CHAPTER 1

INTRODUCTION

1.1 Introduction

The primary aim of this study is to attempt a description of the development of the concept ‘law’ during a semester of introductory legal study. Thematically, the study investigates a relationship between prior knowledge, context, and learning (evidenced in microgenesis, or concept development), and tries to develop a language of description for this investigation. At an empirical level, the study attempts to plot an instance of student concept development in a legal / academic task, and examines the relation between students' understanding of the concept 'law' held at entry to the course and the Discourse context of interaction in this concept development.

This chapter serves to introduce this study through an examination of the motivation for the study (the empirical rationale), and through a brief examination of the context of the study (the historical rationale). The chapter concludes by providing a brief outline of the research logic and the content of the remaining chapters of this text.

1.2 Motivation

As an Education Development Officer based in the School of Law, University of the Witwatersrand, I have for many years been involved in the design of the Introduction to Law course - a course intended to provide the ground-work ‘mapping’ of the discipline of law study, and also to act as an introduction to the methods and skills, not only of law study, but also of academia more broadly. As part of our curriculum reform process in preparation for the new, undergraduate, LLB curriculum, a course

requirement that students complete an essay on the topic 'What is Law?' in the first week of their academic study was introduced in 1998. There were several reasons for this decision: we wished to introduce as many writing assignments as possible into the course, and this exercise served as the first of these assignments. A second rationale was that the essays may provide the teachers in the course with a greater understanding of the pre-conceptions held by students, would help them to know their students better, and that this would help them to link to students' prior knowledge in their teaching in a meaningful way. The third rationale was that this would enable teachers in the course to identify, at a very early stage in the academic year, those students who were likely to struggle in the course on account of their ability in written English, and to thus direct them to the appropriate interventions timeously.

In order that the exercise be taken seriously by students, it was felt that it should be a formal requirement, contributing to the final course-work result for the student. However, in order that this not result in students effectively being penalised for the poorer language skills that we were trying to identify and work with, a decision was taken to include in the course-work requirements the submission of a portfolio of work at the end of the semester from which a 'development' score could be calculated for each student. Clearly, those students who scored excellent marks on the first assignment would not score as highly on the 'development' mark as those who had come in with poor scores, but who had subsequently improved considerably. The calculation of a development score is, however, far from problematic. Although the teachers in the course had no problem in allocating this score intuitively, having freshly emerged from a masters course in developmental psychology, the problem for me was perhaps more a theoretical one: what is development? what is development in this context? how can it be described? how can it be understood? became the framing questions for what was to become a long-term investigation, which seemed to lead naturally out of the psychological, into the social and the linguistic arenas. The inclusion in the course of a second essay on the same topic at the end of the first semester of study provided an ideal opportunity to investigate these questions in more depth.

The research was, for me, theoretically motivated also. Having adopted during the course of my previous study a Vygotskian understanding of the nature of development, the question of the role of the social in development became crucial. Perhaps too crucial, as I found myself at that stage questioning the relevance of psychology in educational explanation. If the social provides the conditions, the driving force, and the evaluative criteria for development, where within this is the value of the individual as a unit of analysis? In what sense is the psychological not reducible to the social? And if, in a semiotic account, language is seen as the mediator of the social, is this as tool or as determinant in individual thought and action? This research represents an attempt to move beyond this impasse: by taking the social conditions of learning into account, the question becomes how the individual is constrained and enabled by these conditions.

This investigation is rooted in the psychological, not the social. However, it attempts to take different strands, psychological, social and linguistic, and to weave them into a coherent account of a specific instance of student development. Whilst it is, of necessity, inter-disciplinary, and while it attempts to recognise the contextual forces that constrain and frame as well as providing possibilities for individual action, it cannot provide more than a sketch of the social and linguistic arenas which it touches upon. The boundaries between the traditional disciplines become increasingly blurred as one attempts to gain a rich understanding of empirical phenomena, and the process of crossing the boundaries is enormously frustrating. By necessity, depth in any specific domain is sacrificed for breadth, and the sense that I am left with is that I have barely begun to scratch the surface of the possibilities of an integrated analysis.

The study is thus both ambitious and simple. It is ambitious in that it attempts to draw together strands from very different domains of academic thought. It is simple in its primary goal however: to try to locate a particular instance of legal education within its specific context, and to try to plot the influence of that context on a single instance of student development. It is a modest attempt to engage

with pedagogical debate in that arena.

There are certain constraints and limitations of this study that must be fore-grounded. The first, already mentioned, is its appeal to breadth, rather than depth, in any of the particular areas touched upon. The second relates to the particular categories used in analysis of the empirical data: the study attempts to investigate cultural model understandings through the lens of 'race'. In South Africa today, although not necessarily at the time that this research was begun, race is increasingly becoming an inadequate categorisation. As a Black middle-class is formed, and as the distinction between 'Black' and 'white" becomes less pronounced, other factors previously hidden by that dichotomy come to the fore. It may be becoming increasingly true that 'social class' may provide more generative understandings than race. 'Gender' as a variable, is not included in this study. This is not to suggest that I would not regard this as an important mediator of experience, and as a valuable category for study, but the 'fine-tuning' that this category would provide was not possible within the scope of this study. There is also no attempt in this study to relate to experience outside of the academy, to the broader community, except where that is evident through the writings of the students themselves. The experiences represented thus are those of a highly selected group, in academic terms, and may not provide an indication of the operation of social mediation in other contexts. A penultimate caution relates to the use of categories themselves within analysis: there is a sense in which the structuralist understandings thus generated are increasingly irrelevant in a post-structuralist, post-modern society - the agenda has changed. Finally, a caution must be sounded regarding the validity of any understandings derived in the course of this research. My own position, as an outsider to law and as a member of an advantaged group within society, does not allow me to provide a personal account, a confirmation in terms of experience, of the empirical findings of this study.

It is traditional that a treatise of this nature ends with some kind of reference to the work that still needs to be done or the understandings that still need to be explored in the field. I would like to begin from this point: the apparent movement of psychological explanatory principles into the social domain

leaves developmental psychology, as a field of study, vulnerable. Yet those principles are by themselves insufficient to account for individual difference, for possibilities, rather than determinations, within a common social context. This study is a small attempt to contribute to the growing literature that attempts to cross these divides. Much must still be done.

1.3 Background to this study

The historical location of this study is explored in the section below. The growth and subsequent decline of the academic development movement in this country, described in the first part of this section, is of personal concern to me as I have, for many years, been based in that tradition. As the section describes, following the 1994 democratisation of the country, and despite increased access to higher education which might have been expected to increase the need for academic development interventions of all sorts, the field has not regained the ground that it held in the early 1990s as a site for critical reflection on higher education. Where that reflection takes place is perhaps not important; what is important is that the agenda that was set in academic development - to find ways of understanding the institution, of understanding students' experiences of the institution, and of understanding learning in the institution, that will enable us to improve on our practices as higher education practitioners - is not lost.

As a further framing context, the specific site of legal education in the country is also briefly examined.

1.3.1 The academic development movement

The defining feature of the South African politics of the past, including the higher education landscape, was apartheid. Under the National Party rule, South African society was divided along

racial lines, and the expectations of each group were clearly defined. Education too was racially segregated (through the Bantu Education Act, Union of SA, 1953), and was seen as a means of controlling the social aspirations of the different groups (see, for example, Rose and Tunmer, 1975, pp.228-180; Molteno, 1984; Enslin, 1984; and Christie and Collins, 1984; Hartshorne, 1999). Different groups (racially defined) thus had different schools, different administrative structures, reported to different government departments, and had different funding models, with large disparities between the amount of funds provided for Black (comprising the African black, the coloured and the Indian groups) and for white scholars. The disparity was reflected also in the numbers of pupils successfully graduating from the schooling system (see, for example, Hartshorne, 1986; Blignaut, 1981).

Higher education, in these years, was seen as the prerogative of white groups. In 1971, for example, the total number of African black students enrolled in Higher Education in the country was 5407; 6% of the total enrolment (in a society in which 80% of the population is African black) (data from Blignaut, 1981). Black enrolment was furthermore not intended to be of the same nature as that of white enrolment: different institutions were created to deal with the different groups, reflecting the disparities of schooling system (see, for example, Wanda, 2000). Racial intermingling within institutions was not encouraged: prior to 1984 ministerial approval had to be obtained for a Black student to study at a white institution (see Bunting, 2002). Although this control was relaxed in 1984, driven by an apparent 'skills shortage' in the country (Chisholm, 1984), demographic changes were slow, due not least to inequitable output from the schooling system.

University responses to this broadening of access differed. Although numbers of Black students in the historically-white Afrikaans medium universities remained low, other universities embraced the changes (Bunting, 2002, p.71). Since the early 80's Academic Support Units had been operating on the campuses of most of the English-medium historically white universities. These units had been formed in response to the pressure that had been placed on the teaching / learning context by the

increasing number of ‘non-traditional’ admissions to these universities. Strongly rejecting the apartheid policies of the government at the time, these so-called ‘open universities’ sought, by whatever means possible, to find ways around the regulations governing the determination of admission to institutions on racial grounds, and sought to increase the numbers of Black students registered at the institution. Whilst admirable in political intent, these open admissions policies brought with them a new set of problems to the institutions: the students that were admitted via the ‘alternate admissions’ routes came from schooling backgrounds very unlike those of the traditional white students, and, in addition, spoke English only as a second (or third) language. Without additional support, these students were not going to survive in the academic environment. Political policies regarding widening access would be meaningless without an allocation of resources to ensuring the success of that access. In this context, and at these universities, Academic Support Units were formed: to provide academic support in the form of additional tutorials and skills training, as well as non-academic support, to what were then classified as ‘educationally disadvantaged’ students (Hunter, 1993; see also Moll, 1987).

The nature of the university itself was unchallenged in these early days: drawing from a model of Western academe, with an established tradition spanning centuries, the university was seen as sacrosanct. Teaching methods, curricula, and forms of research were legitimised through this historical tradition, and problems that students were having in adapting to these traditions were seen as precisely that: student problems. It was only as the numbers of these ‘educationally disadvantaged’ students began rising significantly at the open universities, and as practitioners at these open universities began conversing with those at historically disadvantaged institutions where similar problems were experienced on a much larger scale, that the problem began to emerge as one broader than the individual student, and that it became recognised that a more fundamental change in the teaching approaches used in academia was necessary (e.g. Hunter, 1993). Thus, by the end of the 1980’s, this academic support model was characterised by a philosophy that could be described as liberal, by prevailing themes that moved from ‘access’ to ‘integration’, and by a focus of activity that

moved from the level of the student, to the teacher, and began to interrogate the nature and form of the curriculum.

One of the achievements of the movement in this era was to foreground the role of language, or more specifically literacy, in student learning. Early explorations in this area focused on language as a primary problem of 'disadvantaged' students, most of whom spoke the language of tuition as second language. These students were seen to have 'underdeveloped reading and writing skills' (see for example, Dyers, 2000, p.189), or were seen to lack the cognitive academic language proficiency skills necessary for academic study (from Cummins, 1984, see Hunter, 1993). Later work, however, moved into broader understandings of the notion of academic literacy as something which all students are novices at, and which can be theorised as a cultural change for the individual student (e.g. Bock, 1988).

This was the context in which the academic (or education) development (AD) movement was founded. Academic development, in its original conception and in much of its practice, referred to a field devoted to improving the teaching methods used in academia, and to integrating basic academic literacy and skills training into mainstream content teaching, so that the needs of all students, and not only those who came from an academic background, were met. Although this understanding of the field has for the most part been retained, as the field developed, pockets of understanding were formed in which it was acknowledged that the challenge facing academic development is deeper than simply that of improving teaching methodology. At issue were more fundamental issues regarding the function of the institution, the bases of knowledge within the institution, and the identity of the institution within power struggles in society. What was necessary was a new understanding of the university in a new context, "examining the basic underpinning of the institutions themselves" (Mehl, 1988, p.17; see also Hunter, 1993).

In theory at least, AD in the early 90's took a new form which rejected the liberalism of the eighties.

The political nature of the AD task became more explicit: the tone adopted was more militant, the prevailing theme was one of transformation, and the focus was the level of the institution and its policies. Although, for the most part, institutional placement remained peripheral, morale was high and the field was, for a time, both growing and receiving more recognition. At the level of practice, there was a consolidation of activities, and common areas of AD activity (including access and selection; curriculum development; higher education research; language development and academic literacy; evaluation; learning and cognition; staff development and educational policy development) were established. However, despite the growing sense of coherence within the field, in many areas the field could be accused of a lack of adequate theorization (e.g. Moll, 1987, see also Volbrecht, 2003). Moreover, this coherence, although evident to those internal to the field, did not receive much institutional or national recognition. The demise of the South African Association for Academic Development at this critical juncture in the field's formation resulted in a loss of much of the ground that had been won in the previous decade, and in a sense of isolation for practitioners.

Despite attempts at revival, academic development in the late 1990s and early 2000s, has not regained momentum as a site for critical reflection on higher education. Perhaps the political impetus derived from fighting a clearly unjust system was lost in the era following the formation of a new state in South Africa. Perhaps also, the goal of institutional challenge and transformation that academic development set was not achievable. As Carrim (1994) points out, the reproduction function that tertiary education fulfils in society is too pervasive for real challenge. Transformation, in the South African context, has been (and is) "primarily about institutional access and does not change the cultural capital basis of knowledge systems" (p.276).

Changes in higher education particularly with respect to access to higher education, have been notable since democratisation, with open access to all institutions declared in 1994 (Bunting, 2002). Although uptake of this new opportunity was not as rapid as had been expected, primarily due to a low output from the schooling system between 1994 to 1999, the number of students graduating from

the schooling system, and the number of those graduates obtaining matriculation exemption (university entrance), have steadily improved since 1999 (see for example, the Ministerial Report on Matriculation Results, DoE, 2002), with a total participation rate in higher education of around 15% in 2000 (National Plan for Higher Education, DoE, 2001). Enrolments of Black students in higher education increased by 61% between 1993 and 1999, from 249 000 (or 53% of the total headcounts) to 414 000 (or 71% of total headcounts). The change is even more dramatic in the case of African black student enrolments - these increased by 80% in the same time period, from 191 000 to 343 000 (op cit). The growth in African black student enrolment moreover has predominately been in the historically white institutions (historically disadvantaged institutions having experienced a decline in enrolment during the 1990s): between 1993 and 1999, the proportion of this enrolment rose from 25% to 57%.

Aside from access, transformation of the sector since democratisation has been promoted through new policies regarding the size, shape, function, and funding of tertiary education (see for example, Department of Education 1995; 1996; 1997; 2001; and 2002) and by new practices regarding the regulation of the sector. Although many of these policies are driven by specific national needs for transformation of the system, outside influences on the system from developments in the international higher education sphere are also evident. Although it is difficult to prize apart the imperatives arising from the necessities of post-1994 transformation in this country and those imposed by global forces, many of the effects which have been felt elsewhere in higher education (see for example, Ball, 2000, Barnett, 2000, Carnoy, 2000) have manifested in South Africa also: managerial models of governance are increasingly being adopted, there is reduced government funding for higher education, with subsequent increasing emphasis on entrepreneurialism, and there are increasing state demands for accountability in the system (see for example Cloete, 2002., Ensor, 2002). The pressures are simultaneous, however, with the need to create a new higher education system responsive to the needs of the politically transformed society.

1.3.2 South African legal education

Legal education as a field is not well-explored in the literature, relying predominately on traditional views and methods. Professor Twining, speaking of the British educational system, said in 1982 that "(v)irtually no serious research on legal education has been undertaken in this country" (cited in Mackie, 1990, p.131). Twenty years later, and although the volume of work in the legal education domain has increased, it is probably true to say that the field is still, at most, in an early stage of definition.

The context of change surrounding higher education in general has, however, not left legal education untouched. Internationally, the call for a curriculum based on objectives or outcomes similar in some ways to our outcomes-based education (for a discussion of this see Jansen and Christie, 1999) has led to at least some debate over the objectives and purposes of legal education (e.g. Hort and Hagen, 1988). That the level of this debate has not been high can probably be attributed both to some resistance from within the legal education domain about the incorporation of 'new methods and understandings' of education, and more fundamentally to a general neglect of legal education as a discipline or area of research.

The changes being experienced in higher education generally have created a context for legal education which Mackie (1990, p.132) refers to as 'environmental turbulence'. He points also to changes within the broader social arena of law which contribute towards this turbulence: increased competition between lawyers, or between lawyers and other professions; political and economic pressures calling for greater inclusivity of service; pressures on the profession's claim to self-regulation; and ethical considerations. Edwards, writing in the United States in 1988 gives other factors causing 'major structural problems' which are facing the professions. These include case overload, the rising expense and length of litigation, growth of law firms and in the salaries of lawyers, creating more pressure to "generate billable hours" (p.288), increasing problems of access to

justice for the poor and middle class, low representation of minorities in the profession, and increased competition within the profession. MacCrate (1988) raises the same concerns, describing these as leading to "a breakdown of what can be termed 'professionalism', that is, the elements of the practice of law that surmount mere technical craft" (p.295). Wade (1989) points to a crisis of 'relevance' causing a re-evaluation of legal education in Australia. The situation has not changed for the better in the decade since these writings: Kritzer, writing in 1999, describes further increases in legal capitalism that are "sending tremors through (the American legal profession's) institutional foundations" (p.713). Locally, some of the recent pressures on law schools described by Fagan (2001) include lack of funding and the resulting focus on income generation strategies (personal and institutional), the loss of qualified persons to first-world countries, reduction in library spending, increased vocationalisation (training for a job), the impact of managerialism, and affirmative action affecting staff positions. The situation is compounded in this context, however, by a context of change which includes changes in the content of law itself: the introduction of the new Constitution (Interim Constitution, RSA, 1993), and the resulting democratization of the country in 1994, has fundamentally changed both the context and practice of law.

The apartheid system that existed in this country for close to 50 years was upheld by a system of law which, in Dugard's (1986) terms was "discriminatory and repressive". Dugard shows, through an examination of the "jurisprudential underpinnings of the Apartheid state" (p.115), how this situation came to be. At the time of British colonisation, the dominant model of law in Britain was one of parliamentary supremacy; this model was adopted on independence by the Afrikaaner state, and was ratified by the 1961 Constitution, which stated that: "(p)arliament shall be the sovereign legislative authority in and over the Republic" and that "no court of law shall be competent to enquire into or to pronounce upon the validity of any act passed by Parliament" (p.116). Law's function as a tool of the state, to perform Parliament's bidding, was thus established. This situation was not resisted in the early stages: leading members of judiciary promoted the positivist understanding that law is about the promotion and enforcement of a body of rules generated by a higher authority. Within this

understanding, law and morality are independent concepts, and the judiciary has no role in commenting on the content of law. This approach was reinforced, in some quarters, by a belief that law should reflect "the legal convictions of the community" (p.119) where that community was defined as the ruling elite. Underlying much of this belief system was a version of Calvinism in which it was believed that the supremacy of God is at odds with the supremacy of man which is at the heart of humanism: human rights were thus not a consideration in legal thought in this country throughout much of the 20th century, and no Bill of Rights was included in the 1983 Constitution. Dugard suggests that writings criticizing this situation began appearing in the 1960s and 1970s, but that it was not until the 1980s that the human rights movement in this country began growing, with increasing judicial interpretation in favour of 'individual liberty' (p.118).

The democratisation of the country in 1994 was a radical break with this legal past. Most fundamentally, a Constitution was ratified (1996) which curtailed state power and, as the ultimate legal authority, provided the yardstick against which all legislation would subsequently be judged. Enshrined in this Constitution is a Bill of Rights, widely lauded as the most comprehensive in the world. Justice, once the tool of the ruling elite to maintain its position, is now seen as serving a broader social role to act for the betterment of all, collectively and individually, placing at its core:

> treasured social values and a commitment to healing the divisions of the past; establishing a society based on democratic values, social justice and fundamental human rights; laying the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improving the quality of life of all citizens and freeing the potential of each person; and building a unified and democratic South Africa able to take its rightful place as a sovereign state in the family of nations" (Omar, 2000, p.5)

Throughout the apartheid era there were dual requirements for qualification to entry to legal practice:

the academic qualification necessary for admission as an advocate was a postgraduate Bachelor of Laws (LLB), typically following qualification in a Bachelor of Arts or Commerce, but for attorneys, an undergraduate BProc degree was all that was required. The latter degree was restricted in content to 'core legal' training, without providing a broader social education. In practice the distinction between the two qualifications led to a hierarchy of status within legal education, with students less able to spend the additional time and finance on obtaining two degrees registering for the less elite of the qualifications.

Demographically, legal education in the apartheid years was subject to the same constraints as were operating in the higher education sector more broadly. The number of Black students admitted to and graduating from Law Schools was low. Many of these graduates graduated from 'historically disadvantaged institutions', and held the inferior B.Proc (or a three-year B.Juris) degree as opposed to the postgraduate LLB degree. The statistics quoted at a 1998 conference on capacity building in law schools of historically disadvantaged universities show that, at that time, out of a Black population of 30 million, there were only 500 qualified Black attorneys and 50 advocates. In contrast, for a white population of fewer than 5 million, there were around 6000 white attorneys and 15000 advocates (Omar, 2000). The disparity in numbers was echoed also in the types of opportunities available to practitioners: Black graduates were commonly unable to find articles and therefore could not become attorneys. Many Black lawyers typically worked for small firms, handling criminal cases before the magistrates' courts, divorce proceedings and motor vehicle accident cases. Large commercial work, on the other hand, tended to concentrate in the large firms which typically employed the top graduates of the most prestigious degrees and institutions (Omar, op cit, see also Iya, 1997). As law school curricula tend to be biased towards this large scale commercial work, graduates handling the smaller private work were disadvantaged. Access to justice for the majority of the population was thus limited in two ways: firstly in terms of the number of practitioners available, and secondly in terms of the training that those practitioners had received (Woolfrey, 1995). As Omar describes it, there existed both a first- and third- world in the legal profession.

In an attempt to address this situation, a conference was held in 1991 on the theme of access to justice and access to the profession. Although work begun in that conference took many years to come to fruition, the conference laid the ground for a re-examination of practice through the broad agreement that was obtained amongst participants on the segregative nature of existing curriculum outcomes. In a subsequent 1994 National Forum on Legal Education convened by Ministry of Justice and a 1995 Deans' Forum on the same issue further agreement was reached: it was decided that the two routes of entry to the profession should be abolished in favour of a single entry qualification with no 'ladder-structure' (multiple exit points) to this qualification. The outcome of these talks was agreement on the introduction of a new four-year undergraduate LLB degree, to replace the two previous degrees, as the legislative requirement for practice as either attorney or advocate. This qualification was ultimately adopted through the Qualification of Legal Practitioners Amendment Bill in 1997 (see Church, 1998).

The move to the new degree was clearly a move in the direction of opening access to the profession and through this, opening access to legal services in the community. Iya (1997) however, argues that, whilst this superficially addresses social demands, it does not necessarily give real status to the question of what law should be in society, and therefore fails to meet the context objectives of a transformed legal system and society. In his view, 'transformation' has not been interrogated in terms of the meaning of this term for law schools and universities. The term is typically used in two senses: to refer to the need to create a legal system and curriculum based on traditional or contemporary African values or to the need to create a system which is responsive and responsible to local societal needs. With regard to the latter, Mokgoro (1998) says the following:

> In the area of legal training, the quality of education offered by law faculties is increasingly determined not only by academic excellence, but also by the role that law faculties and law schools play and the contributions that they make to the transformation

> of South Africa. The socio-political and economic context in which they function has now become a much more fundamental consideration for the education and training that they provide than previously. Whenever the Africanisation of tertiary institutions in South Africa is called for, those calls tend to rock the boat. To my mind, how and to what extent institutional education and training respond to the social, political and economic needs and challenges of societies in Africa is basically what this Africanisation is all about. (pp.4 - 5)

The 'Eurocentricism' of the legal curriculum and its provision is a critique levelled by Wanda (2000) who argues that it is not only at the level of structures of provision that South African law is colonized, but also at the level of legal content: what is necessary is that

> The Constitution and the legal system as a whole should reflect the values and morality of the broad spectrum of the people of South Africa. It must reflect an African experience and mindset, and make a deliberate shift away from a European and American influence (op cit, p.42).

The two strands of the transformation / Africanisation debate both set societal needs at their core: on the one hand, cultural needs, and on the other, economic needs. The latter, in particular, invokes the debate about the broader role of higher education in society, and whether the function of such education should be to provide for labour's needs or to contribute to the personal development of the individual. Within legal education, the debate in the South African context has focused around curriculum content and the practical training needs of the profession.

Although the first major Commission on legal education in this country (the Lawrence Commission in 1917, see Cowan, 1988) expressed the view that law teaching "should not be geared solely to the technical needs of those studying law as a professional career" (p.23), the debate has resurfaced in the

era leading up to the adoption of the new curriculum. The need for increasing the level of skills training in the degree has been strongly argued by the profession, with suggestions that the curriculum should "take account of requirements of modern practice", stress "analytic, writing and interviewing skills" and focus on practical skills (Lucatti, 1990). The profession's argument is that these skills would 'facilitate' subsequent "passage through vocational training" (De Rebus, 1995). There has been some support for this view in academia: a document criticising initial proposals regarding the content of the new curriculum suggests that legal education must be 'de-mystified' and should be broken down into "intellectual integrity and independence of mind, core knowledge, contextual knowledge, legal values, and professional skills" (Iya, 1997, p.317). The assumption is that the traditional (Eurocentric) legal curriculum has overstressed the "cognitive" (Iya, 2000, p.66) without addressing the broader skills and values necessary for practice (see also Iya, 1995).

The opposing argument is well expressed by Hund (1993), who suggests that the 'legal-bureaucratic rationality' developed through an over-emphasis on skills acquisition will reduce the intellectual training offered by the academic curriculum, and will reduce the logical development and social understanding of graduates. The effect of this would be to produce a system of functionaries, incapable of interrogating and directing societal reform. Du Toit (2000) points out that globalisation places requirements on education that graduates have both a high level of general ability and specialisation: it is doubtful that a curriculum focussed solely on technical skill will be capable of generating the type of person most capable of dealing in such a world.

Practical legal training is not only the domain of the universities. Access to the profession is fundamentally controlled by the profession through its requirement for admission to practice of formal professional training (articles of clerkship). One of the areas identified in the process of debate around the new LLB curriculum as requiring urgent attention was that of the practical training requirements for professional admittance. There were strong feelings expressed particularly by the Black lawyers party to the debates that location of this practical training in the law firms constituted a

barrier to professional access for Black students, and that this requirement should be abolished in favour of incorporating such training into the legal qualification (Fort Hare document, 1996). No agreement was reached at the time, or subsequently, on the question of professional legal training, and this aspect of legal education, and control over access to the profession, thus remains with the profession.

Despite the introduction of the new curriculum into legal education in this country in 1998, there has been little change in the fundamental ways in which legal content is framed and taught in universities. Attitudes towards academic development initiatives in the field in the early 1990s ranged from "enthusiasm (in all too few cases however) to mild interest, indifference, skepticism and downright hostility" (Woolfrey, 1995, p.155). These strategies have had little impact on the teaching practices in the discipline. Subsequent debates around the 'outcomes' of legal education occasioned by NQF registration requirements, and more recently, around the registration of a 'generic' LLB qualification on the framework have for the most part been paper exercises, occasioning little real consideration of what is taught and how. The 'Africanisation' debate, moreover, has not moved forward in recent years, and little change has been made to the values and understandings underlying legal education. Although physical access to the qualification has been broadened, 'epistemological access' (Morrow, 1995) remains un-interrogated. There is a danger in the context that external pressures to improve throughputs and achieve semblances of equality will result in teachers adopting measures which, rather than interrogating and improving practices, simply lower the standards required.

1.4 Research frame and logic

The section above sketches the historical location of this study in terms of the context directives of transformation and relevance for higher education generally and for legal education within that. It has been shown how the critical focus in teaching and learning has shifted from the individual student to a

focus on institutional practices at both macro (systematic or structural) and micro (teaching practices) level. To facilitate improved practices at the micro level what is necessary is a clear understanding of how what we, as teachers, do, and what students bring, affects their subsequent performance. In other words, what is necessary is an understanding of how social context impacts on the level of the individual. If learning is socially determined, then the context surrounding that learning must have significance. Moreover, past learning contexts may be reflected in existing knowledge, and the extent to which new knowledge is congruent with this existing knowledge may have significance. Although commonsensical, this relation is untested empirically: what students bring to the learning situation and how they bring past positions (personal or group) into play within the pedagogical arena has not been well explored.

Primarily, the research investigates students' acquisition of the concept 'law' in an introductory course for undergraduate students registered for the first year of a Bachelor of Laws degree. The research question that is addressed is: How can an account of first-year undergraduate students' development of the concept 'law' in an introductory course on law be provided, such that the analysis enables an understanding of the role of the social domain in ontogenesis?

The attempt to answer this question raises two research problems which need to be addressed prior to beginning the empirical study. First, it is necessary to account theoretically for the role of the social in learning and development, and secondly, what is necessary is the development of a method congruent with this theory.

At a theoretical level, this research proceeds from a Vygotskian understanding of ontogenesis (individual development) and of the role of the social domain in ontogenesis. Fundamental to the account is an understanding that it is through semiotic mediation that teaching / learning proceeds: this is the vehicle through which knowledge is passed from the social domain to, ultimately, the psychological sphere. In this regard, Vygotsky's account of the Zone of Proximal Development

(ZPD), as the means whereby the social is acquired by the individual, is seen as of particular importance. Integral to Vygotsky's theory of the socio-cultural-historical basis of individual development, but relatively unexamined within his empirical work, is an exploration of how social structures and relations are realised within ZPD functioning. His account thus suggests an unproblematic acquisition by the learner, and lacks a description of how the individuals acting within the ZPD context may be both positioned by social relations and of how they may position themselves. Following Vygotsky's belief in the importance of language (as a semiotic system) as the means by which the social becomes the psychological, this research attempts to use Gee's conception of 'Discourse' in order to enrich understandings of the interaction between the social and the psychological in development and as a tool in the empirical analysis of this development. In order to perform this integration, questions that are addressed include: What is the individual / social problematic in Vygotskian socio-cultural-historical theory? How can Gee's theory of Discourse contribute to the understanding of the individual / social relation in Vygotsky's theory? To what extent is Gee's theory of Discourse compatible with a Vygotskian paradigm?

The study then examines the methodological assumptions that can be derived from the integration of Gee's theory with the Vygotskian paradigm, and suggests additional resources necessary to enable description within such a paradigm.

What the frame makes apparent is that there are four related enquiries which need to be addressed in order to satisfactorily resolve the main question of the research. Each of these four areas is described below:

First, it is necessary to provide a more detailed account of the context of culture (see Chapter 4) of the study: the academic, and specifically legal academic, situation of the study. This is the context within which the research itself is positioned, and within which the instance of student learning being described is located.

Second, the research attempts to examine the situated meanings associated with the concept 'law' by students at the onset of study, through an examination of initial essays produced on the topic 'what is law?' The object of this section of the study is to attempt to construct an account of the cultural model/s (see Chapter 3) of 'law' held by students as novices to the field. The analysis also serves to provide the initial point from which individual learning is measured.

The mediation provided within the context of situation of the learning interaction, or interpsychological domain (see Chapter 3) of the learning task, is then examined: this is plotted through an examination of the course-pack materials provided to students, and through an examination of lecture content. Although the intention in this section is not specifically intended to provide an elucidation of the 'insider' cultural model, some evidence of the teacher's task definition with regard to the concept is sought in this examination.

Finally, an attempt is made to describe individual student concept development through a comparison of initial and final student texts on the topic, by examining within these texts the dimensions of textual features, logical structure, concept elucidation, themes addressed, and voice. An attempt is made in analysis to empirically track the impact of socially-conveyed meanings in this development.

1.5 Chapter outline

As a guide to the reader, the following section provides a brief overview of the contents of each of the remaining chapters of this text.

Chapter 2 of this study provides an introduction to the research logic of this study: the understanding adopted in this research of the role of theory in guiding empirical investigation. A description of the

course itself is given as the overall data set from which samples for specific analyses are drawn. Also briefly examined is a broad description of the methodology adopted: methods used in each analysis are described in that specific section.

Chapter 3 provides the theoretical background to this study. The work of Vygotsky is outlined, focussing on the role that he attributed to language in individual development. The study of language, specifically represented in the social semiotic field, is briefly examined, and the understandings provided by Gee, as an exemplar of this field, are outlined. The chapter concludes by examining the compatibility of the two domains of theory, and by providing the integration of these accounts necessary for this study.

Chapter 4 briefly introduces some further core theoretical dimensions necessary to create a methodological frame for this study. The issues explored in this chapter include understandings in the areas of culture**,** text and context, interaction and subject and self. The chapter concludes by sketching the understanding adopted in this study of the relations operating, and expected to position learning, in the context.

Chapter 5 'zooms in' on the context of this study to provide an understanding of legal education: how this is located both within the higher education context and within its own context of legal professionalism, and how the latter has had a specific influence on the nature of this educational provision. The chapter suggests that this context is one in which strong power relations are operating: this is critical to understanding the nature of the learning experience of the student entering this field.

Chapter 6 is located at the level of the student. An attempt is made, in this chapter, to describe student understandings of the concept 'law' at the outset of their studies: of interest in this account is not the individual understanding per se (these are picked up in Chapter 8), but rather, whether group trends in these understandings can be identified as a clue to the cultural understandings of the concept held by

different groups at the outset of study. The chapter thus attempts to read the situated meanings associated with the spontaneous understanding of the concept brought to the task by different groups of students.

Chapter 7 examines the learning interaction of the course itself: the interpsychological domain of the study. The specific mediation provided in this domain is examined: what is mediated and how provides an indication both of the lecturer's definition of the task, and of how the power relations implicit in the legal domain and necessary for its continuance, are reproduced.

Chapter 8 examines the writings of a small sample of students in the class. By comparing student writings at the beginning of the course with those at the end of the course, evidence is sought in this chapter of Discourse-appropriate development in individual student texts, read in the light of the findings of Chapters 6 and 7.

The conclusion to the study is provided in Chapter 9. The chapter returns to the primary question of this research by asking how, in this instance of practice, student concept development could be described such that the role of the social domain in this development is made evident. The chapter concludes by providing an overview of the process that has been followed in the research, before asking how understandings developed in the study contribute to psychological understandings of 'development'.