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Non-traditional students and critical pedagogy: transformative practice and the teaching of criminal law

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The widening of university participation to non-traditional, mature students has drawn attention to the paradigm of students' learning. Indeed, it has been argued that a 'student-centred' approach is the most effective practice in HE (Blackie et al, 2010). Accordingly, this kind of approach is expected to facilitate a 'deep' style of learning where students are active participants in their own learning experience; hence, learning tasks should be geared towards that purpose. A good example of such class activity which I have been using in my criminal law teaching classes at Birkbeck, is the 'problem question'. The 'problem' is a fictitious legal scenario, which should allow, according to Levin, 'for multiple levels of analysis and interpretation' (1995, cited in Goodnough, 2006:303). Indeed, Goodnough (2006) highlights the importance this technique has on the development of content knowledge and problem-solving skills.

According to Barnett (2008) a student-centred approach should bring about 'a fundamental growth in the person of the student' (cited in Blackie et al., 2010:639). Moreover, Meyer and Land (2005) relate this idea with what they call 'threshold concepts'. They argue that 'as a consequence of comprehending a threshold concept there may thus be a transformed internal view [...]’ (2005:2). Examination of threshold concepts is facilitated, in my own teaching, through learning tasks such as critical open-questions. An example could be the following: 'No one should ever be held responsible when someone dies as a result of recreational drug use'. Discuss by drawing on R v Kennedy [2007] and R v Evans [2009]. This task allows students to consider the concept of liability for breach of duty of care. Another example is the following question: 'Does criminal law recognise the existence of a difference between male and female sexuality? Two guided readings are provided. Here the threshold concept is about the criminal law construction of rape.'

Moreover, Canaan considers that a teacher's aim is to 'work with and against students' current interrelated words and world views' (2013:35).¹ This understanding sits nicely with learning theories suggesting that adult-students' platform of knowledge is not a blank slate; thus, in order to trigger learning, teaching strategies should be designed to challenge prior-knowledge (Fry and Marshall, 2008). Drawing upon my criminal law teaching, a learning task aimed at fostering critical

¹ Critical pedagogists have been criticised for falling short to go beyond the 'critical' and achieve the change its theoretical frame is proposing (McArthur, 2010); neither do I in my class and teaching can commit to such an agenda. However, Birkbeck College, through its students'-societies, social and political activities fostered by the school, might provide students with the appropriate platform for active and radical engagement and the seeking of 'change'.

examination of one's preconception is titled 'Imagining Criminal Law'. In preparation for this class students would have read Albert Camus' short novel *The Outsider* (1942)² and the case law R v Moloney [1985];³ they will be required to write a short review and a case note which will be used in class to discuss the question: How criminal law constructs the criminal subject? Students will also be asked to consider the theatrical aspect of a trial.

Indeed, a legal critical, pedagogical approach, as the one applied at Birkbeck School of Law, which is flexible in embracing a variety of theoretical perspectives (e.g. feminist, race, human rights, victimology etc) might guarantee what the National Centre for Legal Education⁴ has deemed as desirable. In this manual Thomas recommends a socio-legal approach to teaching, recognising 'that "facts" are negotiable, constructable and open to alternative usage' (2000:7); in other words, the 'law's empire' must be challenged (*ibid*). A good example here, is the use of the 'alternative' judgment on the case of R v Dhaliwal [2006]⁵ provided by Munro and Shah in *Feminist Judgments* (2010). Students will be required to prepare a case note for the original and alternative judgments; then, these will be used in the seminar, possibly in small groups, to discuss the following question: To what extent do you think a person can or should be held liable for the suicide of another? (Domestic violence related). By drawing upon the doctrine of Involuntary Manslaughter and the two judgments, students will have to critically consider the options available to the prosecution.

In conclusion, this inclusive approach supports what, back in 1997, the Dearing report on higher education recommended. Indeed, the report suggested that many students will not find the pursuit of a narrow field of knowledge 'attractive, nor useful in career terms, nor suitable'; and that in a rapidly changing world, 'the nation will need people with broad perspectives' (Dearing, 1997, cited in Thomas, 2000:4)

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² Sometimes translated as *The Stranger*.

³ 1 All ER 1025.

⁴ Now UK Centre for Legal Education.

⁵ EWCA Crim 1139.

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