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Teaching Law Etymologically.

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On 22 May 2014 I gave a paper at the University of Northampton annual Teaching & Learning conference. The opportunity gave me a chance to reflect on why learning of law is generally perceived by students as dry, boring and tedious: a subject to be tolerated in the interests of future gains.

In the paper I tried to argue that critical approaches to teaching law can transform the experience of learning law making the possibilities of freedom, equality and justice a reality. The argument was that most law students perceive learning law as “hard and boring” but necessary as an instrument to a singular outcome – a well-paid career in law!

That is all fine, but the unintended consequence of this approach to law studies is that learning of law becomes commodified, measured by reference to the size of the ultimate financial return, and by reference to the coefficient [1] of delivery of teaching of law. Thus, teaching of law risks being reduced to the realisation of an economic equation. I contend that such a transactional relationship is not an interesting or intellectually useful experience for the student or the teacher of law.

I seek to argue that teaching and learning law can be ‘fun’, intellectually stimulating and creative, both for the student and the lecturer. It is claimed that conceptualisation and critical theories can help make teaching and learning of law a transformative experience.

In this brief extract from the paper, I argue that etymology illuminates our approaches to understanding of law and opens up infinite ways to interrogate law which generate novel questions and fresh positions, in contradistinction to a pedagogy, sacrificially, offering ‘answers’ which are then handed down to students as ‘things’ for them to memorise and repeat in their essays and examinations – the impossible logic of an abacus.

One approach is a deconstruction technique using etymology to deconstruct ‘pre-given’ notions and meanings. This is where the questions we ask operate to transform our perception and truly reflect our lived historical experience of law.

The questions include for instance considerations of how and why are we conscious of law, why we follow rules and accept sovereignty of power or another authority, where does law come from and how can we feel it, how does law structure/define our relations and how we think about law and relate to our fellow creatures, culture and society. In other words we are transforming our perception of law as a system of rules into dynamic organisational system.

At the start we notice that any basic dictionary will tell us that law is defined as *an enforceable body of rules that govern society*.

A definition carries the attraction of apparent simplicity and clarity, even if not any aesthetic beauty, and seems to reflect our own inner common sense of law is and what law should be. However, because a definition appears to be unquestionable amounting to a simulacrum of our own personal view of law, in short we have internalised something but we do not know not what it is and are at risk of losing our consciousness.

However, as we know definitions are closed systems justified on basis of exclusion. But, when we look a little closer at what the definition apparently suggests, or more significantly at what it does not say, cracks appear opening up vistas of alternative understanding and critique.

Accordingly let us ‘unpack’ the definition of law to see if such an examination helps us to understand a little more what is meant by law and its sense. We will now attempt to deconstruct the following sentence to see if such an analysis opens up the specificity of the text’s critical difference from itself [2].

“An enforceable body of rules that govern society.”

‘Enforceable’ – the verb *‘to enforce’* comes from Old French: *‘en’* meaning *‘to put in’* the (en)force. *‘Force’* represents, *inter alia*, energy, physical power, intensity, control – all dynamic notions which when combined with *‘the put in’* may leads us to think of quite physical moving forces. We can then notice that *‘enforcement’* comes in two basic forms (i) self-enforcement and (ii) enforcement by some sort of powerful and legitimate authority. This then immediately opens up questions about power, violence, meaning, interpretation and senses of the various links between power and the subject.

‘Body’ – *corpus* – the word includes notions of a physical body often dead or a collection of facts or things. And it is in this mode that teaching of law can go seriously wrong, by this I mean that should lecturers view themselves as authoritative transmitters of the *‘body’* or *‘corpus’* of accepted knowledge passively *‘received’* by the acolyte students. The notion of a corpus of knowledge can become often become literally a corpse, a body of unquestioned dead facts transmitted generally by rote and tested by written examination.

‘Rule’ – is a fascinating idea which carries many senses: for instance in Old French *‘riule’* designates a *“principle or maxim governing conduct, formula to which conduct must be conformed”*. In Norman *‘reule’* means *“rule, custom, (religious) order”*, and in Latin *‘regula’* means *“straight stick, bar, ruler”* and is related to *‘regere’* *“to rule, straighten, guide”* measure and make straight lines.



As a verb it means *“to control, guide, direct.”* The Latin word *‘regulare’* means to *“establish by decision”*, but we may ask whose decision is to be established?

It also means to *“mark with lines”* and from late 19th century it means *“to dominate or prevail”*, as in Rule Britannia illustrated here.

Even from this quick survey of the etymology of the word *‘rule’* we gather ideas of measurement, straight lines, compulsory recipes for conduct, conquering ruler directing and making decisions. We see reflected in the word notions of religious custom and order, and the indispensable connection between the political and the legal.

‘Govern’ – is the next word we can look at. In Latin the word *‘gubernare’* signifies someone who seeks *“to direct, rule, guide, or govern”*. And in Greek the word refers to nautical notions of *‘kybernan’* meaning someone who wants *“to steer or pilot a ship, or to direct it”*. The word carries a sense of both moving forward and being subject to direction – in short the dialectic of directed director. One who directs and steers yet is directed to steer, and in a more objective external sense that *‘sense of the rule’*, in so far as this idea embodies the subjective and objective characteristics of the notion.

‘Society’ – As we know, for many the notion of *‘society’* can be politically and intellectually a troublesome concept. In October 1987 Mrs Thatcher said: *“... there is no such thing as society. There are individual men and women, and there are families. And no government can do anything except through people, and people must look to themselves first. It’s our duty to look after ourselves and then, also to look after our neighbour.”*

People have got the entitlements too much in mind, without the obligations. There's no such thing as entitlement, unless someone has first met an obligation."[3].

Of course she did not quite mean that we are all atomised beings floating free in the 'Never-Never' Peter Pan land, in autonomous spaces, but rather she meant that the relational social bonds of civil society should be reduced to legalised connections and beyond that the common obligations of the state need be reduced to those of least possible responsibility. She was a precursor of the idea that social relations are best expressed as transactional relations most efficiently implemented as legalised economic relations. Of course it is obvious, and beyond the scope of this paper, to discuss the vulgarly simplistic but self-serving extension of her ideas.

Yet key to this social disengagement notion is the traditional, reactive concept of the patriarchal family operating to doubly legalise and abstract the notion of the 'family' through the authority of religion and the sanction of state law.

This notion is supplemented by (at one level) the quasi-legal relationship of the 'duty to our neighbour' which, interestingly, we find echoed in law of tort. And to round things off Mrs Thatcher introduces the notion contractualisation into social, civic and even political life based on the idealised equivalency if not mutuality of the exchange of commodified rights and expectations underpinned by the rhetoric of 'entitlements', implicitly unjust, designating the exclusion of the Other.

Therefore, it follows that a 'definition' in fact permits a superficially logical mechanism to draw conclusions, even if we find any such determined 'conclusion' socially and morally deplorable, allowing us to jump to irrefutable conclusions, permitting us by its internal logic to discount any considerations of extraneous human obligation or (in law) legitimate expectation. In short the human desire for order is reduced to the logic of economics.

Accordingly, the point of the etymological approach is to illustrate an approach to teaching law which helps to uncover not only the historical layers of accrued meanings, the logic of opposition, and variegated interpretations of legal concepts which can liberate the discipline of law from the binary hierarchies of defined rules painfully memorised and elaborately replicated by students, opening up critical avenues for questioning and transforming our sense of law exposing its difference from itself and even making law 'fun'!

Footnotes and references:

[1] The word 'coefficient' is used here to signify the multiplicative factor to an expression.

[2] J A Cuddon *A Dictionary of Literary Terms and Literary Theory*, London: Blackwell, 3rd ed., 1991.

[3] Interview with the late Prime Minister Margaret Thatcher, talking to the *Women's Own* magazine, October 31 1987 available at: <http://briandeer.com/social/thatcher-society.htm>

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