

TEACHING NOTE

Synergistic Literacies: Fostering Critical and Technological Literacies in Teaching a Legal Research Methods Course

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Introduction

Nowadays, new law courses are not approved unless both the “needs analysis” is convincing and the “consumer demand” is certain. Needs and demands today are driven by new pressures for technological literacy accelerated by globalisation and the current revolution in information and communication technologies (ICTs). The popular logic is that new global “knowledge economies” need “knowledge workers” or “wired workers” to labour in the new e-markets for goods and services and to use the burgeoning number and high quality of electronic information databases now essential to legal research. Students are acutely aware of these developments as well as of the highly competitive nature of the contemporary labour market for law graduates. Consequently, students are demanding more “how to” research skills training.

This article puts in context the reasons why, at the University of Waikato, we regard creating synergy between critical and technological literacy as essential for teaching and learning law-in-context research methods, and then describes the curriculum we designed for a legal research methods course in order to trial this approach.

From the start we have been clear that the new course was not just to be a “how to” course, and that we would be concentrating on critical literacy as much as technological literacy. For us, critical literacy is fundamental because it relates to the way in which one analyses the world, a process described as “becoming aware of the underlying structure

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©2002. (2002) 13 *Legal Educ Rev* 65.

of conceptions”.¹ This awareness includes the politics in the architectures that constitute the Internet and the assembly of information accessible on it.

We designed our curriculum for critical literacy around five types of analysis. Our shorthand for this is to call these “the five ‘Cs’”. Our five interrelated categories for analysis focus on:

- Change – in society, economy and culture
- Concepts – legal and sociological concepts and analytical frameworks
- Critique (and standpoint or perspective)
- Comparisons (and Contrasts)
- Contexts.

We argue that, at a minimum, these are the conceptual tools necessary to critique and engage the operation of the law in the context of society, noting especially inequalities and injustices.² Throughout the course students are encouraged to harness technological literacy to each dimension of their analysis.

This article consists of two main parts. The first part (“Context and Assumptions”) explores in some depth the reasons for the need to teach critical literacy alongside technological literacy. The second part (“The Legal Research Methods Course”) describes our efforts to promote the synergy between critical and technological literacies in the context of a fourth year optional course, Legal Research Methods 2000, at the University of Waikato School of Law.

Context and Assumptions

The Need for Critical and Technological Literacy for Law-in-Context Research

The changing face of tertiary education has resulted in fresh challenges for teachers and students. Elite universities that once aspired to pursue scholarship and education for their intrinsic worth and that valued pure research and the development of moral character³ have long since been displaced in most OECD countries (including New Zealand) by under-

1 P Walker & N Finney, Skill Development and Critical Thinking (1999) 4 (4) *Teaching in Higher Education* 534.

2 See J Kretovics, Critical Literacy: Challenging the Assumptions of the Mainstream (1985) 167 (2) *Journal of Education* 51.

3 J Ben-David & A Zloczower, Universities and Academic Systems in Modern Societies (1962) 3 (1) *European Journal of Sociology* 45, at 64-65.

funded mass higher education systems with highly instrumental curricula. These mass higher education systems have been justified in terms of democratising education, as part of the class compromise intrinsic to the Keynesian welfare state, and in terms of preparing the labour force for productive citizenship. In their heyday such higher education systems aspired to offer greater equality of access; to provide education adapted to a great diversity of individual qualifications, motivations, expectations and career aspirations; and to facilitate the process of lifelong learning, as well as to serve their local communities and the economy. At their best, such systems promote critical thinking and work for the public good⁴ but the egalitarian and democratic social values on which they were founded have been unrelentingly challenged by the cult of market relevance and economic rationalism.

Despite years in which market fundamentalism has been hegemonic, universities in OECD countries are still admitting students in greater numbers and these students are increasingly from “non-traditional” backgrounds: the commitment to more open access to education, at least, has been sustained.⁵ However, while the 21st century student body is heterogeneous as to qualifications, motivations, expectations and career aspirations, most these days come to university to get ahead, to become the “clever people” and “wired workers” of the information age.⁶ Consequently, promoting critical thinking and working for the public good will be difficult unless and until access to Information Technology (IT) and the understanding of its workings are actively promoted and the synergy between critical and technological literacy accepted as the operating norm. For legal educators committed to legal, critical and technological

4 L Cerych et al, Overall Issues in the Development of Future Structures of Post-Secondary Education, in *Policies for Higher Education: General Report on the Conference on Future Structures of Post-Secondary Education* (Paris: OECD, 1974) 23.

5 See discussion of enrolment growth in Proceedings of the World Conference on Higher Education (Paris: 1998), Volume IV, *The Requirements of the World of Work* (Working Document, 15) at <<http://unesdoc.unesco.org/images/0011/001173/117311m.pdf>>

6 See JA Codd, Knowledge, Qualifications and Higher Education, in M Olssen & MK Matthews (eds), *Education Policy in New Zealand: the 1990s and Beyond* (Palmerston Nth, NZ: The Dunmore Press Ltd, 1997) for a discussion on the shift to an “ideology of instrumentalism” with the expectation that higher education is about various skills that can be performed and “knowledge as information to be acquired” (at 133-136).

literacy the implications of the multi-disciplinary law firm and borderless market in higher education are multi-layered and complex, especially given that “the university ... like all other human institutions ... is not outside but inside the general social fabric of a given era ... an expression of the age”.⁷

It will be helpful now to say something of the establishment of the Waikato Law School. The genesis of the Law School was the Fourth New Zealand Labour Government’s (1984-1990) struggle to reconcile contradictions between its New Right monetarist program and its egalitarian social democratic commitments.⁸ The Law School Committee gave eloquent expression to the latter in its statement of the School’s foundation values and goals.⁹ They included a commitment to provide opportunities for non-traditional students, including Maori and those from socio-economically disadvantaged groups, to gain access to a legal education, a reflection of regional needs.

Most relevant to this paper and closely related to the access goal is the curriculum goal. This promotes synergies among contextualism,¹⁰ Maori-Pakeha biculturalism, rigorous learning of the law, and the law’s theory, methods, doctrines, processes and ethics, in preparation for professional legal practice. Even on an austerity budget the School, with help from the local Law Society, also invested in a decent IT platform. Waikato Law School’s success in relation to its access goals is reflected in the admission figures for 2000. The percentages for non-traditional students admitted (where “traditional” appears to be defined as white, middle class, male school leavers) were: 28.7% Maori, 30% mature (aged over 30) and 63% women.¹¹ Law teachers at Waikato, as elsewhere, have to facilitate learning for a diverse student

7 A Flexner, *Universities: American, English, German* (London: Oxford University Press, 1930) 3.

8 P Havemann, *Regulating the Crisis – from Fordism to PostFordism in Aotearoa/New Zealand: Some Contradictions in the Interregnum, Morbid and Otherwise* (1994) 18 (1) *Humanity & Society* 74.

9 See University of Waikato Law School Committee, *Te Matahauariki (The Horizon Where The Earth Meets the Sky/The Meeting Place of Ideas and Ideals): Report of the Law School Committee* (1998). For a discussion of the School’s foundation goals, see MA Wilson, *Waikato Law School: A New Beginning*, in J Goldring, C Sampford and R Simmonds (eds), *New Foundations in Legal Education* (Avalon, NSW: Cavendish Publishing, 1998) 194.

10 P Havemann, *Law in Context – Taking Context Seriously* (1995) 3 *Waikato LR* 137.

11 Minutes, School of Law Board of Studies, University of Waikato, March 2000.

body within a new legal education paradigm in what we regard as a revolutionary period fraught with opportunities and perils.

Government-funded public higher education in New Zealand and many other OECD countries still remains the primary though not the unchallenged “provider” of human capital in the form of an educated workforce to produce and to compete internationally.¹² However, OECD states have increasingly allowed the market to be the mechanism for signalling demand for education and thus for identifying and prioritising educational values and goals.¹³ We, in New Zealand, are now familiar with the discourse of student as consumer and industry as chief stakeholder (and, increasingly, direct purchaser) of research and knowledge. There has been a widespread rupture in the model of governance for higher education, characterised mostly by a shift from state funded to user pays education. Instead of being a social right to be accessed for the public good, higher education has substantially become a private property right.¹⁴ Ironically, corporate beneficiaries of this accumulated human capital still pay precious little for it.

Our case then for stressing the need for both critical and technological literacy for law-in-context research stems from our appreciation that our students are living in revolutionary times. They must develop into legal knowledge workers able to compete and to survive as players in the “knowledge economy”; to participate as intelligent citizens¹⁵ in a globalising polity; and to serve as ethical professionals in the changing and uncertain world of globalised practice.

In the next section we outline some of the context, critique, understandings of change, choice of comparisons, and key concepts that inform our curriculum design for synergising critical and technological literacy to meet the challenges posed by the present revolutions.

12 For example, more than 90 per cent of students enrolled in formal programs at tertiary institutions were partially funded by the Ministry of Education (that is, subsidised by the Government) as at 31 July 1998 ((1998) 8(10) *Education Statistics News Sheet* 2).

13 J Boston, *The Funding of Tertiary Education: Enduring Issues and Dilemmas*, in J Boston, P Dalziel, S St John (eds), *Redesigning the Welfare State in New Zealand* (Auckland: Oxford University Press, 1999) 197.

14 For a full exposition, see S Marginson, *Education and Public Policy in Australia* (Cambridge: Cambridge University Press, 1993) Part II.

15 P Havemann, *Modernity, Commodification and Social Citizenship* (1997) 1 *Yearbook of New Zealand Jurisprudence* 17.

Theoretical Frameworks: Modernisation, Self-Identity and Globalisation

The late 1980s produced the revolutionary (in New Zealand) “social engineering” vision upon which the Waikato Law School was founded. Few, then, except the most prescient, would have foreseen the technological revolution and processes of globalisation that would impact on legal knowledge workers (including academics and lawyers) in the late 1990s. Our current notions of knowledge and learning, including access to knowledge, the nature of knowledge, the uses of knowledge, legal practice and, most intimately, self-knowledge and self-identity, are now being radically challenged.

Scholars are forever wrestling with the task of defining the nature of the revolution(s) of the times. The present revolutions have been characterised variously as the postmodern, or the transition from modernity to late modernity,¹⁶ or from Fordism to post-Fordism,¹⁷ or as the emergence of the risk society¹⁸ or network society involving the transition from industrial to informational capitalism. The network society as a conceptual framework seems highly germane to a discussion about knowledge work as a current context for legal education. We are indebted for this framework to Manuel Castells’ pioneering sociological analysis of the network society and the information age – the transition from industrial to informational capitalism.¹⁹

Equally relevant to our analysis is Anthony Giddens’ concept of the process of reflexive modernisation, capturing the transition from modernity to late modernity. Reflexive modernisation describes the dynamic interplay of globalisation, enhanced social reflexivity, and the rise of a post-traditional social order. Giddens’ work expounds the significance of this revolution for the construction of self-identity and the reflexive practice of enhancing self-knowledge for critical literacy. Giddens’ concept of reflexive modernisation, focusing

16 A Giddens, *The Consequences of Modernity* (Cambridge: Polity Press, 1990).

17 A Amin (ed), *Post-Fordism: A Reader* (Oxford: Blackwell Publishers, 1994).

18 U Beck, *The Risk Society: Towards a New Modernity* (London: Sage, 1992).

19 M Castells, *The Information Age: Economy, Society and Culture* Volume I: *The Rise of the Network Society*; Volume II: *The Power of Identity*; and Volume III: *End of Millennium* (Malden, Mass: Blackwell Publishers, 1996, 1997, 1998 respectively).

on the reflexive self and the agency of the self, is helpful for identifying the importance of critical literacy in this new informational age for self-identity, and for making life choices and life chances. Giddens distinguishes social reflexivity from simple reflexivity. Simple reflexivity is characteristic of traditional, local societies in the pre-modern and non-modern worlds. In such societies, norms derived from a traditional order enable people to make sense of their world and their place in it, so as to define a self-identity grounded in locality, kinship and community and constructed from the ideologies and experiences flowing from these sites of experience. Social reflexivity, in contrast, is the defining characteristic of the late modern, information age. All societies have invented, re-invented and refurbished tradition; today, however, there is a radical disjuncture between the past and the present. This disjuncture appears to result from the increasing inability of societies to invent and sustain tradition because all tradition must now be continuously exposed and justified as a basis for order. Thus the inexorable process of reflexive modernisation is what makes Giddens describe late modern society as a post-traditional society.²⁰ Social reflexivity is also a key ingredient of the knowledge society, if it is to be more than merely the information society.

Giddens suggests²¹ that the four key institutional dimensions of modernity are capitalism, industrialism, surveillance, and violence. According to Giddens, four global “bads” have been associated with them: economic polarisation, ecological threats, denial of democratic rights, and the threat of large-scale war. Globalisation and the IT paradigm are very important dimensions of late modernity and the present epochal revolution. Globalisation is a multi-dimensional process, the backbone of which is the Internet and the ICTs. Hence globalisation should not be defined exclusively or primarily in terms of a new economic order. The technological paradigm shift is one of the chief levers of globalisation, and globalisation accentuates and exacerbates the degree to which the “bads” of modern times are manifested. Globalisation does not at present signal a more even distribution of wealth and

20 A Giddens, *Beyond Left and Right: the Future of Politics* (Cambridge: Polity Press, 1994) 6-7; M O'Brien, *Theorising Modernity: Reflexivity, Identity and Environment in Giddens' Social Theory*, in M O'Brien, S Penna and C Hay (eds), *Theorising Modernity: Reflexivity, Environment and Identity in Giddens' Social Theory* (London: Longman Higher Education, 1999) 17, at 20; U Beck, A Giddens and S Lash, *Reflexive Modernisation* (Cambridge: Polity Press, 1994) 83-84.

21 Giddens, *supra* note 16, at 100-101.

power. Instead, globalisation and the ICT revolution appear to be expediting the process of creating steeper hierarchies of knowledge workers in cyber spaces – with infocrats controlling the metropolitan hub, cyber proletarians/cyber serfs in cyburbia, and the cyber illiterates and lumpen trash in cyberia. Globally, the result is the social exclusion of many, if not most, people from basic sites of power, especially the market and systems of local, regional and global governance.²²

Castells provides an insight into the magnitude and significance of the new technological paradigm shift. For him the information technologies are the engine driving the transition into informational capitalism and the network society. He suggests that, like earlier technological paradigm shifts, the IT paradigm shift is fundamentally altering the material basis of our economy, society and culture.²³

The present IT revolution is comparable to a limited degree to the revolution brought about in the West by the alphabetisation of language around 7 BC. The ability to convert the spoken word into written text, thus separating the speaker from the message in time and place and meaning, provided the infrastructure for cumulative, knowledge-based communication. Consequently, new social hierarchies were created in terms of the literate and illiterate, and oral communication was relegated to a lower tier of esteem and relevance.²⁴ This trend was compounded and its pervasiveness accelerated in the 15th century by another technological revolution in the West: the Gutenberg printing technology. Access to literacy, access to books and writing materials, and the capacity to print – access to knowledge and the power to communicate – became more important sites of power, especially for lawyers, who, like literate priests, were the knowledge workers of this era. Alphabetic literacy only gradually

22 See generally P Knox and PJ Taylor (eds), *World Cities in a World System* (Cambridge: Cambridge University Press, 1995); Castells (Vol III), *supra* note 19, at 70; P Havemann, *Enmeshed in the Web? Indigenous Peoples' Rights in the Network Society*, in R Cohen and S Rai (eds), *Global Social Movements* (London: Athlone Press, 2000) 18; P Havemann, *Freedom, Serfdom and Internet Governance: Private Domains or Cybercommons?* in AR Buck, J McLaren and NE Wright (eds), *Land and Freedom: Property Rights* (Aldershot: Ashgate Publishing, forthcoming).

23 Castells (Vol I), *supra* note 19, at 29-30. See also J Mokyr, *The Lever of Riches: Technological Creativity and Economic Progress* (New York: Oxford University Press, 1990) and G Dosi et al, *Technical Change and Economic Theory* (London: Pinter Publishers, 1988).

24 E Havelock, *The Literate Revolution in Greece and its Cultural Consequences* (Princeton, NJ: Princeton University Press, 1982).

became a vehicle for social and economic mobility in feudal and later class-based industrial orders.

In contrast with the gradual paradigm shift brought by alphabetisation, the IT paradigm shift of our own epoch is arguably much more significant. It is characterised by the very rapid and exponential expansion of the capacity to communicate and create interfaces among technological fields through a common digital language. Information technologies allow those who control them to exploit incomparable memory storage, flexibility in the reconfiguration of text, communication feedbacks and interactions, and instantaneous planet-wide transmission of vast volumes of data.

Castells lists²⁵ the characteristics of the new technological paradigm that we need to consider:

- Information is itself the raw material the technologies act on, whereas in previous technological revolutions, such as the alphabetic or industrial revolutions, information acted on technology.
- The new technologies interacting on information have an unprecedented ubiquity and pervasiveness, shaping all processes of individual and collective existence, material and psychological, because information is an integral part of all human activity.
- As networks are created to communicate and to out-communicate²⁶ – that is, to stifle oppositional voices and block out competitive communication (for instance the proponents of citizens' rights or the competition in the global marketplace for legal services) – the new ITs have an unprecedented capacity for exploiting networking logics. Networking, for example in the form of financial market transactions via this medium, is almost impossible to regulate and tax globally and locally, making governance of the activity both very difficult and most necessary.
- Undreamt-of flexibility is another hallmark of the new ITs, making fast and easy reconfiguration, reprogramming and retooling possible. Thus, new technology has enormous capacity for emancipating or repressing, depending on who controls it.

The new IT allows for an unprecedented degree of integration and convergence of a set of now indispensable

²⁵ Castells (Vol I), *supra* note 19, at 60-65.

²⁶ G Mulgan, *Communication and Control: Networks and the New Economies of Communication* (Cambridge: Polity Press, 1991).

technologies – micro-electronics, computing machines, software, telecommunications, broadcasting, and also genetic engineering – amplifying and spreading the impact of each one to a massive degree.

International Governmental Organisations (IGOs) such as the International Telecommunications Union are gradually recognising that in the global information society – dominated as it is by informational capitalism, access to information and knowledge, and technology – the global information infrastructure, therefore, has an increasingly vital place in the social fabric of democratic social order. Its role encompasses the interweaving of good governance, human rights and the Rule of Law both locally and globally.²⁷ More than ever, power resides with those who control the ICTs, repositories of information, knowledge workers and the knowledge industries. Our students have to acquire the necessary literacies, critical and technological, to participate in and contribute to the new, technology-powered knowledge economies and the network society. The need for technological literacy (but not yet critical literacy) has been recognised by our law students. It is our view that critical literacy involves being able to understand the power and politics in the normative and ideological architectures that constitute the Web, the market, the state and globalisation.

Senior year law students who once eschewed courses on theory, and on methods and research, are increasingly taking an interest in computer-mediated research, which they now see as essential for their own confidence and employability. We discern that students place much emphasis on technological literacy in a *narrow* sense of computing skills. Students believe that they need to know what information is available electronically and how to access the databases or World Wide Web sites cheaply and fast. In contrast, our “needs analysis” for the curriculum does not dichotomise:

- analysis and method;
- concept and critiques; contextualisation and explanations for change; justifications for comparison and technique;
- conceptual keywords and Boolean search keywords, and so on.

27 International Telecommunications Union, *The Missing Link – Report of the Independent Commission for World-wide Telecommunications Development* (Geneva: ITU, 1984) and see ITU's *Valetta Declaration and Action Plan* (Geneva: 1998); KW Grewlich, *Governance in “Cyberspace”: Access and Public Interest in Global Communications* (The Hague: Kluwer Law International, 1999) 73-93.

We stress that employing theoretical frameworks for the purposes of analysis is a method, and that analysis requires taking concepts and analytical frameworks seriously. Without concepts, only crude analysis is possible, and without thoughtful analysis, knowledge work cannot be done now, any more than it could in the past. We sometimes have to stress this point because of what we perceive to be the false promise of ease and speed of “knowledge acquisition” which is part of a newish cyber utopianism and accompanying media hyperbole. Equally problematic are many students’ negative feelings about “theory”; they are impatient with what they see as “theorising about theory” when what they want to know is how to apply theory, automatically and immediately.

We understand that law students’ intuitive and knowledge-based insights into the nature of the present IT revolution and globalisation lead many of them to position themselves to be among the infocrats at the apex of the knowledge economies. They will at the very least want to be employed as infoserfs, not left as infopaupers trapped in poverty in some informational black hole. As law teachers attempting to respond to students’ sense of urgency (that is, consumer demand for technological literacy), we stress and demonstrate that knowledge and higher order skills such as analysis and synthesis are required for the optimal use of information-finding techniques.

Meeting the Need for Critical Literacy

Our aim has been to design a course to meet students’ ever present (though not always conscious or articulated) need for critical literacy as well as a new and almost overpowering demand for technological literacy. There appears to be a profound tension between the deep learning reflected in contextualism and critical knowledge-building, and the potentially shallow learning often associated with acquiring techniques, including those for using new technology. Often the latter is reflected in a “techno-fetishist” preoccupation with simple, crude information gathering. This tension is as evident at Waikato Law School as at any other. Like other schools committed to teaching law in its social setting, we struggle to resolve the tension and convert it into a dynamic synergy.

At Waikato, we start with the supposed foundations for critical literacy. It is compulsory for all students to study Law and Societies in the first year and Jurisprudence in the

second year of the LLB program. All students other than graduates must also study non-law subjects in the first two years. Within each law subject students are exposed to societal, economic, and other contexts within which law operates and develops. We also have a strong emphasis on legal research and writing and on forensic skills. We explicitly recognise that legal education does not have the production of solicitors and barristers as its sole imperative. The study of law from the perspectives of other disciplines has become mainstream in our School, as in other schools of law. We believe it is equally important to provide students with a framework to assist their engagement in interdisciplinary research and, more riskily, to encourage them to join with “theoretical”, rather than “operational” or “doctrinal” approaches to the learning and teaching of law.²⁸

The ever present pressure from students and some employers for immediate relevance and transferable skills makes it tempting to bias the curriculum in the direction of “technological literacy” alone. When we surveyed students who enrolled in our Legal Research Methods course at the beginning of the academic year, they expressed a desire to acquire technology-based skills in relation to interdisciplinary research. By this, they appear to mean information on how to access the scholarship of law and other disciplines through print indexes and, more importantly as our students see it, electronic databases. They want to acquire at least a basic understanding of statistics and information on how to access statistical databases. They tell us that they would be better informed if they knew where to look for information, and knew how to operate information technology, and that they need more help with conceptualising and writing.²⁹ Their emphasis seems to be on the mechanics of print and database/World Wide Web based searching and on the presentation of research findings, rather than on the conceptual and contextual underpinning of research as an intellectual task. This pragmatic emphasis is reflected in what some legal practitioners tell us they want from our graduates. These employers want law graduates who have good research and writing skills. Most often, what is meant by research skills is that law graduates ought to be able to “handle” IT and know their way around the legal databases.

28 A Sherr, *Legal Education, Legal Competence* (1998) 32 (1) *Law Teacher* 41.

29 We are told this in classroom discussions with students and questionnaire responses in 0860.460A *Legal Research Methods* 2000.

Legal research methods texts seem to perpetuate this conception of research. Most identify primary and secondary sources of law and both print and electronic resources for finding the law. They explain how the resources ought to be used and provide useful addresses for sourcing national and international legal materials. These texts are excellent providers of the types of information, noted above, which students and legal practitioners have identified as being necessary for legal research. Other disciplines have texts with similar purposes and they can assist law students with interdisciplinary research. But students who are to become researchers need to know *what they are looking for*, not just where and how to find it. Researchers need to construct a conceptual framework as part of a methodology for academic research. Law students require a conceptual framework for law-in-context research. Texts dealing with legal research skills from an interdisciplinary perspective are much rarer than the legal research texts described above. Chatterjee's *Methods of Research in Law: A Handbook for Students*³⁰ has just one chapter on socio-legal research, which has been criticised for its brevity and lack of guided further reading on quantitative and qualitative socio-legal methodologies, comparative studies, and the role of legal history.³¹

If our rhetoric is that a contextual approach to all law study ought to be taken, then research students require assistance from their law schools with the specialist languages of research and of particular disciplines, and with training in finding discipline-specific literature (print, electronic or World Wide Web based). They need to be able to take context seriously and to be introduced to a range of methodologies, both qualitative and quantitative. They also need to be given guidance on choosing appropriate methodologies. The ethics of research and the nature of knowledge(s) should be explored. Research students should be able to use comparative and historical materials appropriately.

Students need to be sensitised repeatedly to the necessity that research findings must be presented in a way that is appropriate to the audiences for whom the research is conducted. We point out that the university is the prime "setting for

30 C Chatterjee, *Methods of Research in Law: A Handbook for Students* (London: Old Bailey Press, 1997).

31 A Blackhurst and PW Edge, Book Review [1998] 1 *Web Journal of Current Legal Issues*.

literacy development”³² at this point in their intellectual careers; that to become an active member of an academic research culture or learned profession like the law, you have to adopt its “purposes, values and practices”.³³ However, we also stress the importance of other, non-academic audiences and the imperatives of doing research and writing it up to meet the needs of such audiences. In such research, the student needs to be involved; that is, the research should inform the researcher rather than simply the research product. This notion is critical for students so that they recognise the general utility of critical analysis for research even when the research is not to be presented in the form and style of legal or academic discourse.

How law schools tackle the teaching and learning of research methods varies. One school of thought argues that, ideally, such knowledge and skills can be acquired as part of the undergraduate LLB program, through research tasks related to subject assessment. Others argue that such knowledge and skills may be taught explicitly or may be implicit in the research tasks set within skilling components of the curriculum. A third model is to treat research as a discrete subject. We chose the third model to assist students wishing to engage more knowledgeably in a law-in-context approach to research. The model freed us from time constraints that would be imposed by having to cover law subject content. As William Twining pointed out, “[m]aking space for a substantial amount of direct skills teaching would inevitably involve sacrificing other worthwhile and not-so-worthwhile enterprises.”³⁴ This model also allows students to engage with a topic area of their own choosing.

Our approach is andragogical: that is, geared to promoting learning for self-determining adult learners. A narrow focus on practical skills related to learning how to find and use legal materials would not empower our research students to become independent researchers and would perpetuate the false “theory/method” or “theory/technique or skill” dichotomy. Our remedy for “narrow vision” is similar to that proposed by Karl Llewellyn in his critique of Langdellian case method: expand the number of skills and then “the

32 M Nevile, *Literacy Culture Shock: Developing Academic Literacy at University* (1996) 19 (1) *Australian Journal of Language and Literacy* 38, at 38-39.

33 *Id* at 39.

34 W Twining, *Legal Skills and Legal Education* (1988) 22 (1) *The Law Teacher* 4, at 8.

wherewithal for vision”³⁵ should be provided by “perspectives”, “contextual approaches” or “thinking in terms of total pictures”.³⁶ The five “Cs” bundle of analytical tools offers a means for analytically identifying the contours, textures and meanings in such a total picture.

For us, critical literacy is obviously basic to the “total picture” approach explicit in doing law-in-context research. This form of literacy relates directly to the way in which one becomes “aware of the underlying structure of conceptions”.³⁷ Our claim for the five “Cs” method is that it provides students with the conceptual tools necessary to critique and engage society along with its inequalities and injustices,³⁸ and that these conceptual tools also assist them to harness technological literacy to their task.

The Legal Research Methods Course

Aims and Objectives

The aims and objectives of the course are set out for students as follows:

Legal Research Methods 2000

Legal Research Methods is a new course that has been designed to meet a recognised need for advanced research skills, knowledge, and strategies for the effective, ethical and culturally appropriate conduct of research in the contexts of societal and legal change and of developing technologies. This course prepares students to undertake research in a variety of employment contexts. The course is taught on campus, but you will have access to materials on-line through Topclass and will have an opportunity to participate in further discussion of relevant material through the on-line Class Forum.

continued

35 K Llewellyn, *Jurisprudence* (Chicago: Chicago University Press, 1962) 377.

36 See the discussion of resistance to skills teaching in Twining, *supra* note 34, at 9.

37 Walker and Finney, *supra* note 1, at 534.

38 See Kretoivics, *supra* note 2, at 51.

Through discussion, active reading, applying research methodologies and participating in Law Library Computer Laboratory tutorials related to this course, students should be able to:

- (1) demonstrate an ability to formulate and refine legal research questions and to identify appropriate methodological techniques, discuss legal and social science concepts, and locate such concepts within analytical frameworks (as appropriate);
- (2) demonstrate an understanding of the language of legal research, socio-legal research, and academic and policy- oriented research (as appropriate);
- (3) demonstrate an understanding of the theory and methods underpinning research in law and related social science disciplines (as appropriate);
- (4) use library and electronic resources for research in law and law-related disciplines and evaluate the quality and relevance of materials found on the World Wide Web; and
- (5) demonstrate the appropriate application of theory and method in legal and law-related research.

To promote the synergy of technological and critical literacy we aim to model the goal of the course on the self determining law-in-context researcher. In order to do this we draw fully on the skills and knowledge of many people in the Waikato Law School. The combination of teaching and learning opportunities offered by academic law staff and law librarians exemplifies a most exciting synergistic partnership. The team offering the course have pooled their knowledge. Hence the teaching staff includes electronic legal research experts from the Law Library, Kay Young and Kate Young, with technical backup from Douglas Davey, Computer Consultant to the Law Library.

The sequence and structure of our syllabus is set out later in this paper. It illustrates our attempt to address technological and critical literacy in parallel, as well as converging teaching/learning experiences. Such a platform of learning processes has been important to promote synergies rather than dichotomies. Construction of a conceptual framework for a research project progresses at the same time as knowledge of available electronic databases/search engines is acquired. As the course progresses, students experience the relationship between keywords for conceptual mapping and keywords

for successful information retrieval, in the context of their chosen research projects.

There is no all-encompassing text for the course available from any jurisdiction; in the spirit of andragogic education, we have pointed students in the direction of resources,³⁹ and provide a loose-leaf folder for them to use to assemble our handouts and their own resources.

Law-in-Context Research and the Five "Cs"

What follows is a brief summary of our specific approach to the development of critical literacy. Our technique has been to use a weekly two-hour seminar to workshop with students how they can go about the task of framing their topic in terms of the relevant dimensions of the five "Cs". Our method for conceptualising law-in-context research projects involves constructing spider diagrams (mind maps)⁴⁰ and building models, including keywords, proposal writing and description of methodology, in terms of the five "Cs". The application of the five "Cs" to the students' own projects is the implicit though fundamental sixth "C", namely the process of concretisation.

As part of this process of concretisation we use short group discussion sessions to focus on each of the five "Cs" in turn, with spider diagrams as vehicles for overviewing interrelationships through identifying keywords. Keywords drawn from discipline-specific and generic vocabularies for research are basic to our approach. Keywords arrived at

39 L Blaxter, C Hughes and M Tight, *How to Research* (Buckingham: Open University Press, 1996); P Crème and MR Lea, *Writing at University: A Guide for Students* (Buckingham: Open University Press, 1997); P Maykut and R Morehouse, *Beginning Qualitative Research: A Philosophic and Practical Guide* (London: Fulmer Press, 1999); R Watt, *Concise Legal Research* 3rd ed (Sydney: Federation Press, 1997); H Becker, *Tricks of the Trade: How to Think About Your Research While You are Doing It* (Chicago: Chicago University Press, 1998); P Beilharz, *Social Theory: A Guide To Central Thinkers* (North Sydney: Allen & Unwin, 1991); V Jupp, *Methods of Criminological Research* (London: Unwin Hyman, 1989). See also University of Waikato Law Library links; R Tyner, *Sink or Swim? Internet Search Tools and Techniques* (1998) <<http://www.ace.ac.nz/Centres/Technology/ICT/internet/Sinkswim.htm>> (20/02/00); and Social Policy Virtual Library, WWW Virtual Library <<http://www.bath.ac.uk/~hssgjr/simul/s-www1.htm>> (20/02/00) which links the user, for instance, to the ILO, IMF, WTO, World Bank, OECD and many other websites and databases.

40 See, inter alia, G Gaywith, *Power Learning: A Student's Guide To Success* (Lower Hutt, NZ: Mills Publications, 1992) 50-51 on using mapping as part of a brainstorming, examining, categorising, organising, reviewing and structuring process.

from general knowledge or prior personal or professional knowledge are as helpful in the initial stages as keywords from a specialist and researched knowledge base, though specialist knowledge clearly becomes more important as students develop sophistication in refining their questions and defining their concepts.

Keywords aid in the refinement of the topic; they help to frame a thesis statement and to identify lines of thought and directions for research. We point out that it is no coincidence that keywords are also vital tools for Boolean database searching and World Wide Web surfing. This convergence of components required for critical literacy with those required for technological literacy constitutes a vital link between what many students have previously seen as two separate spheres sharing little or no interface. Keywords for conceptual mapping and the choice of keywords for Boolean searching are not identical; however, what is the same is the requirement for intellectual engagement by way of the use of analytical tools for which there is no technical fix or short cut. To stimulate student interest and to illustrate the breadth and depth of law-in-context research, we drew up our list of key words (see Appendix) and suggested that students embellish it themselves and find out what all the keywords they were not familiar with meant in the research context.

Planning law-in-context research involves asking the following questions about the five “Cs”:

1 Change

- How will you explain legal and social change? (For example, economic determinism, egoism, serendipity or structuration; the transition from status to contract; from *gemeinschaft* to *gesellschaft* society, repressive to restitutive law, Fordism to post-Fordism, modernity to late or post-modernity, or from industrial capitalism to informational capitalism.)
- Is your question premised on the need for change or on the fact that change appears to have occurred?
- Have you considered identifying and organising the historical epochs relevant to your topic in terms of changes in society and changes in legal doctrine?

2 Concepts

- What are the key jurisprudential concepts embedded in your question? (For example, rights, property, sovereignty, contract, personality, liability.)

- Which sociological concepts and analytical frameworks seem relevant? (For example, social reflexivity, globalisation, ethnicity, gender, class, state, market, ecology.)
- What are the legal techniques for social ordering reflected in the body of law most central to your questions? (For example, public and private arranging, constituting, penalising, benefiting, regulating.)
- Have you defined your use of these terms and explained how you intend to use them?

3 Critique

- What is your critique?
- What standpoint or perspective do you adopt when asking your question? (For example, objectivism/scientific positivism.) Or do you implicitly or explicitly use value-laden assumptions drawing from, for example, liberalism, Marxism, feminism, post-modernism, legal realism, critical legal studies, economic rationalism?
- Is your model of human nature and society a conflict, order, or pluralist model?
- Are you locating your inquiry at the personal, cultural or structural level of analysis?
- What are the limitations of your standpoint or perspective, and how does this affect your critique?

4 Comparison

- Are comparisons and/or contrasts implicitly or explicitly necessary to your answer?
- What are your units of, or themes for, comparison/contrast? (For example, jurisdictions, regimes of rules, peoples, policies.)
- Can you be explicit about your justification for the choice of units of analysis you make?
- Have you considered historical contingency and sociological specificity in choosing your units of comparative or contrasting analysis?

5 Context

- What important aspects of the economic, political, social or cultural context need to be provided in your answer so that your research will answer “why” questions as well as “what” and “how” questions?

Which disciplines offer the richest sources for you? (For example, history, sociology, political science, Maori/ethnic studies, gender studies, economics.)

Sequence and Structure of Legal Research Methods 2000		
Week Number, Date and General Topic	Seminar Themes	Computer Tutorial
(1) 6 March Overview and expectations	The language of research – theory and method Overview of the “five ‘Cs’” method Types of research – forms of projects Identifying and formulating a thesis statement	(None)
(2) 13 March Thinking about and doing research strategically	Developing research strategies and managing time Ethical considerations and cultural appropriateness	Constructing a literature review Logging on and using Topclass
(3) 20 March Contextualising	Legal and social theory Locating and using historical materials	Introduction to databases
(4) 27 March Conceptualising	Jurisprudential concepts Social science concepts and analytical frameworks	Introduction to databases
(5) 3 April Comparison and contrast	Units of comparison Specificity and contingency	Maximising resources

Sequence and Structure of Legal Research Methods 2000			
(6) 10 April Comparative and international law research	Introduction to comparative legal systems and resources Locating and using international materials	Legal databases	
17 April	[Study break]		
24 April	[Study break]		
(7) 1 May Accounting for social and legal change	Scholarship and evidence	World Wide Web	
(8) 8 May Identifying a critique	Legal theory and social theory Objectivity, positivism and critical theories Modernity and post modernity	World Wide Web	
(9) 15 May Legal writing	Focus and structure – scholarship, evidence and analysis Focus and structure – scholarship, evidence and analysis Legal writing – the research paper Writing up research, self-assessment and troubleshooting Legal writing – objectives and forms	Non-law databases	

Sequence and Structure of Legal Research Methods 2000		
(10) 22 May Panel discussion 1:	Specialist legal discourses or Law, globalisation and lawyering in the 21st century or Meeting specialised legal and socio-legal research needs Specific writing problems	Relevant legal and non-legal databases
(11) 29 May Panel discussion 2:	Specialist legal discourses or Law, globalisation and lawyering in the 21st Century or Meeting specialised legal and socio-legal research needs The assessment and publication of research Presenting research findings	Government documents

Sequence and Structure of Legal Research Methods 2000			
(12) 5 June Panel discussion 3:	Specialist legal discourses Or Law, globalisation and lawyering in the 21st Century Or Meeting specialised legal and socio-legal re- search needs Summation and review		Legal databases test
12 June-14 July			STUDY BREAK AND MID-YEAR EXAMS

Assessment Tasks

Our approach to assessment is also designed to promote a critical/technological literacy synergy. Each student must submit for assessment:

- a research topic proposal and preliminary literature review
- a paper identifying, evaluating and selecting appropriate research methodologies
- a research paper on a topic of the student's choosing.

In addition, students will undertake a research databases test in the Law Library Research Laboratory.

Research topic proposal and preliminary literature review

In this assignment students are expected to demonstrate an ability to:

- formulate and refine legal research questions
- identify appropriate methodologies
- discuss legal and social science concepts
- locate such concepts within analytical frameworks that reflect the scholarly literature in the area
- use the language of law-in-context research for academic, professional practice and policy-oriented research.

Students must indicate who the intended user(s) of the research are likely to be. For example, whether the research is to be written up as an article for an academic legal journal or interdisciplinary journal, an article for a professional legal journal, a Law Commission working paper, a written argument for an appellate court, or a law and policy briefing paper.

Our approach here is to stress the obvious importance of being explicit about which voice you write in and which audience(s) you aim to reach. However, as the key to critical literacy in action, we also point out that sometimes it is necessary to be explicit about each aspect of one's analysis (explicit analysis). An example would be academic writing where a scholar is writing primarily for other scholars. Other types of law-in-context research relate to opinion work as a lawyer, research for courts, or research for public bodies engaged in policy development and law reform. In this type of research too, theoretical frameworks provide a basis for analysis of what is fundamental and implicit. How implicitly or explicitly the analytical frameworks and concepts underpinning the research are voiced in the resulting

research paper will be a matter of judgement reached after considering the audience. The five “Cs” method of analysis nonetheless remains a necessary part of the research process.

In the critical literature review that must accompany the research topic proposal, annotations to the literature listed must identify the relevance of the items to the topic statement and arguments supporting or contrary to that topic statement. Relevance may be supported by relating items to dimensions of social/legal change, key concepts, the student’s critique, any comparative aspects, and relevant dimensions or context. Individual feedback is given on the research proposal and literature review, and students are referred to materials on methodologies.

Research methodologies assignment

The purpose of this assignment is to measure student learning in relation to appropriate and effective research methodologies and the ability to analyse critically relevant materials necessary for the design of a research project. Students’ facility with the use of the five “Cs” as methodological tools for analysis, and their ability to identify the issues relevant to the type of audience for whom the research project is intended, are the critical dimensions of this assessment exercise. Again, individual feedback is given in order to sustain an iterative research process with each individual student.

Research databases test

As we wrote at the outset, many students may have assumed that this aspect of the curriculum would constitute the core of the course. From the beginning of the course, students have been attending weekly tutorials in the Law Library Computer Laboratory. Database materials used in these tutorials are also available on-line to students in the course.⁴¹ Students download the materials from home if they have Internet access. The topics cover law and non-law databases, World Wide Web search engines and sites, and evaluation of electronic materials. A problem-based learning approach is used. Students are encouraged to relate the five “Cs” analysis of their topics to electronic search strategies. The test has both written and practical components.

41 Kay Young and Kate Young, Law Librarians, designed and taught this vital part of the course.

Research project

Two primary criteria are used to assess the paper that results from the project. One criterion is the degree to which the paper demonstrates (implicitly or explicitly) the appropriate use of research methods and theory in addressing matters of context, critique, conceptualisation, comparison/contrast, and theory about change, relevant to the question. The other criterion is the extent to which the paper effectively demonstrates breadth and sophistication in the use of library and electronic databases and other legal and social science research resources. Secondary criteria for assessment – primary in most other papers – concern structure and focus; evidence, scholarship and analysis; and quality of writing and presentation.

Conclusion

Andragogy for the knowledge society requires teachers to investigate methods that provide functional skills and conceptual tools in an explicitly synergistic way. The five “Cs” approach to critical literacy cannot stand alone as a technique for planning and guiding law-in-context research. To be a contribution to holistic law-in-context education, it must be embedded in a curriculum that continuously promotes the synergy of technological and critical literacies.

Our aim must be to try to animate the students’ capacity for analysis and social reflexivity while at the same time explicitly skilling them to be knowledge workers in a world largely governed by the new technological paradigm. For us, as educators and knowledge workers, what is significant is how the cultural and social dimensions of globalisation impact on the reflexive project of self-identity construction and the use of knowledge.

To be reflexive is to be human. And to be denied the chance to be critically literate, or the knowledge and skills for technological literacy that now constitute fundamental components of the global and informational mode of production and governance, is to be denied keys to self-actualising reflexivity and hence to be de-humanised, disenfranchised as a citizen, and de-skilled as a knowledge worker.

Appendix: Some Keywords for Law-in-Context Research

- academic research
- action research
- advocacy research
- after Fordist
- aims
- American realism
- analysis (modes /units)
- analytical frameworks
- argument
- audience/voice
- Austinian positivism
- autopoiesis
- B 2 B
- Brandeis brief
- case studies
- causation
- cmc
- collaborative research
- comparative law
- comparison
- concepts
- constructs
- content analysis
- contextualisation
- correlation
- critical (theory)
- critical legal studies (CLS)
- critique
- cultural studies
- data/ database
- de-construction
- diagrammatic
- dichotomy
- discourse
- doctrinal
- documentary analysis
- economic rationalism
- e-hub
- empirical
- epistemological
- epoch
- essentialist
- ethics
- evaluation research
- feminisms
- field work
- flow chart
- focus
- Foucault/Foucauldian
- gemeinschaft/gesellschaft (M Weber)
- globalisation
- goals
- governance
- hegemony (A Gramsci)
- heuristic device
- histograms/ bar graphs
- human subject research ethics
- hypertext
- ICTs
- ideal type
- ideology
- informational age/ capitalism
- institution/ institutional design
- instrumentalist
- instruments
- internet
- interview analysis
- juridical
- jurisprudence
- law and economics
- liberal
- links
- literature review
- macro/meso/micro

- Marxist/Marxian
- method/methods
- methodology
- models
- modernity
- network society (M Castells)
- new public management
- New Right
- normative
- objectives
- objectivity
- ontological
- originality
- outcomes
- paradigm
- participatory research
- periodisation
- philosophy of law
- pie chart
- policy/policy analysis
- political economy/ecology
- positivist
- post colonial theory
- postmodernism
- praxis
- presentation
- pure/applied research
- purpose statement
- qualitative/quantitative
- questionnaire
- radical race theory
- rational (public) choice theory
- reductionist
- research (noun and verb)
- research proposal
- rhetoric/reality
- risk society
- sample size
- scholarship
- social reflexivity
- socio-legal
- sociology of law
- spider diagram
- statistics
- strategy/tactic
- structuralist (post-)
- structuration (A Giddens)
- structure
- style
- subjectivity
- survey research
- synthesis
- tasks
- theme/thematic
- theory
- thesis/hypothesis
- time line
- web (WWW)