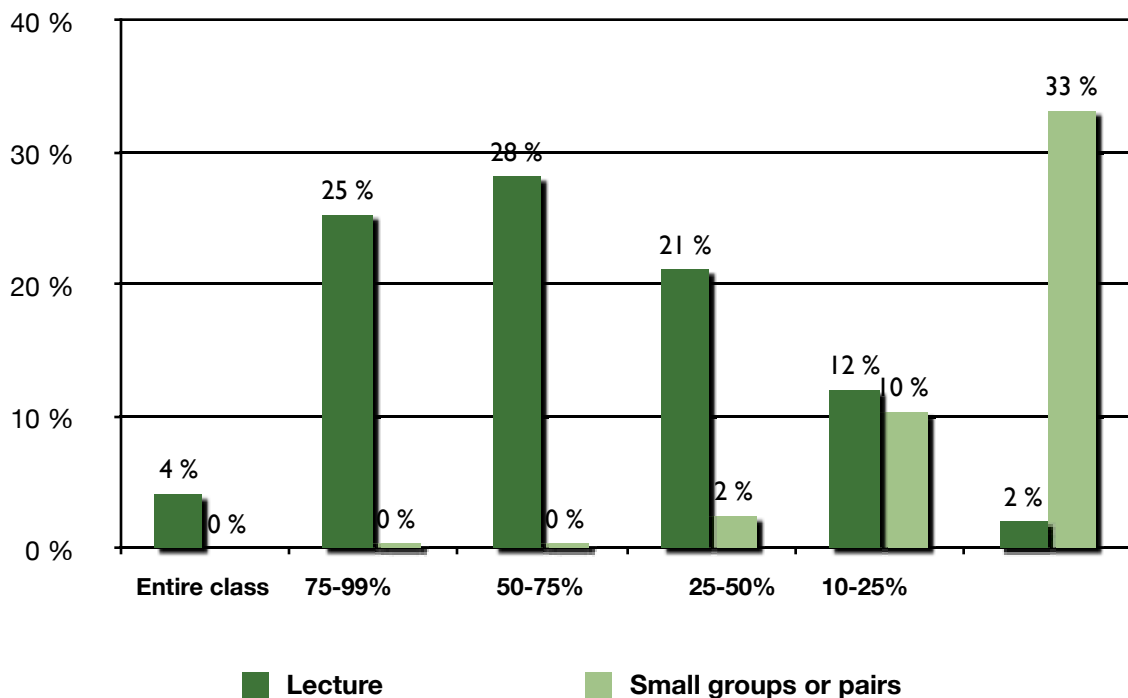
More women than men use small groups, but only for a quarter or less of class time.[24] Small groups and role plays are not used much in either a mandatory course or a seminar (see Figure 4-12, blue bar). When small groups are used, they are used for about 10% of class time in a mandatory course, and between 10-25% of the class in a seminar for a majority of respondents (see purple and grey bars). The observations I carried out also confirm these findings, as the great majority of the classes observed did not include these teaching methods, but a few did.

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[24] 7.5% of women use small groups in 10-25% of class time, compared with 3.5% of male respondents; 16.8% of women use them in 10% of class time, compared with 11.9% of men; 19.5% of male respondents NEVER use small groups, compared with only 11.9% of women respondents.

Figure 4-12 Use of small groups compared (mandatory vs seminar)
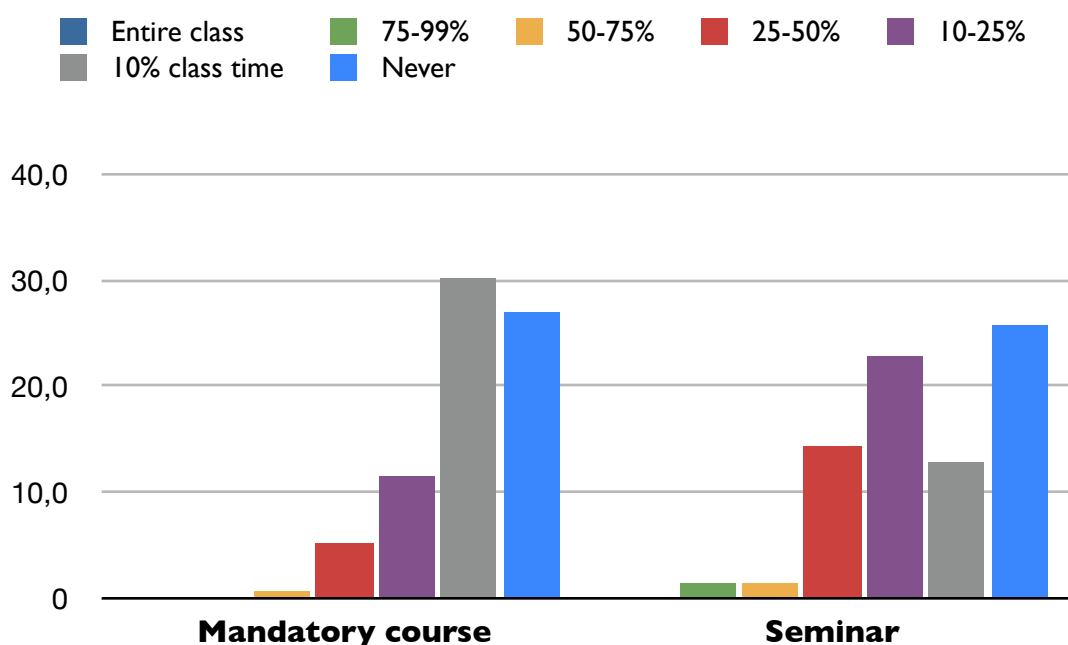
In one class observed, for example, the teacher used a pop quiz at the very beginning of class to test the understanding of what had been taught in the last class. The atmosphere of the class was good; the students started laughing when the teacher distributed the quiz and they were allowed to work in groups on the quiz. At the end of class, the teacher distributed a completed version of the quiz to the students.

In my observations, I did see the use of small groups in a few classes.   In small groups, students were asked to carry out a variety of learning tasks, including solving a hypothetical problem, discussing the similarities and differences between two factums, discussing the policy issues behind a specific legislative provision, expressing their opinions on critical articles they had to read, or even taking part in simulations, where for example, students had to pretend to be the counsels for one party in a particular case and drawing up their argument.   In one other observed class, students played the role of defence and prosecution lawyers and had to choose jury members from a photograph.   One teacher I observed used think-pair-share when no one in the class

answered her question and told the students to "articulate it to a partner", or when one student asked an interesting question and she wanted the students to discuss the question in pairs. When talking about the regular use of small groups, this other participant gives us some good ideas on how to use them:

> *I guess in terms of teaching methods, I also frequently, not quite once a class, but in most classes I would break the students up into small groups of three or four students and ask them to talk amongst themselves about something in particular. Sometimes it would be to ask them to develop an argument for one side of a debate. And they'd come back and present it to the class. And I would generally give them between five minutes and ten minutes to formulate something. Other times I would ask them to do a bit of preventative lawyering. I would ask them to draft a clause in an imagined contract that would work to avoid any disputes. So, I would say that almost for the majority of classes, but not every class, I do that. (APM1)*

The same participant also adds that after putting students in small groups, it is a good idea to require some kind of "performance" from them, to report back to the class:

> *Like having them work in small groups to think through something themselves, and then, in a sense require a performance from them. It may just be a short one to provide a summary of what the group was working on, or to provide their list of what they thought was important in the problem. To put the onus back on them to perform what they've learned. [pause] If I think that helps generate enthusiasm, and I think it does generally, then I'll use it. (APM1)*

On the other hand, another participant did not think it was not necessary to have the groups report back to the class:

> *So when I do small groups, I find that the more concrete the problem I assign to them, the more successful that mode is, because I don't necessarily think that the idea of these small groups is to report back to the whole. Often all the work of the class goes on in the small groups. And that's the class. But they have to feel that it's been productive. So I have to go to each group, and I have to make sure that they're doing something concrete, rather than feeling that they're wasting their time waiting to present. (AsPW7)*

There are many ways to assign groups, either randomly, or asking students to group themselves, or assigning groups. Small groups are not easy to use effectively. Some of the difficulties I observed in different classes were groups that were too big (and therefore some students were physically excluded from the group), groups not on task, the task appeared too difficult for the amount of time granted to carry it out, physical classroom settings that were not conducive to small group work (all the seats are bolted

to the floor in long rows facing the front of the class, for example), and getting the students' attention back after the small group work. One participant articulated the difficulties in using small groups in a large class:

> It doesn't work as well and it does take up a lot of time. And it's really hard in a large class, when you have a requirement about what you have to cover, to do too much of that. Also I'm not sure how well it works in a large class, because it's very hard to insure that every group is engaged. And then it's hard to actually hear back from every group when you have 14 groups of five in a class of 70, it's really hard. It takes a lot of time if you were actually to hear from each of those 14 groups, and it's repetitive and it's not interesting for the other students. (AsPW2)

However, I also observed classes where small groups were on task, energy was high and heated debates were going on. In the classes observed, small groups also seemed to help generate class discussions.

Teachers also do different things while the students are carrying out the small group activity. Some teachers walk around the room and visit groups while others take the opportunity to review their notes.

(iv)   Comparing teaching methods used in different course types

If we combine results of Course #1 and Course #2 and compare course types, i.e. first year course, mandatory upper year course, elective upper year course or seminar, we find similar but not identical results than when we compare Course #1 and Course #2 (see Figure 4-13).   For example, 28.2% of respondents use the lecture method in a *mandatory course*[25] for 75% or more of class time in a typical class (green and dark blue bars in the first graph of Figure 4-13), compared with 3.2% of respondents using discussion for the same proportion of time in the same type of course (see second graph in Figure 4-13).   In a seminar or workshop, in contrast, 35.7% of respondents use discussion for 75% or more of class time (green and blue bars, last graph below), compared with only 2.9% of respondents lecturing for the same amount of time in a seminar (green bar, second graph). We can also see from Figure 4-13 that in a seminar,

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[25] Included in "mandatory course" are first year basic courses and upper year mandatory courses.

discussion is used for more class time than lecture (compare the yellow, green and blue bars in the 2nd and 4th graph in Figure 4-13) and lecture takes up more class time (for the majority of respondents, for at least 50% of class time) in mandatory courses. (see yellow and green bars in the 1st graph). In the seminar, lecture takes up between 10 and 25% of class time for the majority of respondents (see purple bar in 2nd graph), and in mandatory courses, discussion is used for about 10-25% of class time for the majority of respondents (see purple and grey bars in 3rd graph).

Figure 4-13 - Course types - lecture and discussion compared
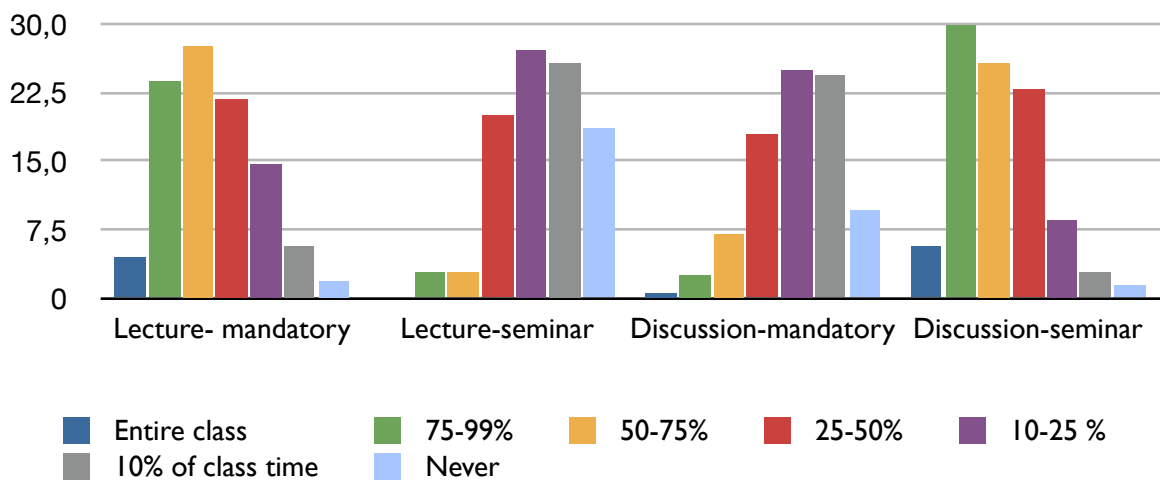
Moreover, in interviews participants referred to "lecture courses" and "seminar courses", indicating that the type of course (and class size) influenced the choice of the dominant teaching method,[26] as we can see from this following quote:

> *That course is a seminar and I would say that my teaching them is a very straight forward classical seminar method in that [pause] I don't lecture. (AsPW1)*

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[26] This is not a phenomenon unique to law! See Catherine Mulryan-Kyne, "Teaching Large Classes at College and University Level: Challenges and Opportunities" (2010) 15:2 Teaching in Higher Education 175; Hativa cites a study carried out by Thielens in 1987 which showed that lecturing was by far the predominant mode of teaching in higher education in the US, England and Scotland: See Hativa, *supra* note 10 at 73 citing Thielens, *supra* note 12.

(v)   Comparing teaching methods for classes with different numbers of students

If we compare teaching methods used in courses with different numbers of students enrolled (i.e. class size), there are some significant differences. If we combine Course #1 and Course #2 data and compare the teaching methods for groups of between 60-100 students and groups of 0-20 students, we see that the number of students in a class obviously influences teaching methods.[27]   As could be expected, lecture is used more often and for a greater proportion of class time in a group of 60-100 students than in a group of 0-20 students (see Figures 4-14 and 4-15 respectively).   Discussion, on the other hand, follows the opposite pattern.   It is used more often and for a greater proportion of class time in groups of 0-20 students than in groups of over 60 students (Figure 4-16 and 4-17 respectively).

Figure 4-14 Use of lecture in a _course_- class size compared

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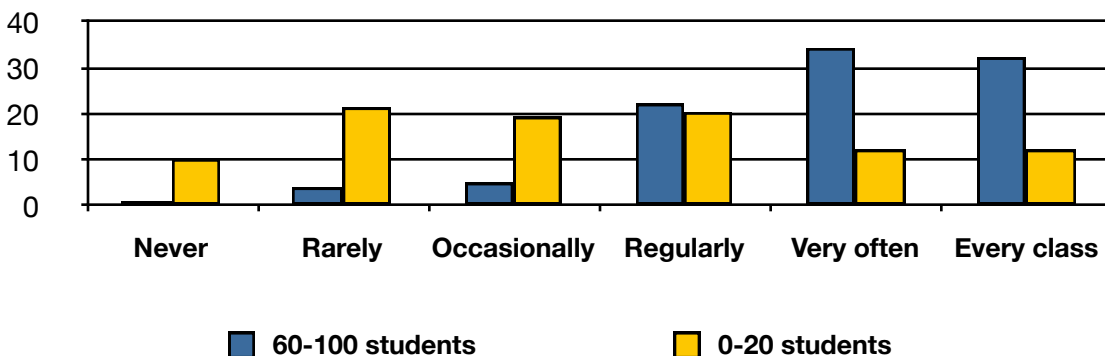
[27] Of course this could also be because classes with 0-20 students are usually seminars and classes with 60-100 students are usually mandatory courses. Therefore the results in this section are comparable with the results in the previous section.

Figure 4-15 Use of lecture in a <u>class</u>- class size compared

Never | 10 % | 10-25% | 25-50% | 50-75% | 75 % | Entire class

■ 60-100 students   ■ 0-20 students
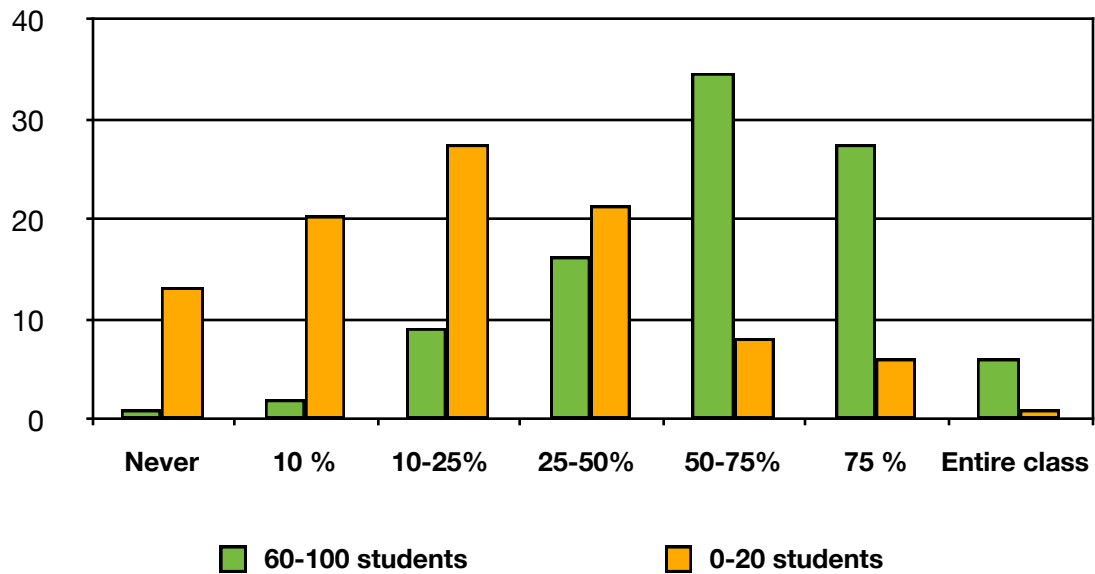
Figure 4-16 Use of discussion in a <u>course</u>- class size compared

Never | Rarely | Occasionally | Regularly | Very often | Every class

■ 60-100 students   ■ 0-20 students
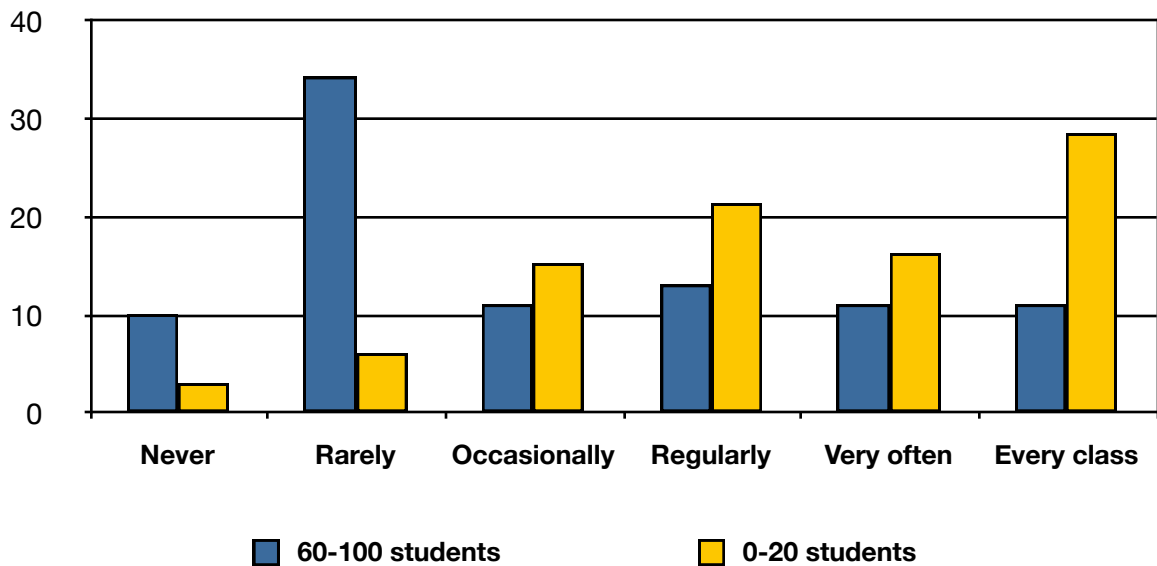
Figure 4-17 Use of discussion in a <u>class</u>- class size compared
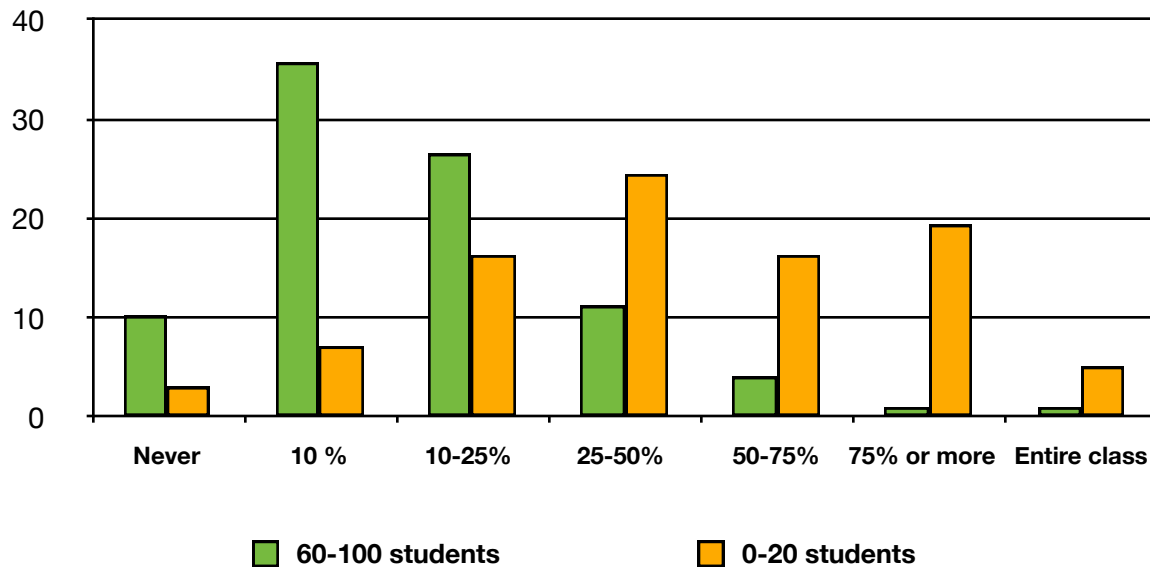
As for question-answer, however, the difference between different class sizes is not significant (see Figure 4-18). Whether class size was between 0-20 students or over 60 students, the greater proportion of respondents used Q&A rarely or occasionally.

Figure 4-18 Use of Q&A in a <u>course</u>- class size compared
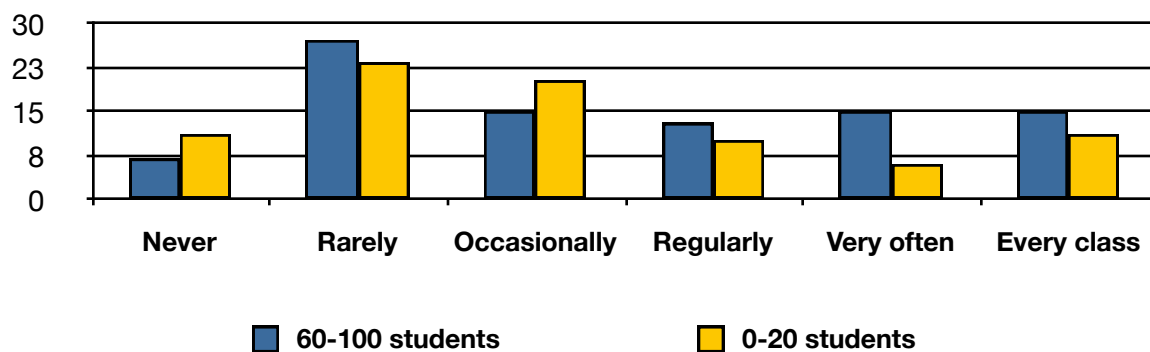
We can therefore see from the survey data, observations and even in the interview data that law professors most commonly use a combination of lecture, discussion and question-answer, although the proportion of time spent using each of these varies

between course types.[28]   The following quotations testify to these varying mix of teaching methods:

> *C'est conscient mais c'est pas un rejet en ce sens que mon cours est quand même, serait probablement qualifié de magistral en ce sens que je livre la matière mais où il y a un petit peu, il y a plus d'interaction, c'est-à-dire j'interpelle quand même les étudiants, de temps à autre. J'intègre des cas soit au tableau, beaucoup d'acétates, tableaux, parfois l'exemple est comme ça sur le vif et là, on travaille avec une hypothèse puis on mélange l'hypothèse puis on fait différentes... Puis j'essaie de varier en ce sens que pendant les cours, il y a du magistral, il y a des cas pratiques, il y a des exercices, il y a donc un petit peu de tout; j'essaie de varier pour ne pas que ce soit style magistral pendant tout le temps. (FPM11)*

> *I mean I lecture a bit. I lecture a bit, but I usually break it up with Q and A. So that I don't end up talking for just an hour and a half, the sage on the stage. (APM2)*

Since these teaching methods necessarily involve questioning, let us take a closer look at how law professors use questioning in their classes.

(C)   Questioning

The survey results thus indicate that the majority of law teachers lecture for the majority of class time, but they also show that there is quite a bit of interaction, usually in the form of question-answer or discussion.   My classroom observations confirm this finding.   The survey and the observation data also tell us law teachers rarely use small groups, role playing or other forms of student-driven interaction and rely mostly on teacher-driven question-answer and discussion.   Questioning is thus the most common form of interaction in the classroom and the law teachers that I observed used it in almost every class observed, with varying degrees.

Questions allow interaction between the teacher and the students.[29] Questions have an impact on student achievement by verifying student understanding, emphasizing

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[28] Hativa calls the mixture of lecture with one or more other teaching methods such as teacher-led discussion, allowing students to ask questions, asking questions and Socratic "less strict lecturing", thus indicating that the main teaching method is still the lecture: See Hativa, *supra* note 10 at 72.

[29] Hativa, *ibid* at 98; Newble and Cannon say that questions offer the "simplest form of interaction": D. Newble and R. Cannon, *A Handbook for Teachers in Universities and Colleges: A Guide to Improving Teaching Methods* (New York: Kogan Page, 1989) cited in Lebrun and Johnstone, *supra* note 1 at 274.

important points, attracting student attention and forcing students to synthesize the material on which the question is based. [30]

When analysing the observation data, I was surprised to see how many different issues developed around the theme of questioning. First, professors ask many different types of questions. Second, it was interesting to see the different ways in which professors ask their questions. Third, it it interesting to note who answers their questions. Finally, I also observed that students ask different types of questions and that professors respond to student questions in a variety of ways.

(i)   Types of questions asked

It was surprising to me to see the variety of questions that professors weave into their lectures. First, there are the questions that required one-word or short answers, such as definitions of concepts or elements of a legal test. There is a possible right answer to these questions and they are mostly law-based. Sometimes, these questions required a simple YES/NO. If we look at Bloom's taxonomy in the cognitive domain that we discussed in chapter 2, these questions are at the bottom of the pyramid and require students to simply recall information.[31] Observed examples of this type of question include the following:

> *"Quels sont les éléments constitutifs d'un État?"*
> *"C'est quoi un sujet[de droit]?"*
> *"How could we define group rights?"*

A second type of question includes higher-level thinking questions that require students to synthesize, apply and evaluate. Again looking at Bloom's taxonomy, these questions would be located in the top three levels in the pyramid. Law teachers ask these questions quite frequently although as we will see later, sometimes too quickly.

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[30] Hativa, *ibid* at 98.

[31] Lebrun and Johnstone assert that research shows that the tendency is to ask low-level questions: see Lebrun & Johnstone, *supra* note 1 at 276.

Professors often give out short hypothetical problems as questions, where students are asked to apply what they have learned to another situation. Here are other examples of these types of questions taken from my observations:

> *"Can you think of other examples?"*
>
> *"what would YOU argue?"*
>
> *"Would this be binding in Ontario? Any difference in Québec?"*
>
> *"Pourquoi cette affaire est-elle intéressante?"*
>
> *"Why is this important?"*
>
> *"What is the effect of section 35 being out of the Charter?"*
>
> *"Do you agree with the critiques presented in the two articles? Do we go far enough or should we go further?"*
>
> *"Do you think that makes sense? Do you accept that rationale?"*

Because law teaching in common law Canada uses mostly cases to explain concepts and principles of law (as we will see in chapter 5, the Carnegie Foundation refers to this as the case method, the signature pedagogy of law teaching in the USA and in Canada), I have grouped together questions related to cases, whether they fall into the category of lower-level or higher-level thinking. As their name indicates, these questions related to cases under review. These questions require students to recall elements of cases they were required to read for class, such as the facts, the ratio or the arguments presented by either party. Again, a correct answer to these questions exist and the students must find it. Examples of this type of question include the following:

> *"What are the facts of this case?"*
>
> *"Tell me about the people and I'll tell you about the case"*
>
> *"Can you give a summary of the case?"*
>
> *"Quelles sont les trois questions posées à la cour?"*
>
> *"How was the case disposed of?"*
>
> *"What is the main argument of Madame Justice L'Heureux-Dubé?"*

In the case questions we also find higher-level thinking questions related to cases, such as those relating to the legal principle derived from a case, questions comparing different cases, or the impact of a case on law or society. Here are some examples:

> *"What do you think? Which judgement makes the most sense?"*
>
> *"How did Butler change the law?"*
>
> *"Is there a difference between these cases?"*
>
> *"What would you do if you were counsel for x in this case?"*

One participant explains why he prefers asking higher-level questions after lecturing about the facts and issues of the cases:

> *I don't want to waste students' time. There's a lot of stuff to get through, so I want to do it efficiently. So, I will usually set up the basis for a discussion by talking about the statutory provision. Then when we come to a case and I'll talk about the facts of the case. And then, start to ask questions, like ... Try to get the students to understand, through these questions, what the incentives are. Why the dispute is occurring. ... And so I'll often have these things structured that way. One person's argument, another person's argument, what the court was deciding, and, use the students to actually, instead of me, to say what's happened. But not go through what are the facts of the case, which could just waste a lot of time I think and is not that useful. It also means that students who, you know, not everyone does the readings in advance. The students who haven't done the readings in advance can get a sense of what's going on and participate, even if they haven't managed to do the readings in advance, cause I've given them the facts, and what's going on. And now they can exercise their own judgement about what's going on. I ask whose argument, who's arguing one way? Who's arguing the other, or what the arguments are. What the court has said. And then I go a step beyond, which is to evaluate whether the court was right, whether people think the court's right, ask other broader questions about the structure of the act. That's usually when people start really going, or sometimes do, it depends. It varies. (AsPM2)*

Law teachers also ask students "context questions", which ask students about the social, economic, historical or other context of the law. These questions are usually used in the context of a discussion or a lecture. Here are some examples:

> *"What is the difference between father and daddy?"*
>
> *"Why did LEAF take heat after this case?"*
>
> *"What is the case for multilateral investment?"*
>
> *"What assumptions do we have about past experience and how that affects judicial making?*
>
> *"What do you think the NAFTA side agreement was meant to accomplish?"*

Closely related to "context questions" are policy questions or value questions, or questions requiring students to give their opinion about a subject, case, or legislative provision, where values of justice and fairness come up. Examples of this type of

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question include "is this the right result?" or "is this fair?". In one class on sexual harassment law, the professor asked the students whether the individualistic solution found in the legislation was the right one or whether we should find a collective or social solution to the problem. These questions are designed to encourage class discussion where different points of view are discussed.[32]

The types of questions identified in the observation data can be fitted into Centra's typology of questions as reviewed by Lebrun and Johnstone,[33] which is closely related to Bloom's taxonomy. Centra identified four types of questions. The *cognitive memory questions* require students to recall or recognize information, i.e. recalling facts, definitions, or answering yes or no. *Convergent questions* encourage slightly higher level thinking. Students are required to analyse and combine given information, comparing, contrasting, explaining, concluding. Third, *divergent questions* are broad, open-ended questions that permit varied thought-provoking and original answers. Some of the context questions identified above fit into this category. Finally, *evaluative questions* require students to communicate and support their judgements, values, choices and interests. The policy or value questions identified above fit into this category.

In my observations, however, I identified other types of questions that do not fit into Centra's categories. Probably in order to engage students, professors also sometimes ask students about their personal experience (e.g. "Has anyone been to Fort Langley?" or "Has anyone been to Little Sisters?") or their personal opinions about issues discussed in class or in the course materials (e.g. "What do you think pornography is?"). For example, on the topic of the right to counsel, one teacher asked students how much they thought they were worth and what salary they think they should get. I also observed what I call "checking understanding" questions, where teachers ask students if they

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[32] Lebrun & Johnstone, *supra* note 1 at 272.

[33] *Ibid* at 276. Lebrun and Johnstone also mention Brown & Atkins' typology of questions, which include conceptual, empirical and value questions (these are classified according to the approach required to answer the question), broad and narrow questions (or closed vs open questions; these are classified according to the likely range of answers and the thought processes required) and thought or recall questions (categorized according to whether the answer to the question involves simply recalling facts or speculative or evaluative thinking). See George Brown & Madeleine Atkins, *Effective Teaching in Higher Education* (New York: Routledge, 1990); J.A. Centra, *Determining Faculty Effectiveness* (San Francisco: Jossey-Bass, 1979) at 69-70.

understand what was just explained. These questions are usually very general (i.e. not specific to the subject just explained) and appear more to give the professor permission to move on to another topic than to really check if the students have understood. Some examples of these questions include "any questions?", "c'est clair?", "vous avez compris?" or "everybody with me?".

(ii)   *Ways in which law teachers ask questions*

A second interesting sub-theme in questioning concerns the ways in which professors ask these different types of questions. Most of the time, professors ask questions to the whole class, hoping they will get a few students putting up their hands to answer those questions. However, sometimes professors will ask specific students some questions. Sometimes these students are randomly selected. For example, I saw one class where the professor used the Socratic method and called on any student in the class. He told me later that he tells the students at the beginning of term that they can always be called upon to answer his questions and that they must always come prepared to class. I also saw one professor call students randomly from cue cards. Sometimes, however, students know ahead of time that they can be called upon for that particular class. The professor thus constitutes a sort of "panel of experts" for each class, consisting of two or three students responsible for the materials and thus ready to answer her or his questions. Less frequently I observed professors asking the question to the whole class but getting students to answer it in small groups or pairs. Most of the time, the professor asks the question orally only, but occasionally the questions are also put the board or on a transparency or slide.

(iii)   *Students' responses to questions and teachers' responses to those*

When a professor asks a question, there are also many different types of responses from students, as we could expect. Of course the type of response is first and foremost related to the type of question. Therefore a straight recall question will solicit a one-word or short answer response (e.g. the relevant provision in the Civil code of Québec,

the facts of the case), and an open-ended or divergent question can encourage long responses from one or more students. Sometimes only one student answers the question and sometimes many students (or the entire class) answer or mumble an answer simultaneously. Students either raise their hand or just blurt out the answer. There is also the response we all dread when standing in front of a class - silence - and judging from my observations, this response is quite frequent. Students also sometimes give an incorrect answer to the question.

Professors also respond in different ways to these different types of student responses. When students answer correctly (or just answer when there is no right or wrong answer), teachers sometimes validate the response, sometimes they paraphrase or summarize it for the rest of the class, sometimes they ask follow-up questions, or, as Lebrun and Johnstone label them, "prompts" and "probes", which are supplementary questions that seek clarification on an answer given by a student or that challenge the student.[34]   I have also seen professors interrupt students' answers, or lead right into lecture again without sufficiently acknowledging the student's response. Yet if we use questions as a way to improve student learning, we should give them sufficient feedback.[35]

To an incorrect or incomplete answer, teachers also have different types of responses, such as using humour (without mocking the student), asking another student, validating (e.g. "yeah"; "right"; "t'as fait plusieurs bons points") and completing the answer (e.g. "Yes, that's part of it" then answering the question), simply answering the question without commenting on the student response, or getting the same student to complete her answer with more questions. In one case, a student gave a politically incorrect (or naïve) answer and the teacher asked the class to comment on the student's comment.

One of the things that struck me during my observations was how often teachers' questions are met with silence from the students. Even more interesting is the variety of

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[34] Lebrun & Johnstone, *supra* note 1 at 277.

[35] *Ibid*.

strategies professors have to counter this response. Unfortunately, the most common response to a silent audience is for professors to answer their own question. Others repeat or rephrase their question, some give hints, some ask more probing questions, some ask students to look at a particular passage in a case or statute to find the answer, and some ask another student or put the question back to the class. Making jokes or telling a funny story are also strategies to break the silence. In one class, the professor tried to reassure the students by saying "it's okay, you've remembered a lot, this is an obscure detail". One professor broke students into pairs to answer the question when the question first went unanswered.

Brown and Atkins have identified common errors in questioning. These include asking too many questions at once, asking a question and answering it yourself, asking questions only of the brightest or most likeable, asking difficult questions too early, asking irrelevant questions, always asking the same types of questions, asking questions in a threatening way, not using probing questions, not giving time to think, not correcting wrong answers, ignoring answers and failing to build on answers.[36]

In the classes that I sat in, most of these errors were observed. Regularly I saw what I call "guess what's in my head" questions where teachers have a particular answer in mind and are trying to get students to guess it by giving different hints and probing questions. Other problems I saw were teachers asking many questions at once; in one case students had to ask the professor to clarify which of the many questions they should answer. Often teachers will ask higher-level thinking questions without building up to them. Students thus do not have the tools necessary to answer these higher-level thinking questions, which are then met with silence. According to Lebrun and Johnstone, low-level questions are useful to lay the groundwork for higher-level thinking questions.[37] I remember one seminar class where the teacher complained to me that the students were quiet even though he tried to encourage discussion; I went to his class and observed that the questions he was asking to stimulate discussion were tough, policy-

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[36] Brown & Atkins, *supra* note 33 at 73, also cited in Lebrun & Johnstone, *supra* note 1 at 278.

[34] Lebrun & Johnstone, *ibid* at 276.

oriented questions. Had he started warming them up with easier recall questions about the law and the context and then working them up to these tougher questions, he might have had more responses. Lebrun and Johnstone say that higher-level questions, if clearly enunciated, tend to generate more responses from students than low-level questions because students are afraid to embarrass themselves if they cannot answer correctly a simple question.[38]

One participant explained to me the relationship between the "what" and the "why" questions:

> *Well, they need to understand what the law IS. And then I'll bring them back to, okay, why do we have the law this way? Right? You get them to read the case, THEN you explain to them, okay you know what the rule is. WHY would you want to do it this way? But I tend to do the why, as part of, here's what the rule is. (APM2)*

Another participant explains how she gets the discussion going and mixes it up with lecture:

> *Yeah, I just have the themes, and [pause] I start off with some questions. And in that I might incorporate reference to what's going on in a particular judgement. And then I'll open up the floor. And I often will start with easier questions to get that going. Like, for this judge, what was the problem here? And, and then they'll start talking. And then others will disagree. And then we'll open up the discussion. And I just try to go from that into kind of go back and forth in discussion to more lecture format, incorporating references. I will bounce around. (AsPW7)*

The most problematic and common error I observed law teachers make, however, was waiting an insufficient amount of time before answering the question themselves. Rowe's research on wait times shows that the average wait time for teachers is about one second.[39] Following on Rowe's research, Duell et al did a study on wait time for university teachers and found that the average wait time was 2.25 seconds.[40] However,

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[38] *Ibid* at 277.

[39] See Mary Budd Rowe, " Wait Time: Slowing Down May Be a Way of Speeding Up" (1987) 11:1 American Educator: The Professional Journal of the American Federation of Teachers 38; Mary Budd Rowe, "Wait Time: Slowing Down May Be A Way of Speeding Up!" (1986) 37 Journal of Teacher Education 43 at 43; Mary Budd Rowe, "Wait-Time and Rewards as Instructional Variables, Their Influence on Language, Logic, and Fate Control: Part One--Wait-Time" (2003) 40:S1 Journal of Research in Science Teaching S19. See also Robert Leamnson, *Thinking about Teaching and Learning: Developing Habits of Learning with First Year College and University Students* (Sterling: Stylus, 1999) citing her work at 57.

[40] Orpha K. Duell et al., "Wait-time in College Classes Taken by Education Majors" (1992) 33 Research in Higher Education 483 at 492.

waiting another three seconds will produce a response more frequently than waiting one second.[41] Rowe also suggests that waiting an extra three seconds after a student response will encourage elaboration from the same student and contributions from others.[42] I did not calculate the number of seconds that professors waited before answering their questions, but my impression was that it was not long at all. I noted one particular class where the professor waited for 4-5 seconds (which is the recommended wait time) until someone finally answered. This seemed like a long time to me (and everyone involved I'm sure), but if we want thoughtful answers to our questions, we must give them sufficient time to respond. This participant describes the different kinds of pauses she takes in the classroom:

> So, one thing I'll do sometimes if I ask a question and there's nothing there, I think the pause is the best method and there's three or four different methods of pause. One is to just wait until somebody chimes in. And I think a lot of professors don't do that. They don't like the discomfort. So they'll either spoon feed it, or else they'll lecture them and say I'm not telling you this because you should know this. Or, they're frustrated... And what that means is, they make an assumption that, either the people don't know, or don't care, about this stuff. But really it's cognitive. The wheels are spinning, right? So they're making bad assumptions. So there's variations of the pause. The one that you just talked about [3-5 second rule]. Then there's this longer pause, which is take two. And then there's another kind of pause, which I did today, although I turned it more into an exercise. Which is, sometimes when I ask a question to one individual in the class, and nobody seems on to it, I just say, okay, talk about this for a second. And this is actually one of my best techniques. What happens is they start talking, and then if you interrupt them and get them back at the right time, all of a sudden you can bring that together and have a different, enthusiastic conversation that would have been thwarted but for this pause, um, and that works pretty well. (AsPM3)

Lebrun and Johnstone suggest giving students time to jot down their thoughts before requiring anyone to respond to the class, or, as this participant mentions, getting students to discuss the question in pairs.[43]

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[41] Budd Rowe (1986), *supra* note 39 at 43. See also Leamnson, *supra* note 39 at 58.

[42] Budd Rowe, *ibid* at 43. See also Orpha K. Duell, "Extended Wait Time and University Student Achievement" (1994) 31:2 American Educational Research Journal 397 at 399; Leamnson, *ibid* at 58.

[43] Lebrun & Johnstone, *supra* note 1 at 277.

(iv)   *Student questions and comments*

Students also have their own questions and comments. I observed both teacher-driven Q&A and discussion, but also significantly, student-driven Q&A and discussion. However, whether survey respondents included these in their responses is not clear, since the survey question was geared towards teachers' use of teaching methods. But this is nevertheless an important question because in some of the classes observed, the professors would have been lecturing for the great majority of the class if it had not been for the student questions. Yet students should be given opportunities to ask questions in class because they will then take more responsibility for their own learning, they are in the best position to determine which aspects of the subject they find difficult to understand or interesting and because asking questions is an important skill to learn.[44]

Student questions are as diverse as the teacher questions we saw above. The first and probably most common type of questions from students are clarification questions, when they are confused about concepts, rules or cases, about the content of the lecture or about the course materials. For example, "what is the difference between trespass and nuisance?".   Sometimes students ask questions in order to correct a mistake the professor has made (yes, they are quick to point those out!). Clarification questions also include those presenting a hypothetical to see if and how the rule would apply.   For example, in one case, the student gave a hypothetical and asked if this would be considered false imprisonment.   Sometimes students will ask for examples to clarify concepts or rules.   I also observed that students do not seem afraid to ask follow-up questions if the answer given to their question does not satisfy them.

Students also often have practical or more procedural questions. They want to know the application of the concept or rule in the "real world". One example of this was when talking about jury selection, one student asked whether you could appeal a jury decision or not. Closely related are questions about current events.

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[44] *Ibid* at 278, citing S. Habeshaw, T. Habeshaw and G. Gibbs, *53 Interesting Things to Do in your Seminars and Tutorials* (Bristol: Technical and Educational Services Ltd, 1984).

Students also ask why questions. Some of these why questions relate to the fairness of judicial decisions or legislative provisions (eg. "why did the court have to decide that way?"). Sometimes they will just give their opinion about the common sense or the (un)fairness of cases or rules. Some students also shared some personal experiences that were related to the subject.

Students will also openly disagree with the reasoning of a court in a particular case or with what the professor is saying. I saw a few instances of students challenging the professor. More often than not, this was done in a respectful way, but I did see some instances where the student could have been qualified as difficult and disrespectful.

This typology of student questions and comments fit with Lebrun and Johnstone's description of student questions "who may wish to clarify issues, raise new issues, challenge our opinion or interpretation or seek examples or illustrations."[45]

Finally, most students raise their hands in order to ask a question or make a comment, but this is not always the case. I have seen instances where a student interrupted the teacher in order to ask a question or to make a comment, even when the teacher was answering that student's question.

But overall, I was quite impressed with the quality of student questions and comments, which more often than not were thoughtful and informed. In most classes observed, student questions and comments were frequent and demonstrated an engagement with the material.

(III) Teaching and evaluation methods - discussion of findings

What can we make of these findings? Is teaching in Canadian law faculties effective? It is not surprising to find that the lecture is the dominant teaching method in Canadian law

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[45] Lebrun & Johnstone, *ibid* at 274.

faculties. It is also the case in university teaching generally.[46] In fact, it is used in over 90% of university or college classrooms[47] and it is almost "synonymous with what higher education is about".[48] But is lecturing an effective teaching method? The answer is "it depends." It depends on the goals of the teacher, the quality of the lecture and ultimately on whether the students learn.

There are indeed many advantages to the use of lecture in university teaching. Because it permits the transmission of information to a large number of students at the same time, lecturing is cheap and less demanding for professors.[49] Tribe and Tribe explain the appeal of lecturing for both teacher and students:

> Nonetheless, it is still common to find law lecturers addressing, or even dictating notes to, students with a minimum of interaction. The chief aim seems to be the transmission of as much legal information as the student can write down in the time available; this information includes teacher-made solutions to problems. For many students this type of session is very popular, as a set of notes to be carried away at the end of the lecture gives a feeling of security.[50]

A clear, well-structured lecture can also transfer information quickly and concisely, which is useful where the information is not accessible by other means or where it needs to be organized by the teacher.[51] The lecture is also appropriate for communicating to the students information that may not be in the textbook or the teacher's critical perspective on the subject matter.[52] The lecture provides an opportunity for students to benefit from this expertise.[53] This participant acknowledged this point but then also added that the point of a lecture was to go beyond the textbook to get students to read between the lines:

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[46] See Donald A. Bligh, *What's the Use of Lectures?*, 1st US ed. (San Francisco: Jossey-Bass Publishers, 2000) at 3. See also Catherine Mulryan-Kyne, *supra* note 26.

[47] Hativa, *supra* note 10 at 71 and 76, citing Thielens *supra* note 12.

[48] Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009) at 105.

[49] Lebrun & Johnstone, *supra* note 4 at 258. See also Light, Cox & Calkins, *ibid* at 107; Brown & Atkins, *supra* note 33 at 16.

[50] Tribe & Tribe, *supra* note 6 at 300

[51] Lebrun & Johnstone, *supra* note 1 at 259.

[52] Light, Cox & Calkins, *supra* note 48 at 107.

[53] Mulryan-Kyne, *supra* note 26.

I think that the stand and deliver method allows for a certain kind of dissemination of information. But so does a text book. I think that the idea is get between the lines with them, and to really get them to think through things. (AsPM3)

The lecture is also an appropriate teaching method when it is necessary to arouse interest in the subject, when it is necessary to introduce a topic, or to provide instructions for a task.[54]   It can therefore be an effective communication tool, but as Hativa explains, an effective lecture is "much more than just communicating knowledge. It arouses interest and motivation; promotes concentration and attention; identifies and marks the most important information; and enables effective cognitive processing."[55] Lecturing also serves a modeling function, as explained by Mary Burgan in a short article defending the value of the lecture:

> It is in this context, it seems to me, that teachers are irreplaceable as models of knowledgeable adults grappling with first principles in order to open their students' understanding. Indeed, surveys have shown that such modeling is critical in students' responses to their teachers: The two features of an individual instructor's pedagogy that most engage undergraduates are control of the material and concern with students' understanding of it. No matter how recondite or obscure the ideas may be, the phenomenon of a grown-up person capable of talking enthusiastically and sequentially can show students how they themselves might someday be able to think things through.[56]

This participant explains how she models thinking about the cases and argument:

I think it's probably fair to say that what I do is take the material that's under discussion for the day and, work out how to make sense of it, right? What the cases are about, why they matter, how they're consistent or inconsistent with one another, what the lines of argument are that are coming up out of it, how does it fit with what we've done before, where is it going to, and present it, almost as though it were reading a paper, but a paper that's very suited to a first year audience as it were, right? … So it's really more about making an argument in front of them about how this all fits together and what the meaning of it is. (FPW1)

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[54] *Ibid*, citing Thomas L. Good & Jere E. Brophy, *Looking in Classrooms*, 9th ed. (Boston: Pearson/Allyn and Bacon, 2003). (the 10th edition was published in 2008).

[55] Hativa, *supra* note 10 at 76.

[56] Light, Cox and Calkins think that although the objectives that Burgan mention are "admirable and necessary" for the lecture, they are not sufficient to justify the use of lectures: Light, Cox & Calkins, *supra* note 48 at 107. See also Mulryan-Kyne, *supra* note 26 at 179, who cites studies that lecturing is appropriate for modeling problem-solving, critical thinking, for showing enthusiasm for the subject matter and relating content to students' experiences.

Thus, lecturing can be effective when the objective is to transfer information or to model thinking. However, going back to the criteria we established in chapter 1 to identify "good teaching", it is important to remember that lecturing will be effective when it results in student learning. As Hativa points out, an effective lecture should therefore "activate students to construct their knowledge, include a personal approach and human warmth, present content that cannot be learned from other sources, at least not directly, and contribute greatly, overall, to student learning."[57]

Light, Cox and Calkins distinguish between traditional lecturing and what they call "engaged" lecturing. Traditional lecturing, or "ongoing periods of exposition by a speaker, before an audience who is seeking to learn from that speaker",[58] is based on the "sage on the stage" vision of education, where the professor's role is limited to transmitting knowledge to passive and empty recipients, the students.[59] Lecturing does not necessarily allow students to be active since they are busy taking notes.[60] Studies done by cognitive psychologists have also shown that learners remember 10% of what they read, 26% of what they hear, 30% of what they see, 50% of what they see and hear, 70% of what they say, and 90% of what they say as they are doing something.[61] In a lecture, studies have shown that concentration is reduced only after a few minutes[62] and lost after 20 minutes.[63]

In his extensive review of studies on lecturing, Bligh reaches the following conclusions:

1. The lecture is as effective as other methods for transmitting information.
2. Most lectures are not as effective as discussion for promoting thought.
3. Changing attitudes should not normally be the major objective of a lecture.

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[57] Hativa, *supra* note 10 at 76.

[58] Light, Cox & Calkins, *supra* note 48 at 106. Bligh defines "lecture" as "a period of more-or-less uninterrupted talk from a teacher": See Bligh, *supra* note 46 at xiii.

[59] Lebrun & Johnstone, *supra* note 1 at 258.

[60] Tribe & Tribe, *supra* note 6 at 300. See also Hativa, *supra* note 10 at 75.

[61] See James E. Stice, *Developing Critical Thinking and Problem-Solving Abilities* (San Francisco ; London: Jossey-Bass, 1987).

[62] Lebrun & Johnstone, *supra* note 1 at 260, citing Newble & Cannon, *supra* note 29.

[63] Lebrun & Johnstone, *ibid* at 260, citing numerous studies at footnote #10.

(a)   Lectures are relatively ineffective for teaching values association with subject matter.

(b)   Lectures are relatively ineffective for inspiring interest in a subject.

(c)   Lectures are relatively ineffective for personal and social adjustment.

(d)   Lectures are relatively ineffective for teaching behavioral skills.[64]

Thinking back to our learning gaps framework, lecturing is therefore effective in getting students to the recall/knowledge acquisition stage, but less effective to get them moving through the gaps to the other stages, in part because they are not active.[65]   Therefore, this teaching method is not catered to stimulate thought or getting students to develop higher-level thinking abilities. [66]   I was thus surprised to see that many teachers that I observed lectured about critiques of the law or policy.   If one of the aims of legal education is that students develop higher-level abilities such as analysis, application and evaluation (i.e. critical thinking), we must complement lecture with other teaching methods such as discussion. [67]

Lecturing, which is still the dominant teaching method in law classrooms, thus has its advantages, but it is not the most appropriate method for students to learn higher-level thinking skills such as analysis, application and evaluation, or for teaching them about values. However, Light, Cox and Calkins also note that the problem is not with lecturing per se, but with the traditional lecture. They argue that it must be re-imagined "as a dialogue in which the lecturer and the students are genuinely engaged". [68] The authors suggest what they call the "engaged" model of lecturing, which "focuses on the lecturer as a person committed to engaging with other people in a dialogue focused on particular

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[64] Bligh, *supra* note 46 at 3.

[65] Light, Cox & Calkins,*supra* note 48 at 106.

[66] Lebrun & Johnstone, *supra* note 1 at 259; Hativa, *supra* note 10 at 79.

[67] Lebrun & Johnstone, *ibid* at 260. The format preferred for discussion in the literature seems to be small group discussions: see, for example, Donald A. Bligh, *What's the Point in Discussion?* (Exeter, England ; Portland, OR,: Intellect, 2000).

[68] Light, Cox & Calkins, *supra* note 48 at 111.

content".[69]   The aims of the engaged lecture is to engage the students and to "facilitate both conceptual exchange and conceptual change in the students,"[70] i.e. learning.

The following quote reflects what Light, Cox and Calkins say about the engaged lecture:

> *I try to recreate the sense of a conversation which is to say having the comfort zone that you would have in a conversation with friends. The idea that you can explore topics whether or not they exactly fit with what's expected at the moment or whether they're clearly thought-out ideas. I like to try to create the atmosphere that has some spontaneity to it so there typically are some digressions. There's a structure that's always being followed but I don't lecture from notes, I don't have PowerPoint slides, I don't have an itemized list of take away points for every single class and invariably it takes on a bit of a shape of its own, and hopefully in ways that have some coherence both internally to each class and over the course of many classes, but certainly the coherence is a meandering coherence and not a rigid coherence. (FPM4)*

It is encouraging to state at this point that most of what I saw and heard during my field work in Canadian law faculties was, at least in intention, engaged lecturing, although as I mentioned in chapter 3, this might be because my sample of participants is self-selected, and therefore, more likely to care about teaching than those who did not want to participate. Nevertheless, many law professors I talked to, like the one above, are concerned about engaging students and provoking changes in them. All were passionate about their subject and wanted to generate the same enthusiasm in students, as we can see from the following quotes:

> *I think, you know, part of the reason I worry so much is because I want them to come away from this class engaged, like, turned on by these issues and so sometimes you have to think really hard about how to make it different and interesting... (APW1)*

> *I think the most valuable thing that one can convey as a teacher is enthusiasm for one's subject. If one is able to convey that enthusiasm then, the learning that's done in the class will extend far beyond that 90-minute window, or that three-hour window. And so, the classes that have been most disappointing is when that enthusiasm hasn't materialized. And it's either from me or from my interaction with the class. So, the goal is to generate enthusiasm and interest and, if that's achieved then, [pause] I really think the sky's the limit for what the students want to learn. (APM1)*

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[69] *Ibid* at 112.

[70] *Ibid*.

According to Light, Cox and Calkins, the engaged lecture also provides students time and structure to become actively engaged. This means giving them time to reflect, to share the main ideas and points with others, and to discuss (either with the class as a whole or in small groups).[71] As we saw above, law teachers use discussion and Q&A to supplement lecturing in most classes. However, I did not see professors asking students to reflect on their own, either through the one-minute paper or by taking a pause for them to think. From my conversations with professors, it seems that when it is encouraged, reflection is something that is done outside of class, either on assignments, exams or "reflection papers".

Moreover, as we saw above, according to the survey data small groups or pairs are hardly ever used in law classrooms even though studies have shown their effectiveness in getting students to achieve higher-level thinking skills.[72] Light, Cox and Calkins explain the benefits of using small groups to promote student learning:

> The opportunity to come together in small groups to change conceptions and explore theories and insights provides students with one of the most important learning experiences higher education has to offer. Research has shown that small-group work can help students construct meaning more deeply; enhance critical thinking skills; provide opportunities for feedback and self-reflection; promote social and emotional development; enhance student awareness and acceptance of diversity; and even lessen student attrition. Interacting with their peers can help students develop and construct their own conceptions - partly by having to think through and even defend their own ideas, but also when they question or clarify the views held by others. When worked into large classes, small-group activities can also reduce anonymity and promote student accountability.[73]

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[71] *Ibid* at 115-116.

[72] See Bligh, *supra* note 67; Barbara J. Millis & Philip G. Cottell, *Cooperative Learning for Higher Education Faculty* (Phoenix, Ariz: Oryx Press, 1998). David Jacques & Gilly Salmon, *Learning in Groups: A Handbook for Face-to-Face and Online Environments*, 4th ed. (New York: Routledge, 2007), chapter 2 for an overview of studies on group work; D.W. Johnson, Roger T. Johnson & K.A. Smith, *Active Learning: Cooperation in the College Classroom* (Edina, MN: Interaction Book Co., 1991) for a review of research studies on cooperative learning.

[73] Light, Cox & Calkins, *supra* note 48 at 128 citing J.L. Cooper & P. Robinson, "The Argument for Making Large Classes Seem Small" (2000) 81 New Directions for Teaching and Learning 5, N.M. Webb & A.M. Mastergeorge, "Promoting Effective Helping Behavior in Peer-Directed Groups" (2003) 39 International Journal of Educational Research 73 and A. Yazedjian & B.B. Kolkhorst, "Implementing Small Group Activities in Large Lecture Classes" (2007) 55 College Teaching 164. See also Hativa, *supra* note 10 at 117.

Small-group learning activities also foster team-work and collaboration and enhance problem-solving and decision-making skills.[74]

We saw above some of the concerns expressed by law professors about the use of small groups, including that it takes more time and that it is difficult to do in a large class with a large number of groups to manage.[75] Other difficulties with small groups include overtaking of the group by one or two dominant students, lack of trust between group members, students not getting along, groups not on task. [76]

We also saw from our analysis of the survey and observation data that whole class discussions, rather than small group discussions, are preferred in law classrooms to supplement lecturing.[77] Whole class discussion is also the predominant teaching method in upper year seminars. Teacher-driven discussion is indeed an effective teaching method to achieve higher level thinking objectives. Discussions "encourage students to actively participate in the lessons", to make connections with other things, to explain and summarize what they have learned.[78]

However, there are some problems with teacher-driven class discussion, as explained by Hativa:

> The main problems that reduce the use of discussion in class are: low student participation, habitual participants and discussion monopolizers, students' impression that they do not learn much from discussion, negative emotional reactions to discussion, and perceived low expertise of discussion participants. [79]

The first problem was definitely noticed during my classroom observations. When I was observing classes and sitting at the back, I observed that when professors would switch

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[74] Light, Cox & Calkins, *ibid* at 128. See also See also Hativa, *supra* note 10 at 117-118.

[75] Light, Cox and Calkins note the concern of professors about coverage: see Light, Cox & Calkins, *ibid* at 129.

[76] *Ibid*.

[77] Hativa notes that teacher-driven class discussion is the most prevalent form of discussion used in colleges: Hativa, *supra* note 10 at 112.

[78] *Ibid*.

[79] *Ibid* at 113.

from lecturing to discussion, many students would also switch from listening and taking notes to doing something else. In classes where laptops were common, students would have many different windows opened at the same time on their desktop and would switch to a chat room, e-mail or internet. There were enough students willing to participate in the discussion that the rest could benefit from the anonymity of the large class and stop paying attention. Nunn's study on classroom participation showed that not only little time was spent on interaction in higher education classrooms, but that only few students actually participate in class discussions.[80] However, the same study also showed some correlations between participation and certain teaching techniques that we mentioned earlier[81] such as praise, asking questions, asking probing questions, repeating answers, using students' names and correcting wrong answers.[82]

The advantage of small group discussions is that in small groups, students cannot hide. They must be on task and must contribute to the group's work. There is peer pressure to do so. There is mutual responsibility for getting the task done.

In summary, the findings of this study confirm that the lecture is the predominant teaching method used in Canadian law classrooms, but also suggest that lecturing is supplemented by teacher-driven class discussions or Q&A (with the occasional Socratic method). When we compare these findings with the literature on teaching and learning, we see that the predominant teaching methods used in legal education are also the predominant teaching methods used in higher education generally. However, we also saw that lecturing may not be the most appropriate teaching method to get students to learn higher level thinking skills and that there are common problems with teacher-driven class discussions. Our findings also tell us that small group work is hardly ever used in law classrooms even though studies have shown that they help students learn the higher level thinking skills. Therefore, the teaching methods we use in legal education may not be the

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[80] Claudia E. Nunn, "Discussion in the College Classroom: Triangulating Observational and Survey Results" (1996) 67:3 The Journal of Higher Education 243 at 259. See also Hativa, *ibid* at 113.

[81] See the section on questioning above.

[82] Nunn, *supra* note 80 at 259.

most effective methods if our goals as legal educators are for our students to achieve higher level skills such as critical thinking. Let us now take a look at the effectiveness of our evaluation methods.

(IV) Evaluation methods

The survey results also confirm my assumptions that conventional sit-down final examinations are the main form of evaluation used in law schools (see Figure 4-19), although again this conclusion is nuanced.

Indeed, for Course #1, 70.8% of respondents use a conventional sit down final examination as a form of evaluation. However, a significant number of respondents (45.7%) also indicated using 1 or 2 assignments and 30.5% also use a mid-term sit down examination. For the majority of respondents, the weight of the final exam is between 60-74% of the final mark, with only 16.9% of respondents using a final exam worth 100% of the students' mark (see Figure 4-20). Take-home examinations are not commonly used, with only 7.4% of respondents indicating that they use a final take-home and 3.7% a mid-term take-home exam. Participation is also noted by 21.4% of respondents as a form of evaluation, and research papers are used by 20.6% of respondents.

If we compare the anglophone and francophone respondents, more anglophone respondents than francophone respondents use the 100% final examination or one that is worth between 75-99% of the grade, while more francophone respondents have a final examination that is worth between 50-59%.[83]

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[83] This might be because Québec civil law faculties (or more likely, their university administrations) have adopted rules that prohibit only one form of evaluation. This is the case in my own institution.

Figure 4-19 Evaluation methods (Course #1)
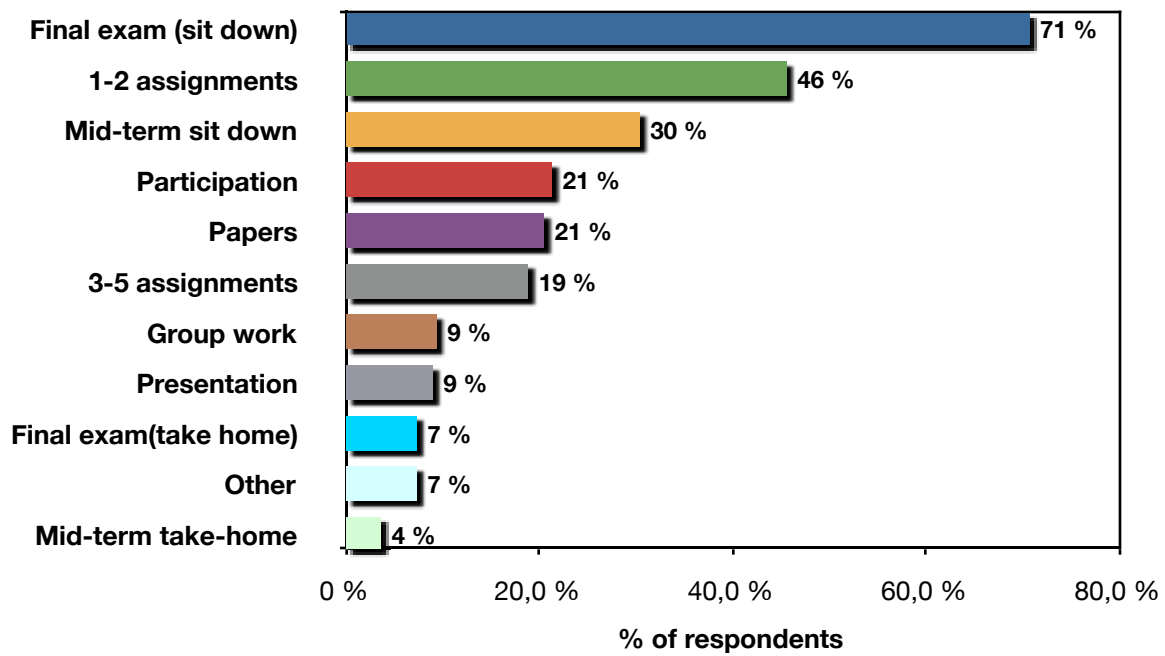
Figure 4-20 Weight of final (sit down) examination
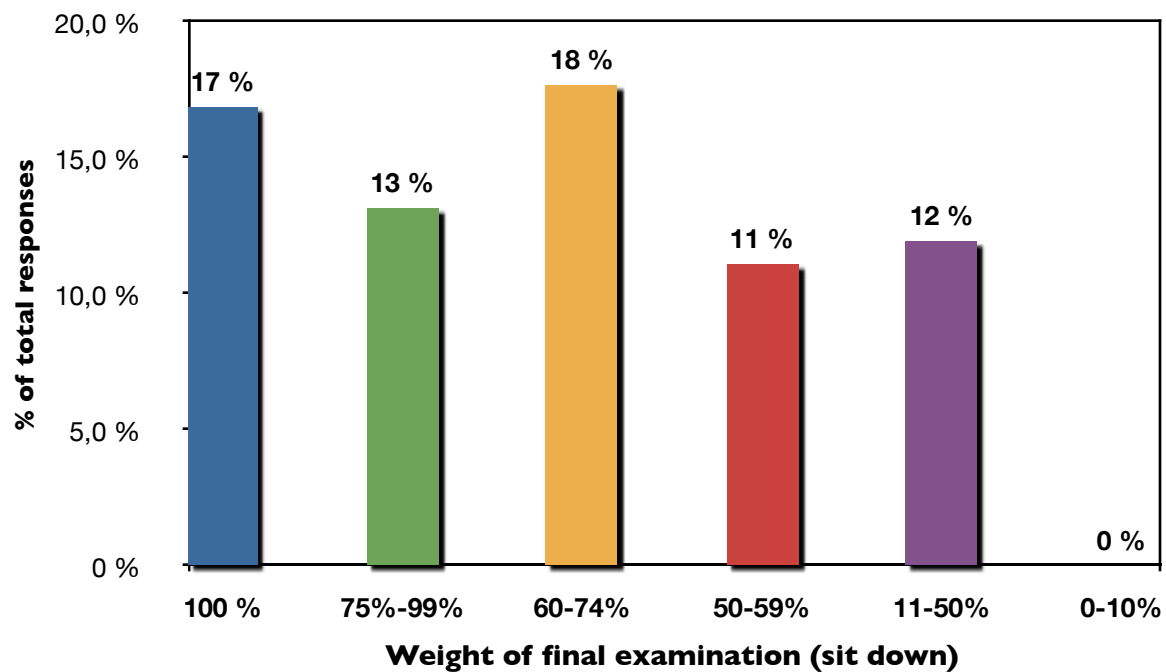
Gender does not seem to be a factor in the choice of evaluation methods, as there is hardly any difference between women and men respondents on this question. However, more male professors than female professors use a sit-down final exam worth 50% or more of the final grade, with the greatest number of men using this exam for 60-74% of the final grade (see Figure 4-21). Of female respondents who do use a final examination, the greatest proportion of them (24.4%) use a 100% final examination compared with exams worth less (but still less than their male colleagues). However, if we compare the use of an examination worth 50% or less of the final grade, we see that women tend to use them more than men.

Figure 4-21 - weight of final exam - men and women compared
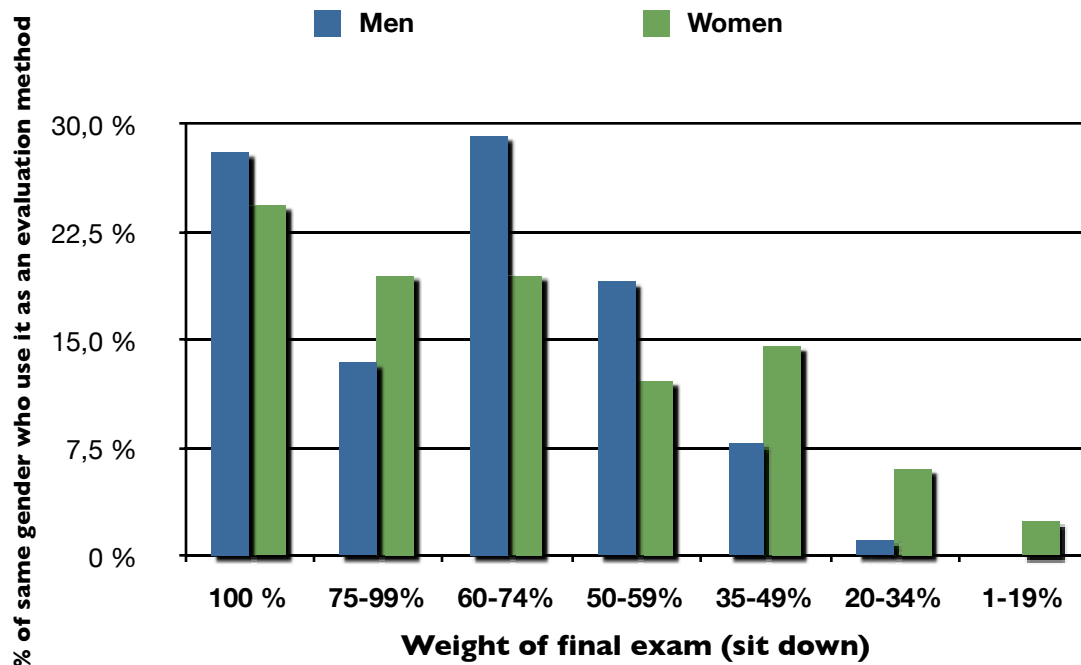
The proportion of professors who use participation and research papers is much greater for Course #2 than it is for Course #1 (see Figure 4-22), which is to be expected considering the fact that for a good proportion of respondents, Course #2 corresponds to an upper year seminar, as we saw above. Research papers are used by 43.6% of respondents for Course #2, compared with only 20.6% for Course #1. Class participation is used as an evaluation method by 44% of respondents for Course #2,

compared with only 10.7% of respondents for Course #1. Assignments are also slightly more popular in Course #2, with 51.3% of respondents using this method for Course #2, compared with 45.7% for Course #1. In contrast with Course #1, only 39.7% of professors use a final sit-down examination for Course #2.

Figure 4-22   Evaluation methods Courses #1 and #2 compared
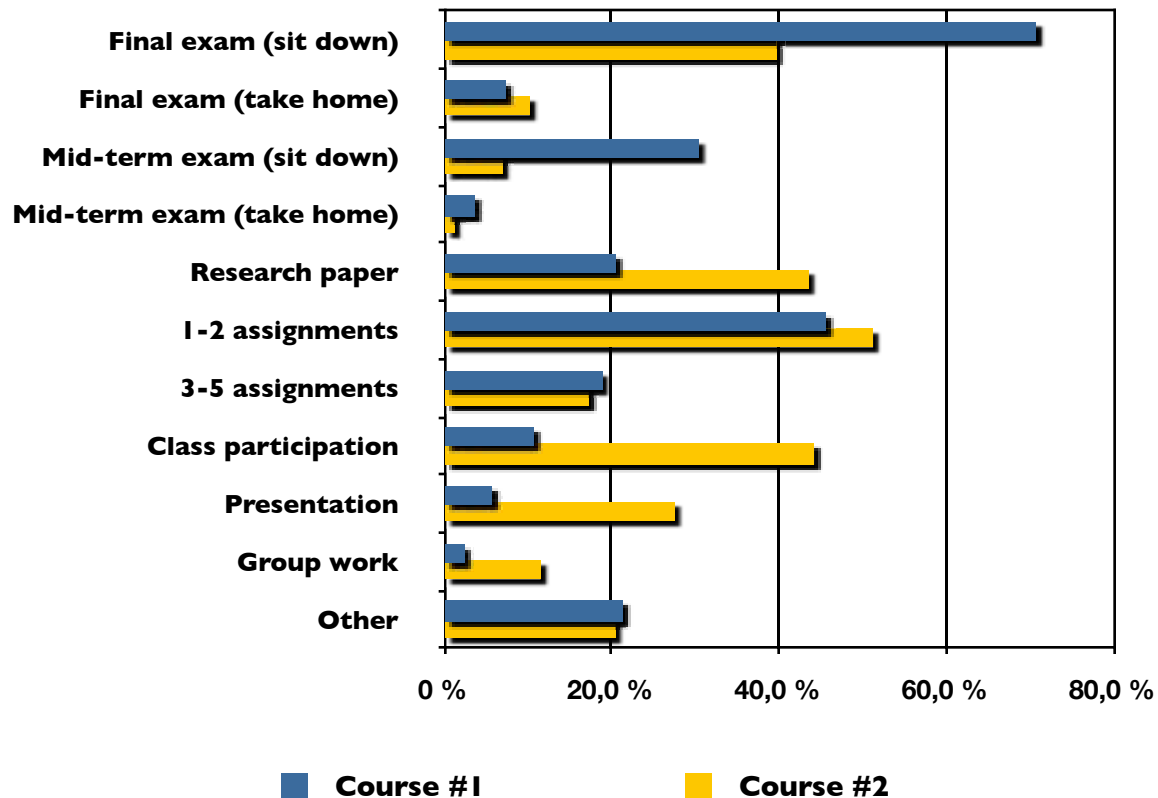
If we compare course types, there are noticeable although expected differences. Final examinations are used by the great majority (87.9%) of professors teaching a 1st year basic course, but never used in an upper year seminar (see Figure 4-23). In a first year basic course, of those teachers who use the final sit down examination, it is worth 100% of the final mark for only 16% of them, the greater proportion of them having a weight of between 60-74% of the final mark (see Figure 4-24).

Figure 4-23 - evaluation methods compared by course type

Evaluation method	1st year course	Upper yr seminar
Final exam (sit down)	88	0
Mid-term exam (sit down)	53	0
Research paper	11	73
Participation	17	67
Presentation	6	51

■ 1st year course   ■ Upper yr seminar
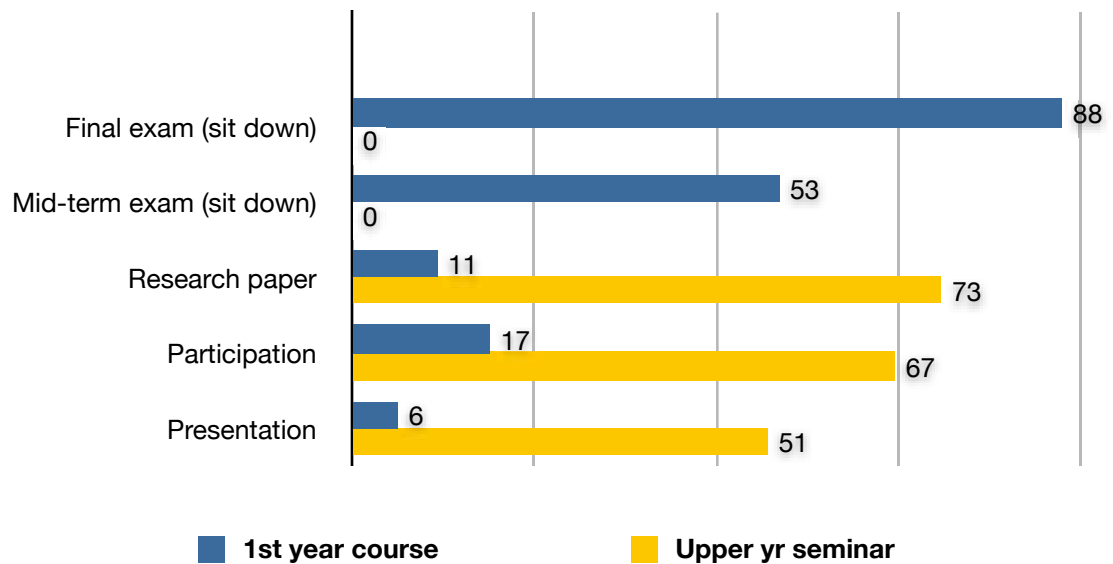
In a first year basic course, there is also often a mid-term sit down examination, which usually happens in December since most first year courses run the entire academic year. As this participant explains, this mid-term examination is often only used to help the students' grade, with the final exam potentially worth 100%:

> *And if it's a large group, then there's a mid-term exam that can only help them on their final exam. And the final exam is potentially worth 100%. (APM1)*

The stress of ONE form of evaluation on students was recognized and justified the use of diverse methods of evaluation (or options):

> *...pour éviter d'augmenter le stress qui à mon avis est contre productif parce que quand t'es dans une classe et que tout le monde est hyper stressé parce qu'il y a un examen de 100% à la fin de la session, bien au fil des années moi j'ai changé mes modes d'évaluation, je les ai diversifiées: analyse d'arrêts en classe qui compte pour un certain pourcentage, examen intra-semestriel qui compte pour un pourcentage substantiel. (FPM12)*

Figure 4-24 1st year basic course: weight of final exam
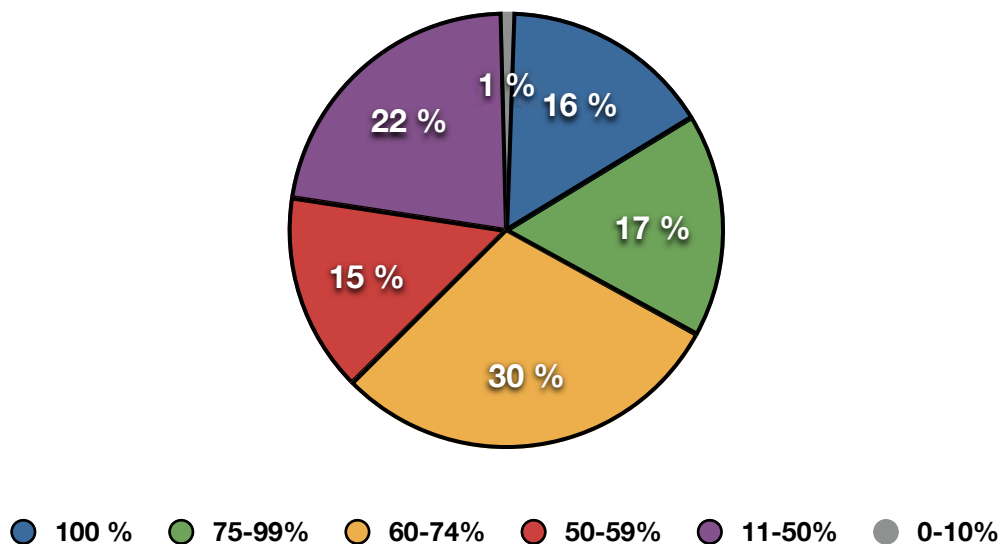
As to the content of final examinations, they can contain a hypothetical problem, asking students to apply the law to a fictional situation, and/or a policy or law reform question asking students to reflect and critique about certain aspects of the law, or a more theoretical question, as described by these participants:

> I will always on every exam include a question that asks students to explore the policy or the why behind the law. So, there will always be, a fact hypothetical, but there will always be a short essay question. (APM1)

> l'examen final c'est un mélange, il y a des cas pratiques, il y a toujours des vrais ou faux mais avec motifs évidemment, et puis parfois, il y a des questions théoriques. (FPM11)

A legal historian who believes that the goal of legal education is for students to understand that law is a social process still examines the doctrine, but carefully chooses his hypothetical problems:

> Exams tend to do the doctrine more, to do the traditional kind of "here are a set of facts, what would you do?" But they always have some scope, in the sense of at the end of the day, I can tell the client this is where I THINK it would go given the cases I've read. But, [pause] try and do problems that, also allow them, if they're the better students at least to [pause] say you know it's really going to depend on what kind of judge you're going to get, right? One who has more sympathy for you know, particular life styles, or whatever. I've quite often thrown into [pause] discriminatory estates problems and conditions, gay relationships. (FPM3)

This one participant told me about giving students a poem on a final exam :

I gave them a poem, said you are a Supreme Court judge who's also a poet. This is your poem. And from this you will give a speech on, [pause] pure economic analysis and fiduciary duty in the Supreme of Canada in 2006. (AsPW7)

One participant designed her evaluation methods in order to give student different options, but she assessed the same three elements:

Everybody has to do three things. [pause] ... So I divided the course up into basically three sections, and they have to do some assessment related to each section. And so if you do section one in the assignment, then you don't do that in the exam. You still get a choice of questions, but the questions are related to the part of the course that you're doing your exam on. (AsPW1)

Other participants told me about giving students options on the questions they could choose on the final examination, as indicated in this comment:

An exam that's worth about 70%, with a mid-term paper. The mid-term paper students can do in groups or individually, as they see fit. And the exam, [pause] is, it's a three hour exam. [sigh] And I give them as much detail as possible in advance, including how it's broken down, without telling them the question. So there's going to be a long fact scenario and it's worth 30 marks out of the 70 marks. And then there's gonna be a series of eight questions and you need to do six. And they're short answer more theoretical questions, and they're worth five a piece. So that kind of break down they get. I give them all of that in advance. (AsPW6)

As to the mid-term exam, this participant explained to me that it was a one-page, 50-minute short-answer exam where the primary purpose was to give students feedback on their application of knowledge. When I asked for more details, he told me that the exam was a hypothetical.

Ça fait au moins une dizaine d'années que j'ai fait des intras mais une forme d'intras je dois être le seul à utiliser cette forme-là d'intra qui est un examen sur une page. Toujours une page, donc un examen de cinquante minutes, une page, dont les réponses sont absolument très très courtes et où l'intra est remis aux étudiants par la suite avec mes commentaires. Corrigé en classe et les étudiants qui ont des difficultés, je les invite à venir me voir. Ce ne sont pas des examens anonymes. L'intra n'est pas anonyme parce que l'intra n'a pas le même objectif que l'examen final. Alors l'intra sert à différents objectifs, et pour moi, et pour les étudiants. Donc je tiens absolument à ce qu'il ne soit pas anonyme. Et à ce que l'étudiant ait sa copie d'examen corrigée pour être capable de, avec, et je leur donne le corrigé de l'examen par la suite. Et donc on le fait ensemble en classe après ça avec le corrigé, de manière à ce que les étudiants puissent voir où ils ont commis des erreurs puis qu'ils aient le temps de se rattraper avant l'examen final. (FPM11)

This other participant told me she used a take-home mid-term so she could give students feedback during the term and to address equity/diversity concerns:

> *Well this is the first time actually, so this is the first year I went to take-home. Okay, so, up until this point I've done largely 100% finals, except my second year. So the second time teaching it, when I did a take-home mid-term. And, so there, what I tried, I did that this year as well. And I think that's great, because the students really learn the material really nicely on take-homes, I think more than, finals. Because finals is usually like cramming for something, right? And then I also give quite detailed feedback on the take-home. I won't on the final, because they're not going to pick it up. So, I try to do that, to be more responsive to the equity/diversity concerns about student learning and evaluation and then the skill sets that are privileged on exams aren't necessarily reflective of everyone's skill set. (APW2)*

Another participant told me the goal of the mid-term was the "contrôle de connaissances", i.e. to make sure that students had acquired the basic concepts and principles, and to give students feedback:

> *Deux examens, un examen de mi-session qui est plus un examen de contrôle des connaissances plutôt par des questions de type objectif et des questions à développement court, quelques lignes de réponse sur des concepts, qui leur permet aussi de réviser et de ne pas être pris à tout avaler d'une seule et même grosse bouchée et ça leur donne du feedback sur leur niveau de connaissances... (FPM8)*

In contrast to the mid-term and final examination combination used in most first year basic courses, the majority of professors (72.9%) teaching an upper year seminar evaluate their students with a term research paper; in contrast, this evaluation method is used by only 10.6% of professors teaching a 1st year basic course.

Participation marks are not used very frequently in a 1st year basic course (used by only 17% of those teaching a first year basic course), but are very common for upper year seminars (67% of teachers in an upper year seminar evaluate participation)(see Figure 4-23 above). According to the survey data, for the upper year seminar, participation is worth between 0-10% of the final grade for 51% of professors who use this type of evaluation method, between 11-20% for 43% of them and between 21-30% of the final grade for only a small 6% of them. A few participants told me in interviews that their

participation mark is Pass/Fail. This participant explained how the participation mark indirectly affected the final grade:

> *I don't like to give them a grade. And the purpose is, in some sense, my participation component is a pass/fail. You know, what I do is if your participation is satisfactory, your course grade is your paper grade. If participation is very good, then your paper grade might go up by one. If it's poor, it might, if the paper's on the borderline it might go down by one. But you know, it doesn't make any difference on the margins. But for most people it means that they're satisfactory, and they get their paper grade. So, you have to do this in order to ensure that the students actually read every week... (FPM3)*

Some participants told me that part of the participation mark was for being responsible for a certain number of readings and discussions, others told me they gave students the opportunity to participate on the virtual discussion forum instead of or in addition to participating in class.

One participant told me about using and evaluating peer to peer evaluation in a seminar in order to encourage collaboration:

> *In the past I've run that portion of the class as a three part assessment, where students get graded on an outline that they submit for a research project, their oral presentation of that outline and their ability to give feedback to somebody else about their outline. So, they actually have a form which has those three things on it, and each person is assigned to another person in the class to be their research support and their writing support and they have to fill out the form and they also have to hand in the form to me, so that I can see some reflection of what their feedback is. (AsPW1)*

The use of student presentations as an evaluation method is also relatively common in upper year seminar courses. This form of evaluation varies: some are individual presentations of research papers, others are group presentations where teams have to prepare a class, others are presentations to parliamentary committees, sometimes students have to take turns presenting the readings and leading the discussion.

One participant told me why she did not like doing paper presentations and required students to do group presentations instead:

> *I don't do student presentations as much as other people do, because I find that it doesn't make the class very interesting for other students... But I have done group presentations, where they have to actually run a class. And they have to work with me. And I impress*

> *upon them the need to keep their fellow students engaged and do different things. (AsPW2)*

Other methods of evaluation mentioned in qualitative comments and in interviews, used mostly in upper year seminars, are reaction papers or commentaries on the readings. Assignments ("travaux pratiques" in French) are also frequently used and more by francophone respondents than by anglophone respondents.

(V)   The use of learning technologies

Since the use of learning technologies has become more prevalent in the last ten years, I asked survey respondents to indicate their use of these technologies in their teaching, for two courses. For Course #1, 86% of respondents indicated that they use e-mail, 38% have a course web page, 37% use Powerpoint, 28% use a course management software[84], only 8% use online discussion forums, and 23% use 'other' learning technologies (See Figure 3-22).

Figure 4-25   Use of technologies
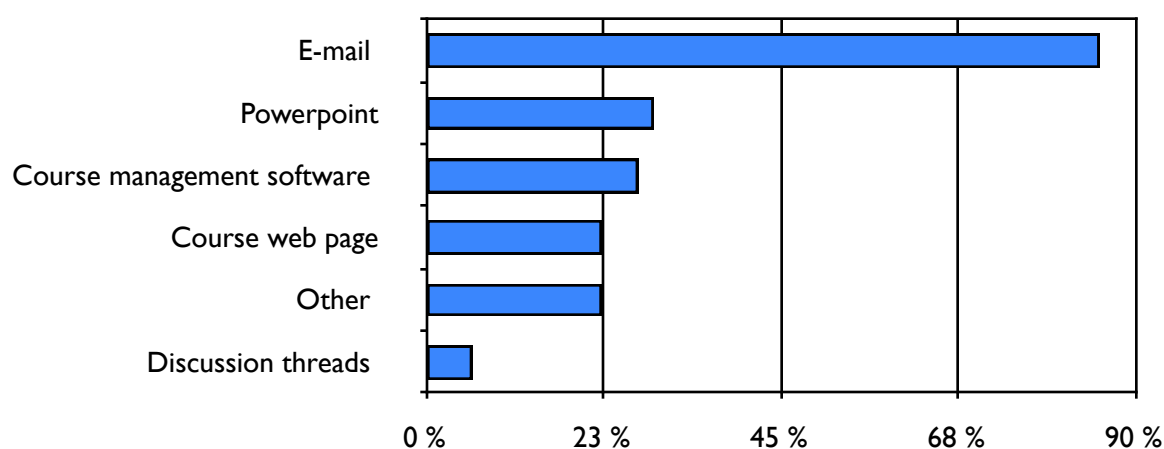
In the 'other' category, several respondents listed more conventional learning technologies such as overheads/transparencies and the blackboard, or chalk. One respondent noted the following about the use of the blackboard:

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[84] Examples of these include TWEN, WebCT or Moodle.

"I use chalk- it provides greater flexibility and spontaneity than pre-designed Powerpoint slides and accomplishes the same tasks."

The use of learning technologies does not vary much for Course #2,[85] except that the use of Powerpoint is slightly lower (28.9% use it), which would make sense considering that there is more class discussion and less lecture for Course #2 than for Course #1. In the 'other category', respondents also listed student blogs and wikis.

Some participants have mixed feelings about learning technologies such as presentation tools or course management software. Two participants told me about their different uses of online discussion forums, one for discussion and questions, and the other to solve problems. In both cases, students were evaluated for their contributions. Another participant told me that Powerpoint had changed his life because it had forced him to synthesize the material, to be more clear, and freed him from the blackboard:

> *Et donc, Powerpoint m'a permis de ouf! me libérer du tableau et de montrer toutes sortes de choses et montrer des choses que le tableau ne peut pas montrer bien sûr. Des images, des interactions, du mouvement. Alors je trouve ça a énormément dynamisé mes cours et ça capte beaucoup plus l'attention des étudiants d'une part mais c'est pas, c'est pas pour ça tellement qu'il a changé ma vie. Il a changé ma vie parce qu'il m'a forcé à aller à l'essentiel. Et il m'a forcé à développer une synthèse... on propose une notion aux étudiants qui est beaucoup plus synthétisée qui revêt un autre aspect je trouve qui est donc plus facile à comprendre aussi pour les étudiants, plus facile à retenir, plus facile à absorber et eux aussi, ils vont développer un peu cette méthode-là. (FPM6)*

In my observations, presentation tools such as Powerpoint were used quite frequently. However, contrary to the interactive presentations just described (with the use of images, tables, flow charts), most of the slides that I saw were filled with text. They contained the main points of the lecture, important passages from cases or legislative provisions (in Québec civil law classes, articles of the Civil code of Québec). In one instance, however, the teacher made a very engaging use of Powerpoint. The presentation *only* contained images and animations that would metaphorically or

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[85] These numbers did not vary much for Course #2 where 85.5% of respondents used e-mail, 27% use a course management software and 22.4% elected "other".

pictorially relate to the content he was talking about. The slides also contained the questions he put to the whole class and the problems he wanted them to solve.

However, not everyone is keen on using technology in their teaching and some have concerns about lessening interaction or about the logistics of technology. Others were not convinced that it increased engagement or learning and the pressure from students to have Powerpoint slides was also mentioned, as we can see from the following quotes:

I just think it's because of experience that I feel like I've tried a spectrum of things. Like I don't actually feel at this point there's so many things out there that I haven't, [pause] tried. With the exception of using technology. And I haven't done that. And I'm not keen to do that. But I suppose if I could find some way that, if I could be convinced that it actually would enhance my approach to teaching, rather than take up time and not really add anything, I might be more interested in doing it. (AsPW7)

J'utilise très peu Powerpoint en classe alors que je l'utilise assez souvent dans les conférences, puis j'ai essayé d'y réfléchir pourquoi j'utilise pas en classe et mon hypothèse c'est que finalement ce que je déteste dans Powerpoint c'est qu'ils ne me regardent plus, ils regardent l'écran alors moi je préfère qu'ils me regardent. Je perds le contact avec eux quand ils sont tout le temps branchés sur l'écran et je pense que c'est à cause de ça que je résiste un peu à l'usage de Powerpoint. De temps en temps, je vais l'amener pour mettre des tableaux un peu compliqués, mais la plupart du temps je les fais reprographier, je les distribue plutôt que d'amener Powerpoint. (FPM10)

But I think that they just all expect Powerpoint. So I'm still asking myself. I tried it this year. And I'm going to see what they say about how much it added to, or distracted from, the conversation. Because the way our system is set up, it's great we have so many tech rooms now, finally, which is helpful, but you kind of have to turn off the light, so they can see behind you. So you're almost standing in the dark and there's little, you know, little things like that. So, I'm trying to figure out how much it does add. But you can put the main points on, and also I like to try more to put the questions rather than the answers. So that it helps them to focus on what we're thinking about. But if you put the answer up, it's obviously not very helpful. Or sometimes you'll ask them first and then at the end you can put up a slide to confirm, that these are the main points, you know. But they're just so [tapping on the desk] ugh. Like you know, they're just not listening to you, because they have to take this in, even though, and you say, "It's in the book. I'm just using it so that we can have a framework. It's on page eight." You know, they're just, tch, tch, tch, tch, they can't miss it, if it's on the Powerpoint it must be important. (APW3)

(VI) Conclusions

In this chapter, I have described the teaching and evaluation methods used by Canadian law professors using survey, observation and interview data. My findings confirm what most of us already felt was the case. Indeed, the survey and the observation data show that law teachers use predominantly the lecture method in their classrooms, although it is almost always supplemented by other more interactive teaching methods such as question-answer, discussion or, although less frequently, some form of Socratic method. The use of these main teaching methods varies according to course type and class size. Therefore, as could be expected, professors use the lecture more often and for a greater proportion of class time in first year basic courses, upper year mandatory or elective courses and in larger classes, and more discussion in the seminar-type and smaller class size courses. We saw that small groups are not used very frequently although I have described the few instances where I did see very effective uses of small group activities.

As for evaluation methods, we have seen that evaluation is most likely done by a sit-down final examination, although the 100% final exam is no longer the only evaluation tool of choice. The sit-down final exam is now often supplemented by another evaluation method, which is predominantly a mid-term exam or one or more assignments.

If we compare our findings with the literature on teaching and learning, we can therefore come to the conclusion that depending on what we want students to learn, the teaching methods used may be sufficiently effective. If what we want is to transfer information and have students acquire and be able to recall that information, lecturing is an efficient way to do that. However, if we want our students to learn to do something other than simply recall that information, i.e. if we want them to be able to understand it, apply it, synthesize it, and evaluate it, lecturing may not be the most appropriate teaching method to use. Higher level thinking skills such as application and evaluation (critique), as well as attitudinal objectives, are not going to be achieved through lecture. According to the learning theories, these higher level thinking skills are more effectively learned through

discussion or some other form of active learning, such as small groups, hypothetical problems or role plays. Modeling critical thinking through lecturing does not mean that students will learn how to do it themselves.

My analysis of the observation data and of the interview data on the higher level thinking skills such as critical thinking is that although professors reflect extensively about and know what they want students to learn, those reflections do not extend to thinking about how students learn those skills or integrate the values of social justice and social responsibility for themselves. Although as we saw, some of the questions teachers ask in class would incite critical thinking or reflection, most teachers seem to move through their questions or into discussions with students on a more spontaneous and intuitive basis. The professors I observed very often lectured about critiques of the law or gave students their opinions on the law. Other times, students expressed their opinions on the outcome of a particular case or on a legal rule, but not necessarily invited to do so by the professor.

This impression was confirmed when I asked participants how they taught students to be critical thinkers because hesitation was a common response to my question. Often they would respond that they did it through their materials (they would then choose critical content materials for students to read), through their evaluation methods, or they would do it themselves in the class by lecturing or asking question, as we can see from this participant's response:

> *Q:* How do you get them to think critically about [the] law?
>
> *Well. [pause] [sigh] mostly by doing it myself. And then, there's always one part of the assessment in which is ask them to think critically about something, like they do a law reform piece or they do a case assignment…, in which I've taken, two boring cases and said, connect these up to critical and contextual material we did at the beginning of the class. That's the assignment, to write about the case in light of what I have said in class about political values, social values, economic values, the way the Canadian law is structured. (AsPW1)*

Of course, some participants had reflected a great deal about this question. One participant, who considers herself a feminist and critical race scholar, had thought about this question and was conscious of the fact that critical thinking could not be achieved through lecturing. She therefore used press conferences, role plays and simulations in order to teach those skills, although when dealing with difficult subjects she was always concerned about offensive statements being made by members of the class or about marginalized students in the class, as we can see from her comments here:

> They were organized into groups, they had to make submissions. Some group is the [chuckle] Senate committee and, they get to, [chuckle] make decisions. We did like voting... And so then again into groups and I said, "You, as a group, you have to come to a consensus on each one." ... And you get the group to come up and suggest what were the lines of disagreement. And so that's always very interesting. The students get to see what's going on there. We've done news conference, press release. ... And sometimes it gets into a little bit of drama, which is fun. But also at first I worry if it's critical content that someone is going to say something very offensive, and then in first year it creates a lot of reverberations, so I'm always concerned when there is a lot of open dialogue like that. (APW2)

Another participant told me about using brainstorms or concept maps to get students to think theoretically and critically about concepts such as disability and how it interacts with the law. Another participant who wants students to think critically about law, requires students in his upper year course to conduct an inquiry (une recherche-enquête) into the workings of one aspect of the law. They must go into the field, interview people (i.e. consumers, academics, experts) to figure out for themselves if the legislation really works and if it does not, how to possibly improve it. He was also able to connect this assignment to specific learning objectives:

> C'est extraordinaire à plusieurs niveaux parce qu'ils assimilent plein de notions qu'ils ont vues à l'intérieur du cours d'une manière totalement différente de façon concrète, ils découvrent plein de choses qui se passent dans la vraie vie. Ils développent une pensée critique absolument formidable. Parce que là ce n'est plus seulement le professeur qui critique certaines lacunes de la loi en avant ou qui réfléchit avec eux, ils le découvrent par eux-mêmes. (FPM6)

In summary, then, there might be a disconnect between some of the educational goals of law teachers and the teaching methods they use in the classroom in order to achieve those objectives. We then have to ask the follow-up question of finding out what drives law teachers' pedagogical choices if these are not driven by the educational objectives.

What other factors would explain the apparent disconnect between some teaching objectives and teaching and evaluation methods? There are numerous reasons and factors that influence professors' pedagogical choices and the interplay between these factors and pedagogical choices is complex and nuanced. In the next two chapters we explore some of these factors, including conceptions of teaching, institutional factors and students.

CHAPTER 5 - FACTORS THAT INFLUENCE TEACHING STRATEGIES: CONCEPTIONS OF TEACHING

(I)   Introduction

We saw in chapter 4 that most law professors who responded to the questionnaire use lecture in combination with question-answer and discussion, and sometimes with some form of Socratic method, in their teaching. In upper year seminar courses, the more predominant teaching method is class discussion. When comparing the findings with the teaching and learning literature, we saw that lecture is appropriate and efficient for transmitting information, while discussion is more suited to encouraging higher level thinking skills such as application and critical thinking.

If Canadian legal education's goals include the education of engaged citizens, of lawyers and jurists with a critical mind and a sense of social responsibility, the teaching strategies predominant in Canadian law faculties may not be the most effective to achieve those goals by facilitating conceptual changes in our students. There might therefore be a disconnect between objectives and teaching strategies if we look at it from the perspective of student learning. If there is a disconnect between our objectives and the predominant teaching and evaluation methods, how can we then explain those pedagogical choices?

As explained in chapter 3, in order to explain what drives law teachers' pedagogical choices, I conducted interviews in which I asked law professors to describe their teaching and evaluation methods and the reasons why they used those particular methods. I also asked participants to describe how they viewed their role in relation to students, their goals of teaching, attributes of a good teacher, and elements of a good class and a bad class. When analysing the responses to those questions, it became clear that I could group their reasons or other factors into two broad categories: those factors that were personal to each individual (role, goals) and those factors that were external to them but nevertheless had a significant impact on their teaching: institutional

factors, including course characteristics, institutional constraints and culture, and students. These findings largely concur with Kember's model of teaching and learning that we saw in chapter 2. By analysing together the data in the first broad category (personal) I found law teachers' conceptions of teaching.

This chapter will therefore explore my findings for participants' conceptions of teaching, and the relationship between these conceptions and law teachers' teaching practices (i.e. teaching and evaluation methods). In the second part of this chapter we will compare these findings with the literature.

(II) Conceptions of teaching - Findings

Because I was using an inductive methodology, I did not start out this project thinking that law professors' conceptions of teaching would influence their teaching practices. In my interviews, I did not directly ask questions about their definition or conception of teaching.[1] While analysing the data, I developed my own categories on how law teachers saw their role in the relationship between them, the students and content (knowledge, skills and attitudes),[2] the rationales behind their pedagogical choices, and their goals and intentions in teaching.[3]

Law professors' teaching conceptions are interesting to explore for two reasons. First, as we saw in chapter 2, the teaching and learning literature found a relationship between

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[1] According to Kember, who did a comprehensive review of the studies carried out on conceptions of teaching, most of the studies (all except one) on conceptions of teaching did not ask direct questions about "teaching" but asked more generally questions about teaching and learning: See David Kember, "A Reconceptualisation of the Research into University Academics' Conceptions of Teaching " (1997) 7:3 Learning and Instruction 255 at 258.

[2] It is important to note that law teachers consider themselves as having other roles in their relationship to students, such as mentor, role model or emotional support, but since we are looking at the role teachers play in relation to student learning, I have not included those roles in my analysis. Law teachers also think they have a broader role in relation to society in disseminating their research. However, since the purpose of this research project is to explain teaching and learning, I am leaving this aspect for future research projects.

[3] I did not completely separate teaching conceptions from teaching approaches in my data analysis first, because the literature is itself confusing as the exact definitions of those terms, and secondly because the distinction between these two in analyzing the data did not come up, nor would it have been easy to do. In a recent study, Postareff et al also mention that descriptions of conceptions of teaching and of teaching approaches are "closely intertwined": see Liisa Postareff & Sari Lindblom-Ylänne, "Variation in Teachers' Descriptions of Teaching: Broadening the Understanding of Teaching in Higher Education" (2008) 18 Learning and Instruction 109 at 112.

teaching conceptions and student learning approaches and therefore outcomes. According to the same literature, there is also a possible relationship between teaching conceptions and teaching approaches, although as we saw in chapter 2 the literature is not clear as to the place of teaching practices (i.e. teaching and evaluation methods) in this relationship. It is therefore worthwhile to explore the possible relationship between conceptions of teaching and teaching practices in our explanation of law teaching in Canada, which we will do in the second part of this section.

(A) *Law teachers' conceptions of teaching*

We can define conceptions of teaching as the ways in which teachers see their role in the relationship between course content and students' acquisition of it. When analysing the data grouped together in the broad theoretical category 'internal' factors, six different conceptions of teaching emerged: transmitting, acquisition, modeling, motivating, facilitating learning and transforming. Based on the literature we reviewed in chapter 2, we can put these conceptions on a continuum from teaching-centered to learning-centered (see Figure 5-1).

Figure 5-1 - Continuum of law teachers' conceptions of teaching

teaching-centered   **learning-centered**
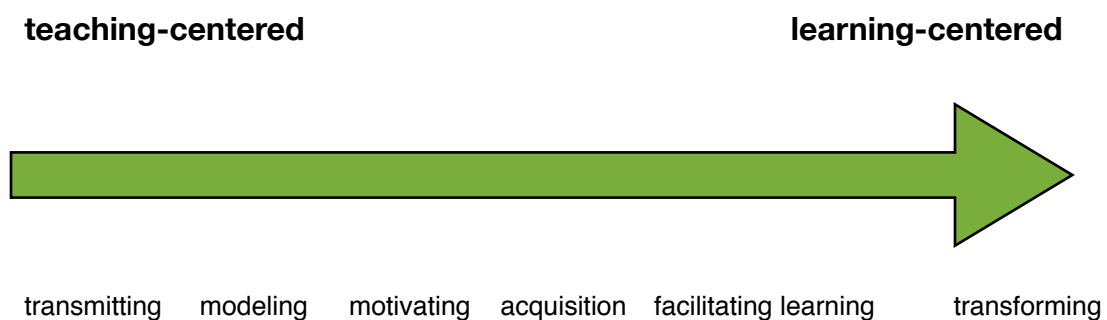
transmitting   modeling   motivating   acquisition   facilitating learning   transforming

The first conception is teaching as transmitting knowledge or content. Law teachers with this conception think their job is to "teach students the law", to "give" them a set of tools or skills, to "give" them a base of "culture juridique" or knowledge, or even to transmit certain values. These three descriptions illustrate this view:

> *You have to let them know what the rules are. (APW3)*

> *And I guess that's where I come at it from, is that I always start with, my job is to teach these students the law. (APM2)*

> *Yeah, so I said there were two things. I think one is to convey just a whack of information and insight about how various legal systems work: who benefits, where it comes from historically and culturally and conceptually situate the information. So one is just a knowledge transfer. (FPM4)*

The teacher is an expert whose job is to transmit the knowledge, skills and attitudes that she has determined are important for students to know, and the students' job is to acquire them (see Figure 5-2).

Figure 5-2 Transmitting conception of teaching
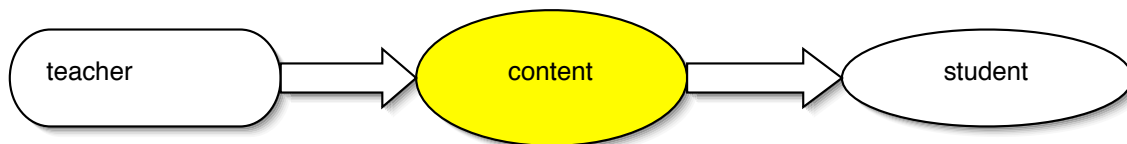
The goal of legal education is therefore to maximize the time with the experts so they can transfer all this knowledge, as expressed by this participant talking about his 1st year course when I asked him why he lectures:

> *So I think in contrast for example to try and break them up into small groups and doing little things. Then they're spending a lot of time with themselves, right? They get actually very little time with you, right? So, I guess I figure my job is to maximize what they can get out of their time with me. So that's one reason why I do it. (FPM3)*

Teachers with this conception of teaching take for granted the fact that students, or at least the good students, will learn if they transmit the knowledge clearly. Students' learning is perhaps hoped, but whether this is achieved or not is not the main concern of the teacher, which is to transmit a certain amount of material. One participant in a civil law faculty said she realizes students may not remember anything after two weeks, but she still needs to cover the material :

> ... j'essaie de ne pas prendre de retard parce que je ne peux pas me permettre qu'ils n'aient pas vu certaines notions. Parce que ça va avoir des conséquences sur tout le reste de leur bac sachant aussi qu'il y en a qui ont tout étudié puis après deux semaines, ils oublient tout, ça se peut, mais moi, ma responsabilité c'est qu'ils aient vu les choses principales... Ça prend des connaissances. (AsPW9)

Another aspect of this conception of teaching is thus the overwhelming concern with "coverage", i.e. covering a set amount of information or materials. As this participant explains, this concern is greater for basic first year courses because there is a sense that certain legal rules and principles (i.e. doctrine) have to be conveyed for students to be prepared for their upper year courses:

> And also because the lecture courses I teach are required courses, I feel there's a certain coverage that has to happen. So there's certain materials we just have to get through. And do so in a way that actually leaves people with a good, sound, comprehensive knowledge of it, and so they can feel confident in going into writing and exam about that. (AsPW2)

Concern for coverage and the influence it has on teaching methods is also clearly expressed by this participant:

> The worst class or just where sometimes, there's just so much material, that you feel that you have to plow through it in a more lecture form. And they get bored with it. (APW3)

Under this conception of teaching, good teachers have self-confidence and confidence in one's "command of the subject-matter", as expressed in this statement:

> You have to be confident about yourself, you have to be confident about your command of the subject matter. You know if you're ever gonna expose yourself to people asking questions, talking, I mean, you have to be able to have it. You have to have your act together, you have to have your stuff together. They'll see through someone who's trying to fake it. You can't walk into class and half read the case you've asked them to read extremely carefully and you try to do that once, twice, and they'll know. And once that happens you're dead. (APM2)

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Teachers with this conception thus worry about not knowing the content as well as they should, as is demonstrated by this quote:

> *The worst class is on topics that you know you have to cover that you don't know very well. And no matter how much you try to learn them, you just don't and you're trying not to be asked too many questions, [chuckle] or you're, "Good point, I'll look that up." (APW3)*

The "talent" of a good teacher is thus somewhat innate; this participant explained that teaching can be marginally improved with experience and taking into account student comments, but the talent comes naturally or it does not.

> *On peut le bonifier surtout si on écoute les conseils des étudiants et leurs critiques. Oui, on peut améliorer les choses mais c'est d'abord inné. En tous cas pour l'enseignement magistral. Probablement aussi pour les autres méthodes, la méthode d'analyse de cas, la méthode socratique, les séminaires. Il doit y avoir beaucoup de talent naturel là. (FPM5)*

(ii)   Teaching as modeling

The second conception considers teaching as modeling. Under this conception of teaching, teachers' role is to model or demonstrate the skills they want students to learn, such as analysing a case, constructing legal argument or giving their opinion on the law (i.e. critical thinking).

> *So it's really more about making an argument in front of them about how this all fits together and what the meaning of it is. (FPW1)*

> *Je perçois aussi mon rôle un peu comme étant celui d'un modèle de juriste, ils nous regardent les étudiants, tu sais. Alors de temps à autre, plus souvent qu'autrement, moi, je leur donne mon opinion assez franche. Dans d'autres cas, je m'abstiens de le faire pour les forcer à se faire une opinion. Mais en tous cas, pour leur faire sentir qu'un bon juriste doit avoir des opinions, j'en donne sur certaines choses... (FPM5)*

Figure 5-3   Modeling conception of teaching
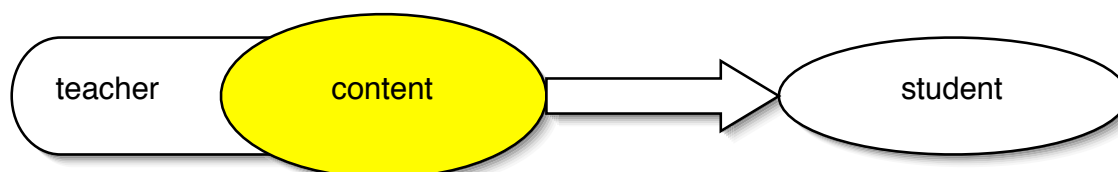
As we can see in Figure 5-3, in order to transfer the content (usually skills) to the students, the teacher becomes or performs that content. It is teaching by example. Students are not active participants other than by watching and paying attention. As we saw in chapter 3,   many participants told me about wanting students to learn how to critically think about the law. When I asked them how they did that in the classroom, one of their responses (after pausing for a moment) was that they did it themselves in the classroom[4] as we can see from these examples:

> *Well. [pause] [sigh] mostly by doing it myself. And then, there's always one part of the assessment in which is ask them to think critically about something. Like they do a law reform piece or they do a case assignment. (AsPW1)*

> *[pause] okay, I, I will use a number of methodologies. In the first term of first year, I use almost exclusively, well no that's too strong, I probably do 80% lecturing at least on that. And that's modeling. (FPM2)*

This participant models critical thinking by giving her opinion and hopes that students will be able to do it by watching her:

> *And I do really try and get them to think critically about issues and I don't disguise that I'm very political about my understanding of the law. And I tell my students "I'll tell you what I think about this, but I'm happy to hear what you think about it, and you can tell me why I'm wrong." I just said that the other day in class. And I think part of what you want to get from your professor is your professor's opinion. You want to be able to engage with them and you want to have them lay it out for you in a way that you can understand why this person who's studied this so much thinks this about it. (AsPW2)*

Students are then expected to learn by watching, or, as some participants explained to me, by "osmosis". There is a sense that around February of 1st year, students suddenly understand legal reasoning and can reproduce it to various degrees. Teachers explain this

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[4] Other responses to this probe included giving critical materials to read or assigning reflective papers.

phenomenon as "osmosis", thus implicitly saying that students learn by watching them do legal reasoning in the classroom until they are able to do it themselves, as we can see from this statement:

> And it's mysterious how it happens, you know, it's osmosis-like. Nobody really understand how it happens, but generations of law students testify to the fact that this happens. February everybody goes, "oh, that's what [chuckles] that's what this exercise is about". And so I just never really worried about it very much. I would tell students who were themselves stressing out about not getting it to just take it easy. You know, "just read the cases and think about it and it will all come clear 'round about the end of February, just don't worry about it." And it always does, right? And I don't know because we don't actually have the luxury of testing these kinds of hypotheses. I don't actually really know whether students would do better still than they do if we didn't just leave it to osmosis…But with the first year students I didn't just want to let it happen because I wasn't entirely sure that it would. And the material's very foreign to their world. (FPW1)

> (iii)   Teaching as motivating or generating interest for the subject

This conception of teaching arose from the statements made by law teachers expressing the idea that a good class is when students are engaged, and that a good teacher is one who generates enthusiasm for the subject matter and for asking questions so that students will want to learn it on their own and ask those question, as we can see in Figure 5-4. For example, teachers who have this conception would want to "get students excited about asking questions" or to learn beyond the classroom as this one participant puts it:

> I think that, I HOPE that my role is to get them excited about what they are learning and that they will just keep reading and keep asking questions. And I wish I could say that you know all of them do that, and as you know they don't all do that. But that's what I hope for that. That's what I HOPE I convey to them is that I enjoy what I'm doing and I hope that they all think that it's exciting to ask these questions about law. (AsPW7)

We could suggest that these ideas express a conception of teaching that is more learning-centered because as we saw in chapter 2, the notion of engagement means students have an emotional investment in the material to be learned and are therefore more likely to take a deep learning approach. We also reviewed the advantages of engaged lecturing in chapter 4. Moreover, motivation is linked to deep learning approaches, although this motivation must be intrinsic. However, no one I talked to

made the connection between students' engagement or motivation and their learning the material, although as we will see later, this is likely implicit and intuitive.

Figure 5-4   Motivating conception of teaching
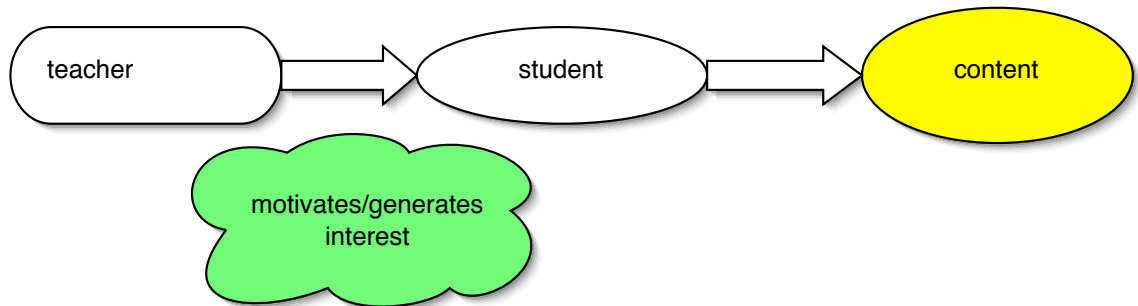
However, the conception of motivating can also be teaching-centered when teachers see their role as entertaining students in order to motivate them and to generate interest in the class, but do not have student learning as their rationale for doing this, even implicitly. The following quotations express the idea of entertainment and fun:

> *You know people are spending a lot of time on this and they're spending increasing amounts of money and it should be an entertaining thing for them to go to. They shouldn't feel like it's dead time. And you know they don't have to be there, right? They could pay their money and get notes from somebody else and look at whatever summaries from past years. So you know [pause] I want to try and to make sure that they have a reason to go. And part of that has to be that they are going to find it relatively fun and it's not going to be two hours of horrible dead time. They're going to get something out of it and the time should go relatively quickly. (AsPM2)*

> *And I also think part of it is like, this is going to sound crazy, but part of it is entertaining. I feel like a part of it is students come to class and I feel like they have a good time. You know, I try to keep it fun because I feel like it's important to have fun and to like what you're doing. I mean if it's just drudge work and it's painful, then I don't see the point. I don't mean to simplify it or to make it just a mundane to boil it down to really nothing. I do expect a lot from them, but I try to infuse it with some lightness and humour. (APW4)*

As we can see from these quotations, the idea of entertaining and making class fun are more closely related to the notion of performance than to student learning.

In this category are also those comments that indicate that we should encourage students to have a sense of social justice and social responsibility. The job of the teacher,

for this attitudinal objective, is to encourage or to motivate, as we can see from this statement:

> *I think part of my role is simply to encourage people to come out of law school as better citizens. Better sense of what it is that the legal system that structures our society, and their role, potential role within it, whether they're going to be lawyers, politicians, or social activists, or whatever. So good citizenship broadly. (AsPW6)*

> *(iv)   Acquisition - Getting or helping students to...*

Law teachers with this conception think it is their role to not only transmit knowledge, but also to do their best in order for students to acquire this knowledge. Teachers with this conception "get students" to read cases, to understand rules and principles, or to think critically, as we can see from these examples:

> *You try to get them to think critically about how the legal system works. And why it's that way. And especially how contingent it is. That it hasn't been this way, or it's the status quo, or it's necessary to be that way. That very much of it is so recent. And there are so many other approaches in other countries or other systems. So to try to really get them to understand that this is just one choice that's been made for various reasons. And that it has lots of benefits but it has lots of costs too, and just think about the overall system and how it really works. (APW3)*

> *There's always periods in the class and the course in which you've got to do basically technical stuff. They've got to understand things that are quite hard to understand. So in those periods it's either me talking or it's questions. (FPM3)*

In their discourse, professors refer to "we" when talking about what they do in class. They are therefore concerned about taking the students along with them on this journey of law and making sure that they acquire the knowledge, skills and attitudes.

> *My teaching approach, I think is one that is very student-centered. One that focuses on "what do we have to get through today? And where am I going to lose you?" If I'm going to lose students somewhere along the way, I probably WILL.. I think my approach is one that gives students as many opportunities as possible to show what they know. And to give them as many opportunities as possible to ask questions. (APM2)*

Figure 5-5 Acquisition conception of teaching
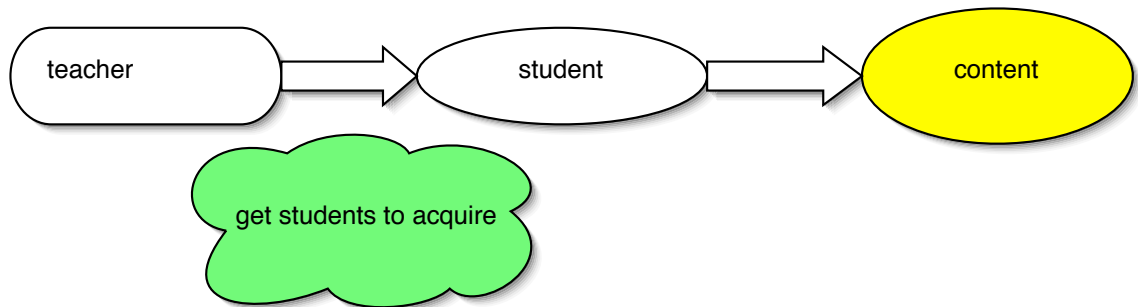
There is also a slightly less directive conception where the teacher's role is to assist students acquire the content. Teachers with this less directive acquisition conception see themselves as a guide to students in their learning, as we can see in the following quotes:

> *My role is to help students understand what the law is. (FPM3)*

> *But I also enjoy the, [pause] in the sense that there's a set body of material that we need to get through. And I need to help the students get through it. (APM1)*

> *Here's the relationship that I understand between you and I. I said I'm a climber. So what we have here is a mountain of materials. And over the course of the year you're going to climb that mountain of materials. And I'm the person, your belayer, on the end of the rope. Now sometimes you're going to slip off the, you know, you're going to fall, but I will never let you hit the ground because I have you. My job is to help you. So at some point in time you get to the very top of the mountain of materials, and then I will lower you to the ground, and we'll be on even footing. And you'll have gotten through the materials. (APW1)*

This conception is therefore closely related to the next conception of teaching as facilitating learning but the focus still seems to be on content and not on learning, which is where I draw the distinction between them. We can see how this distinction plays out in the following statement:

> *I assume that for the most part, you know my job is to help them understand basic concepts, so I go in assuming I'm going to talk for most of the, a lot of the time. (FPM3)*

How teachers know whether the students understand or not, however, is not always clear. There is a large responsibility on students to let the professor know if they are not "getting it" by asking questions.

(v)   Teaching as facilitating learning

Towards the learning-centered end of the continuum we find this conception of teaching as facilitating students' learning. For teachers with this conception, the focus is more on creating learning environments that will foster active learning by students, and less on what they as teachers are doing in the classroom.   Similarly to the acquisition conception, they are concerned about students understanding the material, but know they are more likely to learn it if they have opportunities to actively apply it (and not only on the exam). This statement captures this conception:

> *... un autre de mes principes c'est le principe un peu à la mode dans le fond, la pédagogie axée sur l'apprentissage et non pas sur l'enseignement; moi, j'ai toujours eu ça sans m'en rendre compte, maintenant on met des mots là-dessus, on met des noms mais j'ai toujours eu cette préoccupation. D'abord, on enseigne pas pour soi, on enseigne pour les gens qui sont devant nous. Et c'est eux à faire leur apprentissage et donc on est là pour les aider, pour les accompagner dans cet apprentissage-là... (FPM6)*

As Figure 5-6 shows, under this conception, the teacher's job is to create a learning environment (including atmosphere, learning activities and evaluation methods) that will encourage students to learn by being active.

Under this conception, the student still has a responsibility to do her part in the learning process, as expressed by this participant:

> *I guess, fundamentally I think students are responsible for their own learning, and I see my role as a facilitator of their learning, rather than someone who has some great knowledge that I have to sort of take out of my head and put into their head. I'm not shy about admitting when I don't know something; if someone asks me a question I'll say, "I don't know", or throw it back to them, "Well where can we find the answer to that?" (AsPW6)*

Figure 5-6   Facilitating learning conception of teaching
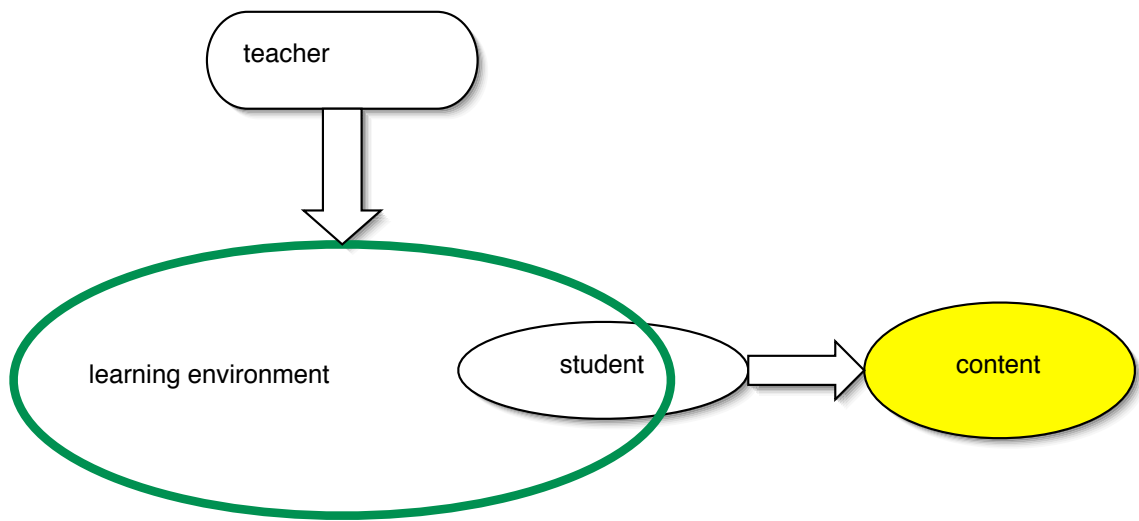
Teachers with this conception are also preoccupied with creating a welcoming and safe learning environment where students feel comfortable to interact and to ask questions, as illustrated by these statements:

> *But then, also someone who will create an environment for learning that is welcoming for as many students as possible, but especially marginalized students. (APW2)*

> *I think that the approach that I would take is probably the same in all of them, which is infused with the idea that students do best when they feel like they are in a safe learning space. So if they feel like they are in a place that's familiar, and if you can try and make them feel disarmed at the beginning, then they'll do better. They'll have a comfortable learning environment where they aren't feeling imposed upon, but more welcomed and invited, then I think that they do better. (APW4)*

This next participant, whose teaching method he calls "gentle Socratic", creates a comfortable learning environment by sharing stories about his personal life with students:

> *But what I see more and more of is they love the idea that they might actually get to know something about you. Like they're interested in the personal side. And so, my approach has always been that I let them in a little bit more than other professors do. And I find that there's a buy-in that comes with that. That they will act differently in that classroom. (AsPM3)*

Teachers with this conception are also concerned about empowering marginalized students so they will be able to learn, as we can see from this comment:

> I try to be the person who will be responsive to people who are feeling marginalized in law school for equity/diversity reasons. I try to do that in a way that is responsive, in terms of their whole person experience. Not just what their grades are, or whether they understand the material. It's like I want to be responsive to that as well. So, I try to be a good teacher in the classroom. But to me being a teacher means being someone who is aware of some of these other social issues that inform someone's ability to learn or to feel. [sigh] I think it's foundational that you need to feel like a member of something. Feel that you belong, not be like distracted by feelings of alienation and that will impair learning. (APW2)

This feminist participant talks about teaching to that one woman in the classroom who has ideas but who does not want to speak up, or to the single parent:

> I try to think of that person that's the smart woman with views but who's not comfortable speaking out loud. That person is who I think of when I try to devise what it is that I'm doing. (APW1)

> So for example my central student who I'm teaching to is the single parent. So I try to think about the different ways in which I deliver all aspects of my teaching plus evaluation with that student in mind. And I envision that student as someone who doesn't like to speak out loud in class, who is very efficient with their time, and who, you know, worries about other things. (APW1)

Under this conception, evaluation becomes about feedback and learning, and not only about assessing and ranking students:

> You could decide that the part of students' learning is to work on something, produce the student outcome from that. And get not just an evaluation but feedback on it, and tips as to how to do better next time. And then to get a next time, to actually practice what you've learned, with the same teacher, to get another shot at evaluation, to see if you can learn anything from this experience and improve your own capabilities. I don't think we do that outside of the seminar context. And that to me is what education is about. It's about getting feedback, learning and trying again... But every course should have, you know, two or three, components of evaluation. And the feedback should be given in a sufficient and detailed fashion to be useful to students in learning, rather than just grading. And that there should be an opportunity to learn from that experience and try again. (FPM1)

When the focus is on student learning, students' previous knowledge and experience become relevant to the teacher, who tries to connect them to the new material they want students to learn. Teachers with this conception noticed the difference with mature students (e.g. they participate more, they ask more questions), thus intuitively

acknowledging that students' previous experience affects their learning approaches, as we can see from these statements:

> *So there's a huge range, even at that age. And there's a huge range between the mature students too, in the different kind of life awareness that they bring and all that. (APW3)*

> *We're not all THE SAME in the classroom. We don't all have the same things to contribute. I think it's very important for the students to feel welcomed to link in their own heads their past experience with what they're learning in the classroom. (AsPW7)*

On the other hand, teachers who do not have this conception of teaching would tell me that 1st year students know "nothing".

> *So what you've got there is, you've got these very smart people who know absolutely nothing at the beginning of the year. (FPM3)*

> *(vi) Teaching as transforming*

Teachers with this conception of teaching hold a view of learning as some kind of conceptual change or transformation in students, as we can see from this statement:

> *When it comes to teaching, my starting point is education. And so to me, the intent is to produce a transformation in the knowledge, skills and abilities of students. (FPM2)*

For teachers with this conception, the focus is on students integrating the material and making it their own. Figure 5-7 shows the integration of the content by the student. The teacher's role is to create learning environments that will foster this conceptual change in students. A few participants expressed views about teaching that would indicate they held this conception of teaching. For example, on using film in her legal theory course, this participant explains how she wants to bring about understanding in an integrative way:

> *It seems to me, and maybe I'm just being hopefully optimistic or something, but I think it's a very subversive way of doing legal theory and I think it is actually a legal theory course. I don't think it's really a law and film course so much as it is theory. And ways of trying to understand how theory plays itself out in ways that makes them feel like theory is theirs. (AsPW3)*

Figure 5-7   Transforming conception of teaching
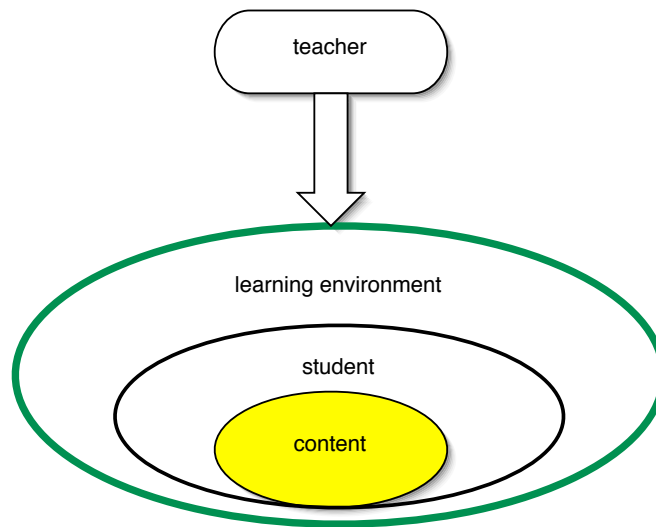
This description of teaching contrasts the transmitting conception with the more transformative conception:

> *C'est peut-être plus intéressant en classe que dans les volumes parce que le but des volumes est surtout [rires] vraiment le droit positif, tandis qu'en classe, c'est une façon de les rattacher, de les ramener, de les intéresser aussi plutôt que de strictement répéter ce qu'ils vont trouver dans un livre ou même si ce que je dis en classe n'est pas nécessairement sujet à être posé à l'examen c'est pas la question, la question c'est de pouvoir les permettre de rattacher à quelque chose de concret. Et éviter de concevoir le droit comme une question de mémoire, des règles qu'il faut se rappeler parce que je pense que c'est beaucoup plus d'être capable de saisir le droit dans son environnement et de comprendre le droit. Après qu'on a compris, il me semble que la mémoire intervient beaucoup moins parce qu'on est capable de rattacher là dans nos circuits, on peut le rattacher à d'autre chose. (FPM11)*

Some teachers with this conception also understand notions of meta-learning, such as students being able to critique their own learning and their own reasoning, as is reflected in this statement:

> *Mais là ce qu'il faut qu'on leur donne ce sont les instruments pour être capables de s'équiper eux-mêmes donc d'aller chercher d'une façon solide leurs informations, de ne pas rater une partie, de s'assurer de la solidité je dirais de leur technique documentaire et de la qualité de leur raisonnement derrière... Alors il faut qu'ils aient trouvé des bonnes bases, puis il faut qu'on les aient doté intellectuellement je dirais de mécanismes de raisonnement qu'ils sont capables d'évaluer et de bonifier au fur et à mesure et donc avoir un regard critique sur leur propre raisonnement en permanence... (FPM10)*

However, these teachers did not talk to me about the fact that students construct their own knowledge. I would say, therefore, that they know this intuitively. One participant, who talked to me about doing a role play with her students to talk about cases in a way that they not only understand the cases and the evolution of the law, but also the issues raised by them, also mentioned that we do these things and yet we have no idea whether these conceptual changes are happening and if so, whether they are happening as a result of our teaching:

> The thing is, that's the thing. Do they remember that? I don't know. In the moment I think they felt, like I get notes from them, a couple of the students write a note and say, you know, it made me think about it differently... (APW1)

In summary, six different conceptions of teaching emerge when analysing the interview data. These conceptions can be placed along a continuum although it is important to note that their place on the continuum is not as rigid as the diagram would suggest. Some statements reflecting the acquisition conception are closer to the learning-centered end of the continuum while others are closer to the teaching-centered end. Likewise, some statements reflecting the motivating conception of teaching are closer to the learning-centered end because the goal is to incite students to become intrinsically motivated to learn about the subject. Others, who see their role more as that of an entertainer, would be located closer to the teaching-centered end of the continuum. As we explained in chapter 3, the analysis of the data used "pools of meaning" when defining the categories on conceptions of teaching. This means that we grouped quotations together, and not individual participants. However, in order to look at the relationship between conceptions of teaching and teaching practices, I had to put individual participants into one or more of these categories.

(B) The relationship between conceptions of teaching and teaching practices

After defining categories of teaching conceptions, I went back to the data in order to tie individual teachers to specific categories. What I found was that most participants

expressed ideas that could be linked to one or more of the conceptions just described. However, if we think of the conceptions in terms of the two ends of the continuum, most (but not all, as we will see) participants' conceptions fit into either teaching-centered or learning-centered. After classifying individual law professors into teaching-centered or learning-centered, I then looked at their teaching practices. As mentioned in chapter 3, I used professors' own descriptions of teaching practices.

For the purpose of looking at the relationship between teaching conceptions and teaching practices, I am qualifying practices as either teacher-focused or learning-focused. I am including in the former group those teaching methods where the teacher is keeping control of what is going on: she lectures, she asks the questions, she directs the discussion. As we saw in chapter 4, in our analysis of the survey and the observation data, the predominant teaching methods used in Canadian legal education are lecture, complemented by teacher-driven Q&A and discussion. In this sense, although these teaching methods can be qualified as interactive, they are still teacher-focused. However, active or experiential learning methods that focus on what the students are doing, such as think-pair-share, one-minute papers, small group activities, simulations, role plays or student-driven discussions, are qualified here as being learning-focused.

When looking at the relationship between conceptions of teaching and teaching practices, four different groupings emerged.

(i) *Law professors with teaching-centered conceptions who use teacher-focused practices*

The first group is composed of those teachers with a transmitting, modeling or acquisition conception of teaching, or who expressed ideas that would put them into more than one of those categories but at the teaching-centered end of the continuum, and who use teacher-focused teaching and evaluation methods such as lecture, teacher-driven Q&A and/or discussion, and a final examination. The teaching practices of law teachers in this group thus correspond to their teaching conceptions.

For example, when I asked him about why he lectures, this participant answered that the lecture works to transmit knowledge and critical reflections on the subject matter:

> *Je ne vois pas de raison de changer, le cours magistral ça fonctionne bien quand on sait comment, quand on a l'habitude on peut passer je pense non seulement des connaissances mais une réflexion sur la matière, une vue d'ensemble, une vue critique, etc... (FPM5)*

There was also a sense from civil law teachers that in civil law courses, there is a great deal of material to transmit and therefore the lecture is the most effective and efficient method to do so, as explained by this civil law teacher:

> *Ça, c'est pas juste moi personnellement qui pense ça mais dans notre secteur, on considère qu'il y a quand même beaucoup de matière et qu'il y a un effort de par coeur qu'ils doivent nécessairement faire. Si bien que la matière se prête assez bien à un cours magistral. Ça, c'est la prémisse de base. (AsPW9)*

This participant also expresses the view that students must learn all this material by heart, which also reveals little or no knowledge of learning theories.

A smaller sub-category of this group use the Socratic method (with student panels) and another some hypothetical problems that would usually be solved as a class, or students would have to work on them individually at home and the teacher would then go over the solution in the classroom.

These law teachers, which represent about 1/3 of the participants, therefore experience no disconnect between their practices and conceptions. For most of participants in this group, the data did not suggest other reasons for their pedagogical choices. For those who did mention other factors, these included class size, students, a concern with coverage, and the fact that teaching was not valued in their institution. We will come back to these other factors in chapter 6.

(ii)   Law professors with learning-centered conceptions who use learning-focused practices

Teachers with facilitating or transforming conceptions of teaching also use the more teacher-focused predominant teaching methods that we saw in chapter 4, but to a lesser extent than more active or experiential learning methods such as think-pair-share, small groups, simulations, role plays and debates, film or games, for example.   They also use a variety of evaluation methods such as assignments, reflection papers, or a field assignment to supplement an examination, if they do use an examination.   This is a relatively small group as it represents about 1/6 of law teachers interviewed.

As the teachers we just saw, there is no apparent disconnect between their teaching conceptions and teaching practices because when they talk about why they use a particular method, there is a learning rationale behind it. They will use some lecture to transmit knowledge, but they are concerned about the lecture being well structured and clear and they will follow it up with in-class, small group problems. For example, when I asked this participant why she did not lecture all the time, her answer referred to different learning styles:

> *Because I don't think that's how you learn. I don't think that's how everybody learns. I think there are people who do learn a lot from, who are good at hearing a vast amount of material from someone who's really bright. Taking it in, processing it, making sense of it. But I don't think that's most people. (APW1)*

Another interesting feature of this category is that many of the participants talked to me about getting some form of pedagogical training.   Some participants in this group also mentioned their own experience as a law student (either positive or negative) as being a factor that influenced their teaching practices.

(iii)   Law professors with mixed conceptions who use mixed methods

Some teachers had very mixed conceptions of teaching. They expressed ideas that could be qualified as reflecting a teaching-centered conception, such as conveying information,

or a concern with coverage, and a learning-centered conception, such as giving students responsibility for their own learning, and both, such as motivating students and generating enthusiasm for the subject. However, these conceptions seemed to co-habit harmoniously within the same teacher. These teachers used a great variety of teaching methods that were mostly teacher-focused, including lecture (more predominantly), discussion, Q&A, but they also used some learning-focused methods such as small groups. In the sense that they hold mixed conceptions of teaching and use mixed teaching practices, there was also no apparent disconnect between their conceptions and their practices.

For example, this participant has multiple teaching conceptions for the same teaching context (same course). In the following three statements, he seems to move from transmitting, to motivating (in a more learning-centered way) to facilitating learning:

> And if one is, going to evaluate with an exam, either 100%, or 40% or some significant component, then I think the teaching method changes in some required sense it includes the conveying of a body of knowledge that you want students to leave the course with.

> I think the most valuable thing that one can convey as a teacher is enthusiasm for one's subject. And if one is able to convey that enthusiasm then the learning that's done in the class will extend far beyond that 90-minute window, or that three-hour window. And so, the classes that have been most disappointing is when that enthusiasm hasn't materialized. And it's either from me or from my interaction with the class. So, the goal is to generate enthusiasm and interest and, if that's achieved, then I really think the sky's the limit for what the students want to learn.

> And it does strike me as removing students from the passive receptor of knowledge into some active engagement with whatever it is we've been talking about in class. And taking the onus off me and putting it on them, to, say okay, do I really understand this well enough? Am I able to think through the implications, or untangle the analysis well enough to formulate a response and articulate it to the class? ...And so I guess it is in a sense that the students are actually more engaged with the material if they are using it rather than just hearing it. (APM1)

This teacher used a combination of more teacher-focused methods such as lecture, class discussion, question-answer but also used the more learning-focused small group activities.

A teacher can also have mixed conceptions of teaching depending on the course content. For example, this participant's conception changed depending on whether she was talking about knowledge or attitudes. When talking about knowledge, she expressed a more teaching-centered (transmitting) conception of teaching, concerned mostly about coverage:

> I suspect it's probably partly me, feeling somewhat content driven as well, because in both the substantive law courses, [upper year big elective course but not a seminar] it is huge. And I've already decided that we can't cover all of it. We're only going to cover this amount, but even with this amount, there's still a lot of coverage. So it's probably partly me, trying to make sure that we get a certain amount of coverage. (AsPW6)

On the other hand, when talking about attitudes towards the law she would like students to acquire, she holds more of a motivating conception of teaching:

> But I want to encourage them to think of it as something than just a bunch of rules. So, even if they're not thinking about it as "how can I make the world a better place", which is what I'd like them to think about, [chuckle] hopefully, at least they realize, I mean one of the things I really love about law is its ambiguity. To me that's its power. If it's not clearly x or y, then that means that you can argue for it to be something entirely different and actually have a plausible chance of success. And I guess I want them to be excited by that power as well. So for that reason I'm not interested in just emptying out what I know as if it were somehow categorical because it's not. (AsPW6)

This teacher uses a variety of teacher-focused and learning-focused methods such as lecture, teacher-driven discussion and small groups to solve problems. For her "lecture" course, she uses a combination of final examination and a mid-term paper (which students can do in groups) as evaluation methods.

One participant, who expressed ideas reflecting both teaching-centered (teaching as performance) and learning-centered conceptions of teaching, describes her different teaching methods, ("standard things" meaning here the lecture), both teacher-focused and learning-focused:

> I guess my teaching approach has evolved over the years. I've been teaching for 17 or 18 years I think at this point I think it's 17 actually, and I think that I'm by nature a quite traditional, magisterial approach kind of teacher.

> I guess what I see myself doing is with the larger group I see myself doing sort of the standard things that one thinks about, you know when you think about diversifying

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pedagogical approaches and sort of more hands-on group work, that kind of thing. I tend to use that in the bigger format.

So I see it more and I see the breaking into small groups or you know going off and doing this or that as being good when you're trying to learn how something works. But not good when you're trying to actually get at the place where law engages you as a person…Yes, and so there's usually more student-driven and a big component of students delivering the seminar. You know where they're not not so much delivering papers they've worked on but collaboratively in small groups, taking an area and developing a class plan for it and a set of readings. (AsPW4)

As we can see from the above quotations and from the data, other factors that influence the pedagogical choices of participants in this group include class size, class type, concerns with coverage and time. However, and we can see this from many of the quotations above, what is common to participants in this relatively small group (about 1/6 of participants) is that the relationship between conceptions and practices is largely intuitive. Indeed, many of these participants expressed ideas about learning without referring specifically to it, but rather talking about generating interest, relevance and motivating students to learn. For example, this participant refers to making the material relevant to students so they will be able to connect with it:

So in terms of teaching philosophy I guess that the first two things interest and relevance are probably the same thing. I think that's kind of important that this stuff be interesting both for me and for them. Relevance, that's if I'm talking about something I should probably try and see if I think it connects to us in some specific way and particular to the students, I should try and bring that out. (AsPW5)

This mixed bag of conceptions of teaching and teaching practices can be partly explained by a lack of or superficial knowledge of pedagogical principles and learning theories, which was also common to this group of law teachers.

> *(iv)   Law professors with learning-centered conceptions who use teacher-focused practices - the disconnected group*

The final category in exploring the relationship between conceptions and practices is the disconnected category. In this category, we find those teachers with conceptions of teaching that are on the learning-centered end of the continuum who, for different

reasons, adopt teaching practices that are not compatible with their conception(s). For these teachers, there is a conflict, but their teaching conception remains relatively unshaken, although there is sometimes a sense of frustration about having to use teacher-focused practices. This group of participants represents about 1/3 of participants interviewed; it is therefore quantitatively but mostly qualitatively significant. Indeed, the reasons for this disconnect between conceptions and practices are interesting to analyse because they may give us some indication as to why teachers with facilitating learning conceptions of teaching are not able to use teaching practices that are coherent with their conceptions.

The concern with coverage of a specific (and large) amount of content, particularly in large group first year or upper year courses, might explain for some in this group the disconnect between teaching conceptions and practices. The disconnect may result from the conflict between how they view learning and how they view their subject area, as is illustrated in this comment:

> So there's a real tension between teaching so that I'm SURE they understand and teaching so that I can COVER all the rights. (AsPW2)

The concern with coverage is either personally imposed, as in this example, or it is a perception of what others in the same institution are doing, but it always leads these teachers to opt for teaching practices that are teacher-focused because there is so much material "to get through". This next statement illustrates the tension in wanting students to engage deeply with the material but realizing that focus on content has much to do with the fact that they do not:

> I think overall they [students] don't come in with an attitude that says "I really want to explore this". They come in with an attitude that says "I need to know this". On the whole. And, I think maybe they do the readings, but do it in a fairly superficial way. So that they're not ready to dig deeper, I think. I suspect it's probably partly me, feeling somewhat content driven as well... And I've already decided that we can't cover all of it. We're only going to cover this amount, but even with this amount, there's still a lot of coverage. So it's probably partly me, trying to make sure that we get a certain amount of coverage. (AsPW6)

Closely related to the idea of coverage is the tension between positivist and critical ideas of law and how that translates into teaching. For some participants indeed, there was a

tension between doctrinal teaching and teaching critical ideas about the law as is illustrated in this comment:

> *I think my aspirations for how it should work out in the classroom are always higher than how it does work out in the classroom. So there is a moment of pull towards a fear of inadequate positivism. I don't know what to say, like, that what's happening in the classroom isn't real enough, or substantial enough, or tangible enough, to be examined. So there's a pull... Oh here's what an exam should look like and here's what I have to do in the classroom to make sure that stuff actually happens. And that it's more than just a bullshit session. (AsPW3)*

For these teachers, as with those overly concerned with coverage, the pull towards positivism means adopting teaching practices that are more teacher-focused in order to ensure that what needs to get covered gets covered.

Other reasons for the disconnect between teaching conceptions and teaching practices include institutional requirements, institutional culture and students (resistance, expectations, abilities), reasons we will explore in more details in chapter 6. These individuals perceive using learning-focused teaching methods as going against a "norm" defined by the institutional culture as more content-driven lecture and 100% final exam. When they did this, therefore, they faced important barriers from students, who resist their teaching methods and give them bad teaching evaluations, as we will see in more detail in chapter 6. These professors thus feel the pressure to follow the norm and often they admit changing their teaching practices to fit the norm. However, this has a price, both personal and institutional. These teachers, going against their beliefs, seemed unmotivated about their teaching and cynical about students and their colleagues. The following quotation illustrates this cynicism:

> *Well, I think you need to find a balance between, say, I don't care at all what you think, of me. And saying, what you think of me doesn't hurt me personally. I think there's a fine line. [chuckle] And one of the things I say, when I say I feel bored about my teaching this year, is I'm getting to the point of not caring. Like I don't like the model. I don't like the students' attitudes when they come into the room. I don't like spoon feeding people. There are a lot of things about student expectations in this faculty that I'm increasingly hostile to, [chuckle] which probably comes from, well a lot of it surely comes just from simple old age and getting more and more stuck in my ways. (AsPW1)*

Also, if we want to improve teaching and learning in Canadian legal education, we need to pay attention to the reasons why these law teachers feel they have to go against their conception of teaching to revert back to teacher-focused practices.

(III) Conceptions of teaching - discussion of findings

(A) Conceptions of teaching

If we look at the different conceptions of teaching that emerged from our analysis and compare them with the literature discussed in chapter 2, we find that our categories correspond roughly to the frameworks developed in the literature on conceptions of teaching (see Figure 5-8 for a summary of the comparisons). Like Samuelowicz and Bain, we also found that these conceptions can be placed on a continuum, with "soft" boundaries between each conception but "hard" boundaries between the larger categories of teaching-centered or learning-centered.   There are, however, some differences worth exploring.

First, the data collected in our study does not point to an "imparting information" category that we find in some studies. Even law teachers with teaching-centered conceptions still believe they have a role that goes beyond simply repeating what the textbooks or the cases say.   Common law teachers with the transmitting conception believe that they have to make sense of the cases and present a clear synthesis to the students.

As Kember points out, there is also a performance aspect to the transmitting conception of teaching, which came up again and again in my interviews.[5] In her study of British legal academics, Cownie's findings suggest that "performance is a fundamental aspect of the culture of academic law and 'being a good performer' is a major part of the professional identifies of academic lawyers."[6]

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[5] The notion of performance, or teaching as performing, came up so often in the data that I had originally a separate "performing" category before deciding to include it within the transmitting category.

[6] Fiona Cownie, *Legal Academics: Cultures and Identities* (London: Hart Publishing, 2004) at 129.

Figure 5-8 Comparison of conceptions of teaching with the literature

Rochette (2011)	Biggs	Kember (1997)	Prosser & Trigwell (1999)	Kember & Kwan (2000)	Samuelowicz & Bain (2001)	Light, Cox and Calkins (2010)
		teacher-centered: imparting information		**transmission** passing information	**teaching-centered**: imparting information	
teaching-centered: transmitting	Level I	**teacher-centered:** transmitting structured knowledge	transmitting	**transmission** making it easier for students to understand	**teaching-centered**: transmitting structured knowledge	teacher-focused
teaching-centered: modeling	Level 2	student-teacher interaction				teacher-focused
teaching-centered or learning-centered: motivating	Level 2	student-teacher interaction				teacher-focused student-focused
teaching-centered: acquisition-helping students to acquire the content	Level 2	student-teacher interaction	helping students to acquire	**transmission** making it easier for students to understand	**teaching-centered**: providing and facilitating understanding	student-focused
learning-centered: facilitating learning	Level 3	**student-centered:** facilitating understanding	helping students develop their own conceptions	**learning facilitation** meeting students' need	**learning-centered**: helping students develop expertise	learning-focused
learning-centered: transforming	Level 3	**student-centered:** conceptual change	helping students change conceptions	**learning facilitation** facilitating students to become independent learners		learning-focused

We saw earlier that the conception of motivating can be either teaching-centered or learning-centered. We saw that it is more teaching-centered when teachers see their

role as conveying enthusiasm for the subject, or as entertaining students or making class fun. Samuelowicz and Bain describe a conception that fits this profile:

> Academic A stresses his enthusiasm and interest in what he teaches and his expertise as factors that should motivate students, capture their attention, make them curious. He tries to make things less boring by using humour, by trying to make the content relevant to students, by giving examples of substances known in everyday life, familiar to students. Consistent with his beliefs he tries to use everyday examples in his teaching.[7]

Samuelowizc and Bain describe this orientation to teaching as providing and facilitating understanding and consider it to be teaching-centered. However, overall, this conception most closely resembles Light, Cox and Calkins' middle student-focused category because the intent in motivating is usually to help students acquire the course content.

The same reasoning applies to the modeling conception, which also fits nicely within Light, Cox and Calkins' student-focused category because most teachers with this conception are concerned with whether students are following their legal reasoning or legal argument and are then able to reproduce it (i.e. they have acquired that skill). The modeling conception of teaching is specifically related to the teaching of *law,* or at least to professional education. The Carnegie Report entitled *Educating Lawyers*,[8] holds that the signature pedagogy [9] of legal education is the case method, or the case-dialogue method as the authors of the report call it. Even though the context of this report is American legal education, which is more geared towards legal practice than Canadian legal education, this signature pedagogy is also present in Canadian law classrooms. Through the case-dialogue, law teachers model legal analysis and legal reasoning. They teach students how to think like a lawyer by doing it themselves, or by engaging in a question-answer or Socratic dialogue with students in the classroom. The Carnegie Report describes the case-dialogue method signature pedagogy in the following way:

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[7] Katherine Samuelowicz & Joe Staten Bain, "Revisiting Academics' Beliefs about Teaching and Learning" (2001) 41 Higher Education 299 at 314.

[8] William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

[9] A signature pedagogy is a "kind of language of a particular profession. It can be imagined to have four dimensions: (1) its observable, behavioral features - the surface structure; (2) the underlying intentions, rationale, or theory that the behavior models - the deep structure; (3) the values and disposition that the behavior implicitly models - the tacit structure; and (4) its complement, the absent pedagogy that is not, or is only weakly engaged - the shadow structure.": See Sullivan et al., *ibid* at 14.

> The surface structure is a set of dialogues entirely focused by and through the instructor. In these dialogues about legal texts, students are expected to engage in intense verbal duels and competition with the teacher as they struggle to discern facts and principles of interpretation within a case. By contrast, the deep structure of the pedagogy is that "thinking like a lawyer" is about processes of analytic reasoning and the grasp of legal "doctrine" and principles rather than learning a system of statutory or "black letter law". This is modeled through the relentless confrontation of interpretations in the inherently competitive character of the classroom.[10]

Although in Canada this method of teaching is more "gentle" and could be characterized more like a Q&A period rather than the described competitive Socratic dialogue, the influence of this pedagogy on law teachers' conceptions of teaching comes through in the modeling conception found in the data.

For American legal education, because it is professional education, the Carnegie Report also advocates a return to apprenticeship as a way of teaching future lawyers. Under this theory of learning, learning "entails embarking on an effort to gradually grow into the complex abilities of an expert."[11] Learning happens when the expert models performance "in such a way that the learner can imitate the expert while the expert provides feedback to guide the learner in making the activity his or her own."[12] Law teachers with the modeling conception are therefore demonstrating to beginners how to carry out legal analysis, but they do it tacitly. Indeed, some statements made by a few participants about "learning by osmosis" in first year law by attending class and watching the professors model legal reasoning, indicate that it is done implicitly. Law teachers with this view know that most students will "get it" (i.e. understand legal reasoning) in about February of their first year, although they cannot explain why.

This finding is echoed in the Carnegie Report, where the authors note that when they asked how students learn with the case-dialogue method, the responses they obtained were "by observing faculty in action", "by reading cases", "by repetition", or "by osmosis,

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[10] *Ibid* at 14.

[11] *Ibid* at 26.

[12] *Ibid*.

so that one day the light just dawned".[13]   Because this modeling is done tacitly, we have little information about the learning that results from it. Have all students learned it? If so, was it as a result of teaching or did students learn it on their own?

The Carnegie Report notes that expert thinking needs to be made explicit in order for students to learn; it suggests scaffolding in order to achieve this.[14] The Report also mentions that for apprenticeship to lead to learning, students need to change their learning approach from "making good grades with minimal effort"[15] (i.e. surface and strategic learning approach) to "a complete involvement with learning new ways of thinking, performing, and understanding oneself"[16] (i.e. deep learning approach).   The Report also argues that the case-dialogue method needs to make connections with students' previous knowledge and "slow down the process of 'exposing' students to knowledge or 'covering material' in order to engage, that is to build new habits of mind and rearrange old ones."[17]   Finally, the Report notes that with apprenticeship, students learn best if they have an opportunity to reflect on their knowledge and performance.

If we take a closer look at our acquisition conception, we see it is also closely related to the student-focused conception of Light, Cox and Calkins' framework. The authors' idea of a dialogue rings true when comparing it with what many law teachers with the acquisition conception of teaching told me about having a conversation with the students in the class and making sure the atmosphere was such that students would participate. It is also reflected in teachers talking about the "we" in the classroom, i.e. taking the students along with them and helping them acquire the course material. The focus is still on the content, but instead of simply being transmitters, teachers see their role in helping students to acquire the concepts they are teaching. This idea is also closely related to

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[13] *Ibid* at 47.

[14] *Ibid* at 26-27. Scaffolding means providing support to allow the learner to learn for himself or herself: see for example Kathleen Hogan & Michael Pressley, eds., *Scaffolding Student Learning: Intructional Approaches and Issues* (Cambridge, MA: Brookline Books, 1997); Lindsay Lipscomb, Janet Swanson, and Anne West, "Scaffolding", Emerging Perspectives on Learning, Teaching and Technology, http://projects.coe.uga.edu/epltt/index.php?title=Scaffolding#What_is_Scaffolding.3F (accessed October 28, 2010).

[15] Sullivan et al., *supra* note 8 at 27.

[16] *Ibid.*

[17] *Ibid* at 59.

Prosser, Trigwell and Taylor's conception of teaching as helping students to acquire knowledge.

However, if we compare this conception with Samuelowicz and Bain's framework, this conception is similar to their providing and facilitating understanding orientation and is therefore teaching-centered (and not student-focused as in Light, Cox and Calkins' framework). As Samuelowicz and Bain describe, a teacher with this orientation has a "desire to provide an established understanding of his subject matter to his students so they will be able to use this knowledge and understanding in the future",[18] tries to "involve students to make sure that they can understand the material he teaches",[19] "expects them to remember techniques and methods needed to solve problems, to be able to remember 'how it works' and reproduce it, to be able to recall his reasoning in similar situations in the future"[20] and "believes that the interaction between himself and students improves their understanding of the subject"[21] and so "encourages students to interrupt him during lectures to ask questions to clarify their understanding."[22]   If we compare these descriptions of the providing and facilitating understanding orientation to teaching with the comments made by law teachers in the acquisition category, we can see the similarities.   Thus we can conclude that the acquisition conception of teaching is more teaching-centered than learning-centered.

My facilitating learning and transforming conceptions are learning-centered if we compare it with most of the frameworks reviewed. However, contrary to Light, Cox and Calkins' framework, law teachers holding the facilitating learning conception of teaching did not appear to be consciously aware of the socially-constructed nature of learning, although they knew that students would learn better by, for example, being active, by discussing material with their peers or by reflecting on their learning.   On the other

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[18] Samuelowicz & Bain, *supra* note 7 at 312.

[19] *Ibid* at 313.

[20] *Ibid*.

[21] *Ibid*.

[22] *Ibid*.

hand, teachers who have the transforming conception of teaching seemed aware of the constructed nature of knowledge and learning and see their role in facilitating those conceptual changes in students. This distinction explains why I have two categories and not one.

In our analysis, we also found that many participants expressed ideas that would reflect many different conceptions. However, most participants can still be categorized as having either learning-centered or teaching-centered conceptions and not both. Only a handful of participants expressed ideas that reflected both learning-centered and teaching-centered conceptions of teaching. According to our analysis, therefore, law teachers can have many co-habiting teaching conceptions, but these can usually be qualified as being either teaching-centered or learning-centered. The study carried out by Murray and Macdonald[23] on conceptions of teaching concluded that teachers could have mixed conceptions of teaching and that this could be explained by thinking of the different conceptions in terms of a hierarchy, as is suggested by Biggs.[24] Therefore, those teachers with a facilitating learning conception of teaching can also express ideas that would indicate they also have a transmitting conception, but those with a transmitting conception could not express ideas that indicated a facilitating learning conception.

On the other hand, Postareff et al, who studied dissonance relating to conceptions of teaching,[25] conclude that although a teacher can adopt both learning-focused strategies and content-focused strategies, content-focused conceptions and learning-focused conceptions are less compatible.[26] They identified those teachers with both content-focused and learning-focused conceptions of teaching as having dissonant profiles. They found that individual teachers' profiles varied from "clearly consonant to completely

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[23] Kate Murray & Ranald Macdonald, "The Disjunction between Lecturer's Conceptions of Teaching and their Claimed Educational Practice" (1997) 33 Higher Education 331 at 343.

[24] *Ibid* at 343 citing John B. Biggs and P.J. Moore, *The Process of Learning*, 3rd ed (Englewood Cliffs, NY: Prentice Hall, 1993).

[25] In this study, Postareff et al lump conceptions of and approaches to teaching together to discuss dissonance and consonance, but distinguish them from teaching strategies: see Liisa Postareff et al., supra note 3.

[26] *Ibid* at 50.

dissonant".[27]   Of the group of 97 participants, they found that half of them had a dissonant profile to some degree,[28] which meant that they had both learning-focused and content-focused ideas about teaching (i.e. conceptions). In a previous study, Prosser et al found higher quality learning outcomes where there was consonance in teaching approaches, and lower quality learning outcomes where there was substantial dissonance.[29]   Postareff et al explain the dissonance by factors such as changing conceptions of teaching and teaching strategies (still being in the developing stage), or by a lack of reflection on the part of the teacher. In their conclusion, the authors acknowledge the importance of context, or rather, teachers' perception of the teaching context. As the concept of "study orchestrations" for student learning approaches, the authors suggest adopting the concept of "teaching orchestration" which would include the influence of context on teaching approaches and conceptions.[30] As we will see below, my analysis suggests that such "context" factors, or teachers' perceptions of their teaching context, which includes institutional culture and student resistance, are related to dissonance between conceptions and practices, as we will see below.

In summary, when we compare the conceptions of teaching of Canadian law teachers, we can see that they generally fall within the conceptions of teaching developed in different research studies in higher education, although we saw that there were a few differences that could be explained by looking at the literature on law's signature pedagogy, the case-method. However, all of our conceptions could still fit within one of the two broad groups of teaching-centered or learning-centered. When looking at individual profiles, we saw that some law teachers had mixed conceptions of teaching, i.e. they expressed ideas about teaching that were both teaching-centered and learning-centered.   The literature labels this phenomenon 'dissonance' as the two are theoretically incompatible.

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[27] *Ibid* at 57.

[28] *Ibid*.

[29] Michael Prosser et al., "Dissonance in Experience of Teaching and its Relation to the Quality of Student Learning" (2003) 28 Studies in Higher Education 37.

[30] Liisa Postareff et al., *supra* note 3 at 60.

When looking at the relationship between teaching conceptions and teaching practices, our findings suggest that law teachers fit into four categories: teachers with teaching-centered conceptions of teaching who use teacher-focused methods, teachers with learning-centered conceptions of teaching who use mostly learning-focused practices, teachers with mixed conceptions of teaching who use both teacher-focused and learning-focused methods, and finally, those teachers with learning-centered conceptions of teaching who use teacher-focused methods. It is important to note, however, that all teachers interviewed use a variety of teaching methods. Even those who hold more learning-centered conceptions of teaching use a variety of teaching methods that includes more teacher-focused methods such as lecturing. However, those with a learning-centered conception use more learning-focused teaching methods such as role plays, simulations, or small groups, which their teaching-centered colleagues do not use. The first three categories are consonant to varying degrees in that their conceptions and practices are coherent, whereas the last category is clearly dissonant. Let us take a look at the literature to see how our findings compare with other studies.

(B) Relationship between conceptions of teaching and teaching practices

Our analysis of the relationship between conceptions of teaching and teaching practices thus nuances Kember and Kwan's conclusion that teachers use a variety of teaching methods in the classroom no matter what teaching conception or approach they take.[31] Our findings suggest that even though teachers with different conceptions use a variety of teaching methods, there is in fact a relationship between teaching conceptions and

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[31] David Kember & Kam-Por Kwan, "Lecturers' Approaches to Teaching and Their Relationship to Conceptions of Good Teaching" (2000) 28 Instructional Science 469. Our findings also contradict Eley's research on whether conceptions of teaching had a functional role in teaching practices, more specifically in the planning of one particular teaching event. Eley's study concludes that there is no relation between a teacher's conception of teaching and her teaching decision-making. He gives a methodological explanation for this:

> As foreshadowed earlier, one possible interpretation that would fit with the present findings is that conceptions of teaching might essentially be outcomes from teachers' reflective activities. From time to time teachers might simply think back over recent and specific teaching experiences, consider how effective the practices might have been, or what outcomes might have been observed, and maybe speculate on how things might be varied in some future context. Such reflection might be irregular, loose, and unplanned, or very deliberate and strategic.

See Malcolm E. Eley, "Teachers' Conceptions of Teaching, and the Making of Specific Decisions in Planning to Teach" (2006) 51 Higher Education 191 at 209 and 212.

teaching practices. Law teachers with teaching-centered conceptions rarely use learning-focused methods, teachers with learning-centered conceptions use both learning-focused and teacher-focused methods, teachers with mixed conceptions use methods that are both learning-focused and teacher-focused, and some teachers with learning-centered conceptions use only teacher-focused methods.

Unlike what Kember and Kwan seem to take for granted, there is a very plausible explanation for the finding that law teachers use largely the same teaching methods even if they have different conceptions, without necessarily having to discard the possible relationship between conceptions and methods. As we saw in the previous discussion on the relationship between conceptions and practices, much of what law teachers do is intuitive. Most law teachers are not aware of their own conceptions of teaching, as this participant recognizes:

> *I think that I'm by nature a quite traditional, magisterial approach kind of teacher. Just totally through lack of reflection, actually, that they think, yes, this is like the classic thing. Most academics like the least pedagogically inclusive approach to teaching so that's what they do [chuckle].*

Indeed, much of what participants told me about teaching seemed based on intuition. Dan Pratt explains this:

> Teaching adults is a complex, pluralistic, and moral undertaking. Yet, paradoxically, it is also regarded, by scholars and practitioners alike, as unproblematic. It is often enacted habitually without reflection on the hidden values and assumptions that lie beneath behavior. As teachers of adults, we are not usually urged to reflect critically on who we are, what we do, or why.[32]

Those conscious of their conception of teaching most likely have a facilitating learning or transforming conception and adopt teaching strategies that are consistent with their conception, unless other factors intervene. The intuitive nature of law teaching is probably also due to the fact that most law teachers do not have much pedagogical knowledge, i.e. knowledge of teaching and learning. Only 26,7% of survey respondents

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[32] Dan D. Pratt, "Discourses and Cultures of Teaching" in Elizabeth Hayes & Arthur Wilson, eds., *Handbook of Adult and Continuing Education* (San Francisco: Jossey-Bass, Publishers, 2000), chapter available at http://www.edst.educ.ubc.ca/faculty/pratt/DPdisc.html.

listed training in teaching as a factor influencing their pedagogical choices although 66,8% answered that they did receive some form of training in teaching. This might be because the training received was not geared towards making teachers aware of their conceptions of teaching or of learning. The literature on conceptions of teaching argues that professional development programs should be directed at changing conceptions of teaching and not simply developing techniques for teaching,[33] because changing conceptions of teaching will improve student learning outcomes.[34] Light, Cox and Calkins also talk about the existing but tacit nature of pedagogical knowledge and mention Bain's study on excellent teachers, which demonstrates that excellent teachers do not necessarily have knowledge of learning theories.[35] However, Light, Cox and Calkins also argue that scholarly teaching, i.e. teaching informed by research and theory, is a "vital ingredient of reflective and professional practice", an idea we will come back to in chapter 7.

Let us now take a look at the last group identified above that had a dissonant relationship between conceptions of teaching and teaching practices. This group was composed of teachers with learning-centered conceptions of teaching but who used mostly, if not exclusively, teacher-focused practices. As we saw in our analysis, there are two main reasons for this: an overwhelming concern with coverage and the teaching context. Indeed, our findings suggest that when there is a disconnected relationship between conceptions of teaching and teaching practices, the disconnect is often caused by the teaching context (or teachers' perception of it), which includes institutional requirements, institutional culture and students. Teaching context has a significant impact on teaching practices. Moreover, this influence is a negative one in that it was those participants who had a more learning-centered conception of teaching who felt like they

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[33] See for example, Nira Hativa, "Becoming a Better Teacher: A Case of Changing the Pedagogical Knowledge and Beliefs of Law Professors" (2000) 28 Instructional Science 491; Greg Light & Susanna Calkins, "The Experience of Faculty Development: Patterns of Variation in Conceptions of Teaching" (2008) 13:1 International Journal for Academic Development 27; Gerlese S. Akerlind, "Growing and Developing as a University Teacher: Variation in Meaning" (2003) 28:4 Studies in Higher Education 375; Lynn McAlpine & Cynthia Weston, "Reflection: Issues Related to Improving Professors' Teaching and Students' Learning" (2000) 28 Instructional Science 363.

[34] Kember & Kwan, *supra* note 31.

[35] Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009) at 279, citing the study carried by Bain: K. Bain, *What the Best College Teachers Do* (Cambridge, MA: Harvard University Press, 2004).

were going against the "norm" and therefore faced institutional barriers. In these cases, therefore, institutional factors would intervene between the professors' conception of teaching and their teaching practices to influence the latter away from the teacher's conception.

This finding is reflected in the literature. Studies have indeed shown that teachers' perception of their teaching context influences their teaching approach.[36] Kember and Kwan's study did find that institutional pressures and students can have a small influence on teachers' approaches to teaching, which would have them make small jumps on the continuum rather than jumping from one end of it to the other, but they think it unlikely that institutions would be able to shake professors' deep seated beliefs about teaching (i.e. their conceptions of teaching).[37] Light & Calkins agree with Kember and Kwan and hold that the teaching context can influence the teaching approach but not necessarily teaching conceptions:

> While approach often reflects the teacher's conception of the practice, the constraints of a given context may make that difficult. A teacher may have a sophisticated conception, for example, but the constraints inherent in the context – high student numbers, departmental culture, time demands etc. – may dictate a less sophisticated approach. On the other hand, it is unlikely that a teacher will take a sophisticated approach to teaching without having a sophisticated conception.[38]

In chapter 2, we saw Kember's framework to explain the relationships between conceptions of teaching, teaching approaches (which include teaching strategies), student learning approaches and student learning. In Kember's schema, institutional influence is linked to conceptions of teaching by a dotted line because this relationship had not yet been clearly established when he published his article. Samuelowicz and Bain also mention the possibility of explaining the disconnect between teachers' 'ideal' conception of learning and the 'working' conception of teaching by institution-related factors:

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[36] See Michael Prosser & Keith Trigwell, *Understanding Learning and Teaching : The Experience in Higher Education* (Buckingham [England] ; Philadelphia, PA: Society for Research into Higher Education & Open University Press, 1999) at 151-153 for a discussion of this research. See for example, Michael Prosser & Keith Trigwell, "Perceptions of the Teaching Environment and its Relationship to Approaches to Teaching" (1997) 67 British Journal of Educational Psychology 25.

[37] Kember & Kwan, *supra* note 31 at 487.

[38] Light & Calkins, *supra* note 33 at 28. See also Kember & Kwan, *ibid*.

It seems, from the limited data available, that the aims of teaching expressed by academic teachers coincide with the 'ideal' conception of teaching whereas their teaching practices, including assessment, reflect their working conception of teaching. If this is the case research might profitably be directed towards the factors (teacher, student, institution-related) which prevent academic teachers from acting according to their ideal conception of teaching and thus contribute to solving one of the mysteries of higher education - the disjunction between the stated aims (promotion of critical thinking) and educational practice (unimaginative coverage of content and testing of factual recall) so often referred to in the literature.[39]

For one of our four categories explaining the relationship between conceptions of teaching and teaching practices, therefore, the disconnect between their conception and their practices, or, as Samuelowicz and Bain put it, the different between their 'ideal' and 'working' conceptions of teaching, can be explained by the teaching context, i.e. institutional factors and students. We will explore these factors in more detail in chapter 6.

(III) Conclusion

In summary, our findings suggest that law teachers as a group have different conceptions of teaching: teaching as transmitting knowledge, skills and attitudes, teaching as modeling, as motivating students, as "getting" or "helping" students to acquire knowledge, skills and attitudes, as facilitating learning or as transforming students. These conceptions can be placed on a continuum although it is important to remember that they can move along the continuum. We can group these conceptions into two main categories, the teaching-centered conceptions and the learning-centered conceptions. By taking these conceptions of teaching and applying them to individual professors, I found that most law professors have more than one conception of teaching; indeed, they expressed ideas about teaching that would put them, for example, in the transmitting and acquisition categories, or the transmitting and motivating category, or the acquisition and modeling categories. However, if we consider the two main categories of teaching-centered and learning-centered conceptions, we find that most law teachers interviewed will fit in one

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[39] Katherine Samuelowicz & John D. Bain, "Conceptions of Teaching Held by Academic Teachers" (1992) 24 Higher Education 93 at 110. See also

of these two conceptions. Only a few professors had mixed conceptions of teaching, expressing ideas that would qualify them as having both teaching-centered and learning-centered conceptions.

When we look at the relationship between conceptions of teaching and teaching practices (i.e. teaching and evaluation methods), four groupings emerge to explain this relationship. Although teachers with different conceptions of teaching use a variety of teaching methods (and not only lecture, for example), law teachers who have a teaching-centered conception of teaching use more teacher-focused methods, law teachers with mixed conceptions use both teacher-focused and learning-focused methods, law teachers with learning-centered conceptions use mostly learning-focused practices (although they also use some teacher-focused methods) and finally, a disconnected group who have learning-centered conceptions but who use mostly if not only teacher-focused methods. This last group is interesting to study because it can explain why teachers with learning-centered conceptions keep using teacher-focused methods when they know they are not as effective for student learning.

The reasons for the disconnect include the concern with coverage, students, as well as institutional factors such as institutional culture and institutional constraints (class size, class format, internal directives or regulations, time).   These institutional pressures influenced these teachers into adopting teacher-focused practices incoherent with their teaching conceptions. In talking with these teachers, I felt their sense of frustration and cynicism about the teaching aspect of their job. Institutionally, the price is high. It means that the teachers who are concerned with creating learning environments that foster deep learning approaches in students are in fact marginalized or forced to conform to a teacher-focused norm. Let us now explore these institutional factors more closely.

(I) Introduction

Our findings on conceptions of teaching explained in chapter 5 lead us to investigate the teaching context of Canadian law teaching. We saw that at least for a group of law teachers, there is a disconnect between their conceptions of teaching and their teaching practices and that this disconnect is most likely caused by the teaching context, including institutional culture, institutional constraints and students.   Moreover, even those teachers with consonant relationships between their conceptions of teaching and their teaching practices expressed ideas and concerns about the teaching context and how it impacted their teaching.

It is therefore helpful to examine teaching context more closely.   When I originally analyzed the interview data, I grouped together into the category 'external factors' all the factors mentioned by law teachers in interviews: institutional constraints, such as course characteristics, regulations and directives, institutional culture, including the relationship between research and teaching at the institutional level, and students (expectations, abilities, evaluations). Some of these were also identified in the web-based questionnaire as factors influencing pedagogical choices. After looking at the literature, and for the sake of coherence, we refer to these as elements making up the teaching context.   This terminology is also more reflective of our data analysis, which does not establish cause and effect connections but rather broad relationships.

(II) Teaching context - findings

Judging from the survey and interview data, institutional factors such as course characteristics, institutional requirements, the physical set-up of the classroom and workload seem to influence the pedagogical choices of law teachers.   As we will see in this section, law teachers also talked to me about institutional culture in relation to

teaching, or rather their perception of the institutional culture. Students also emerged as a major theme in the analysis; student abilities, student expectations and attitudes towards learning, and student evaluations (which are also an institutional factors) were a constant theme throughout the interviews. Finally, it seems that the teaching-research nexus is a factor more at the institutional level than at the individual level, where it concerns mostly the content of a particular course and not the teaching practices.

(A) Course characteristics

Respondents to the web-based questionnaire were asked to choose the factors that influence their choice of teaching, learning and evaluation methods.[1] The characteristics of a course (type of course, format, course content or subject matter, class size) seem to be a substantial factor in professors' pedagogical choices (See Figure 6-1). Course type, i.e. whether the course is a regular course, a seminar or a workshop, as well as students (number of students, undergraduates/graduates, first or upper years)[2] seem to be the two most significant factors influencing law professors' choices of teaching and evaluation methods as they were checked off by 81.7% of respondents. Class size is indeed a factor that influences the choice of teaching methods for many professors, as this comment by a participant indicates:

> Yeah, well small group, large group, it makes a bit of a difference. (APW3)

For those who perceived class size as a factor in their teaching practices, it was mostly a question of student engagement. The more students there are in the class, the less engaged they seem, or the more difficult it is to engage them. Student contact is better with a small class than it is in a large class because with a smaller group, teachers can get to know the students by name and ability and they can build a relationship with students.

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[1] This was the exact question on the questionnaire: "Generally, which of the following factors and conditions influence your choice of teaching, learning and evaluation methods? Check all that apply."

[2] 81.7% of respondents elected "students" as a factor influencing their choice of teaching and learning methods.

Figure 6-1   Course characteristics as factors influencing teaching methods
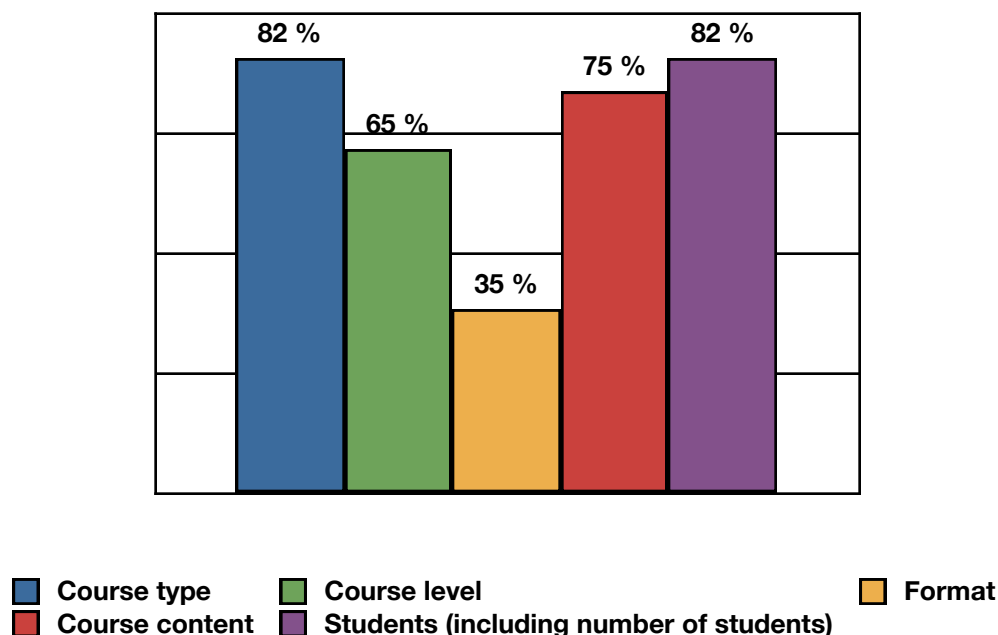
For example, this participant told me that in a large group she felt she was talking to a mirror and she had to do discipline or the students would be chatting during class (I saw this happen during my observation of her class). On the other hand, she said teaching a group of 40 was like paradise because student engagement was high and she had a personal relationship with students:

> *Donc, lorsque j'ai eu un groupe réduit, c'est-à-dire 40 personnes parce que j'avais le travail obligatoire dans mon cours, c'était le paradis. Parce que c'est sûr que le travail pour nous c'est une charge supplémentaire mais le contact qu'on a avec les étudiants, à peu près 35 étudiants participaient au cours, j'avais de la difficulté à conserver en fait mon rythme tellement ça participait et je ne voulais pas non plus freiner ça. Puis, ces étudiants m'écrivent encore aujourd'hui. Ils ont fini leur bac et m'écrivent encore aujourd'hui, ils sont dans le monde. J'ai eu vraiment une très très belle session quand j'ai eu ce groupe-là. (AsPW9)*

Although the following participant did not know whether class size affected the students' perception of the learning environment, she mentioned that with a group of 70 (still large), she could learn their names and ask them questions, which she could not do with a group of 180. To her, this meant a more interactive form of lecture:

And I did both. So I both lectured two groups of 180, you know with a microphone and a podium, and unable to see the students at the back of the room. And that is a different style of lecture. I don't know that it's much different in terms of student experience, but when I was lecturing here, where the group was about 70, I tried to learn most people's names. I try to make eye contact with people, and I try to ask people questions. I never attempted to do that with 160 or 180. (AsPW1)

Others mentioned that it was easier to create a safe learning environment and therefore to get students engaged (i.e. asking and answering questions) in a smaller class, although one did mention that it was not impossible to do so in the large group.

...students do best when they feel like they are in a safe learning space. So if they feel like they are in a place that's familiar, and if you can try and make them feel disarmed at the beginning, then they'll do better. They'll have a comfortable learning environment where they aren't feeling imposed upon but more welcomed and invited, then I think that they do better. And it's easier to create that kind of environment in a small class, I think, but in the bigger class I think it works. And it can be done, it just takes a little bit more effort. (APW4)

Another participant told me about dividing up her large classes into smaller groups so that she could engage the students more to facilitate their learning:

But, I have, in the past, the way I DESIGNED [name of course], and I think is the ideal way to do it is to have one session a week that's the whole class. And then a session that's split up that I repeat however many times. So I can get 20 to 30 students in each session. Then it's more problem-based. And they would follow up and learn something new. So it's not that it's taking what we did up in the lecture, because that makes it sound that the lecture's more important and this is peripheral. It's something new but it's a different format. So I have done that in the past. And that, when I do it, I know my students much better. I know every single one of them. And I know what their abilities are. Every single one has to speak, because they don't have to speak in the big class, but every single one has to at one point report from a small group or engage, present something. So I think that's the ideal. (AsPW7)

For the law teachers I spoke to, trying to incorporate active learning in a large classroom presents some challenges. Students do not always cooperate and professors have talked to me about "losing half the class" when asking them to do a task.

But I have taught, well 70 is a big group in law school. And so, that was really a challenge. And I've read some of the books about trying to get them to do a minute paper and try to get them to talk among themselves. But it's very hard to get them all to respond. You know and if they don't and they start chatting, then you lose half the room. I found that it was quite difficult so I would like to practice that more. But in my first year small group class, it's a small group, so that's much more amenable. (APW3)

How big a large class has to be before it is perceived as too big to be interactive varies between law teachers. For some, you can engage a class of 70 motivated students, whereas for others, a group of 25 is considered a large group, with less interaction possible, as we can see from these two quotations:

> I do not blame the size of the classroom, because our large classes are nice and out around 60 or 70 on the whole. That is not too large to have in theory active engaged students. And I know that because I had a significant teaching career before I came to this law school. And if you have 60 or 70 actively engaged students who are willing to invest time to come prepared and be committed to the process to engage with each other, a classroom of 60 or 70 can be dynamite. So that's not the problem. (FPM1)

> I mean up to 30 I think you can get interaction. When you get over that it's very hard. You tend, that's when your case method slides into lecture method. Your case method decreases with your class size. (FMP13)

For instance, this participant, who loves to teach seminars of about 12 students, thought a group of 25 students was the same as a group of 75 students. As a result, he did not change his teaching practices much between these two group sizes:

> I would say that my delivery doesn't actually change that much between big and small, and with 25, it's still a large group. At least a relatively large group that I don't feel comfortable having the students direct their learning in that group. But I think that with 75 I can still take out the monotony of the lecture by asking students to work through something, part themselves in small groups. (APM1)

For others, class size is not a barrier to active learning. This participant, who taught in large groups and seminars, still believed that she could keep a large class just as active as a seminar group:

> I mean I don't use PowerPoint, for example, in a smaller class, but I still try to do the same thing like encourage that dialogue, the discussion, and use the problems. I find the problems are actually really effective, no matter what I'm doing. (APW4)

One participant, who uses a "soft Socratic method" as he describes it, does not believe that class size (he is talking about here of a class of 400) affects his ability to engage students:

> You can treat these people like they're just sitting there taking notes, or you can actually try and engage them. And there's people in the back rows in the room of 400 that will talk to

you as long as you let them in like that... there's no reason to think that in a bigger group you wouldn't connect with just as many people or be able to have that kind of teaching connection with them. I think. (AsPM3)

One professor I talked to even loves carrying out his conversational teaching approach in a large class (of 100) because the size of the group affects the group dynamic in a positive way:

Q: How do you manage to get a conversation going with 100 students?
P: Well I think the same way you get it going with 15. In other words I mean it's by not letting the numbers dictate the atmosphere. And I think there's in fact a nice chemistry you can build up with a full class. Nothing's more depressing than a half empty room, in some ways so, you know, I think that the tactics often are to make sure you yourself are presenting a personality that is in conversation mode as you explore the ideas and that for me isn't very difficult because I'm exactly the same way in the classroom that I am outside the classroom. (FPM4)

Course type, course format and class size are very closely related to each other and to course content (e.g. "black-letter law" course or a "law and..." course), the latter being related to both institutional and student expectations about the course. Law teachers in common law faculties even talk about course type and class size together by differentiating between "large lecture classes", which usually refer to first year and upper year mandatory or elective courses and have large class sizes, and seminar classes, which typically have less than twenty students.

Moreover, course type is closely related to the issue of "coverage", which as we saw earlier, constrains some law teachers into more teacher-focused practices. Many law teachers I talked to feel the pressure to cover a certain amount of material and in order to do this, they must sacrifice interactivity for efficiency through the use of lecture. Law teachers teaching the first year basic courses or mandatory upper year courses feel this pressure to cover content and it does impact their teaching practices. For one participant teaching both "large lecture classes" and seminars, class size seemed to impact her teaching practices, but as she kept talking, this concern seemed to be subsumed by the pressure of coverage that comes with such "large lecture courses":

So I mean I do tend to use small groups a lot, but not in my large lectures. In fact I would be interested in learning more about what to do with large lectures. But I feel so constrained by the need to cover a certain amount of material, and I already cover much less than other classes do. Because I have much more discretion I think I do move more slowly through the material. (AsPW2)

One participant was concerned about students going into practice without knowing all of the law of contracts. For him, coverage was a huge issue:

I've known past colleagues that never get beyond offer and acceptance... I think it's tragic because we must, of course then again it depends on, do you view your law school as training schools for practice or what? [sigh] (FMP13)

The pressure for coverage does not seem to be an issue in upper year seminars or elective upper year courses, unless these are recommended by the Bar.[3]

I mean what I've tried to do in [upper year elective course] is a lot of modeling in my teaching. So that I try to show that I'm enthusiastic and engaged and that it's kind of fun to think about the common law judge or the way in which the common law understands itself. I try to do much less coverage if you like, or checking that they've read carefully. I just make it clear that I assume that and that then we can have a conversation. (AsPW7)

Pressure to "cover" also implicitly leads professors to change their teaching method to a more surface, more efficient (and therefore less interactive) lecture because of time issues. There is no time to do interactive teaching, no time to go deeper into the cases, no time to talk about why the law is the way it is and no time to try alternative pedagogical methods because we have to cover for this course the whole of the syllabus in the time allotted (which is never sufficient). The following examples illustrate these concerns:

I can't spend the time to take them deep enough into one case when all I need, when what they need to know is the law. Because if you try to explain to them why it's wrong then it takes too long. (APM2)

Effectivement, je dois toujours me rappeler que je n'ai que deux heures cinquante à ma disposition chaque semaine [rires]. Donc, il y a des limites à ce qu'on peut faire, deux

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[3] In Canadian law faculties, there are number of courses that are recommended by the provincial Bars that law students should take. This is even more so now after the Federation Task Force Report (see chapter 1). Even though these courses are not mandatory, most students take those courses; they are then labeled "core" courses: for a detailed view of this phenomenon, see Annie Rochette & W. Wesley Pue "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Yearbook of Access to Justice 167. It is important to note, however, that even for those "core" courses, not all law professors felt they needed to cover a certain amount of material.

heures cinquante avec en plus la pause, donc en réalité c'est deux heures trente qu'on a à notre disposition. Alors, il faut calibrer évidemment la matière qu'on prévoit couvrir en fonction de cet espace temps et ça implique peut-être oui, la renonciation à certaines choses qu'on aimerait faire mais qui prendrait trop de temps. C'est souvent d'ailleurs ce qui va motiver la renonciation à des méthodes plus actives, bon il y a, ça serait bien chouette de le faire mais si on s'engage là-dedans, on n'y arrivera pas côté temps, on n'arrivera pas à couvrir suffisamment de matière compte tenu du temps qu'on a à notre disposition. Donc, le facteur temps oui est une contrainte. (FPM8)

For this participant who has a facilitating learning conception of teaching, time and "being comprehensive" were issues that pushed her to lecture even though she knew the students might not be learning as much:

So, [pause] so I guess it still is me in the sense that I'm not fully anti-lecture. I just realized that it's the least effective thing to do [chuckle] for most things but I will still do it, either because it's a time issue, right? So I still feel, it's me. It's very much part of me to feel compelled to do things because I need to be comprehensive, while recognizing that maybe no one's learning it, even though I'm fitting it in. I still respond to those types of things. (APW2)

In one class I observed, the teacher told the students he would lecture about a particular case because there was no time to discuss it as the next class had to be cancelled.

However, law teachers have different priorities about coverage. The following two comments indicate that these participants are more concerned about facilitating learning or going in deeper with students than with covering a certain amount of material:

I factor in the group exercises into my coverage. So I make a conscious decision to do less sections of the Charter, for example, but to do them more thoroughly by doing, enabling them to not only be introduced to the materials but work with them. (APW1)

So not getting through the course material is rarely something I perceive as a problem. (FPM4)

However, this last participant did acknowledge that coverage is important for those basic core courses (which he does not teach):

But I have stayed away from the core, doctrinal canon courses where you do feel like whatever I may believe about this field 80% of it just has to be taught the same way irrespective of the school you're at or the moment you're in and I think that there are some courses where that does have a conviction to, that there's a canon to teach. And I think the first year tends to probably be more about that than the upper year classes. (FPM4)

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Law teachers also seem more interactive in their approach in seminars or upper year elective courses, because of the smaller class, but also because they feel more "free" to follow their ideals without feeling the pressure to lecture or take a more conventional approach to teaching as students are self-selected.

> One, it's the numbers. It's also self selection in terms of, I don't feel the pressure of the "black letter law" course. So, in the seminar I tell students up front "this is a seminar". I just feel more at liberty to... (APW2)

> And then the course you saw is an elective course; people who are taking the course know what they're getting into, who they're getting into it with...and so you know this isn't a scare issue for them or a worrisome issue for them so I don't have a lot of trouble with compliance in terms of readings. (AsPM1)

The survey results also point to course content or subject matter of the course as being an important element in pedagogical choices, as 75.4% of respondents chose it as a factor. 64.6% of respondents also chose course level (first year course, upper year seminar, graduate course) as a factor in their teaching and evaluation choices.

(B)   Institutional requirements and constraints

(i)   Institutional policies

Other than course characteristics, which are most often set by the institution, institutional requirements such as internal policies or directives were also said to influence choice of teaching and evaluation methods by 26.7% of survey respondents. If we compare this number with other factors, for example those related to course characteristics or student expectations, this factor does not seem to be that significant. However, some institutional requirements other than course characteristics were mentioned by a few participants in interviews, such as certain types of evaluation methods being imposed by the institution. For example, those teaching a "small group" in first year in some law faculties were required to assign legal writing assignments,

whereas those not teaching a "small group" had to use an exam, as explained by this participant:

> For the [name of course] course, the evaluation is very much set by the institution and by whether I'm teaching in a large group or a small group. And if it's a large group, then there's a mid-term exam that can only help them on their final exam. And, the final exam is potentially worth 100%. (APM1)

However, when probed about how mandatory this 100% final exam is, the same participant responded that perhaps it was not an explicit rule:

> I mean I don't think there's an explicit rule that requires a 100% final exam, but I think this year actually some of my colleagues have raised the idea of changing their evaluation method in the large group, and were told that no, this is the standard format in first year. But I think that was through the level of the committee, a committee decision rather than a... basically I don't think that faculty has considered evaluation methods for quite a while. So any change would probably be part of a larger review of that. (APM1)[4]

Another participant told me her teaching methods were driven by the evaluation method (an exam) because she then had to worry about covering the material. One professor, who had at one point evaluated 1st year students using a written assignment instead of a final examination, was told by his administration to go back to an examination because of unequal workloads between sections of the same course even though, in his opinion, the students had thought the assignment was a much more valuable exercise.

However, institutional requirements (other than course characteristics) in law faculties in Canada are overall quite minimal, as we can tell from the analysis of the interview data. Would law professors want more institutional constraints?

Those who raised the issue in the interviews wanted more institutional norms to ensure uniformity between them and their colleagues. Some of the institutional issues that were

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[4] This is an interesting comment because it raises a chicken-and-egg issue of changes to teaching and evaluation methods. Some professors do not want to deviate from what they perceive as an institutional norm even if they realize teaching could be more effective by making changes. So they wait for the institution to discuss reforms and changes. However, institutional change is a very arduous and long process which usually results in ad hoc and minor changes. The "norm" is therefore not easily changed institutionally. But if every member of faculty decided to change her teaching and evaluation methods, wouldn't the institutional norm then change itself? The issue of institutional change is a very relevant one to this study, but also a big issue which we do not have the space to explore further. For an interesting article relevant to changes to law school curriculum, see, for example, Rose Voyvodic, "'Change is Pain': Ethical Legal Discourse and Cultural Competence" (2005) 8 Legal Ethics 55.

raised in interviews were the presence or absence of institutional grading curves, ranges or guidelines to ensure fairness between sections, set course content in mandatory courses to ensure coherence between those courses, and the presence of conceptual building blocks for students.

However, overall, these kinds of institutional requirements and constraints did not seem to significantly influence teaching practices. The physical set-up of classrooms, however, seems to be an important factor.

(ii)   *Physical layout of classrooms*

Physical space and the layout of the classroom was listed by 41.3% of respondents as influencing their choice of teaching methods. Physical space can indeed be constraining on the teaching methods we can use in a classroom. For example, in one class observed, the professor had to turn her back to the class in order to use the overhead projector, which was used for a great proportion of the class. This meant that often she would speak to the class with her back turned to students. She was therefore not always able to see hands going up with questions. In another class I observed, there were physical barriers such as an overhead projector, chairs and tables in front of the blackboard. Therefore in order to explain something using the blackboard, this professor had to move over these obstacles in order to get to it. I also noticed in my observations that in many civil law large auditoriums, the professor was up on a stage at the front of the class. When students would go up to the professor at the break or at the end of class to ask questions, they would be looking up to the professor in order to talk to him or her, making the dialogue between teacher and student a little uncomfortable.

One participant richly describes the situation of the physical layout of classrooms in her institution:

> *Our classrooms are just terrible to work in, it's a really crummy environment. The equipment in the classrooms is pathetic. I went to [another] law school, and they've redone their classrooms with all the state of art. You know they have a big console that has a computer built into it, and they have two screens. You don't have to bring your thing, you just get onto*

a central server. And you can just show up with nothing and get everything from there. And it's just a beautiful environment, whereas, we teach, we're tripping over chairs, there's computer cords at our feet, there's one overhead in one of the classrooms that only lights up half way. They've lost the other half of the screen. And, it's just, you know, those would be good things that would show the importance [of teaching]. (AsPW2)

(C)   Workload and resource constraints

Canadian law teachers are feeling the crunch! Time, or rather the lack of time, came up repeatedly in interviews and according to my data it is definitely a barrier to adopting teaching strategies that foster active learning, especially if this means changing practices. 55.4% of respondents to the web-based questionnaire identified time and resource constraints as a factor influencing their pedagogical choices, 34.6% listed "other obligations, such as research and administrative duties", and 43.3% listed teaching load as a factor. This result is consistent with what was mentioned to me in many interviews, as illustrated by this statement:

> *The workload in this place, I mean I think it's true in most schools, it's just, particularly administrative. By it's just THROUGH the ceiling, and I don't want to keep track, because it's so depressing but conservatively, 40% of my time is administrative. (FPM2)*

The heavy workload was not always directly mentioned, but the overwhelming concern of the professors I talked to about time, or rather the lack of time, said as much. As time becomes a scarce resource, choices must be made.   As these two statements from assistant professors indicate, changing teaching methods, designing active learning activities or giving students many opportunities for feedback take more time:

> *My ability to think about new ways of delivering material and then figure out how to implement them is constrained by the time I can devote to teaching. And it seems when I'm in term, that all of one's time is devoted to teaching, that one's scrambling around the edges to fit in everything else that one wants to or needs to do. So I guess time is always a constraint of everything. (APM1)*

> *I think the evaluation is a big thing for me, like making sure that they get constructive written feedback on their writing during the course of the year. So I do a written assignment and I don't think it' valuable unless they get quite a bit from me. So I'm sure I won't continue to do this as I become a more senior person, because it takes a ridiculous amount of time. (APW1)*

When legal academics start teaching, they feel that they must first make sense of the content of their courses; therefore they spend all their time learning the content and have no time to prepare interactive activities. This assistant professor talks about her first year teaching a particular course:

> *I find it takes more work to do interactive things rather than lecture. Surprisingly it does. And I had no time to do anything other than figure out what was going on in the cases and present it to the students. (APW2)*

Not having the time to move away from the teacher-focused lecture to more active, learning-focused teaching methods also led many to frustration and stress. The stress for time of this participant, who wants to implement active learning in her classes, is palpable:

> *This [book about teaching] is a REALLY good book. And each chapter is like 15 pages long, so it doesn't take you another afternoon to figure out, you know. And it has really, really useful tips. But I think a lot of it is just time. I think a lot of it's time.*
>
> *Q: Do you find yourself, totally stressed about it?*
>
> *Uh huh [affirmative]. It's AWFUL when you have a bad class. It just makes you feel upset for [chuckle] the next whole day! It's really hard. I don't mind if there's a bad class when you made your best effort and sometimes it just doesn't click with them. You know, I've had the feeling that I wish that it did, but I don't feel that horrible. But when you know that you could have done more, but you just ran out of time, and you know you feel that you let yourself down [chuckle] and you let them down. And sometimes you can lose it too, so even if your next one's brilliant, you still, like once you go down the wrong step, it's hard, very hard to get back up the step, I find. (APW3)*

Lack of time also means that those law teachers who would want to build a relationship with students feel they cannot afford the time, as expressed by this participant:

> *I'd take them for drinks and ask them how they think the course is going. Ideally I would still do that but honestly my time is so limited in terms of the time that I have at the office. I can't just go for a beer with them at five o'clock and chat about how the class is going. I just can't, I don't have time to go for lunch. I just don't have time to do anything, and I don't know, it doesn't sound very friendly or very open. I don't think it, that means, I hope, maybe this is just self-justifying. [chuckle] I don't think that means that I'm a worse prof and I'm less able to, as I say, read how they're reacting to me. (AsPW7)*

As we will see later, the workload and time issues are closely related to the tension between research and teaching obligations.

(D) *Institutional culture*

Other than the institutional requirements and physical environment just mentioned, institutional culture, or rather law teachers' perception of institutional culture, also seems to have an influence on teaching practices in three different ways. First, in my fieldwork, I noticed significant differences between research-oriented institutions and teaching-oriented institutions in the general atmosphere of the place, the size of classes, and more importantly, in how professors from each institution talked about institutional support (or not) for teaching. In more teaching-oriented faculties, people were around, their doors were open, professors were chatting in the hallways with each other and with students. As this participant from a teaching-oriented faculty points out, open door policies and being available for students are considered important institutionally:

> It's a school that has a reputation of being a good teaching school and yet, when you look around, some of what you see is not good practice... Colleagues who are never available to their students. You know, we have an open door policy, nothing formal, but I think that's sort of generally the approach. But there are some who are never here, so their doors are always closed. And I think that affects, I think it sets a tone. (AsPW6)

In more research-oriented faculties I visited, office doors were closed and people were difficult to find.   In a sense, there was more of a community feeling in the teaching-oriented faculties. During my visits in those faculties, I was welcomed with an office, people came to chat with me and I felt I was part of a community. In the larger, more research-oriented faculties, I felt like no one even knew I was there and it was more difficult to find volunteers for my research project.

Secondly, it is also clear from the interview data that in teaching-oriented faculties, teaching is seen as important and is supported by the administration and by the institutional culture. Therefore, those who want to be interactive in their teaching and to use alternative methods are encouraged to do so and are supported, as this participant tells us:

> I think my approach to teaching has shifted. And that's partly because of an institutional climate that's very supportive of that, and actually to some extent has always built in an expectation of sort of more interactive inclusive approaches.

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> *I think that being supportive of creative and inclusive pedagogies is important to have institutional support that is more than just words, but actually thinks through structures and on-the-ground ways to make that happen. And to also do it in a way that takes account of the vulnerability of more junior members. (AsPW4)*

However, the flip side of this coin seems to be an ethos of student evaluations. Teachers in those faculties were concerned about their teaching "scores", as expressed by this assistant professor:

> *But it wasn't until getting a flavour of institutional expectations about your teaching scores and then how students were perceiving certain things. Then I started to modify, according to what was going to affect or not affect my scores to a certain extent, still retaining things that I thought were important. (APW2)*

Teachers concerned about student evaluations thought it was therefore risky to deviate from the traditional approach to teaching as this could affect their "scores"; this was even more so for junior faculty members. There was sort of a paradox, therefore in valuing teaching but still holding on to the more traditional model of teaching, as explained by this more senior participant:

> *It was a kind of paradoxical situation of having, you know, this very friendly supportive climate for a more interactive approach, but not much understanding of how risky that is in the classroom for someone who's junior. You know and I think that's a really, that's something that always HAS to be factored in when institutions try to be more self-conscious about what their commitment to pedagogy entails.*
>
> *Q: Why do you say it's risky?*
>
> *Because, I think that to the extent that you depart from very traditional models you might be seen as not doing the real thing, not delivering the goods. You know, not being a conveyor belt of information. (AsPW4)*

A third element of institutional culture that seems to influence teaching practices is the tension between research and teaching, which was present in both teaching-oriented and research-oriented faculties. This tension has an impact on teaching practices for two main reasons. First, it is an issue of time and resources. If there is not sufficient time to do all of what we are expected to do as an academic (research, teaching, administration), then we should focus on what is valued in our institution. One assistant professor (i.e. did not have tenure yet) in a research-oriented institution expressed this implied rule:

I don't know of any place where that's necessarily actually true. I mean certainly if your teaching is appalling, then they definitely call it to your attention, for sure. But all things being equal, if you had an extra hour, you should spend it on your research... It seems to be the organic feeling. It's not really said. But it seems to be implied that if you're just a middle of the road researcher but a fabulous teacher that's nice, but you should probably do some work on your research. (APW3)

The following participant, also from a research-oriented faculty, told me about putting all his time and energy into teaching and writing a casebook when he first started out teaching and felt this was not valued by his colleagues:

I think one of the things that has at times had an impact is the expectation about research and the tension. I think the first few several years I just invested a lot in my teaching and to some extent at the expense of research that was recognized. I mean this is research [pointing to the casebook he wrote] but it wasn't as well recognized I feel. Maybe it was at the end of the day, but it took a long time to get there. So that obviously has an impact the more you're doing other kinds of research that aren't directly related to your teaching, the teaching invariably can suffer a little bit, right? (AsPM2)

For participant at a teaching-oriented institution, the tension was expressed at the other end of the continuum:

One of the things about [name of her institution] that surprised me was the pro-teaching culture and an attitude that if you wanted to do research you were somehow turning your back on teaching, which I don't think is an accurate, or a proper way to see things at all. And so because coming from [research institution], which is so different and having advisors from there, I would have a really mixed message about what I should be doing. So from here it was like, just focus on your teaching, but my advisor said "No, you should be applying for a SSHRC grant." And I'm just like, "But no one applies for a SSHRC grant here!" [chuckle] (APW2)

Secondly, those who consider themselves teachers first, or who spend a great deal of time preparing for teaching at the expense of research, implicitly feel less valued than their "scholar" colleagues as we can see in these comments:

They'll tell you that your work on your teaching is important, but they don't say it's not important. But I think that if there was a professor who was a GREAT researcher and an adequate teacher, and a person who was a GREAT teacher and an adequate researcher, that the first person would have a lot more prestige. And the second person would be, "Oh, she's such a great teacher, that's great."... But you can say, this person got this grant, you know, on the web site. This person is doing this project, this person is launching this book, or this person did this competition, or this person got a teaching award. [pause] You know? It's sort of less, and there's less of them. So it's much much harder. Or it's more unusual to get the university teaching award than to get a grant. So fewer people will get

them. And I mean I think if you got a 3M award or something they would go crazy for sure. Certainly my understanding is that my teaching should be good, but really getting grants and getting published is something that's more important. (APW3)

It's more the sense of "Are you somebody who COUNTS in the institution? Are you a scholar? Are you a whatever?" And as I said this stuff [pointing to a policy article] gets you more bonus points than this stuff [pointing to the casebook he wrote]. So I've been shaped by the values of my institution that way a little bit. (AsPM2)

The teaching-research tension did not affect everyone the same way. When I asked him whether the fact that teaching was less valued (although still valued) than research affected his teaching, this full professor responded that it did not:

Non, non, ça ne m'a pas affecté, c'est-à-dire que je ne me suis pas laissé déstabiliser par ça. Je savais qu'il fallait faire beaucoup de choses à la fois, je sais qu'il faut le faire encore mais et j'espère, et j'espère beaucoup qu'on va garder cette réalité, c'est-à-dire cette préoccupation de ne pas dire bon tout à coup là, il faut tout mettre de côté parce que le plus important c'est d'obtenir des subventions etc... À mon avis, on n'est pas rendus là. Moi en tous cas, dans mon cas, je n'ai pas fait ça, peut-être que ça a pu retarder, pffff bon je sais pas, j'ai jamais mesuré si ça a eu un effet ou non parce que c'est toi qui décide quand tu veux soumettre des demandes sauf pour la permanence, le reste tu peux dire j'attends quand je serai prêt. Mais non, moi à mon avis, pour moi ce n'est pas une préoccupation. (FPM12)

Institutional culture also fosters a "norm" or a certain way of being, which for teaching and evaluation methods is mostly perceived to be lecturing and giving a 100% final examination. There was a good deal of reference to this "norm" by participants, as is expressed by this participant:

And, [pause] again it's like fighting against the norm, but I think you have a lot of the younger faculty members and some others who are using them. So at least it doesn't look so popularized to your class... Because I think, maybe because the over-arching norm has been the lecture, and then they're so surprised that I've had pair-share opportunities or something in class, or have someone stop and say, "Okay that was a difficult point, so let's make sure everyone understands it. Just try to reiterate it to someone else, what you think I just said." (APW2)

Some identified themselves as fitting in with this norm, whereas many felt they were constantly going against it. Some nevertheless felt the pressure to conform, thus resulting in a disconnect between conception of teaching and teaching practices.

In talking about teaching, law teachers thus compare themselves to their colleagues and most of those who use "alternative" teaching strategies and evaluation methods feel they are alone in doing so. Many law teachers I interviewed actually had a negative view of their colleagues' teaching. For example, some talked about their colleagues spoon feeding students, not wanting to have a relationship with students or caring about student learning. Indeed, perceptions of individual teachers of being "the only one" to do what they were doing were commonly expressed as we can see from these examples:

...je dois être le seul à utiliser cette forme d'intra qui est un examen sur une page. (FPM11)

On using tutorials in his Contracts class, this participant said he was the only one doing it:

It's totally optional and it totally goes against- there's not other profs who have this- so it's like our Contracts section is the only one that has this. (AsPM3)

This professor was apparently told by students he was the only one who said "hello" to them before starting a class:

Moi je suis surpris tu sais que des gens m'écrivent « Vous êtes le seul professeur qui nous dit 'Bonjour!' en commençant. » Miséricorde il y a quelque chose de bizarre. (FPM12)

Another professor, whose teaching method is in large part the Socratic method, also thought he was the only one teaching students how to analyse cases:

I know not a lot of people do what I do although they may profess to do it. (AsPM1)

Moreover, those professors going against the perceived "norm" (as well as others) have a harder time using learning-focused practices because of student abilities, attitudes and especially, expectations. For these teachers, going against student expectations often resulted in poor teaching evaluations, which made them change their teaching practices to what they perceived students wanted in order to avoid having to explain bad teaching evaluations.

(E) Students

In general, the law professors I interviewed have a very good opinion of the abilities and intelligence of incoming law students. They consider themselves privileged to be teaching to a group of intelligent and motivated students. However, many of the law teachers interviewed complained about students' attitudes and expectations, which seem to affect their teaching practices.

(i) Student attitudes and expectations

When law teachers talked to me about students in relation to teaching, it was mostly about students' passivity, unpreparedness, and their resistance to some teaching and learning methods. These behaviours often influenced teachers' practices, usually away from more learning-focused methods to more teacher-focused methods. Those teachers using more learning-focused methods complained about students' passivity and unpreparedness for class (i.e. not having read the material) because students would not be able to answer questions, as we can see from this statement:

> *Students want to be spoon fed. The consumer demand is to be lectured to, to have an extraordinarily intellectually rich but also complex subject area presented to them in digestible coherent story lines, very little intellectual curiousity, in fact a distinct lack of patience for intellectual aspects of [area of law], and no willingness on the part of most students to do readings ahead of time, or to engage in any discussion, which is actually hard if you haven't done the readings. And ill temper and lack of patience with students who have done their readings and are prepared to engage in discussion because after a while you're tired of hearing the same very few voices. (FPM1)*

Students not doing the readings is a very common frustration expressed by participants, and it seems to be worst for students in upper years than for first year students. According to many participants, upper year students develop all kinds of strategies do to the least amount of work as possible. This participant describes the effect of students' passive behaviour in the classroom, which she believes is encouraged by what her colleagues are doing:

> *... some of the worst aspects of our teaching, and I resent them increasingly when I see their consequences in the classroom. When I'm prepared to do an exercise that I've prepared but the students haven't prepared for. Or when people say, "Could you repeat*

what you just said?" when, A, I can't and B, it wasn't particularly on point so why would you want to write that down anyways. (AsPW1)

Another professor complains about upper year students' lack of motivation:

I don't know that I ever really figured out, and I'm still trying to figure out the challenge of mandatory upper year courses, which are more of a challenge. First year students don't display that attitude of, "Oh I have to be here. But I don't know if I really want to be here." Or "why am I here?" Second years are more of a challenge. I mean what I've tried to do is a lot of modeling in my teaching. So that I try to show that I'm enthusiastic and engaged and that it's kind of fun to think about the common law judge or the way in which the common law understands itself. (AsPW7)

This other participant explains the impact of students' unpreparedness on her teaching. Although she would like to spend classes having critical discussions about the law and instead, she must deliver the "positivist pieces" because the students have not learned them on their own:

No I feel that they should learn them on their own. But they should have all that before they come to the classroom. And then we should be able to do this more adventuresome piece. But there is the sort of disciplining sometimes of students where they don't come, often with it done. So you'll get a class of students who come in and they haven't read the cases and it becomes very clear a few minutes in that they haven't. (AsPW3)

The teachers I interviewed have developed various ways of coping with unprepared students, including pop quizzes on the content of the readings, assigning a smaller amount of material to read, doing group work exercises so that peer pressure will force them to come prepared, evaluating class participation, or accommodating this fact by telling students what the readings were about so they can then discuss them. For example, this next participant first lectures on the rules and then gets students to work on problems because sometimes students read but do not understand what they are reading:

… je me suis donc rendu compte et c'est vrai, que ce n'est pas parce qu'ils lisent qu'ils comprennent. Enfin, je pense. C'est exprimé clairement sur papier mais ils n'ont pas nécessairement compris. Donc, ils ne sont pas capables de nécessairement, sauf les, je dirais les très très bons, le 10% de très bons qu'on a dans la classe, ils ne sont pas capables de faire les exercices ou de réfléchir à certaines situations, ce n'est pas assimilé. Alors donc, je me suis rendu compte qu'on ne peut pas faire ça et que dans le fond, il faut faire un rappel théorique au début avant d'inviter les étudiants à passer à autre chose. Il faut faire comme une synthèse et donc, je m'emploie à faire ça. Je fais cette synthèse, j'essaie de la présenter de façon différente du livre. (FPM6)

Law teachers also talked a great deal about student resistance to both learning-focused teaching methods and to content that was other than "the rules". For example, one participant who uses the Socratic method in his classroom said first year students resist it at first because it is more work, but then, says this professor, they see the value in it and are thankful for this kind of teaching:

> I meet with all kinds of intense resistance from a core of students all the time. Why do I think they resist? Because it involves a hell of a lot more work. And so, they say to themselves, "why do I have to do all this other stuff when the other people don't have to do it?" It's sort of resentment that they're getting too much for their dollar. (AsPM1)

One participant who required her students to write reflective papers on one or two cases talked to me about the resistance of one student to doing reflection:

> But she felt like this whole idea of reflection and theoretical approaches, she didn't tell me it was a waste of time, but I kind of got that point. [chuckle] ... But I think she's one voice among many. I don't think they're all like that. (APW4)

Student resistance to any kind of critical content or discussion of the context of the law, or policy questions was a widely held frustration and concern. This participant expresses students' expectations about "getting the law":

> There's one of the tensions of teaching, the ways in which the student body, the desire of students for, solidity and fixity and firmness and known-ness, puts this pressure back on faculty to in fact produce, or provide, that content. (AsPW3)

If the professor is not teaching "black-letter law" or "the rules", students react negatively because they feel they are not learning the law; they are therefore wasting their time discussing these larger issues.

Some participants attribute these attitudes and behaviours to institutional culture whereas others blame student consumerism or instrumental views about legal education. Students compare their workloads with those of other students in other classes and complain if they perceive their own to be heavier. The law teachers who make students work more than others are thus "unpopular". For example, this Socratic teacher believes students resist because no one else requires them to do this kind of work:

Ah, one of the problems I face is not a lot of people do what I do. So, students find doing it for me is extra hard because it hasn't become a way of thinking, a way of doing uniformly across the board. So I meet with opposition and objection along the way because it's strenuous, it's this and that, but I mean ultimately they see the value and merit in it and are thankful to have had it. They say to me in many cases, "Geez if I hadn't had it from you, [chuckles] I don't know if I'd ever know how to read a case". (AsPM1)

An institutional culture where heavy workloads (huge amounts of readings) and sit-down final examinations ask students to memorize and sometimes apply what they know encourages the following behaviours from students, as expressed by this professor:

I mean we lie to them. They come here, we say, you've got all these really big case loads and you have to read all the way through and start looking through the intellectual problems all by yourself or you'll never understand anything about law. And about week two they realize that all they're getting is lectures. About week three it dawns on them they don't have to do a paper. They don't have to do assignments. They don't have to do a mid-term. All they have to do is get through a 100% exam. And around week eight they look up the old exams in the library and find out, gee they can only ask me four questions. They can't possibly cover the whole thing, you know. And in the time available I can't possibly do an in-depth legal analysis. So all I have to do is memorize the rules they consider in the CAN [i.e. a course summary] that's circulating around the web, or wherever they're finding it these days. And that'll get me whatever grade I'm predestined to get. So I think, you know we lie to them as to their expectations. (FPM1)

Many law teachers interviewed also believe that law students hold a very instrumental view of their legal education. They are basically there to get a "ticket" to a high paying job and hold a mistaken belief about what it is they need to know. Others go further and say that student consumerism means they come to class expecting their teachers to digest and explain the material for them. Others expressed the idea that this generation of students has a sense of entitlement. This participant with a teaching-centered conception of teaching perceives this consumerism to mean that students want to learn from the professor and not from themselves:

Some people do suggest this method of getting them to throw out a question, getting them to break up into small groups, get them to discuss it, and then get them to come back and and report. I worry in the first place as I already said about the fact of whether they can do that at any time. They're only in your class for a limited period of time. And to be honest with you, when I speak to students about that, about when other colleagues do that, what I hear most of the time from students is, "I didn't pay $16 000 to teach myself." I mean that's what you hear a lot, right? They want, "I want to hear what the professor has to say, I could talk to the other students any time I want to." So I don't think students are that keen on some of these other kinds of things. That's my impression. (FPM3)

The perceived obsession with high grades and the willingness to go as far as they can to get them also falls within this attitude of consumerism. This participant describes the relationship between some students and their grades:

> *You can have some students who come in, to say, oh, I really need and A because I want to go on exchange next year. Or, I think I deserve and A because I'm an A student. And I've got As in the past. (AsPM3)*

In Québec universities, a culture of grade appeals was noted by a few law teachers I interviewed. Students feel it is their right to appeal a grade and many do it systematically, as explained by this participant:

> *... il y a des étudiants qui font systématiquement cinq demandes de révision de notes dans leurs cinq cours. C'est institutionnalisé. Puis là on essaie de faire un pas en arrière parce que c'est sûr que les étudiants en droit, ce n'est pas si évident que ça mais, en tous cas, on aurait tendance à penser qu'ils sont revendicateurs. Alors, on met à leur portée les outils qu'ils leur permettent de [rires] de revendiquer. Mais ça a pris des proportions vraiment pénibles, parce que ça nous oblige à réviser tout l'examen. (AsPW9)*

Many law teachers interviewed therefore believe that at least for those "large lecture classes", law students expect to sit passively through lectures that transmit "the rules" and to be evaluated by 100% final examinations. Expectations change for seminar courses, where law teachers believe that students expect more interactive teaching methods and a research paper for evaluation. Because of these perceived student expectations, which also correspond to the perceived 'institutional norm' we talked about earlier, teachers either change their teaching practices or constantly run up against these attitudes and sometimes bad teaching evaluations, as we will see below. Student expectations were indeed noted by 57.5% of survey respondents as influencing their choice of teaching and evaluation methods. Two survey respondents had this to say about student expectations and the institutional norm:

> *Student expectations are the greatest inhibitor of improved education. Their expectations may be inculcated in a pedagogically un-innovative first year.*

> *Student expectations are often shaped by what other faculty members do. If students feel that a particular teaching method or evaluation method involves additional work—greater than that of their fellow students in other courses then they will complain. After awhile*

complaints can wear you down particularly when these other methods also involve greater work for the teacher.

(ii)   Student evaluations of teaching

According to my analysis, teaching evaluations are part of the problem and not part of the solution.   Teaching evaluations are perceived as important to the institution, and therefore, to professors in their institutional role and for tenure and promotion purposes. However, the law teachers I talked to are more concerned about bad teaching evaluations than good ones.   Professors who get good evaluations are not very concerned about teaching evaluations:

> *Moi, ça ne m'a jamais préoccupée mais je me suis rendue compte que ça ne me préoccupais pas parce que j'ai toujours eu des bonnes évaluations. (AsPW9)*

Therefore, good formal evaluations do not seem to influence teaching practices. However, bad formal evaluations, or the fear of bad evaluations, seem to have an impact on teaching practices, and, as this professor said, it is not always for better learning:

> *For many of us, teaching evaluations are not a true indication of what you're doing in the classroom. And in fact the teaching evaluations just push you into more conservative teaching. Clearly, clearly, clearly, does that to you. (AsPW2)*

Indeed, those who talked to me about changing their teaching practices because of student resistance or student evaluations had to change *away* from fostering better student learning.   For example, this participant lectured more than she originally did or wanted to, and even changed her evaluation method to an examination instead of assignments because of bad student feedback:

> *And let's face it, it's so easy to have students who write 100% final exam. ...The first year I taught the course and I compelled people to do work throughout the term, not only did I spend probably 60-80 hours marking them - my colleagues didn't spend time marking- I was absolutely lambasted by students and by very poor student evaluations on me on the work that I required students. And, you know, it's easy for me to do less work and have them do less work and have them like it all more, even though I think they probably learn less. (AsPW1)*

Even for this participant who has a learning-centered conception of teaching and uses learning-focused methods but who gets good evaluations, this was still a worry:

I guess I worry about it a little bit. I haven't been slammed yet. (APW1)

According to many participants, there are problems with the present teaching evaluations. Evaluations are criticized for not being statistically sound, for what the anonymity permits students to write, for being more of a popularity contest than about learning, as we can see from these examples:

It's statistically unchallenged aggregate income measures, data, like, all that, and somehow, we're at an institution where knowledge about statistics is generated, and yet we don't do our own statistics properly. And moreover they're administered in a kind of sloppy off hand manner. Student's aren't told how much significance they have. Students abuse the anonymity they have in them. And have no idea. (AsPW2)

And our teaching evaluations are not good. Our teaching evaluations in this faculty are very, very poor. And hey're about what students like, not about what they learned. And so I need to offer them what they like. (AsPW1)

Many told me they have stopped reading student evaluations altogether, as admitted by these two professors:

I have to admit is that I also decided as of last year that I'm not going to read my evaluations anymore. So I don't read my student evaluations. I've no idea. They come and tell me. I think I'm pretty good now about reading their response to me in the classroom. I think I know if they don't like how something goes. I used to spend a lot of time also having little groups of feedback people. (AsPW7)

Well I used to read them religiously and I just stopped doing it because in fact of the emotional costs of doing them. Even though my numbers are actually good. (AsPW2)

For some professors, informal feedback from students seems to be much more important than teaching evaluations. Law teachers obtain positive feedback from their students in the hallway, by e-mail or at a cocktail party, or long after the course is over, thus reinforcing the validity of their teaching practices, as this one example illustrates:

But it's quite interesting about how, I had a number of students LAST year who came and said well this is the first time that a prof in a mandatory course had PUSHED them so hard to be creative, to engage with the stuff without just, spewing it out. Without just learning it in order to regurgitate. (AsPW7)

Others do informal evaluations in class during the term so they can do something about what needs to be addressed before the course is over, as explained by this participant:

> Yeah I think they [evaluations] are pretty strong. But again, you know, it's hard to hang hats on evaluation. You know there is a bit of a popularity contest that goes on with that kind of stuff and I do informal evaluations in my class to get their feedback when I can still do something about it. It's not so helpful to get it at the end of the year. (APW1)

The influence of students' attitudes and evaluations on teaching practices is gendered more than any other factor found in the data.[5] Those who were personally affected by student resistance and student evaluations were women. As one female associate professor explained to me, authority and power in the classroom are not always what they seem to be:

> Because I think, and then I originally was very sympathetic to the power professors had over students. And I've come to realize that this goes two ways and that students actually exercise a lot of power over professors... (AsPW2)

Most of the women who talked to me about this resistance had thus changed their teaching practices in order to bend to the pressure from students even though this went against their conception of teaching. In fact, the majority of law teachers who have a dissonant relationship between their conceptions of teaching and teaching practices are female professors.

However, according to the questionnaire results, there was in fact very little difference between responses from women and men on the factors that influence their choice of teaching and evaluation methods (see Figure 6-2).

There was a slight but noticeable difference between men and women respondents as to the "student" factor, although "student" here refers to the number of students and whether these students were in first or upper years. 43.6% of men said they were influenced by students whereas only 31.6% of women said they were influenced by this

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[5] In order to safely guard the identity of my participants, I have decided to keep race out my analysis, because at the time of this study, there were not that many racialized law professors in Canada (this has improved tremendously fortunately!) However, I want to say that race is very much a factor in explaining certain aspects of law teaching, and in this case, just as much as gender and age. When it comes to the relationship between students and the teacher in the classroom, race is as significant a factor as gender and age. The combination of all three, therefore, can be a significant factor.

factor. According to the survey results, student expectations are not a gendered factor as we can see from Figure 6-2. Student expectations were more of a factor for those with more than 20 years of experience than for those newly hired faculty.[6]   However, there was a difference between men and women respondents as to comfort level being a factor in teaching practices, as it was named as a factor by 27.6% of women respondents as opposed to 15.1% of men respondents. There was also a difference between men and women for teaching load being a factor.

Figure 6-2 - Comparison of factors between women and men

Men % of total respondents   Women % of total respondents
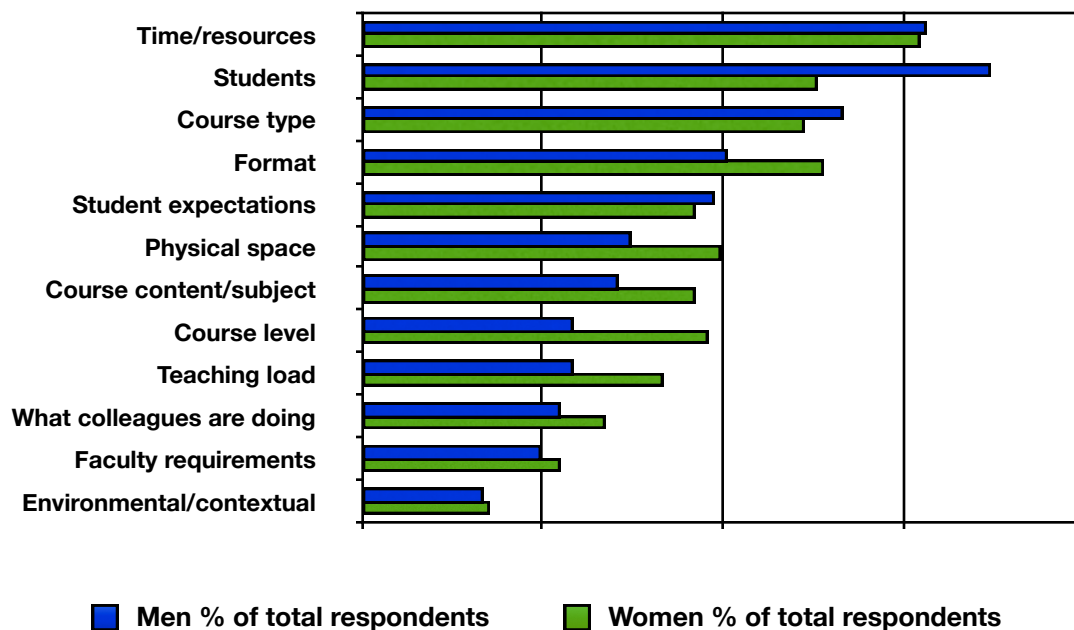
(F)   Teaching-research nexus

One of the goals in carrying out the interviews was to explore whether research and teaching exerted an influence on each other.   In interviews, I asked participants to describe their research and then asked them whether they thought their research influenced their teaching. This was obviously a tough question as for most participants I had to rephrase it or explain it again. The analysis of the data on this issue seems to

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[6] 62.5% of those with more than 20 years of experience listed student expectations as a factor, compared with 50% of those with 3 years or less of experience.

indicate that there is a relationship between research and teaching, but it is mostly in relation to the content of the course. Indeed, participants told me that their research influences, for example, the themes discussed in class, the kinds of questions asked (i.e. more why questions), the selection of course materials, policy-oriented discussions, integrating the social context of law into their teaching, and the kinds of hypothetical problems given to students, as we can see from the following quotes:

> I certainly talk about it more. I emphasize the material in the course book that I'm using more. I emphasize that material more. I spend more time with it. I try and bring in pop culture, or other cultural references to help students connect with stuff. I guess that's something. (APM1)

> I don't know if it affects or influences my teaching style. It certainly influences the content of what I'm teaching or what I'm talking about. So I often talk in class about things that I've learned through my research, because my research interests overlap really tightly with what I teach. I'm really fortunate in that way. (AsPW2)

> For me, my research DOES influence my teaching in the sense that what I'm teaching the stuff that I write about, you have, because you've written the examples down already, to explain it to a reader, you just take those same examples into the classroom with you, and you say, "okay, let's think about it this way." That influence is certainly there. (APM2)

However, my analysis suggests that there is no apparent relationship between approach to doing research, or, as Toma labels it, 'inquiry paradigm',[7] and teaching practices or conceptions of teaching.[8] Participants doing feminist research, for example, were not more likely than other teachers to deviate from the "norm" in their teaching practices, although some of them were concerned about the inclusiveness of the classroom and creating a safe learning environment. For example, one feminist and critical legal scholar mentioned that her research influenced her teaching practices because she teaches to the marginalized students in the classroom:

> Most of my research comes from a critical legal thinking framework. So it's feminist theory, post colonial theory, disability rights. It's all these kind of things, intersectionality in general.

[7] See J. Douglas Toma, "Alternative Inquiry Paradigms, Faculty Cultures, and the Definition of Academic Lives" (1997) 68:November The Journal of Higher Education 679.

[8] In doing this analysis, I drew up a table comparing participants' "inquiry paradigm" (see Toma), based on their own descriptions of their research (for example, feminism, positivism, post-positivism and critical legal studies), with their conceptions of teaching and their teaching practices, although for most participants it was difficult to pinpoint a specific inquiry paradigm. There was no apparent relationships as teachers with different inquiry paradigms had varied and unrelated conceptions of teaching and teaching practices. See Toma, *ibid*.

So, I would say probably, the reason I teach, or to whom I teach is for the marginalized students in the classroom to have a better experience than they might otherwise if someone wasn't aware of those concerns about equality and dignity and oppression. And that way it fundamentally influences my teaching, because if I didn't have [chuckle] this research interest, or research background I wouldn't know about these things. And I wouldn't think they were important in the classroom. (APW2)

In answering the question on the research-teaching nexus, some participants also seemed to be making a distinction between doctrinal and "other" scholarship (social context, law and society, policy work) and between doctrinal and seminar courses because they felt they brought their research to the seminars.

Many law teachers also told me that the teaching-research nexus worked the other way, i.e. that their teaching influenced their research. One participant mentioned that because of time pressures due to a heavy administrative load and being a mother of three, she needed to connect her teaching with her research, otherwise she would feel like she was not doing any research:

Well my research approach, [pause] my research approach. And this may just be out of necessity at this point, over the last few years, is that EVERYTHING I do, from teaching to putting together materials, to reading stories to my children, to talking with people in meetings, is now incorporated into my research. Everything. Because I think I would drive myself crazy otherwise because I would feel like I'm spending my whole life doing everything but research. So I'm actually now, I mean I'll read a newspaper article and I'll sometimes I'll cut it out. Or sometimes I'll just put it into my head as an example that I'll use maybe in my writing maybe in my teaching. If I use it in my teaching, it might eventually go into my writing. And I try to have kind of interactions going with among all my various research ideas now. (AsPW7)

This participant explains how her teaching influences her research and not the other way around:

My teaching influences my research more. I see that more going on. And I think that the way that that happens is the obvious way, of I think by teaching you actually get to know issues in a way that you can't just by thinking about them in your head. [chuckle] And you know that the social engagement of the teaching process is crucial to understanding how the law works, and, so, to the extent that you're teaching in the areas that you research, there's always been some overlap for me that's really important. So I see it that way, that the teaching is helping the research, not the other way. (AsPW4)

The same participant also explained how in order to teach something you need to really understand it, which helps your research:

> I really FELT I need to teach it to understand it. And, so to me, the idea of the synergy goes the other way of teaching informs scholarship. (AsPW4)

Another participant mentioned that teaching influenced his research by the questions students asked him during class because they would point out problems or inconsistencies in the law which he might not have seen. As we can see from this quote, he seemed to appreciate this:

> Oui, l'enseignement a un impact sur la recherche mais très ponctuel, c'est comme une multitude de petits points, ce sont les questions que les étudiants posent en classe qui me font voir des problèmes que je n'ai pas vus. Alors ça, c'est intéressant. Mais c'est ponctuel, je veux dire, ça va être une ligne ou trois lignes dans le livre, mais c'est très utile et c'est très appréciable parce que des fois ils mettent le doigt sur des choses importantes que personne a vues. (FPM5)

Thus, although we can say that there is a synergy between research and teaching, this synergy does not really translate into a relationship between research and teaching practices. Teachers' conceptions of teaching seem to be more influential than approaches to research.

(III) Teaching context - discussion of findings

(A) Institutional factors

According to our findings, therefore, institutional factors seem to play a significant role in the teaching practices of law teachers. Kember and Kwan studied the relationship between institutional factors, students and teaching approaches.[9] Although they conclude that institutional factors are unlikely to change conceptions of teaching, they found that institutional factors can influence teachers to change their approaches.

> The extent to which teaching approach will be modified by these other factors is likely to vary between universities, departments and courses. The approach is

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[9] Their definition of teaching approaches does not refer directly to teaching methods or practices. See chapter 2 for the discussion on the different terminology used in the literature.

more likely to be adapted from the preferred approach if one or more of the following factors plays a part.

‑ An extensive and intensive procedure for course development and approval, particularly if external members or bodies have a significant role

‑ Intensive procedures for monitoring and reviewing teaching

‑ Team teaching

‑ Large classes

‑ Teaching rooms which are not conducive to the type of teaching preferred by a lecturer

‑ Heavy teaching loads[10]

Although the first three factors listed by Kember and Kwan are not relevant to Canadian law teaching as we do not yet have external controls on university teaching in Canada (unlike Britain, for example) and team-teaching is not common, heavy teaching loads, physical set-up of classrooms and the size of classes are factors that influence law teachers' pedagogical choices.

The work of Prosser and Trigwell on teaching context is also helpful to explain the relationship between the institution and teaching approaches. In studies they carried out, they showed that teachers' perception of their teaching context influenced their teaching approach, which in turn has an impact on student learning approaches and student learning outcomes. They identified five aspects of teaching context that had an influence on teachers' approaches to teaching:[11]

- ☑ Teachers feel they have control over what is taught and how it is taught;
- ☑ Their class sizes are not too large to prevent engagement and interaction with students;
- ☑ Their students are able to cope with the subject matter (i.e. ability of students);
- ☑ Teaching is valued in their department/faculty;
- ☑ Their academic workload is appropriate;

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[10] David Kember & Kam-Por Kwan, "Lecturers' Approaches to Teaching and Their Relationship to Conceptions of Good Teaching" (2000) 28 Instructional Science 469 at 487.

[11] Michael Prosser & Keith Trigwell, *Understanding Learning and Teaching : The Experience in Higher Education* (Buckingham [England] ; Philadelphia, PA: Society for Research into Higher Education & Open University Press, 1999) at 151; see also Michael Prosser & Keith Trigwell, "Perceptions of the Teaching Environment and its Relationship to Approaches to Teaching" (1997) 67 British Journal of Educational Psychology 25.

These five aspects of the teaching context resonate with my findings on factors influencing teaching practices. Law teachers teaching mandatory (first year especially) courses had an overwhelming concern with coverage, which they felt constrained what they could do in the classroom other than to transmit large amounts of content, thus dictating teacher-focused practices such as lecture. Moreover, as we saw, class size was a factor mentioned by survey respondents and participants. For law teachers, large groups do not lend themselves to much interaction. Many therefore adopt more teacher-focused practices when teaching a large class. How large the class had to be to restrict interaction varied between professors, thus confirming that what is important is teachers' perception of their teaching context. Thirdly, student ability was not really considered by law teachers as a factor since most law professors think very highly of their students' abilities. However, according to my analysis, students learning approaches[12] and expectations, as we will see below, seemed to influence teaching practices for many participants.

My analysis also suggests that the valuing or devaluing of teaching in one's faculty is a factor influencing teaching practices. We saw that in teaching-oriented law faculties, teachers felt support in their teaching and were encouraged by the administration to try new teaching strategies and to use more learning-focused methods. In the research-oriented faculties, it was clear from what teachers told me that in order to get tenure and promotion, what matters is research, publications and obtaining research grants. The fact that research is valued much more than teaching in attributing tenure and promotion is well known and based in reality.[13] In academic settings, teaching is not as valued as research when it comes to tenure and promotion decisions.[14] A recent survey of

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[12] This was expressed in descriptions of students as being passive and unprepared for class.

[13] Fiona Cownie, *Legal Academics: Cultures and Identities* (London: Hart Publishing, 2004) at 133. See also Charles E. Glassick, Mary Taylor Huber & Gene I. Maeroff, *Scholarship Assessed: Evaluation of the Professoriate,* Report of the Carnegie Foundation for the Advancement of Teaching (San Francisco: Jossey-Bass, 1997).

[14] Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009) at 26. Rhode reports that "[p]rofessors who spend too much time on classroom rather than scholarly activities pay the price in missed promotions and other rewards.": see Deborah L. Rhode, *In Pursuit of Knowledge : Scholars, Status, and Academic Culture* (Stanford, California: Stanford Law and Politics, 2006) at 27 & 63. See also Tony Becher & Paul R. Trowler, *Academic Tribes and Territories*, 2nd ed. (Buckingham: SRHE and Open University Press, 2000) at 76. See J. Parker, "Comparing Research and Teaching in University Promotion Criteria" (2008) 62:3 Higher Education Quarterly 237 for a UK perspective; Nathalie Dyke & Frédéric Deschenaux, Enquête sur le corps professoral québécois: faits saillants et questions (Montréal: Fédération québécoise des professeures, professeurs d'université 2008) at 29.

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Québec academics indicates that 77% of respondents would like to have more time to dedicate to research and publications than they do.[15] In a situation where academics are overworked, my findings suggest they will sacrifice time spent on teaching preparation and appropriate evaluation methods to put it where it will matter: research. As many participants expressed, it is accepted and even encouraged to be a great scholar and an okay teacher, but detrimental to a career to be a great teacher and an okay researcher.

The teaching-research tension was palpable in both teaching-oriented and research-oriented institutions because research is rewarded and valued more than teaching in any academic career. Therefore, some teachers who were employed at a teaching-oriented faculty would tell me they felt torn between institutional pressure to get good "scores" on their teaching evaluations, and their own research agenda and career plans. Light, Cox and Calkins explain that teaching has become the "poor relation" to research:

> At the heart of the struggle is an all too pervasive understanding that teaching is something an academic does, whereas research and scholarship are what make an academic special.[16]

We hire people for their "expertise" or at least interest in a particular area of research so they can teach it, yet we still view teaching as detached from or "even undermining" research.[17] However, the research/teaching tension has implications for learning. As Light, Cox and Calkins have shown (see Figure 6-3), in the current relationship, there is no relation between students and scholar because the teacher mediates between them. Light, Cox and Calkins argue that the challenge for reflective professionals in higher education is to "find ways of critically engaging (reflecting and acting) and integrating the academic worlds in which they practise."[18] The research and teaching aspects of an academic's life should be mutually reinforcing, and not "competitors in a simple zero-sum game".[19] Teaching requires a clarity in understanding and expression that is beneficial to

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[15] Dyke & Deschenaux, *ibid* at 17.

[16] Light, Cox & Calkins, *supra* note 14 at 26. See also Rhode, *supra* note 14 at 27; Cownie, *supra* note 13 at 124.

[17] Light, Cox & Calkins, *ibid* at 26.

[18] *Ibid* at 27.

[19] Rhode, supra note 14 at 74.

research and its dissemination, and research constantly revitalizes interest and enthusiasm for one's teaching subject (if they are related). [20]

Figure 6-3 Current relationship between teacher, student and researcher
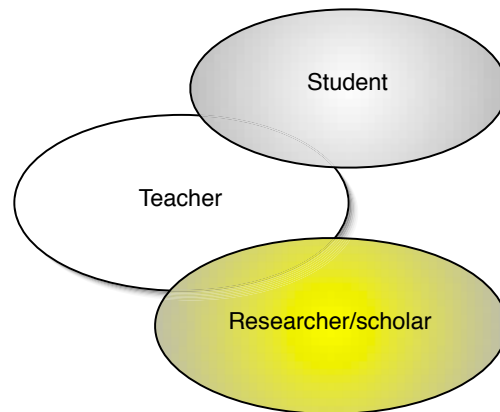
Source: Light, Cox and Calkins (2010) at 27.

The last point in Prosser and Trigwell's five aspects of teaching contexts are teachers' perceptions of their workload.   As we saw earlier, my analysis of the interview data suggests that time, or rather the lack of time, is a factor in law teachers' pedagogical choices.   Workload is an issue that is worth exploring further.   There was a general perception in law teachers that it takes more time to deviate from "the norm" and to adopt learning-focused teaching practices.   It takes time to prepare hypothetical problems, it takes time to assess students with appropriate methods, it takes time to give proper feedback to students, it takes time to organize learning-focused teaching strategies.   When the time you can devote to teaching is limited, lecturing is seen as easier, more convenient and less time-consuming, as explained by Rhode:

> Full-time faculty with substantial scholarly commitments often feel that they cannot afford the time-intensive classroom techniques that are most likely to enhance student learning, such as written evaluations, interactive exercises, collaborative projects, and supervised clinical or community service learning. Rather, the lecture is the prudent choice.[21]

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[20] *Ibid.*

[21] *Ibid* at 75.

The lack of time causes stress and frustration for many law teachers who would love to have the time to adopt more learning-focused practices. If teachers feel this stressed about time, it is because they do not have enough of it to be able to meet all of their obligations. As we saw in the first part of this chapter, workload came up as a theme in the analysis of the interviews and seems a constraint on law teachers' ability to adopt more learning-focused teaching practices. Applying for research grants, being members of research teams (and therefore attending meetings), acting on administrative committees at different institutional levels, participating in community groups or non-profit organizations, writing for mass media, disseminating research, on top of the teaching obligations of preparing classes, preparing and marking assignments and exams, responding to students' ever-increasing e-mails,[22] setting up course websites, preparing lively powerpoint presentations, etc.. are only a few examples of the numerous and increasing obligations of today's academics.

Studies have shown that academics have high and increasing levels of stress.[23] The Canadian Association of University Teachers carried out a survey of Canadian academics on work related stressors in 2007 in which it found that workload was the number one stressor among ten possible factors of stress listed.[24] Professors feel overwhelmed by the pressure to excel at all three aspects of their job, i.e. research, teaching and service,

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[22] Rhode captures the phenomenon of incessant and unnecessary e-mails:

> Technology has expanded the range of inappropriate student conduct by increasing access to victims, providing anonymity for perpetrators, and reducing time for reflection. "Cyberbullies" harass faculty as well as classmates; electronic messages range from the absurdly demanding to the shockingly hostile. At one end of the spectrum are the annoyingly trivial but cumulatively burdensome questions such as what kind of notebooks students should buy, whether they missed anything in class, and if so, could they borrow the teacher's lecture notes...

Ibid at 77.

[23] See Canadian Association of University Teachers, Occupational Stress Among Canadian University Academic Staff, 2007, available at http://www.caut.ca/news_details.asp?nid=1057&page=490 (accessed 22/08/2010) (CAUT); see also G. Kinman, F. Jones & R. Kinman, "The Well-being of the UK Academy" (2006) 12:1 Quality in Higher Education 15, who report that this level of stress for British academics is second only to the recently unemployed!

[24] CAUT, *ibid*. 85% of survey respondents experience high levels of stress related to workload, 76% reported high levels of stress related to work-life balance and 73% work scheduling. For similar studies in Australia and the UK, see respectively: A.H. Winefield, N.Gillespie, C. Stough, J. Dua & J. Hapuararchchi, *Occupational Stress in Australian Universities: A National Survey 2002* (South Melbourne: National Tertiary Education Union 2002); M.Y. Tytherleigh, C. Webb, C.L. Cooper, & C. Ricketts, "Occupational Stress in UK Higher Education Institutions: A Comparative Study of all Staff Categories" (2005) 24 Higher Education Research & Development 41.

yet not having sufficient time for everything.[25] Dyke and Deschenaux explain the relationship between this lack of time and the increasingly market orientation of higher education, as we saw in chapter 1:

> Ce discours conteste abondamment l'idée dominante de l'université qui prévaut actuellement : fonctionnelle, utilitaire, marchande, instrumentale, l'institution universitaire serait désormais assujettie aux lois du marché, à la mondialisation et à l'économie du savoir. Dans ce contexte, les professeurs dénoncent les pressions exercées pour réaliser davantage de recherches ayant un impact immédiatement identifiable sur la société, la charge de travail trop lourde et insuffisamment rémunérée et le manque de temps pour se consacrer de façon satisfaisante aux trois composantes de leurs tâches (enseignement, recherche et service à la collectivité).[26]

The lack of time to adequately fulfill obligations and to balance all three aspects of their jobs can lead to feeling constantly torn between them and to job dissatisfaction.[27] Academics have very long working hours, which are associated with physical ill-health.[28] Studies in the UK have shown that working evenings and weekends is so common (42% of academics do it) that academics view it as normal practice.[29] In Québec,[30] a similar study found that on average, academics work 50.5 hours/week (53.1 hours/week for those under the age of 35).[31] A large proportion of respondents (40%) also indicated that they thought the working conditions had decreased in the last few years.[32] On balancing research and teaching commitments, 45% of respondents noted that their teaching load restricted the time they could spend on research, and 33% thought their teaching load restricted the time available for teaching purposes.[33] As for administrative duties, 54% of respondents in the Québec survey indicated they would like to spend less

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[25] Dave Korotkov et al., "The Balancing Act: The Impact of University Professors' Juggling Research, Teaching, and Service", Conference paper presented at St-Thomas University, Fredericton, New Brunswick, February 7th, 2008, available online: w3.stu.ca/ stu/sites/ltd/resources/Job%20SatisfactionAABSS.pdf (accessed 22/08/2010); Dyke & Deschenaux, *supra* note 14 at 29-30.

[26] Dyke & Deschenaux, *ibid* at 27.

[27] *Ibid* at 29.

[28] CAUT, *supra* note 23 at 8 (references of the numerous studies cited omitted here); Dyke & Deschenaux, *ibid* at 30.

[29] Lucinda Barrett & Peter Barrett, "Women and academic workloads: career slow lane or Cul-de-Sac?", online: (2010) Higher Education at 2 citing G. Kinman & F. Jones, *Working to the limit* (London: Association of University Teacher, 2004) at 1-64.

[30] The CAUT study did not include faculty members from Québec francophone universities.

[31] Dyke & Deschenaux, *supra* note 14 at 5.

[32] *Ibid* at 15.

[33] *Ibid* at 16.

time doing administrative and management duties.[34] Surprisingly, both of these Canadian studies nevertheless report that academics have a high degree of job satisfaction.[35]

What is missing from Trigwell and Prosser's framework are the different cultures within which law teachers find themselves. Academics work within different cultures concurrently, i.e. cultures of the institution, the academic profession, the discipline and society. [36] To these, Toma also adds the culture of academics' "inquiry paradigm", which in law he identifies as being either positivist, postpositivist (the legal realists), critical scholars and interpretive scholars. Picking up from Toma's work, Cownie identifies the following approaches to law: doctrinal or "black-letter" law, socio-legal studies, critical legal studies and feminism and law. She argues that legal academics' approaches to law, when they are used to analyse legal phenomena, are at the centre of the culture of academic law.[37]

As we saw above, there are research-oriented and teaching-oriented law faculties in Canada, thus suggesting an institutional culture as reflected in institutional policies, written and unwritten, and institutional support (or not) for teaching. My findings also suggest a "norm", which many participants felt they were going against in their teaching, both in their teaching practices, but also occasionally in the content of the courses they were teaching. In the interview data, the "norm" implicitly referred to what participants' colleagues were doing and dictated teaching practices that involved lecture and 100% final exam. In many cases, this "norm" had an impact on their teaching practices, mostly because of the way that this institutional culture would influence student expectations. Many participants expressed the sense of being the only one using teaching methods to facilitate learning. Some of those participants were deeply affected by this and their morale was not very high. Pratt and Nesbitt explain the influence of culture on teaching,

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[34] *Ibid.*

[35] CAUT, *supra* note 23 at 4; Dyke & Deschenaux, *ibid* at 5.

[36] Cownie, *supra* note 13 at 10. Toma, *supra* note 7 at 680.

[37] Cownie, *ibid* at 49.

which they consider a social practice, embedded in the social, political, cultural and economic conditions in which it takes place:

> To those who seek to locate teaching and learning within a socio-cultural understanding, it is illuminating to consider how social structures, frame factors, and socio-cultural norms generate particular "beliefs, values, habits, and assumed ways of doing things among communities of teachers who have had to deal with similar demands and constraints over many years."[38]

There are two dangers with this situation. First, going against the norm may result in these teachers being marginalized so as not to disrupt the "local cultural norms of teaching that subject, to those students, in that particular institution."[39] With marginalization comes the danger of professional burn-out for those teachers who deeply care about student learning; the sense of fatigue, frustration and scepticism was palpable in many of my participants. Secondly, there is the danger that these teachers, because their teaching is not valued by either their institution or even their students, will focus on their research and adopt teaching practices that are easier, less time consuming and give them less trouble; they are likely to change from learning-focused to teacher-focused practices.

The overwhelming concern with coverage expressed by law teachers, and the general sense that legal education's objectives must first and foremost involve the transmission of a certain doctrinal content (i.e. the rules) also suggests a disciplinary culture. Toma explains what the disciplinary culture entails:

> Like paradigms, disciplines produce and embody a culture. Disciplines determine the substantive knowledge with which scholars work, how they organize that knowledge, how they may draw on other disciplines, what types of work their colleagues value, and the language and symbols they use.[40]

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[38] Dan D. Pratt, "Discourses and Cultures of Teaching" in Elizabeth Hayes & Arthur Wilson, eds., *Handbook of Adult and Continuing Education* (San Francisco: Jossey-Bass, Publishers, 2000), chapter available at: http://www.edst.educ.ubc.ca/faculty/pratt/ DPdisc.html, at p.6-7 of the online version, citing A. Hargreaves, *Changing Teachers, Changing Times: Teachers' Work and Culture in the Postmodern Age* (London: Cassell, 1994) at 165.

[39] Pratt, *ibid* at p.8 of the online version.

[40] Toma, *supra* note 7 at 681.

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In law, the centre of the subject is a body of rules and the concerns of legal academics are to order this corpus of knowledge.[41]   Disciplinary culture also includes standards for hiring and promoting faculty and for admitting students, institutional roles and missions and physical settings.[42]   According to the taxonomy developed by Becher and Trowler, law is a soft-applied discipline, and scholars in these soft-applied disciplines are "functional and utilitarian in their use of knowledge, concern themselves with the enhancement of professional practice, work towards protocols and procedures, and frame recommendations to those who make decisions."[43]

As for the culture of inquiry paradigm, Toma concludes his qualitative study with the conclusion that paradigmatic culture will influence the questions legal academics decide to pursue in their research, the audiences to which they write, the methods and frameworks they use, the standards applied to judge people's work, the reward systems, their perceptions as to their access to decision-making and the pressures or personal rewards related to advancing causes.[44]   Toma does not establish a relationship between paradigmatic culture and teaching practices or conceptions of teaching; surprisingly this relationship was not considered in his study of the influence of paradigmatic culture on legal academics' professional lives.

My analysis of the teaching-research nexus suggests that there is no relationship between the different inquiry paradigms and law teachers' conceptions of teaching or teaching practices.   When we looked at the teaching-research nexus, we saw that there was a relationship between research and teaching in relation to the content of the course, but not to teaching conceptions and practices. Teaching, therefore, seems relatively divorced from an academic's 'teaching life'.   In chapter 7 we suggest integrating these aspects of academic life.

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[41] Becher & Trowler, *supra* note 14 at 31. This is of course the positivist/doctrinal view of law: See also Cownie, *supra* note 13 at 49.

[42] Toma, *supra* note 7 at 689.

[43] *Ibid* at 683, citing A. Becher, *Academic Tribes and Territories: Intellectual Enquiry and Cultures of the Discipline*s (Milton Keynes, Australia:Open University, 1989). See Becher & Trowler, *supra* note 14, chapter 9 for an revisited taxonomy.

[44] Toma, *ibid* at 690.

To institutional and paradigmatic cultures Pratt and Nesbitt add the teaching cultures that influence teaching. Similar to the concept of teaching context that we saw above, aspects of this teaching culture include the physical setting in which teachers work, class size, their timetable, the curriculum, the nature of professional relationships, expectations of students and colleagues (i.e. "the norm" referred to by many participants), and the resources available. Pratt and Nesbitt argue that in order to be able to feel they have the power to change, teachers must be aware of the cultures of teaching. [45]

Barr and Tagg's Instruction and Learning paradigms, which we saw in chapter 2,[46] are also closely related to the idea of cultures. My findings related to institutional factors suggest that law schools in Canada are located within the Instruction paradigm. We saw in chapter 5, when looking at the relationship between conceptions of teaching and teaching practices, that some law teachers who have a learning-centered conception of teaching have decided to adopt teacher-focused practices because of their teaching context. The barriers and constraints to teachers adopting learning-focused teaching practices, including course characteristics, student evaluations, institutional requirements about (large) content coverage in mandatory courses and about prescribed evaluation methods, all point towards institutions located within the Instruction paradigm. This makes it difficult for individual law teachers, even though they may have a learning-centered conception of teaching, to adopt learning-focused teaching practices. Unless we pay attention to the institutional context of law teaching, any efforts we make at the individual level to change law teachers' conceptions of teaching might be thwarted by an institutional context located within the Instruction paradigm, thus putting up barriers to better student learning outcomes. Although I did not measure student learning outcomes in this study, there was a sense amongst some participants that we were either failing miserably in educating our law students, or that at least we were not doing as good of a job as we could be.

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[45] Pratt, *supra* note 37 at p.7 of the online version.

[46] Robert B. Barr & John Tagg, "From Teaching to Learning: A New Paradigm for Undergraduate Education" (1995) Nov/Dec Change 13.

This is why a change in paradigm for the whole institution is necessary, so that these paradoxes or disconnects will no longer take place and professors with facilitating learning or transforming conceptions of teaching will be able to adopt teaching practices that concur with these conceptions. Further, changing the institutional paradigm alleviates some of the concerns expressed by participants about student resistance and backlash.

(B) Students

As we saw above, my findings indicate that student attitudes, expectations and abilities also influence teaching practices. We also saw that student evaluations have either no effect or a negative impact on teaching practices by making teachers change from learning-focused practices to teacher-focused practices.

(i)   Student attitudes and expectations

As we saw in the findings part of this chapter, law teachers' perceptions of law students are that they are instrumental about their education, they develop strategies to do the least amount of work possible, they do not prepare for class, they are not intellectually curious, they want lectures and final sit-down exams, or that they resist critical or contextual content and those teaching methods designed for active learning because it is too much work. Students are perceived to be in law school to obtain a "ticket" to a high paying profession and to be obsessed with high grades without wanting to do any hard work.[47]

Student consumerism and its impact on higher education have been commented on in the higher education literature. As we saw in chapter 1, higher education institutions

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[47] Rhode states that "[e]ducation is one of the few contexts in which consumers often view less as more": see Rhode, *supra* note 14 at 71. A longitudinal study done in 1994 with law students concludes that their expectations in relation to their legal education are much more vocationally oriented than the expectations of their teachers: See D. Halpern, *Entry into the Legal Professions: The Law Student Cohort Study Years 1 and 2* (London: The Law Society, 1994) cited in Cownie, *supra* note 13 at 60. These perceptions of students are also similar to those held by Québec academics: see Dyke & Deschenaux, *supra* note 14 at 32-33.

aim to cater to the demands of their "clientele".[48]   Fallis argues that the relationship between the teacher and the students has changed to "an economic exchange between a provider of education and a customer who wants to invest in human capital."[49] The result of student consumerism, as reported by Rhode, are decreasing curricular requirements and grade inflation, and not necessarily better student learning.[50]

Ramsden summarizes the impact of these students-as-consumers on teachers:

> It is little exaggeration to say that these changes, taken together, mean that the average university teacher is now expected to be an excellent teacher: a man or woman who can expertly redesign courses and methods of teaching to suit different groups of students, deal with large mixed-ability classes, apply information and communication technology appropriately, and inspire students with zero tolerance for delay whose minds are probably on their next part-time job rather than on the pleasures of learning. [51]

Some law teachers also told me stories about difficulties encountered with students. Those difficulties, although they do not seem to be that common in law faculties, nevertheless seem to have an impact on teachers and their teaching practices.   One participant even noted being emotionally scarred by some of those experiences. In her book on American higher education, Rhode notes that "campus incivility" is now widely acknowledged but rarely addressed in any systematic fashion by institutions.[52]   Nor are professors given any tools to deal with these difficulties.[53]   As she explains, many professors respond with "ill-disguised hostility or resigned cynicism" to students being passive, unprepared or even disruptive students (she mentions students being late for class, cell phones ringing among others).[54]   I encountered this resigned cynism in a few interviews with law teachers indeed.

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[48] This concern was also expressed by Québec academics: Dyke & Deschenaux, *ibid* at 32.

[49] George Fallis, *Multiversities, Ideas, and Democracy* (Toronto: University of Toronto Press, 2007) at 265.

[50] Rhode, *supra* note 14 at 72-73. See also James Côté & Anthony L. Allahar, *Ivory Tower Blues: A University System in Crisis* (Toronto: University of Toronto Press, 2007) for the Canadian context.

[51] Paul Ramsden, *Learning to Teach in Higher Education*, 2nd ed. (London; NY: RoutledgeFalmer, 2003) at 4.

[52] Rhode, *supra* note 14 at 77.

[53] *Ibid.*

[54] *Ibid* at 76.

If we compare our results with the literature on student approaches to learning explained in chapter 2, many of the complaints of law teachers about their students can be explained by looking at student learning approaches. The comments made by law teachers about law students' passivity and resistance to active learning actually refer to student learning approaches and indicate that most students take a surface or, because law school is so competitive, strategic approach to learning. On the other hand, those students participants have described in a positive way probably adopt deep learning approaches to their courses, which is why these students would appear engaged and interested, and would come prepared for class.

According to some participants interviewed, student expectations and attitudes (i.e. their approaches to learning) are influenced by the institutional culture. This concurs with the research on student learning approaches examined in chapter 2, which has shown that student learning approaches are influenced by how students perceive their learning context, including workload and assessment methods,[55] and by teaching approaches.[56] Gow and Kember even established a relationship between teaching approaches at the departmental level with student learning approaches. Therefore, in a department with a propensity towards learning facilitation, students are more likely to adopt deep learning approaches.[57] Even though this study does not empirically look at the relationship between teaching and student learning, it might be helpful to further explore the literature on these influences on learning approaches as they have an impact on learning outcomes.

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[55] See Ramsden, *supra* note 51, chapter 5 for a review of those studies.

[56] Keith Trigwell, Michael Prosser & Fiona Waterhouse, "Relations between teachers' approaches to teaching and students' approaches to learning" (1999) 37 Higher Education 57 at 58. And here is where the terminology starts causing us some problems. The literature on student learning approaches shows relationships with teaching approaches, not teaching practices. However, they define teaching approaches as including both strategy (including practices) and intentions. The different approaches uses in this study are information-transmission/teacher-focused approach and conceptual change/student-focused approach.

[57] See Lyn Gow & David Kember, "Conceptions of Teaching and Their Relationship to Student Learning" (1993) 63 British Journal of Educational Psychology 20.

(ii)   Learning context

As we saw in chapter 2, students' perceptions of their learning environment will drive their learning approach. As Ramsden explains, "students adapt to the requirements they perceive teachers to make of them...They do what they think will bring them rewards in the systems they work in."[58]

Students' perception that they are experiencing "good teaching" will lead them to adopt deep learning approaches,[59] "good teaching" being defined as giving helpful feedback, making an effort to understand the difficulties students may be having, giving good explanations, arousing interest, motivating students and being interested in what the students have to say.[60]   However, a good performance is not necessarily good teaching, nor is a colourful presentation or entertaining students sufficient for effective learning.[61] How students perceive their learning environment is a function of their previous experiences but also of the design of the learning context.[62] For example, students who perceive the nature of the evaluation methods as requiring memorization and recall, and who perceive the workload as being high, are more likely to adopt a surface learning approach.[63]   Our obsession with "coverage" has a impact on students' learning approaches and is likely to encourage them to adopt surface learning approaches.

On the other hand, when students perceive their learning environment as consisting of "high quality teaching, some independence in choosing what is to be learned, and a clear awareness of the goals and standards required",[64] they are more likely to adopt a deep

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[58] Ramsden, *supra* note 51 at 62.

[59] *Ibid* at 74-75; see alsoTrigwell, Prosser & Waterhouse, *supra* note 56 at 66.

[60] Ramsden, *ibid* at 74-75; see also Trigwell, Prosser & Waterhouse, *ibid*.

[61] Ramsden, *ibid* at 73.

[62] Michael Prosser et al., "Dissonance in Experience of Teaching and its Relation to the Quality of Student Learning" (2003) 28 Studies in Higher Education 37 at 38. See also Ramsden, *ibid* at 65.

[63] Prosser & Trigwell (1999) *supra* note 11 at 4.

[64] *Ibid*.

learning approach. Intrinsic interest "and a sense of ownership" in the task at hand also encourage deep learning approaches.[65]

In the learning context, evaluation methods are crucial in dictating a student's learning approach.[66] Inappropriate assessment puts pressure on students to adopt surface learning approaches.[67] As Ramsden explains, "it is the assessment, not the student, that is the cause of the problem."[68] As we saw in chapter 4, the most predominant evaluation method in Canadian legal education are final sit-down examinations, usually complemented by a mid-term sit-down examination. Students will therefore take a learning approach that is appropriate for that evaluation method. For example, a few teachers complained to me about the culture of course summaries; these course summaries and their popularity reflect the surface and strategic learning approaches of students, but they are also possible because of the evaluation methods that we use in Canadian law schools. Although most exams are open-book exams, which means that students do not have to memorize large amounts of information, the existence of already made course summaries will push students to adopt a surface learning approach, even though most exams require understanding and application, and sometimes even critical thinking. Many law teachers are often disappointed with the results of the exam, not because students were not able to recall the course content, but because they did not show understanding of the content, or an ability to apply it to a different context or to critically engage with the material.

Ramsden explains that although we can encourage surface learning approaches by the learning context we design, deep approaches "are fragile things; while we can create favourable conditions for them, students' previous experiences and other unmeasured

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[65] Ramsden, *supra* note 51 at 65.

[66] *Ibid* at 67.

[67] *Ibid* at 68.

[68] *Ibid*.

factors may mean that they remain unexercised."[69] Prosser and Trigwell's[70] work on students' perceptions of their learning situation might also be helpful to explain the disconnect between how teachers perceive their evaluation methods and how students prepare for them (i.e. their learning approach). It also explains why in every course a small number of students exceed our expectations; those students likely have different perceptions of the learning task and adopt a deep learning approach.

Prosser and Trigwell have shown that students' perceptions of their learning situation (which they define as how students see themselves in the learning context) will vary between students, depending on their previous experiences of similar teaching and learning contexts.[71] Therefore, two students could experience the exact same learning context in two totally different ways. This complicates our role as teachers in creating learning contexts that will foster deep learning approaches.   They identify four interrelated principles that link together context, approaches to learning, student perceptions of their situation and learning outcome:

1. In the same learning context, there is qualitative variation in the way students approach their learning.

2. This variation in approach is related to students' perceptions of their learning situation and their prior experiences of learning.

3. Different teaching/learning contexts evoke different approaches to learning.

4. The way students approach their learning is fundamentally (not just empirically) related to their learning outcomes. For example, if they do not seek to understand, then they do not find understanding. [72]

Prosser and Trigwell suggest that teachers need to be aware and find out about their students' perceptions of the learning tasks at hand.[73]

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[69] *Ibid* at 78.

[70] Prosser & Trigwell (1999) *supra* note 11.

[71] *Ibid* at 63-64.

[72] *Ibid* at 99.

[73] *Ibid*.

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(iii)   Teaching approaches

Student learning approaches are also influenced by teaching approaches. Trigwell, Prosser and Waterhouse established a correlation between individual teachers' teaching approach and the learning approaches adopted by their students. They explain the relationship as follows:

> When teachers, for example, report that their focus is on what they do in their teaching, when they believe students have little or no prior knowledge of the subject they are teaching, when they do little more than transmit facts so that students will have a good set of notes, their students are more likely to adopt a surface approach to learning. Conversely, when teachers report that they have the student as the focus of their activities, where it matters more to them what the student is doing and learning than what the teacher is doing or covering, where the teacher is one who encourages self directed learning, who makes time (in formal "teaching" time) for students to interact and to discuss the problems they encounter, where the teacher assesses to reveal conceptual change, where the teacher provokes debate, uses a lot of time to question students' ideas and to develop a "conversation" with students in lectures, then their students are less likely to be adopting a surface approach.[74]

Studies have also shown that we cannot "train" students to adopt deep learning approaches when the educational environment dictates surface approaches.[75] Ramsden explains the different levels influencing the relationship between students' perceptions of their learning context and their learning approach, thus suggesting we can and should intervene at many levels including the learning task, interaction with teachers, curriculum, and the general atmosphere of the program in order to encourage deep learning approaches.[76]

Knowing what we know about student approaches to learning, we then have a responsibility to create learning environments and adopt teaching approaches that will foster deep learning approaches for our students, especially in first year.[77] Deep learning approaches will in turn lead to better student learning outcomes. Thus upon completing

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[74] Trigwell, Prosser & Waterhouse, *supra* note 56 at 66-67.

[75] Ramsden, *supra* note 51 at 63.

[76] *Ibid* at 64. See also Rhode, *supra* note 14 at 82.

[77] Ramsden, *ibid* at 66.

their law degree, students will actually remember what this degree was about, other than getting a high paying job at the end of it. This in turn might alleviate the profession's complaints about the fact that our graduates do not know anything (they are partly right). The solution is not a mandatory set of courses, or more courses.

Unfortunately, the perception that first year students know nothing when they come into law school, although they are bright and motivated, often encourages professors to adopt more teacher-focused practices emphasizing transmission of material. The problem with this is that by the time they reach second and third year, this teaching approach has "passified" students, as noted by this participant:

> And they are not [engaged in their own learning actively] ... at this law school. I think they're not because they have been socialized in first year to sit passively and take notes from every such erudite routine law professors that neatly prepackage and tell them that truth with a capital T about every subject matter. And they go right through first year without learning there's another point of view. And without learning there's another way of approaching the thing, and without learning the skills of thinking on their own. So I think, I think we do abysmal job. (FPM1)

Students have adopted a surface or strategic learning approach that has served them well and they see no reason to change it in upper years. Moreover, because law curriculum is content-focused and largely ad hoc, and because upper year courses are simply more of the same format but in different areas of the law, there is no building on what students learned in first year. If anything, they will do less work than they did in first year because they think they have the system figured out.

The findings of this study also suggest that the institutional culture and practices (class size, assessment methods, course requirements) have an impact on student expectations and engagement. These findings concur with studies that have also shown that institutional culture, as depicted in the practices and policies of academic departments and courses, also have an impact on student learning.[78] As Ramsden notes, surface

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[78] *Ibid* at 78.

learning approaches were more common "in programmes perceived to combine a heavy workload with inappropriate assessment and lack of responsible choice over learning."[79]

Willcoxson also describes the vicious circle between teachers' perceptions of students, their teaching approaches, evaluation methods and students' behaviour (i.e. approaches to learning):

> It would appear that in lectures a negative cycle of expectation and behaviour generally operates:
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> lecturers anticipate lack of student motivation and unwillingness to question and so deliver lectures that provide answers and leave little room for questions or awkward silences ➡ students perceive that questioning is not encouraged and, feeling anyway little enthusiasm for admitting uncertainty or ignorance in front of 50-200 people, dedicate themselves to notetaking ➡ lecturers interpret continuous note-taking as indicative of lack of student motivation and unwillingness to question and, wishing at the very least to ensure that students have 'covered' basic subject content, construct lectures that provide answers to forthcoming examination questions ➡students perceive that lectures are designed to provide answers for examinations and so dedicate themselves to notetaking.[80]

Does this look familiar?

(iv)   Conceptions of learning and knowledge

If we go back to Entwistle's model of conceptions of learning and knowledge seen in chapter 2, some of the descriptions made by law teachers about student expectations can also be explained by looking at students' conceptions of knowledge and of learning. For example, when law teachers say that students "just want the rules" and are looking for "right" answers, they probably have dualist conceptions of knowledge, where they see knowledge as absolute and provided by the "authorities", i.e. the professor or the textbooks.[81]   Those students likely think of learning as acquiring factual information or memorizing what has to be learned and not as conceptual changes in their knowledge

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[79] *Ibid* at 78.

[80] Lesley Willcoxson, "The Impact of Academics' Learning and Teaching Preferences on Their Teaching Practices: A Pilot Study" (1998) 23:1 Studies in Higher Education 59 at 68.

[81] But see Cownie, *supra* note 13 at 59, who interprets these attitudes as student resistance to socio-legal work.

and person. As we saw in chapter 2, these conceptions have an influence on student learning approaches. The simpler their conceptions of knowledge and learning, the more likely they are to adopt a surface learning approach.

Entwistle's model might also help us explain students' resistance to feminist or critical materials or discussion in class. This resistance was mentioned by quite a few feminist law teachers, as we saw earlier in this chapter. Fiona Cownie, in her study of British legal academics, also notes student resistance to approaches other than the doctrinal black-letter law approach.[82] This is likely because feminist, critical or socio-legal studies raise more questions than answers. These approaches to law ask difficult questions and do not usually answer them. Students therefore have nothing to grab on to; they feel lost. The black letter rules, or rather, the illusion of the black letter rules, gives them some sense of security because they still see the world in dualist terms.

These explanations of student expectations and classroom behaviour are of course based on participants' own perceptions of students. The aim of these explanations is not to give law teachers concrete ways of moving students along the continuum of their own conceptions of knowledge and learning. Rather, they are meant to explain what is happening in our classroom when we find resistance by students. For example, these theories might explain why law teachers describe mature students as being different than the other students. It might also explain why students in upper year seminars are more willing to entertain different opinions and perspectives about the law. However, an empirical study of student learning approaches and conceptions of knowledge to confirm these explanations would be necessary.

(v)   *Student evaluations*

The findings in this study suggest that student evaluations have either a negative or no effect on teaching practices. Good evaluations are not a huge influence on teaching

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[82] *Ibid* at 62, citing a study done by D. Halpern, *supra* note 47 that comes to the same conclusion.

practices. Negative evaluations, however, are either ignored by law teachers if they have been teaching for a while (and have tenure), or they can have a negative impact on teaching practices; some law teachers have changed from learning-focused to teacher-focused practices when they met with constant student resistance and bad evaluations, or when they a fear getting bad evaluations. As a few participants noted, student evaluations often feel more like popularity contests than a measure of good teaching and high quality student learning outcomes.

The literature also agrees with the fact that student evaluations of teaching are not unproblematic, as explained by Rhode:

> But not all evaluation processes are well designed, and the results can be skewed by factors that bear no relation to substantive content, such as a professor's enthusiastic style and physical appearance. Nor do undergraduates typically know enough to judge the adequacy of content, and their evaluations do not necessarily reflect how much they have actually learned.[83]

These kinds of formal evaluations have been shown to cause anxiety, concern and resentment, especially if faculty feel they are given too much weight in tenure and promotion decisions.[84] Ramsden argues that evaluation of teaching should be conceptualized "not as something that is done to teachers by experts wielding questionnaires and spreadsheets, but as something that is done by teachers for the benefit of their professional competence and their students' understanding."[85] Ramsden draws a parallel between evaluating the quality of teaching and assessing student learning and argues that the two must follow the same principles.[86] He warns against evaluation systems that focus on "scores" because just as students will adopt surface or strategic learning approaches to "study to the test", teachers will teach to the "scores"; therefore they "will not become qualified to teach and assess better, but to hide their inefficiencies

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[83] Rhode, *supra* note 14 at 69.

[84] Light, Cox & Calkins, *supra* note 14 at 247; see also Rachel Johnson, "The Authority of the Student Evaluation Questionnaire" (2000) 5:4 Teaching in Higher Education 419. See also J.C. Ory, "Teaching Evaluations: Past, Present and Future: New Directions for Teaching and Learning (2000) 83 NEW 13.

[85] Ramsden, *supra* note 51 at 209.

[86] *Ibid* at 211.

better."[87]   This effect was mentioned by a few participants in the present study, who moved away from learning-focused methods to more teacher-focused methods in order to increase their "scores" by giving into perceived student demands.

However, Light, Cox and Calkins report that research carried out relating to student evaluations of teaching have dispelled many myths about these formal evaluations, including the myth that student evaluations are just a popularity contest, that questionnaires lack reliability and validity, and that because they are summative, student evaluations are not that useful for improving instruction.[88] On the other hand, the authors also state that factors such as age, student perceptions of teaching experience, personality traits, student achievement level and students' approaches to learning influence student evaluations of teaching.[89] Other studies conclude that gender may also have an impact on student evaluations because of sexist stereotypes or "students' misattributions of their female professors' educational attainment and university rank", which may bias evaluations. [90]

According to Ramsden, improving teaching means that teachers, as well as departments, faculties and universities must learn.[91] Light, Cox and Calkins add that well-designed and meaningful course evaluations can also help students to reflect on their own learning styles and approaches by comparing their learning outcomes to the different teaching approaches and learning environments encountered.[92] In order to do this, evaluations, as courses and programs, must be aligned or coherent, which means they should do the following:

☑   Focus on student experience of learning;

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[87] *Ibid* at 219.

[88] Light, Cox & Calkins, *supra* note 14 at 248.

[89] *Ibid* (references of the numerous studies cited omitted here).

[90] *Ibid* at 248-249, citing Elaine Martin, "Power and Authority in the Classroom: Sexist Stereotypes in Teaching Evaluations" (1984) 9 Signs 149; J. Miller & M. Chamberlain, "Women are Teachers, Men are Professors: A Study of Student Perceptions" (2000) 28 Teaching Sociology 283.

[91] Ramsden, *supra* note 51 at 220.

[92] Light, Cox & Calkins, *supra* note 14 at 238. According to the authors, this relationship is underestimated.

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☑ Be intellectually challenging;

☑ Challenge the discourse of quality experts;

☑ Provide autonomy for those being evaluated;

☑ Use the power of self-review;

☑ Treat areas for improvement as research problems, not as weaknesses;

☑ Be focused on feedback, improvement and peer judgement;

☑ Display confidence in the professionalism of university teachers;

☑ Ensure rigour and precision;

☑ Be evidence-based;

☑ Monitor its own effectiveness and adapt to new evidence.[93]

For example, Ramsden designed a Course Experience Questionnaire, which reflects the relationship between student learning outcomes, student learning approaches, and their experience of good teaching (e.g. clear goals, effective feedback) and appropriate assessment of their learning and most importantly, is student-focused.[94]

Because of the problematic nature of formal student evaluations, a few law teachers I interviewed rely instead on informal feedback from students (past and present). Light, Cox and Calkins suggest a diversity of informal feedback instruments. These "classroom assessment techniques"[95] are designed to give teachers feedback about student learning, as well as course design, methods and learning environment, and they include the one-minute paper, buzz groups, group discussions, reflective triads, reflective commentaries, or one-on-one discussions with students.[96]   Other examples of teaching evaluations

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[93] Ramsden, supra note 51 at 221.

[94] *Ibid* at 222. The CEQ has been used for several decades in Australia and elsewhere to measure good teaching: see Light, Cox & Calkins, *supra* note 14 at 244. New measures have been added to Ramsden's questionnaire, including student support, learning resources, learning communities, graduate qualities and intellectual motivation. These supplementary measures were developed by P. Griffin et al., "The Development of an Expanded Course Experience Questionnaire" (2003) 9 Quality in Higher Education 259. See Light, Cox & Calkins, *ibid* at 244-245; see Table 9.2 for examples of questions for each measure. Canadian law faculties have begun to use the LSSE, the Law school Student Engagement instrument in order to measure students' experience of their learning environment.

[95] This expression was first used by Angelo and Cross: see T. Angelo & Patricia K. Cross, *Classroom Assessment Techniques: A Handbook for College Teachers*, 2nd ed. (San Francisco: Jossey-Bass, 1993).

[96] See Light, Cox & Calkins, *supra* note 14 at 252-262 where they discuss the pros and cons of each one of these CATs.

include student focus groups (conducted by an outside facilitator), observation by a colleague, structured observation and teaching squares.[97]

However, if student learning is to be taken seriously and learning-focused teaching methods encouraged, informal feedback such as the kind just mentioned is not sufficient and institutions must construct formal evaluation tools that are learning-focused and that reflect the relationship between student learning approaches, student learning outcomes and the learning environment.

(IV) Conclusions

In this chapter we explored the teaching context because this context has an influence on the teaching practices of law teachers and on the learning approaches of students. The findings suggest that institutional factors such as course characteristics (course type, class size, course format), institutional requirements, institutional culture and the research-teaching tension, all have an influence on law teachers' teaching practices. Workload and therefore time, or rather the lack of it, also have an influence on law teachers' teaching practices. We also saw that students' learning approaches and conceptions of learning (as reflected in their attitudes, expectations and evaluations of teaching) also have an impact on teaching. Unfortunately, in most cases, this influence can be considered negative in that it moves certain law teachers from learning-focused teaching practices to more teacher-focused practices. As pointed out in chapter 5, some law teachers with learning-centered conceptions of teaching adopt teacher-focused teaching methods because of this teaching context.

My findings on these influences on teaching practices are reflected in the literature on higher education, which means that law teachers are not the only ones dealing with such a teaching context. It is the same context in higher education generally. By comparing what law teachers told me about institutional barriers with Barr and Tagg's paradigms of Instruction and Learning, we can conclude that law schools (and universities) in Canada

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[97] *Ibid* at 261-268. The authors also include sample observation sheets in the appendices to the book.

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are still very much in the Instruction paradigm, which makes it difficult for individual teachers to choose learning-focused teaching practices. Indeed, the format of classes (i.e. "lecture courses"), class sizes, the distribution of credit-hours, the focus on course content rather than learning, are illustrations of this paradigm.

On the other hand, my findings suggest that paradigmatic culture, as explored by Toma and by Cownie, do not seem to be significantly related to either conceptions of teaching or to teaching practices. When asked about how their research influenced their teaching, participants' responses indicate that it influences the content of the course but not the teaching or evaluation methods. A small exception to this finding is that some, but not all, feminist law teachers seem more concerned about creating a safe and inclusive learning environment than their colleagues.

In conclusion of this chapter, then, we can say that focusing only on individual law teachers and their teaching practices in order to improve student learning in law is not sufficient. Individual teachers and institutions must pay close attention to teaching context, including institutional constraints (class size, course type, course format), institutional culture and the valuing of teaching, the research-teaching nexus, the physical set-up of classrooms and issues of workload and resources (mostly time), because this teaching context has an influence on teaching practices, but also on student learning approaches. Student learning approaches, as we saw, have been shown to have a direct influence on student learning outcomes. Therefore we must create learning environments (both individually and institutionally) that will foster deep learning approaches in students. This requires paradigmatic changes for both individual teachers and institutions.

CHAPTER 7 - CONCLUSIONS

The goal of this study was to describe and explore legal education in Canada by conducting an empirical study of law teaching. More specifically, my aim was to describe with "thick descriptions" the teaching and evaluation methods used by law teachers across the country and to give some possible explanations for these teaching practices. In order to do this, I chose to carry out an empirical study of law teaching using qualitative methodology and mixed methods for collecting data, including a web-based questionnaire, visits to nine different faculties, in-class observations and semi-structured interviews.

When I began my exploratory journey into law teaching, my first assumption was that student learning should be the most important criteria in measuring the effectiveness of teaching. Based on this assumption and my own experience, I also assumed that students did not learn as effectively as they could in Canadian legal education, and that there was thus a disconnect between the goals of legal education and students achieving them. I blamed this disconnect on the teaching and evaluation methods used in law schools, which I assumed were the lecture and sit-down 100% final examination, based on my own experience as a law student and professor. My findings nuanced these assumptions.

The survey results tell us that the predominant teaching method used in Canadian law classrooms is the lecture, but that it is supplemented by teacher-driven class discussion, question-answer or some form of Socratic method. My observation data confirms this finding: in the classes that I observed, law teachers mostly lectured and the classes were interactive, although this interaction was mostly teacher-driven. We also saw that the most predominant method of evaluation is the final sit-down examination, though it is often used in tandem with a mid-term sit-down examination or assignments. When we compare these findings with the literature, we conclude that although lectures can be interactive and engaging, as we observed, their main function is to transmit information. Lecturing is thus not the best method to encourage students to develop higher level thinking skills such as application, synthesis and evaluation (i.e. critical thinking). On the

other hand, discussion, especially small group discussion, is well suited for these teaching objectives, which were identified by participants as important educational objectives. Whole class discussions are not ideal because they are teacher-focused and teacher-driven, thus limiting the opportunities for student independence and autonomy. Moreover, not everyone in the class is participating in those discussions, a fact that was also confirmed during my observations. Small group discussions are almost never used in Canadian law classrooms.

If we look at it from the perspective of student learning, there seems to be a disconnect between at least some of the participants' educational objectives (e.g. critical thinking) and how they choose to achieve them, i.e. the teaching and evaluation methods they use. If objectives are not the main driver behind law teachers' pedagogical choices, how can we then explain those choices?

In order to understand and explain the relationship between teaching and learning in Canadian legal education, building on already existing frameworks from Kember and Prosser (Figures 2-5 and 2-9 respectively) I have thus created a framework to summarize the findings and discussions in this project (see Figure 7-1). In the diagram, the green solid arrows represent relationships that were established through our analysis. The green arrows thus indicate the factors that influence law teachers' choices of teaching and evaluation methods. The solid black arrows represent relationships that are established in the literature. If we follow these arrows, therefore, we can demonstrate relationships between conceptions of teaching, teaching practices, student learning approaches and student learning outcomes, or between students, teaching practices, student learning approaches and student learning outcomes, or finally between institution, teaching practices, students, student learning approaches and student learning outcomes. Finally, the dotted arrows represent possible relationships that have not yet been established in the literature and point to possible directions for future research.

As we saw, the first set of factors that explain law professors' teaching practices are their conceptions of teaching. As we saw in chapter 5, six different conceptions of teaching emerged from our analysis of the interview data:

1. Teaching as transmitting;

2. Teaching as modeling;

3. Teaching as motivating students (and entertaining);

4. Teaching as getting or helping student to acquire knowledge, skills and attitudes;

5. Teaching as facilitating learning; and

6. Teaching as fostering conceptual changes in students (transforming).

Figure 7-1 Rochette's framework on teaching and learning in Canadian legal education
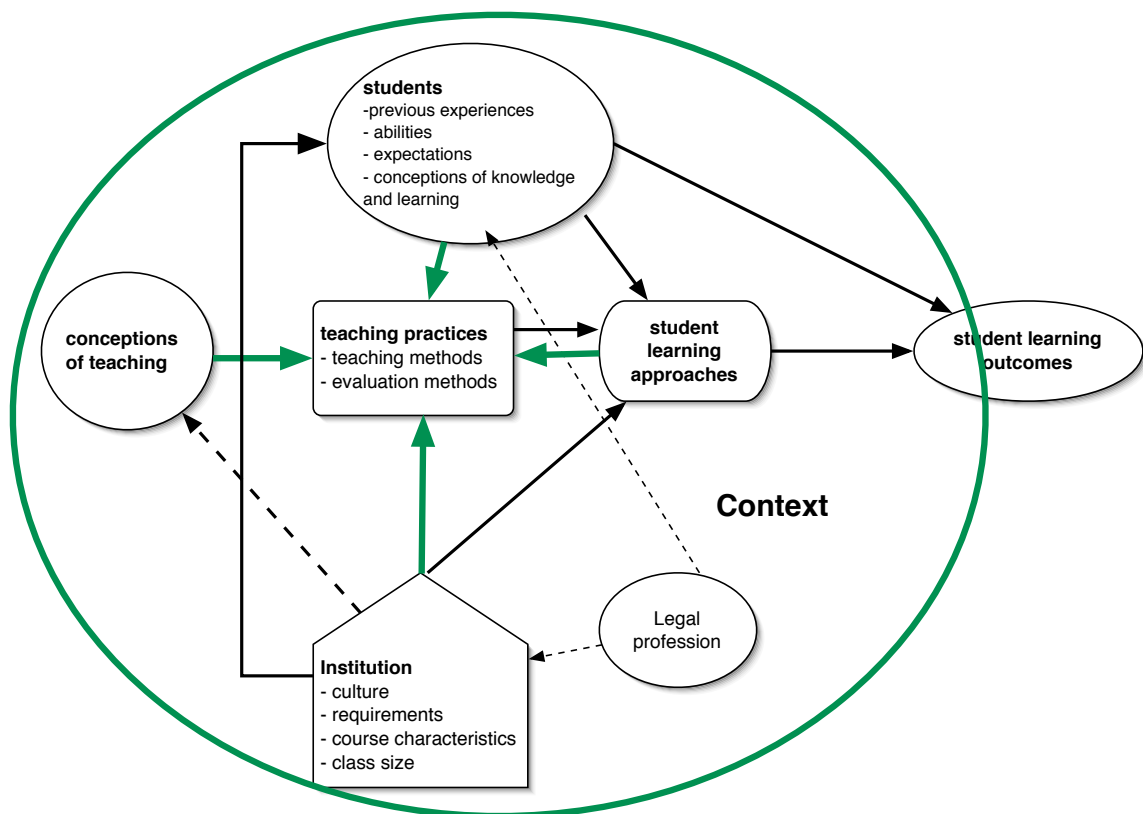
These conceptions can be placed on a continuum from teaching-centered to learning-centered conceptions. These findings seem to generally reflect the conceptions of teaching found in the literature, with a few differences that we explored in chapter 5. One of those differences was that other than Dan Pratt's work on conceptions of teaching in professional disciplines such as medicine and education, the modeling conception did not come up in any other study. However, we explained this difference in terms of law teaching's signature pedagogy, the case-method, which is designed to show students the steps of legal reasoning by making them read great numbers of cases and by demonstrating legal reasoning in class, through lecture, question-answer or Socratic. We also saw that despite the fact that most law professors interviewed expressed ideas that would put them in more than one category, most of the participants would have either teaching-centered or learning-centered conceptions of teaching (except for that small group of teachers with mixed conceptions). This finding also fits with the literature on conceptions of learning.

Always with the perspective of student learning, I then looked more closely at the relationship between these conceptions of teaching and teaching practices. Although we saw from the data that almost all participants use a combination of teaching methods, I was still able to establish a relationship between conceptions of teaching and teaching practices. Looking explicitly at this relationship, four groupings of individual law teachers emerged:

1. Law teachers who have teaching-centered conceptions and use teacher-focused methods such as lecture and teacher-driven question-answer or class discussion. None of them used or even mentioned small groups, simulations, role plays or other more learning-focused methods. The relationship between conceptions and practices is consonant.

2. Law teachers with learning-centered conceptions of teaching who use learning-focused (e.g. small groups, simulations, role plays, film, one-minute papers) as well as teacher-focused practices. Teachers in this last group have pedagogical knowledge about student learning and build it into their teaching

practices. The relationship between conceptions and practices is consonant because although they use some teacher-focused practices, there is usually a learning rationale behind the use of these.

3. Law teachers who have mixed conceptions (both teaching-centered and learning-centered) who use a combination of teacher-focused and learning-focused methods. These teachers expressed ideas that put them in many different categories of conceptions of teaching and used a large variety of teaching methods. There is no apparent dissonance between their conceptions of teaching and their teaching practices. They also seem to have tacit and intuitive pedagogical knowledge.

4. Law teachers who have learning-centered conceptions of teaching but use teacher-focused methods. This last group experienced dissonance between their conceptions of teaching and their teaching practices.

Though teachers in any one of these groupings expressed some concerns about the teaching context, we saw in chapter 5 that the dissonance experienced by this last group seemed to be primarily caused by an overwhelming concern for coverage and by the teaching context. More specifically, this dissonant group expressed concerns with institutional constraints, institutional culture (the (de)valuing of teaching) and student resistance to their learning-focused teaching methods. This teaching context pushed those teachers to adopt more teacher-focused practices.

In chapter 6, we thus explored the teaching context in more depth. According to my analysis of the interview and survey data, the institutional factors that seem to influence teaching practices include institutional constraints such as course characteristics (class size, course format, course type), an institutional culture that promotes teacher-focused practices and devalues teaching, workload and lack of time, and student attitudes, expectations and evaluations. When we compared the findings with the literature, we saw that legal academics' teaching context is related more generally to the context of higher education, which values research over teaching, contributes to student

consumerism (in turn affecting their expectations), pressures teachers to apply for research grants, and structures a learning environment that fosters surface and strategic learning approaches (timetabling, credit-hours, etc...). The workload issue has been researched extensively and the research discussed in chapter 6 concurs with what participants told me about not having enough time to do everything they have to do, let alone adopt learning-focused teaching practices.

Also part of the context is the relationship that law schools have with the legal profession. As we saw in chapter 1, the constant pressure of the legal profession (even more so now with the recommendations of the Task Force) to offer certain courses or to make others mandatory has translated into the shaping, to various degrees, of the institutional requirements that in turn affect teaching practices. In my diagram, the line between the profession and the institution is dotted, but depending on what happens with the Task Force recommendations (which are currently being examined in an Implementation committee), this line could become solid. The legal profession also likely has an influence on law students' expectations about curricular offerings and "learning the black letter law". [1]

We also saw in chapter 6 that students have a significant influence on teaching practices but not necessarily in a positive way. Although most law teachers I talked to had good impressions of law students' abilities, they were concerned about students' attitudes, such as coming unprepared to class, doing the least amount of work but wanting the best grades, and being passive. In some cases, student' unpreparedness for class meant that teachers reverted to more teacher-focused methods such as the lecture. Some participants also mentioned student resistance to learning anything different than "black letter law" and to more learning-focused teaching methods. Student resistance was a predominant theme running through the interviews. Although we did not empirically measure student learning approaches, when we compare what participants told me about students with the literature on student learning approaches, we can tentatively

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[1] See Annie Rochette & W. Wesley Pue "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Yearbook of Access to Justice 167.

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conclude that what law teachers should be concerned about are students' approaches to learning. Indeed, from my analysis of participants' perceptions of students, it seems that most law students have adopted surface and strategic approaches to learning.

The literature on student approaches to learning tells us that student learning approaches are influenced by teaching and learning environments (and their perceptions of it), including teaching approaches. As we saw in chapter 2, fostering deep approaches to learning means creating environments characterized by lighter workloads, active learning, interaction among students and alignment between objectives, teaching methods and assessment, among other things. My findings suggest that the predominant learning environments in law faculties may be related to students adopting surface and strategic learning approaches. My analysis revealed that law teachers have an overwhelming concern with coverage, that teacher-focused teaching practices and anxiety-causing evaluation methods such as examinations are predominant in law faculties, and that there is usually little opportunity for students to interact with each other in classes. Comparing my analysis of the survey and observation data with the literature on student learning approaches, we can say that the learning environments that we find in most law faculties do not likely foster deep learning approaches in law students. More research into law students' learning approaches is therefore needed to confirm or contradict this finding.

In order to improve student learning in legal education, we must therefore design learning contexts that will foster deep learning approaches by sacrificing content for learning, by being overly selective instead of overly inclusive with the material we assign, by adopting teaching practices that focus on learning and fostering conceptual changes in our students and not on transmitting knowledge and by using evaluation methods that emphasize feedback and student independence in their own learning.

However, simply focusing on teaching methods, as this study started out doing, is not sufficient. The key to improving student learning in legal education is not to get law teachers to use specific teaching methods, but to get them to choose the most

appropriate methods to foster deep learning approaches in students so they can achieve their learning objectives. It means making professors aware of their own conception(s) of teaching and trying to bring those who have a transmitting or acquisition (i.e. teaching-centered) conception towards a more facilitating learning or transforming conception of teaching. It also means ensuring that professors who have more learning-centered conceptions do not have to adopt teaching practices that conflict with their beliefs. This requires paying attention to the teaching and learning context: for teachers, this means institutional culture and requirements, and students. For students, this means their learning contexts. Going back to my diagram (Figure 7-1), we must pay attention to all the elements in the framework and not simply teaching practices, although these are central.

My impression, which is based on my interviews with participants, is that the law teachers I talked to reflect a great deal about teaching; they reflect on their good and bad experiences and bring improvements to their teaching by introducing new themes, new perspectives, new ways of presenting the material, new assessments, and even new teaching methods. However, this reflection seems to be focused on teaching and rarely on learning. I know this from the "hmmm.... let me think about that" or "I don't know, I guess I do it" responses I obtained when I asked participants how they got students to think critically about the law, or to achieve their objectives. Other than those teachers with clear learning-centered conceptions of teaching, student learning was rarely mentioned in the interviews as a rationale for particular teaching and evaluation methods. Teaching is what law teachers do on a weekly basis; they spend a significant number of hours preparing for it, being in class, preparing and grading assessments. Yet they do not seem to think systematically about the other end of teaching: student learning. If students are not learning what we are teaching, then why should we spend all this time doing it?

In order to ensure student learning in legal education, therefore, learning needs to become the focus of teaching as we can see in Figure 7-2. As Light, Cox and Calkins put

it, learning should be "...the underlying concept integrating the worlds of teacher, researcher and student.[2]

Figure 7-2 - law teaching - the way forward
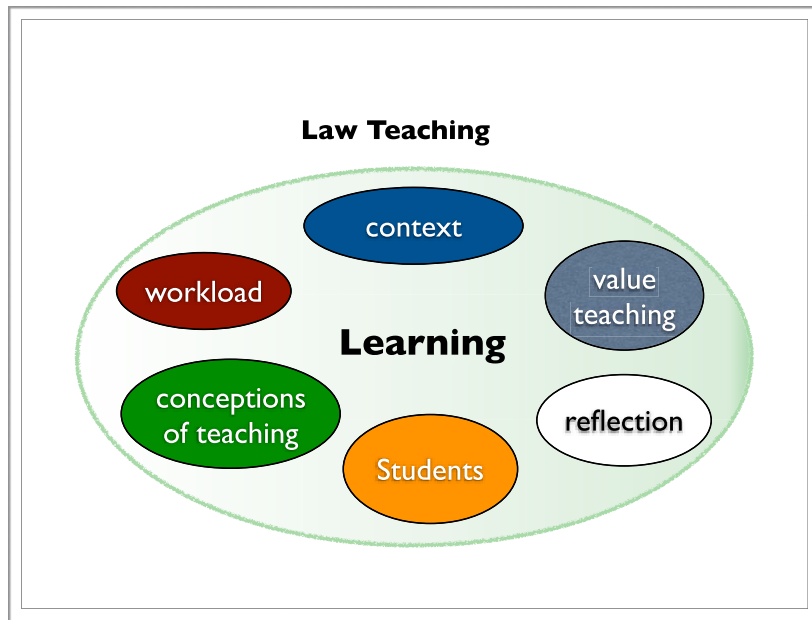
Putting learning at the centre of law teaching means that law professors need to be more reflexive about learning and its relationship to the other facets of their professional lives, as Deborah Rhode explains:

> What defines our profession is a commitment to learning: our own, our students, our readers. We need more occasions to consider how well our daily activities advance our deepest aspirations and what institutional structures get in the way. Our pursuit of knowledge should always include self-knowledge, and a commitment to connect our principles with our practices. [3]

Light, Cox and Calkins suggest a framework for the development of academics as reflective professionals. In this framework, there is a close relationship between research (into teaching and learning) and practice. The first phase, "teaching defined by research" is the 'definitional phase' as they call it, "challenges practitioners to reflect critically upon their own implicit, often unspoken, definition or conception of teaching practice in

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[2] Greg Light, Roy Cox & Suzanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed. (Los Angeles: Sage, 2009) at 275.

[3] Deborah L. Rhode, *In Pursuit of Knowledge: Scholars, Status, and Academic Culture* (Stanford, CA: Stanford University Press, 2006) at 173.

respect of research and theory."[4] The authors tell us that making the connection between teaching and learning is not enough and that academics also need to take a critical approach to the nature of that relationship as it applies to them.[5] The next two phases in Light, Cox and Calkins' framework for the development of reflective professionals do not occur separately or concurrently but are interdependent.[6] They are "teaching v. research" and "teaching informed by research" or scholarly teaching.[7] Scholarly teaching "is informed not only by the latest ideas in the field but by current ideas about teaching in the field."[8] The first of these two phases thus requires academic to move beyond the teaching/research tension to a "culture of inquiry", which encourages an engagement with learning by all.[9] After all, the authors tell us, academics are master learners; they know "how to learn deeply in their chosen field,"[10] that is why they are academics.   Light, Cox and Calkins argue that teaching informed by research, theory and by expert and critical perspectives is an essential element of reflective professional practice.[11] The fourth phase of their framework is teaching as research, where academics carry out action research on teaching to ensure a critical engagement with it.[12]

Of course we cannot expect law teachers to do action research into every aspect of their teaching. However, we should at least aim for the first phase in their framework for the development of reflective professionals, that of teaching defined by research. This means knowledge about learning, about student learning approaches and about learning environments, rather than simplified knowledge about teaching techniques.   As the

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[4] Light, Cox & Calkins, *supra* note 2 at 278.

[5] *Ibid.*

[6] *Ibid* at 278-279.

[7] *Ibid* at 279-280.

[8] *Ibid* at 281 citing Pat Hutchings & Lee Schulman, "The Scholarship of Teaching: New Elaborations, New Developments" (1999) 31 Change 10.

[9] Light, Cox & Calkins, *supra* note 2 at 280.

[10] *Ibid.*

[11] *Ibid* at 281.

[12] *Ibid* at 282.

framework of the reflective professional suggests, we must also strive for a positive and interdependent relationship between research, teaching and learning.

However, in order to be able to become reflective professionals and to make learning central to their teaching, law teachers need a teaching context that will encourage this move. As we saw, academics in general, and law teachers in particular, are overworked. Asking them to take yet more time to learn about learning is bound to fail. The institutional context is key. We must fight for institutions based in the Learning paradigm; these institutions would value teaching as much as research (since, as we just saw, they are intrinsically connected), structure teaching contexts to support, and not hinder, teachers in their design of learning environments to foster deep learning approaches (this may mean, for example, a lesser teaching or especially administrative load, reasonable class sizes or creative timetabling) and changing formal evaluations so that they reflect more accurately the relationship between teaching and learning.

This paradigmatic shift may be labelled as utopian, especially in the current context of higher education which, as we saw in chapter 1, is heading in the very opposite direction of what I am suggesting. However, for the sake of student learning, the teaching-learning relationship and the relationship between law teachers and students, something must be done. The cynicism and the fatigue I encountered while on my visits across the country was palpable. Legal education must transform itself.

Perhaps we can start with small steps. At the level of individual law teachers, this might involve designing workshops aimed at getting law teachers to reflect on their conceptions of teaching and the relationship to teaching practices and to learn about student learning. Judging from my own experience running the CALT teaching and learning workshops, law teachers enjoy sharing their experiences with one another and learning about teaching and learning in a collegial, friendly atmosphere. Perhaps eventually these teachers will want their colleagues to join them in fostering changes at the institutional level, first in their faculties, then in their universities.

At the institutional (law faculty) level, concrete first steps towards improving student learning might involve first and foremost valuing teaching as much as research in tenure and promotion decisions, but also in the teaching community. Putting learning first also requires law faculties to identify learning-centered program objectives and to ensure that there is proper alignment of these objectives with individual course learning objectives, teaching and learning strategies and evaluation methods. Creating program objectives also means defining building blocks from one year to the next so that we are facilitating students' learning of increasingly complex skills and knowledge, as well as change their conceptions of knowledge and of learning. It means promoting an institutional ethos that encourages deep learning approaches through the creation of varied learning environments that foster those deep learning approaches. At the end of the day, we can thus be confident that students will have attained these learning objectives after their years of study in the program.

At the institutional level, putting learning at the centre of legal education might also mean taking advantage of people's strengths instead of treating everyone the same way. For example, some teachers prefer large classes and lecturing and are engaging lecturers; put these teachers in learning contexts where they will clearly explain certain basic principles and concepts. Others excel at facilitating small group discussions and creating assignments and evaluation methods that take students to higher-level thinking stages. If we think of these professors as perfect complements for each other rather than as separate people teaching separate courses in silos, then we are opening up countless possibilities for creating learning environments that will foster deep learning approaches. At the institutional level, this also means supporting (with time and resources) teaching initiatives that will foster deep learning approaches. In the legal education context, problem-based learning, clinical legal education or other experiential learning opportunities, some of them using learning technologies to enhance learning through virtual simulations for example, are all possible ways to re-imagine legal education. If we put learning at the centre of legal education, the sky is the limit as to what we can achieve in terms of student learning.

These are only a few concrete suggestions for change while we await the paradigmatic shift. I do not hold the key to the future of legal education. Individual law faculties within their particular contexts, with their own institutional culture and with their own innovative law teachers, must turn to these questions.

Paradigmatic shifts do not happen overnight, but they are possible. That is why I embarked on this research project and that is why I have the intention of widely distributing the results, and more importantly, my own reflections on those results. More importantly, I hope that law teachers who read this will want to reflect on their own conceptions of teaching and teaching practices and to learn more about learning.

Future research

I would like to end this project by opening other doors for future research. This study was the first empirical study of law teaching in Canada. For this reason, the methodology chosen attempted to get both breath and depth in describing and explaining law teaching in Canada. I hope that I have achieved my objectives of giving "thick descriptions" and possible explanations for law teaching in Canada. But this research project is only the beginning of what I hope will become a new area of legal research in Canada: the scholarship of teaching in legal education.

Indeed, this research project has raised more questions than it has answered. It has opened doors on future research opportunities. Much more research needs to be carried out on aspects that we could not deal with here or that we could only briefly touch upon. For example, the second half of the teaching and learning framework, student learning, was not empirically examined in this study, which focused on the teaching half. Empirical studies on students' approaches to learning, and how they are influenced by the learning environment and teaching approaches, need to be carried out. Students' perceptions of their learning environment and of teaching approaches also need to be done in order to complete the picture of student learning approaches. It would also be interesting to see if and how student learning approaches change during

their legal studies and why they do. Similarly, studies on students' conception of legal knowledge and how it changes over the duration of their studies, along with their conceptions of learning, would help law teachers help students in moving from the more basic conceptions to the more complex ones on the spectrum described in chapter 2.

Further, when I looked at the relationship between teaching conceptions and teaching practices, the group of law teachers who have mixed conceptions of teaching raised more questions than answers. Why do they have mixed conceptions? My impression is that this mix is due to the combination of a lack of reflection about their conception of teaching with some pedagogical knowledge about learning. The result is a pot-pourri of teaching conceptions and practices, yet no apparent dissonance or frustration (as the dissonant grouping experienced). This group is interesting because the literature says teachers cannot have both learning-centered and teaching-centered conceptions of teaching, yet they do. Therefore we need to know more about them. They might hold the key to finding a balance between student learning and the existing teaching context.

These are a few examples of possible research opportunities into teaching and learning in Canadian legal education. I certainly intend on pursuing research in this area, but hope that many of my colleagues across the country will also want to contribute to a distinct body of research into legal education. As teaching occupies a significant place in our professional lives, having access to this kind of research would make our lives a little bit easier.

Note: if you find any of my categories unhelpful, please indicate your answer in the 'Other' category, specifying what you mean.

1. Rank – which of the following best describes your rank at your institution?

    ❑ Full professor

    ❑ Associate professor

    ❑ Assistant professor

    ❑ Lecturer/Instructor

    ❑ Other. Please specify: _____

2. Status – which of the following best describes your status at your institution?

    ❑Tenured

    ❑Tenure-track

    ❑Non-tenured

    ❑Limited term appointment (contract)

    ❑Other. Please specify: _____

3. How many years have you been teaching law?

    a. Less than 3 years

    b. Between 3 and 6 years

    c. Between 7 and 10 years

    d. Between 10 and 20 years

    e. More than 20 years

Comments:

Optional background questions

You are not required to answer the following questions. Feel free to skip ahead to the teaching and learning questions by clicking on the 'Next' button at the bottom of the page.

4. Gender: _____

5. Do you consider yourself to be a member of a minority group? (Check as many as apply)

   a. Yes, by virtue of my ethnicity or race

   b. Yes, by virtue of my religion

   c. Yes, due to a physical disability

   d. Yes, by virtue of my language

   e. Yes, by virtue of my sexual orientation

   f. No, I do not consider myself to be a member of a minority group

   g. Other. Please specify: _____

Teaching and Learning methods questions

Please answer the following questions for **2 courses** you regularly teach in one year. If it helps, you can answer the questions thinking about the courses you taught last year (2004-2005 academic year).

You can choose to answer the questions for 1 course only, but if your teaching methods tend to vary between courses, answering them for 2 courses (for example a first year course and an upper year seminar) will give the researcher a more accurate picture.

COURSE #1

6. Name of course #1:

   _____

7. How many credits?_____

8. What type of course is this? (check all that apply)

   ❑ First year basic course

   ❑ Upper level compulsory course

   ❑ Upper level elective course

   ❑ Seminar

   ❑ Workshop

   ❑ Clinical course

   ❑ Other. Please
   specify:_____

9. How many classroom hours a week do you teach in this course?

   ❑ 2 hours

   ❑ 3 hours

   ❑ 4 hours

   ❑ Other (specify):

   _____

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10. On average, how many hours a week do you devote to this course outside of the classroom (eg office hours, monitoring online discussions, preparation, replying to student e-mails, design and correction of assignments)?

- ❑ Less than 5 hours outside classroom time

- ❑ Between 5 and 10 hours outside classroom time

- ❑ Between 11 and 15 hours outside classroom time

- ❑ More than 15 hours outside classroom time

- ❑ Other (specify):

  _____

11. On average, how many students are enrolled in this course?

- ❑ Over 100 students

- ❑ Between 60 and 100 students

- ❑ Between 35 and 60 students

- ❑ Between 20 and 35 students

- ❑ Between 12 and 20 students

- ❑ Less than 12 students

- ❑ Other (please specify):

  _____

12. In a typical class that you would teach in this course, what proportion of the time might be devoted to the following activities/teaching methods?

	I **never** use this method	For about 10% of class time	Between 10-25% of class time	Between 25-50% of class time	Between 50-75% of class time	75% or more of class time	Typically for the entire class time
Lecture – delivery of material by instructor in lecture format							
Small groups or pairs							
Role playing							
Class discussion : emphasis is on interaction among students and on sharing of experience and points of view; the instructor acts as a facilitator							
Question-Answer: mostly fact or information-driven questioning by instructor							
Socratic method: teacher-driven dialogues with students; teacher tests students' hypotheses for clarity, precision, accuracy, logical precision or relevance through artful questioning							
Other:							

Please describe
'Other':_____

_____

13. Reflecting on the **course as a whole**, how many classes would include the following activities/teaching methods? For example, if you use small group activities once every four classes in a semester of 12 classes, you would check 'occasionally' for 'small groups or pairs'.

	I **never** use this method	Rarely (1-25% of classes)	Occasionally (25-50% of classes)	Regularly (50-75% of classes)	Very often (75% or more of classes)	Typically, I use this method in every class, for the entire course
Lecture:delivery of material by instructor in lecture format						
Small groups or dyads						
Role playing						
Class discussion : emphasis is on interaction among students and on sharing of experience and points of view; the teacher acts as a facilitator						
Question-Answer: mostly fact or information-driven questioning by teacher						
Socratic method: teacher-driven dialogues with students; teacher tests students' hypotheses for clarity, precision, accuracy, logical precision or relevance through artful questioning						
Organized activity outside the classroom (eg field trip)						
Guest speakers						
Other:						

Please describe
'Other':_____

_____

Do you have any additional comments on teaching and learning methods?

Comments:

14. What, if any, is your use of **learning technologies** in this course? Check all that apply.

   ❑ I use Powerpoint in the classroom

- ❏ I use a course management software (CMS)(eg WebCT, TWEN, Blackboard) to manage the course and to supplement the face-to-face meetings for this course
- ❏ I use the discussion threads on CMS to further class discussion
- ❏ I use e-mail to communicate with my students between classes
- ❏ I designed/have a course web page for this course
- ❏ I never use learning technologies in this course

Other. Please specify: _____

Evaluation methods

15. Which of the following methods of evaluation do you typically use in this course? Indicate the percentage of the final grade alloted for each item.

Final examination (sit down)	
Final examination (take home)	
Mid-term examination (sit down)	
Mid-term examination (take home)	
Final research paper	
Assignments or projects (specify % for each) ❏ 1 assignment/term ❏ 2 assignments/term ❏ 3 assignments/term ❏ 4 assignments/term ❏ more than 4	
Class participation	
Presentation	
Group assignment/project	
Other	

Please describe 'other':

_____

_____

16. Would you like to answer the same questions for Course #2, or would you rather skip to more general questions?
- ❏   Yes, I would like to continue to answer questions about Course #2
- ❏   No, I would rather skip ahead to general questions

COURSE #2

17. Name of course #2:

_____

18. How many credits?_____

19. What type of course is this? (check all that apply)

❑ First year basic course

❑ Upper level compulsory course

❑ Upper level elective course

❑ Seminar

❑ Workshop

❑ Clinical course

❑ Other. Please
   specify:_____

20. How many classroom hours a week do you teach in this course?

❑ 2 hours

❑ 3 hours

❑ 4 hours

❑ Other (specify):

_____

21. On average, how many hours a week do you devote to this course outside of the classroom (eg office hours, monitoring online discussions, preparation, replying to student e-mails, design and correction of assignments)?

❑ Less than 5 hours outside classroom time

❑ Between 5 and 10 hours outside classroom time

❑ Between 11 and 15 hours outside classroom time

❑ More than 15 hours outside classroom time

❑ Other (specify):

_____

22. On average, how many students are enrolled in this course?

❑ Over 100 students

❑ Between 60 and 100 students

❑ Between 35 and 60 students

❑ Between 20 and 35 students

❑ Between 12 and 20 students

❑ Less than 12 students

❑ Other (please specify):

_____

23. In a typical class that you would teach in this course, what proportion of the time might be devoted to the following activities/teaching methods?

	I **never** use this method	For about 10% of class time	Between 10-25% of class time	Between 25-50% of class time	Between 50-75% of class time	75% or more of class time
Lecture – delivery of material by instructor in lecture format						
Small groups or pairs						
Role playing						
Class discussion : emphasis is on interaction among students and on sharing of experience and points of view; the instructor acts as a facilitator						
Question-Answer: mostly fact or information-driven questioning by instructor						
Socratic method: teacher-driven dialogues with students; teacher tests students' hypotheses for clarity, precision, accuracy, logical precision or relevance through artful questioning						
Other:						

Please describe
'Other':_____

_____

24. Reflecting on the **course as a whole**, how many classes would include the following activities/teaching methods? For example, if you use small group activities once every four classes in a semester of 12 classes, you would check 'occasionally' for 'small groups or pairs'.

	I **never** use this method	Rarely (1-25% of classes)	Occasionally (25-50% of classes)	Regularly (50-75% of classes)	Very often (75% or more of classes)	Typically, I use this method in every class, for the entire course
Lecture:delivery of material by instructor in lecture format						
Small groups or dyads						
Role playing						
Class discussion : emphasis is on interaction among students and on sharing of experience and points of view; the teacher acts as a facilitator						
Question-Answer: mostly fact or information-driven questioning by teacher						
Socratic method: teacher-driven dialogues with students; teacher tests students' hypotheses for clarity, precision, accuracy, logical precision or relevance through artful questioning						
Organized activity outside the classroom (eg field trip)						
Guest speakers						
Other:						

 Please describe
'Other':_____

_____

Evaluation methods

25. Which of the following methods of evaluation do you typically use in this course? Indicate the percentage of the final grade alloted for each item.

Final examination (sit down)	
Final examination (take home)	
Mid-term examination (sit down)	
Mid-term examination (take home)	
Final research paper	
Assignments or projects (specify % for each) ❑ 1 assignment/term ❑ 2 assignments/term ❑ 3 assignments/term ❑ 4 assignments/term ❑ more than 4	

Class participation	
Presentation	
Group assignment/project	
Other	

Please describe 'other':

_____

_____

25. What, if any, is your use of **learning technologies** in this course? Check all that apply.

- ❑ I use Powerpoint in the classroom
- ❑ I use a course management software (CMS)(eg WebCT, TWEN, Blackboard) to manage the course and to supplement the face-to-face meetings for this course
- ❑ I use the discussion threads on CMS to further class discussion
- ❑ I use e-mail to communicate with my students between classes
- ❑ I designed/have a course web page for this course
- ❑ Other. Please specify:

_____

General questions

26. Generally, How often do you experiment with new/innovative (ie something you have never done) teaching techniques?

- ❑ Very often (at least every two weeks)
- ❑ Sometimes (about once a month)
- ❑ Rarely (once a semester)
- ❑ Never

Comments:

27. Generally, which of the following factors and conditions influence your choice of teaching, learning and evaluation methods? (Please check all that apply)

- ❑ Course level (1st year;upper years; graduate course)
- ❑ Course type (seminar, workshop, regular course)
- ❑ Students (number of students; undergraduate; first or upper years)
- ❑ Format (what and when are the teaching blocks)

- ❑ Physical space/layout of the classroom
- ❑ Course content/subject matter of the course
- ❑ Comfort level
- ❑ Time/resources constraints
- ❑ Teaching load
- ❑ Other obligations (eg research, administration duties)
- ❑ What colleagues are doing
- ❑ Training in teaching (or lack thereof)
- ❑ Student expectations
- ❑ Environmental/Contextual factors: influence of the legal profession, university administration
- ❑ Other. Please specify:

_____

_____

Comments:

28. Have you ever received any training on teaching?
- ❑ Yes
- ❑ No

29. Where?
- ❑ I attended training organised by my faculty/department
- ❑ I attended training put on by my University (professional development unit or teaching centre)
- ❑ I attended the Canadian Association of Law Teachers teaching clinic
- ❑ Other (please specify)

30. Was that training useful to you? Why or why not?

31. Does your faculty regularly offer teaching workshops or seminars (or brown bag lunches)?

- ❑ Yes
- ❑ No
- ❑ Please describe briefly

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32. Would you like to continue participating in this study? If so, which of the following would you like to be contacted for? (check all that apply):

- ❑ You can contact me to obtain my course syllabi
- ❑ I would like to be contacted for **in-class** observations (1-2 visits)
- ❑ I would like to be contacted for **a 60-90 minute interview**
- ❑ Please do not contact me any further

☺**THANK YOU FOR YOUR TIME!**

participant	Descriptors	institutional descriptors
AsPW1	female, associate professor, law and society	west, research-oriented institution
APM1	male, assistant professor, law and society	west, research-oriented institution
FPM1	male, full professor, law and society	west, research-oriented institution
AsPW2	female, associate professor, feminist, law and society	west, research-oriented institution
APW1	female, assistant professor, feminist, law and society	west, teaching-oriented institution
APW2	female, assistant professor, feminist, law and society	west, teaching institution
AsPW3	female, associate professor, feminist, law and society	west, teaching-oriented institution
FPM2	male, full professor, critical legal studies	west, teaching-oriented institution
AsPW4	female, associate professor, feminist, law and society	west, teaching-oriented institution
AsPW5	female, associate professor, law and society	prairies, teaching-oriented institution
APM2	male, assistant professor, positivist	prairies, teaching-oriented institution
AsPM1	male, associate professor, doctrinal	prairies, teaching-oriented institution
AsPW6	female, associate professor, feminist, law and society	prairies, teaching-oriented institution

participant	Descriptors	institutional descriptors
FPM13	male, full professor, doctrinal	prairies, teaching-oriented institution
AsPM2	male, associate professor, law and society	ontario, research-oriented institution
FPM3	male, full professor, law and society	ontario, research-oriented institution
FPW1	female, full professor, feminist, law and society	ontario, research-oriented institution
FPM4	male, full professor, law and society	ontario, research-oriented institution
AsPM3	male, associate professor, law and society	ontario, research-oriented institution
APW3	female, assistant professor, law and society	ontario, research-oriented institution
APW4	female, assistant professor, feminist, law and society	québec, research-oriented institution
FPM5	male, full professor, doctrinal	québec, research-oriented institution
AsPW7	female, associate professor, feminist, law and society	québec, research-oriented institution
FPM6	male, full professor, doctrinal	québec, teaching-oriented institution
FPM7	male, full professor, doctrinal	québec, teaching-oriented institution
FPM8	male, full professor, doctrinal	québec, teaching-oriented institution
APW5	female, assistant professor, critical, feminist, pluralist	québec, teaching-oriented institution
AsPW8	female, associate professor, doctrinal	québec, teaching-oriented institution

participant	Descriptors	institutional descriptors
AsPW9	female, assistant professor, doctrinal	québec, research-oriented institution
AsPM4	male, associate professor, law and society	québec, research-oriented institution
FPM8	male, full professor, doctrinal	québec, research-oriented institution
FPM9	male, full professor, law and society	québec, research-oriented institution
FPM10	male, full professor, law and society	québec, research-oriented institution
FPM11	male, full professor, law and society	ontario, research-oriented institution
APW6	female, assistant professor, law and society	québec, research-oriented institution
AsPM4	male, associate professor, law and society	ontario, research-oriented institution
FPM12	male, full professor, doctrinal	québec, research-oriented institution

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