CHAPTER 7

TEXTUAL MEDIATION IN THE INTERPSYCHOLOGICAL SPHERE

7.1 Introduction

The previous chapters have examined the context of culture of the study, and the cultural model understandings of the concept brought to the task by students. In this chapter, focus is placed on the mediation provided in the teaching / learning context.

In order to plot the course of student concept development, it is necessary to provide a reference point against which that development can be measured. In a discourse perspective, development is not seen to be towards some ideal de-contextualised end-point, but rather is seen as a movement into a particular understanding, a cultural model or a Discourse. In a psychological, or more particularly a ZPD, account this target Discourse frames the teacher's definition of the task, within the context and specific practice. Between the analytic level of this task definition and that of the student lies the realm of the interpsychological, where intersubjectivity between teacher and learner is created. Although intersubjectivity (joint meaning creation) is itself not specifically examined in this study, the interpsychological sphere is described through a study of the mediation provided to students in the context.

The focus in this chapter is thus on what can be described, in Halliday's terms, as the context of situation: the specific setting in which student activity aimed at learning is situated. The basic question asked in this section of the research is 'what meanings, and values associated with those meanings, are mediated through the context and the text?' It has been suggested (see Chapter 4) that these meanings will position the individual within the context. Thus, in this chapter, meanings are sought both with regard to the specific task in this analysis (the content of the scientific concept of 'law'), and in respect of social relations and positioning devices encoded in the mediation.

Two sources of data are analyzed in this account: of particular importance to this study is the site created by the formal course-pack provided in the course, which acts both as mediational tool and as an indicator of the teacher's definition of the concept within the target Discourse. The second site important in the context of the study is the lectures themselves: the site of interaction of the student and the teacher. Relevant aspects of these two mediatory 'texts' are thus examined to provide a researcher's interpretation of the message conveyed in the context.

7.2 Method

Halliday's framework (see Chapter 4) allows us to see that a text "cannot help but encode particular social relations … as well as communicate particular ideas" (Graddol, 1994, p.46). Any reading of mediation provided in the pedagogical context must therefore be sensitive not only to content but also to the relations transmitted via the mediation. Fairclough (1989, see Chapter 4) provides an understanding that it is through values associated with the text that these relations are made evident. The analysis in this chapter thus seeks to find both values and content expressed through the ideational (logical or experiental) and relational (interpersonal and positional) functions created through the texts.

Based on the framework that has been adopted in this study, the method used in this section focuses primarily on the level of social / institutional practice, rather than on that of the lexico-grammatical features in the text. The analysis draws from frames suggested by Fairclough (1989), Lankshear (1997, p.54) and Gee (1999b, p.53), and sets the following as guiding questions:

Through the ideational function of the text:

- What concept pattern is associated with the scientific concept of the task?

- How is this knowledge privileged (made relevant in the situation)?
- What values are expressed through the text with regard to this content?
- What situated meanings or task definitions can thus be read through the text?

Through the relational function:

- How is power is expressed in the context?
- What interactional patterns are evident in the context?
- How are students positioned through the text?
- How is student identity modelled and constrained?

Although the textual is not a specific focus of analysis, evidence is sought also at the textual level of the particular textual structures and lexico-grammatical (grammar 2) features modelled in the situation.

Two analyses are provided below: the first is that of the course-pack, and the second is that of the lecture transcript(s). Each text is analysed independently, with no attempt at individual summary. A comparative summary of the findings of the analyses is provided at the end of the chapter, along with a summary of the meanings modelled in the context.

It is important, in the context of this analysis, to note, as Halliday (1978) does, that the meanings that are available to a particular student in this context will depend on the student's resources, and on their positioning through their prior experiences. Similarly, meanings found in this analysis result from the resources that I, as researcher, bring to this context.

7.3 Course-pack analysis

The course-pack in the 'Introduction to Law' course provides the full set of materials for the course in the form of content notes and readings. It strongly frames the knowledge of the course by means of both providing the explicit structure of the course, and providing its full content (thus serving a regulatory function over this content, as the course is taught in parallel by five different lecturers). No textbook was prescribed for the course in the year of study (although in other years an introductory textbook has been prescribed as reading supplementary to the course-pack). The lectures in the course are based entirely on the course-pack, and serve the function of further explaining, and expanding on (with further examples), the content in the course-pack. It is theoretically possible to pass the course by means of studying the course-pack alone (and fulfilling the necessary assessment requirements), without reference to additional materials, or attendance of any lectures, although lecture attendance in this course is compulsory (all lectures are deemed 'tutorials' in order to make this attendance requirement possible).

In this analysis, an overview of the course-pack is provided, and three sections, the Introductory section and Chapters 1 and 2, of the course-pack are examined in depth (original provided in Appendix 13, volume 2). The Introductory section of the course-pack has been chosen for analysis since it provides the social framing of the task, and expresses strong regulatory and relational values. Chapters 1 and 2 relate specifically to the task of defining the concept law, and thus are of particular significance to this investigation. The remaining chapters of the course-pack do not relate directly to the task, and are thus not analysed; a brief descriptive account is however given of Chapter 6 "Legal Writing" in order to inform the analysis of student texts in the next chapter.

7.3.1 Overview

The course-pack is a photocopied document (black and white), 123 pages in length, plus a course

overview section and a cover sheet. It is printed back to back and is fairly dense (single spaced, font size 12); although it is formatted with large margins, and occasional half pages have been left blank at the end of sections, no space is explicitly reserved for student workings or notes.

The cover-sheet contains the name of the course and course code (top centre, capitalised, large font, bold), name of institution and year (capitalised, centre, font not as large as course-name), and course-co-ordinator's name (centre bottom, small caps, bold).

The following page (reverse side of cover page) is page (i) of the course-pack proper, and begins the Introductory section of the course-pack (note that this page has different numbering at the top and bottom of the page: the top numbering is what is followed through in the remainder of the text). There is no index or any form of explicit summary structuring of the course-pack provided, even though it is broken into chapters and subsections which could easily have been rendered into index form (see Appendix 14, volume 2).

Examination of the chapter structure shows that, of the 10 labelled chapters, one is a glossary of Latin phrases (Chapter 10: Addendum A: Glossary), three chapters explicitly address skill development (Chapter 5: Practical Training, part 1: Reading judgements; Chapter 6: Legal Writing; and Chapter 9: Practical Training, part 3: Some point(er)s for oral examinations), and the remaining six chapters deal with substantive aspects of law. Some errors and inconsistencies are evident in this structure: 'chapter 6' is used twice (7 is not used, so 8 is correctly labelled), chapter 4 refers to 'sources of law (1)', with no further reference to this sub-heading (although chapter 6: Legislation and the Constitution could have been labelled 'sources of law (2)', and chapter 8: the Interpretation of Statutes could have been labelled 'sources of law (3)'). Similarly, chapter 5 is labelled 'Practical Training (1)', and chapter 9 is labelled 'Practical Training (3)', but this sub-heading is omitted in chapter 6: Legal Writing (which should have been 'practical training (2)'). A further inconsistency is found within the subsection numbering within chapters: student problem or revision exercises are numbered in only two of the

substantive chapters (chapters 4 and 8), although such exercises are to be found in almost all chapters.

Within the substantive chapters, only Chapter 1: "An Introduction to the Concept of Law" explicitly addresses the theoretical question of 'what is law'. The contested nature of the concept is established in this chapter, with the remaining chapters referring, not to the abstract notion of law, but rather to the object 'law' (as in a 'collection of rules', which relates implicitly to the 'what is law' question at a different level). Chapter 2 ("Distinction between the Criminal and Civil Law: A Brief Introduction to the sources of Law and the Main Divisions of Law"), which addresses the question of 'what is law' at the concrete level, is structurally distinct from the other substantive chapters in terms of its length (it is only four pages plus a table long, as opposed, for example, to chapter 1 which is twelve pages, or chapter 3 which is ten pages plus readings), and serves a bridging function: some of the themes from chapter 1 are continued in chapter 2 (themes which in the analysis of the first student essays were labelled as diversity and evolution, but which here are termed divisions and sources), but at the level of the object. Chapter 2 thus, both implicitly and explicitly, serves as an introduction to the remaining substantive chapters.

It is clear from the content of the course-pack (six substantive chapters and four skills-related chapters) that the course serves the form of an introduction both to the content and the form of law. There is an authoritative cast to the pack, indicated in its presentation (black and white, non-pictorial, the denseness of the print) and in the tone of the language used, particularly in the substantive chapters. This appeal to authority is heightened by the titling of the course-pack, not informally, as in, for example, 'An Introduction to Law', but rather in terms of the formal course name and code ('Introduction to Laws (LAWS149)'). That this authority should not be questioned is indicated in the absence of provision of structural support for student learning: the lack of space for student notes, comments and workings, and in the lack of an index of contents. Mistakes in the numbering of the sections and pages, which could easily have been avoided and which may have caused confusion, further indicate a lack of regard for students. The field is thus delineated as authoritative and

impregnable. The student is not an equal participant in the creation of meaning within this field, but rather must find his / her own way 'to the inside'.

7.3.2 Introductory section

The introductory section to the course pack is numbered separately from the rest of course-pack (pages i, ii, and iii). This section has as title the course name and course code (repeated from the title page which it backs). The section begins with a welcome to the students (using the device of synthetic personalisation, Fairclough, 1989, p62), to the course, the institution and the School. The second paragraph covers the course duration (six months) and end-point ("fully examined and written off during the June (2000) examinations").

The remaining information in this section is broken down into four sub-sections - course co-ordinator, lecturers, course outline and mark allocation - preceded by the header (in bold print) "Information relating to Introduction to Law is as follows". There are two omissions from the factual information provided in this section: although tutorials are compulsory in this course, no information is given about their time-tabling, or about the tutors that will be responsible for the course. Similarly omitted is any reference to the additional academic support tutorials available in the course.

Under the 'Course Co-ordinator' and 'Lecturers' sections, only names, lecturers room numbers and telephone numbers are given (with an e-mail address for the course co-ordinator). No information is given about the division of the class between the separate lecturers, or the times and venues of the lectures given by the different lecturers. There is no invitation issued in this section to contact either the lecturers or the course co-ordinator for this, or any other, purpose (although the penultimate point of the assessment section "kindly invite(s)" students to approach lecturers with any problem they may have).

The ‘Course Outline’ section is seven lines long, and is in the form of a single sentence completing the sentence “The Introduction to Law will be concerned with *inter alia* the following topics: …”. The following features stand out here:

- The omission of the word ‘course’ after the name ‘Introduction to Law’ in the lead-in phrase (“Information relating to Introduction to Law is as follows:”). This creates the effect of elevating the status of the study from simply a compulsory course within the curriculum to something larger.
- The use of the term ‘inter alia’ in the lead-in phrase. This is entirely unnecessary, as the course contents are listed in full. It is also a term that would most likely not be understood by students (although its meaning is listed in the glossary at the back of the course-pack), and may serve as an ‘introduction to the Discourse’ reference.
- The listing of the course outline purely in terms of the topics to be covered. There is no reference to the function that the course serves in the curriculum as a whole, or to the ‘learning outcomes’ (in current terminology) that the students can expect from the course. There is, in fact, no reference to students at all in this section.
- The brevity of this section (seven lines), as opposed to the length of the next section (mark allocation), which takes two pages.
- The redundancy in the list of the ‘Introduction to Jurisprudence’ topic, since this is covered within the ‘What is Law’ topic (the first one addressed).

The ‘Mark Allocation’ section fills almost two pages of this introductory section. It begins with a breakdown of the actual marks allocated in the course, followed by instructions for handing in assignments, and then a description of each submission requirement, broken down into points 1 – 9. In actual fact, only points 1 – 7 are on the topic of assessment; points 8 and 9 revert to course overview ‘welcoming’ language (“Although this is a taxing course it can be a very enjoyable and a

very valuable course for every law student…kindly invited to discuss any problem … we trust that you will work hard in this course and that you will also reap the benefits…"), contrasting with the language use in points 1 - 7, which is formal and grammatically exact, with explicit power exercised in the directive terminology applied (for example, "should be clearly marked … under no circumstances … Students are not expected … Students will be expected …"). It is notable that within the entire introductory section, the student is personally addressed only in the synthetic personalisation in the welcome, and in the 'Mark Allocation' section. The placing of two final two 'welcoming' points within this assessment section (points 8 and 9, with 9 being "We trust you will work hard in this course and that you will also reap the benefits of attending your lectures and applying your mind to the contents of the course", p iii) is remarkable, subsumed as it were within the summative.

Assessment topics are given in this section only for assignment 1 and assignment 3 - both of the 'What is law' topics. All necessary information is given in respect of these two assignments: however, the instructions for each are repeated in the form of a single page (topic, expectations, assessment criteria) handed out at registration, in the case of the first, and at the appropriate time in the course in the case of the second essay.

This section provides a strong impression of the authority operating in the context. There is a strong sense that students are peripheral, rather than central, to the exercise, which is conveyed through the lack of direct interactional features of the text. The occasional references to the student themselves, rather than providing a welcoming ethos, create a formality about the interaction and set it at a distance from the content. This places stress on the regulatory function of the interaction (further evidenced by the placing of the invitation to talk to lecturers within the assessment section). There is a strong sense conveyed that the object of the course is its content and assessment, rather than student learning: this is suggested through the opening welcome of the document, which, in paragraph two, talks about a course which is "fully examined and written off in during the June 2000 examinations",

rather than about a course which seeks to provide students with some grounding knowledge on which they will base their further law studies; it is further suggested through the 'course outline' section providing no reference to the introduction of students to knowledge and skills necessary for legal study, but rather referring only to topics covered in the course; it is evidenced through the lack of referral of students to appropriate support structures; and it is most evident through the allocation of two full pages of the three-page introduction to course assessment matters. The text is impersonal and formal. The final point of this section provides a good indication of student qualities that are valued in this context: a good student will work hard, attend lectures, and apply his / her mind to the course.

7.3.3 Chapter 1

The style and structure of chapter 1 seems to differ significantly from that of the other chapters. This is evident in the amount of repetition in the chapter (both across sections and within sections, in phrases as well as in concepts), the use of more frequent direct address to students (students are addressed very infrequently in the other substantive chapters, but are addressed in chapters 6 and 9 relating to skills-development), and in the longer sentence structure employed and resulting increased sense of difficulty in this chapter (other chapters tend to use short sentences, with less ambiguity and clearer explanation). There are three subsections to this chapter: what is law?; law and related concepts; and theories of law. These sections are examined individually below.

a) What is Law?

The chapter begins with the subsection "What is Law?" This section serves an important function within the text: not only does it serve to introduce the chapter, but also the course as a whole. The section is particularly important to this analysis, as it directly addresses the task that students must complete.

This section is six paragraphs (1.5 pages) long. Paragraph 1 serves to outline a very basic definition of law (it "has to do with the ordering of society, and … with prescriptive rules", p1) but more importantly, serves to emphasise the difficulty with defining law at the philosophical level. Paragraph 2 provides examples of this difficulty. Paragraph 3 extends the difficulty with definition to the diverse nature of the legal object (forms, sources and functions) and provides a brief expansion on this difficulty at the level of form and source. Paragraph 4 begins a discussion of function by outlining different types (branches or divisions) of law, and paragraph 5 continues the function theme by relating types of law to their function. Note that, beyond a very brief reference at the beginning of chapter 2, there is no further reference after this section in the course-pack to 'functions' of law, but only to 'divisions' of law. Paragraph 6 emphasises the difficulty in definition due to these diverse forms and functions or divisions, and provides a second definition of law (drawn from Locke: "law is the command of a political superior or 'sovereign'"), which is also described as inadequate due to this diversity.

A number of features stand out in this section. First is the provision of two definitions of law, both of which are seen as inadequate: thus, the first definition is inadequate because it fails to address the range of philosophical views on the concepts, and the second is inadequate because it fails to address the range of forms and functions of law. Second is the repetition of the fact that law is difficult to define: "notoriously difficult" in paragraph 1, connecting to philosophical enquiry; and "difficult to pin down" in paragraph 3, relating to different forms, sources and functions, emphasised again in this relation in paragraph 6 where "short definitions of law are inevitably (seen as) unsatisfactory". The two repetitions in the structure of this section serve to highlight the two different levels outlined by this section: the abstract philosophical concept of law, and the concrete object 'law', which is itself indeterminate.

Also evident in the structure of this section is a device whereby, in each paragraph with the exception

of paragraph 5, a proposition is set up and then negated. The 'law is, but isn't' message that is signalled by this device serves to further underline the main theme of this section, which is the difficulty of definition. This, of course, is not an uncontroversial view as most lay-persons would have no difficulty in providing an adequate definition. However, the importance of the view of law as being difficult to define as being critical to an insider's understanding of the concept is emphasised by the expressive value of the opening statement "Law is *notoriously* difficult to define".

One further feature of this section, in the form of the relational values expressed in the section, deserves mention. Thus, in the first paragraph, "most people" is contrasted with "philosophers"; in the second paragraph, "you" (as a member of 'most people'?) is contrasted again with philosophers, in the third and fourth paragraphs, "lay-persons" are contrasted with those in the legal know (legal practitioners); in paragraph 5 the reference has shifted to "we", and in paragraph 6, the indirect "one" is used. Thus, in the course of the section, a shift in relational value from an outsider / insider dichotomy to an inclusive (insider) 'we' or, in the singular, 'one' is evident. Almost all further direct reference to students in this chapter and through all of the substantive chapters in the course-pack, is in the form of this inclusive 'we'.

This section thus sets up a core value, and two primary distinctions. The first distinction is between the abstract concept 'law', and the concrete object 'law'. The abstract concept is dealt with first, and given a certain pre-eminence through this positioning: in the first line of the text it is established that the topic of 'what law is' is one suitable for serious philosophical study. The concrete object however is also rendered complex, and is sketched primarily in functional terms. The second distinction drawn is between the outsider and the insider, and the student is drawn in the course of this section from one position to the other. The core value expressed is that law is a complex and difficult intellectual subject. Those aspiring to become insiders to this field must accept this preposition, prior to any further study.

b) Law and Related Concepts

The second section of this chapter deals with concepts that typically overlap with law. There are three sub-sections under this header: Law and Religion, Law and Morality, and Law and Justice.

The lead-in sentence to this section states the following: “Because of the difficulties noted above, it is probably easier to clarify the concept of law by describing its relationship with other concepts”. The definition of law, in this section, is thus provided not in terms of what law is, but rather in terms of what it is, or is not, like. In contrast to the previous section, no reference is made, either in this lead-in, or in the substance of any of the sub-sections, to philosophical approaches to law, even though many of these approaches are defined by their understandings of the relations between these concepts. There seems to be two functions to this section: the first is to introduce, in simple form, concepts which will be used in the following section to clarify these complex distinctions between philosophical understandings; the second is to dispel any confusion that a student may have regarding these concepts as a basis for law.

Within the ‘Law and Religion’ section, the theme that is emphasised is that of origin or ‘roots’. Thus in paragraph 1 (of three paragraphs), a distinction is drawn between religious law (dictated by powers superior to man) and man-made law, or “imperfect rules handed down by human agency”. The link between the two is seen to be through custom: law may be based on custom, which may in turn be based on religion.

Paragraph 2 continues the origin theme, by describing ‘ancient’ societies where law and religion merged. Although it is mentioned that this overlap continues in some modern societies, this fact is downplayed (“*Even* in modern times ...”). The following paragraph continues this reduction by stressing the fact that “most western societies ... resist (this) overlapping”, and that where the two conflict, “the Western view is generally that law takes precedence”.

Especially when one considers that the 'modern societies' referred to in paragraph 2 (i.e. Islamic and Judaic countries), probably outnumber the Western societies that are the focus of paragraph 3, a tension between the overt theme of origin, and an implicit rejection of the basis theme becomes apparent. Thus, in the espoused view, there is a clear distinction between religious law and human law, and they are linked only through custom (paragraph 1), this link may have been more direct in ancient societies, and although it is continued in some, non-Western countries (paragraph 2), this is not relevant in our society (this fact reinforced by the repeated distinction drawn between religious law and human law in paragraph 3). The ideational value that this section expressed is that religion is thus not regarded (in an insider's view) as a valid basis of law; rather, the relationship can best be seen as one of origin.

Two further points must be made regarding the content of this section. The first is that, although the emphasis in this section has been placed on origin and 'roots', no distinction has been drawn between origin and the term 'source' that was used in the previous section. A layperson's understanding of the term 'source' would include origin; the legal understanding of source is as authority. This confusion is repeated in chapter 2. The second point is that custom is linked in this section to religion, which is not regarded as a valid basis for law. Custom is, however, a valid source (authority) of law. The placement of this term in this section could be expected to lead to confusion.

The sub-section 'Law and Morality' is longer, and thus given more importance, than the 'Law and Religion' sub-section (7 paragraphs as opposed to 3). The relationship that is described is a complex one, which involves functional parallel (paragraph 1), reciprocality (paragraph 2), mutual reinforcement (paragraph 3), and indirect influence (paragraph 3). Although there is overlap between the concepts, this is limited (paragraph 5), both in extent of influence (morality having a wider scope than law, paragraph 6) and by nature of value-divergence both within and between the concepts

(paragraph 7). Morality, thus, may have a similar basis to law, or may be a basis of law either directly or indirectly (or may be based on law), although it is neither a necessary nor sufficient one.

Two structural features stand out in this section. The first is a clumsily formulated sentence in paragraph 1 linking religion, morality and law: "There is obviously a close connection between morality and religion, since many standards of right and wrong are dictated or inspired by morality, since the law is concerned with upholding standards too." In effect, the sentence is setting up the functional parallel (to uphold standards) between law and morality. However, the clumsiness of the formulation, and the connection of morality to law in a sentence that ostensibly should have been connecting morality and religion, again effectively removes religion from consideration as a basis of law, and places it at the distance of origin.

The second structural feature is a thematic play between connection and disconnection throughout the section. Thus, in paragraph 1, there is similarity (both are "concerned with upholding standards"), but difference ("the standards are not necessarily the same"). In paragraph 2, there is disconnection (in some societies the two "coincide", in others "it is possible to draw a fairly sharp distinction"), but connection ("even then, there remains a large measure of overlap"). Paragraphs 3 and 4 explore the connection theme further (they "feed and reinforce each other"); paragraph 5 sets up connection ("considerable vocabulary in common"), but disconnection ("there are also clear divergences"). Paragraphs 6 and 7 continue the disconnection theme (too hard to enforce, and too subjective). The fact that there are connections (similarities or overlaps) and disconnections (divergences) between the two concepts is not necessarily problematic. However, the manner in which each is introduced, always accompanied by its antithesis, suggests ambivalence about this relation.

In contrast to the previous two sections, the section on 'Law and Justice' discusses the concept 'justice' as a substantive concept in its own right. Although this is a long section, the relationship

between law and justice is only discussed explicitly in the first paragraph, with the remaining nine paragraphs devoted to a detailed account of the justice concept. In the first line of paragraph 1, the relation is set as one of aspiration: justice is set above law ("one likes to think the aim of law is to deliver justice"). Although this relationship is qualified later in the paragraph (the two do not necessarily "coincide" since law is "imperfect", and since justice is a "contested and highly subjective ideal"), it is not rebutted, and the relationship stands (reinforced by the use of the word 'ideal' in the last quotation). Although justice is seen as a "moral value" in this paragraph, the problem with the subjective nature of such values is dealt with in only four lines in this paragraph, and is not subject to any of the ambivalence which was evident in the previous section (this may be because the concept is not being discussed as a basis for, but rather as an ideal of, law).

That justice is not an origin of law is established in paragraphs 2 and 3: although the concept is not new, understandings of the concept have changed over time. In these paragraphs, justice is defined as being "intimately linked" with equality. Equality is, however, not a simple mathematical proposition, but rather is open to contestation on the basis of individual or societal needs (paragraph 7).

Paragraph 3 serves also to differentiate the concept 'justice' by type, into formal and substantive justice. The function of this differentiation, besides introducing a distinction important in legal analysis, is to further address the issue of subjectivity raised in connection with moral values. Since formal (procedural) justice, focussing on application and not content of law, is based on an "equality of treatment by processes of law" which is "impartial", it is not regarded as subjective. In substantive justice, however, the focus is on the content, and on the categories used in the determination of formal equality. That these categories introduce subjectivity to interpretation is the subject of paragraphs 4 - 7; in paragraph 8, substantive justice is seen as not only subjective, but also "shaped by self-interest".

The subjectivity concern is resolved in paragraph 9: through self-interest and rationality, it is possible to establish objectivity (according to Rawls). Thus, unlike the "other moral values" to which it relates

(paragraph 1), justice can be viewed objectively. The qualification to the relationship of aim set up in paragraph 1 is thus diminished.

The fact that the section 'Law and Justice' is accorded more weight than either of the two previous sections is further evidenced by its length (10 paragraphs, 2.5 pages as opposed to 7 paragraphs, 1.5 pages in the case of Law and Morality), by its frequent direct address to the reader (words used include 'one', 'we' (5 times), 'our', 'I', 'your' and 'you', where no direct address was used in either of the two previous sub-sections), by the differentiation of the concept, and by the placement within the first paragraph of this section of a new definition of law couched in formal academic terms ("an imperfect social construct riddled with political and moral compromises").

c) Theories of law

Section 3 returns to the discussion of philosophical approaches to law. In contrast to the previous section, which in discussing concepts related to law provided a fairly unproblematic view of the nature of that relation, this section re-opens the question of relation by suggesting that the relation is determined by approach. The section is entitled 'Theories of Law', and covers the following approaches: the natural law approach; the historical approach; the positivist approach; and the sociological approach.

This section is more structured than the previous two, having a formally headed 'Introduction' as well as 'Concluding remarks'. Two of the subsections have subsections of their own: all are formally headed, although there is one error in numbering (section 3.2 'The Historical Approach' should have been section 3.3). The section begins, prior to the Introduction, with a brief section titled 'Objectives', which addresses the student directly and informs them that

"(by) the time you have worked through this study unit, you should

- have a better understanding of what is meant by the theories of law
- be able to outline the main ideas in these theories".

This style of presentation is not used anywhere else in the course-pack, and the placement of objectives at the beginning of this section perhaps serves to underscore its importance. Note that the introductory section is the only subsection which explicitly addresses the first of these two aims; this section serves a further structuring function in listing each of the content areas that will be covered.

Within the first paragraph of the Introduction the distinction between the concrete and abstract concepts of law is drawn. Thus sentence 1 reads "(t)he study of law involves not only the study of legal rules which are found in statutes, court decisions and other formal sources of law, but also the contemplation of the nature and purpose of law". This sentence is followed by the statement that "(v)arious theories of law have been developed over the years to try and explain the concept of law". Within these two sentences, there is reference to the 'study of law', the 'contemplation of law', 'theories of law', and the 'concept of law'. Although the intention may have been to link study with concept, and theory with contemplation, this is not entirely evident in the text: it is not unlikely that an inexperienced reader would make the link rather between study and theory, thus collapsing the distinction between the concrete and abstract concepts. There is no further differentiation in the text between the two, and nothing to point the reader to the fact that theories of law are not concerned with actual rules.

The paragraph ends with a set of questions which raise issues (morality, justice) covered in the previous section: the distinction between the related concepts and theories of law sections, again to the inexperienced reader, might prove problematic. The following paragraph provides the structuring move for the remainder of the section. Of interest in this paragraph is the use of the word 'we' in a non-inclusive sense, i.e. to refer to the lecturers in the course, coupled with 'you' to refer to the

student ("We will attempt to give you…"). This serves to re-emphasize lecturer (course-pack) authority over content.

The full content of each of these sub-sections is fairly lengthy, ranging from one to two pages each, and will not be discussed here in depth, as it is not essential to the analysis. The main points and features of each of the sections are discussed below.

The content of the "natural law approach" section covers the following: in natural law theories, law ("people-made law") is seen as aspiring to an ideal version of law. This ideal version is presumed, in earliest writings, to be part of the "natural order" of things (e.g. Cicero); in later writings this ideal version is based on religion (e.g. Aquinas) or on rationality (e.g. de Groot). Man-made law, in this approach, is seen as invalid if it is not in accordance with the ideal. This understanding has been used to justify civil rebellion (e.g. Martin Luther King, Rousseau). Depending on one's view of authority, however, it may be thought that a sovereign or state has best recourse to understanding of the ideal (e.g. Hobbes). In an alternate view, the ideal may rather be formulated in terms of "inalienable rights" of the individual (e.g. Locke), an understanding that underlies much of the current "human rights" era. Natural law theories were particularly prevalent prior to the French Revolution, but lost favour as a result of that revolution. The current stress on human rights does, however, indicate a return to this manner of thinking.

This is, at two pages, the longest of the subsections. It is written in an authoritative tone, and there is little indication of an interactive function. The word 'we' is used three times in the text: the first seems to refer to the inclusive 'we' ("In the writings of St Thomas Aquinas… we find…", paragraph 5). The other two uses are both in the final paragraph of this section, and are both non-inclusive ("Before we discuss…, we must point out…", paragraph 10). This latter use of the word connects with the discussion on the revival of natural law theory, and the placement of the authoritative 'we' within this section is interesting. One further feature of the text is notable: this is the use of a single

sentence, in paragraph 8, which is in bold font. The sentence reads “The acceptance of a particular theory has very real practical consequences”. It is possible that this sentence is intended as a heading for the two paragraphs which follow it. However, it is not in typical heading style, and is not numbered. The view expressed in this sentence is not specific to this theory, and the placement of this sentence, in bold, within this section, conveys a cautionary note.

The section on the Historical approach is a page long. The content covers two theorists, von Savigny, with whom the concept originated, and Maine. In von Savigny’s approach, law is seen as a function of a particular society and its history, and it cannot be viewed independently of this. Maine concurs with this view, but goes further in suggesting that law, like culture is subject to historical development. He proposes a three stage legal development theory. This approach is, however, no longer regarded as valid (it “has been rendered obsolete by modern research and … classical evolutionist theories have been discredited”, paragraph 6).

Apart from the strong value statement in the discrediting quote above, the section is unremarkable in its features. There is no direct address to students (although the stage theory could have provided an interesting opportunity for students to engage in terms of current South African Law), the tone is authoritative but not strongly so, and the language use, although academic, is fairly simple.

The section on the positivist approach begins with a lengthy introduction section (4 paragraphs), which provides an explicit definition of law in positivist terms (“the only body of rules governing human conduct that is recognised as binding by the state and … enforced”), and which provides, in clear two-point form, a distinction of this approach from the natural law approach. The second of these points states that “Natural law states that law must be concerned with justice”; a point that was not made clear in the natural law discussion. The section ends by structuring the following four paragraphs in terms of what is to be covered. Paragraphs 5 to 6 deal with the work of Austin, which explicitly separates law and value judgements (“morality… justice, equity and so forth”), and

provides that law is the command of a sovereign. Paragraphs 7 and 8 deal with the work of Kelsin, who saw law as a hierarchical system of norms leading up to fundamental norm at the heart of the system ("Grundnorm"), which, unlike the other norms, is extra-legal in origin.

The following section is preceded by the header "Positivism in South African Law", and contains two paragraphs on Dugard's interpretation of South African law in apartheid times as "greatly influenced" by the positivist approach. The use of the term 'greatly influenced', as well as the focus on the level of the individual judge in paragraph 10 ("The positivist approach made it morally easier for judges to apply unjust laws"), imply, but do not directly state, that the system itself can not be positivist, merely the opinions and actions of individuals within it. In this view, morality and justice have no direct relation with the law. The section ends by advising students that "the approach of the courts in the new South Africa" will be dealt with "later". The use of the word 'courts' here is probably intended to refer to judges, but falls between the system / individual distinction.

There are a number of features of this section that stand out: the provision of a precise definition of law in this approach, the point form comparison with natural law, the use of the introductory section and the structuring move at the end of this section, and the clear and concise explanation that is given. Unlike in the previous two sections, the student is referred to in this section, using the inclusive 'we' ("You will recall…"; "If we compare…"; "Let us now turn…"; "We will be looking….). More examples are given in this section than in previous sections: the term "for example" is used three times in paragraphs 5 to 8, and the entire section on South African Law serves as a further example. Of the four approaches discussed, this is the only one that is specifically related to the local context. Although not explicitly positive, the section is given importance through these means.

The final approach discussed is the sociological approach. This section again has an introduction (two paragraphs), followed by a five paragraph section on the work of Pound. The content of the introduction provides the understanding that, in this approach, law can be "analyse(d) as a social

science", or in terms of its "function on society". Law is thus seen in terms of what it should be within society. The section on Pound describes law as a "tool of 'social engineering', which should be used to balance societal interests". The section concludes with the example of abortion.

The structuring of this section is similar to that of the last, with introduction, structuring move, subheading and example. The length, however, is considerably shorter (one page as opposed to two). The first paragraph of the section is notable for its strong interactional value: it addresses students directly, and provides an overview of the aims of the broader section ("As we mentioned at the beginning of this study unit, its purpose is merely to give some idea… Later in your studies…").

Having set up a distinction between the different approaches to law in this section, the 'concluding remarks' to the section serve to destroy this distinction: "it is almost impossible to draw a distinct line between the schools of thought in jurisprudence". The classification is seen as purely "in the interest of being systematic", and is "to some extent ... arbitrary". The device employed within paragraphs in the first section of this chapter (setting up a proposition and then negating it), is thus continued in the broader chapter: section 2 sets up a proposition on relations between religion, morality, justice and law which is repudiated by section 3 in its outlining of the different approaches to law; this classification scheme itself is then diminished in the conclusion.

The chapter as a whole is thus almost deliberately obscuring: through its structure as well as its content the understanding of the difficulty of the object of study is established. This establishes the field as one worthy of academic study.

7.3.4 Chapter 2

Chapter 2 consists of four pages plus a table. There are two main sections: kinds of law and sources of law. "Kinds of law" refers to the divisions of law (the word is mentioned in the first line of the first

paragraph), and it is not clear why this term was not used in the heading. The table heading of 'divisions' of law later in the chapter may thus cause confusion. The seven-paragraph section on 'kinds' of law refers only to the criminal law, civil law distinction, with the only indication that this may not be the only division within law provided in the first two sentences of the paragraph ("law can be divided into many branches… (which) appear in the diagram later…"). Criminal law is defined in paragraph 2 and 3 as a "wrong against the State". Civil law is covered in paragraphs 4, 5 and 6 as a "wrong against an individual". Paragraph 7 indicates that an action may involve both criminal and civil law.

Perhaps the most striking feature of this section is its introduction to the discussion of a number of common legal terms: between paragraphs 3 and 7 terms introduced include criminal, disputes, party, sue, wrongful act, good cause, plaintiff, defendant, compensation, action, assault, prosecution, conviction, and compensation. The section is followed by an exercise, which gives students a case study from which they must determine the likely criminal and civil implications. No specific answers are given: typically this case would be discussed in class, and would lead to animated debate. This did not occur in the year under study though.

The 'sources of law' section has an introduction followed by the subheadings of the Constitution, legislation, judicial precedent, common law and custom. The introduction provides a historical account of the development of South African law and covers the Roman-Dutch, English and indigenous origins of this law. This historical account is emphasised by the full title given to the section "Sources of Law – Where South African Law Comes From". The text, at paragraph 4, moves from sources-as-origin to sources-as-authority, without in any way indicating this shift. The subsections to be covered are, however, outlined in this section as pre-structuring.

The tone in the five subsections is very matter-of-fact, echoing the content which sets out the basic and non-negotiable 'rules' with regard to legal sources. In some instances, the content is definitional

(for example, the first paragraph under legislation, which states as following: "Legislation or statutes are made and passed by parliament. Parliament is also known as the legislature. Statues are written laws. A statute is also known as an Act of Parliament…"), in others it is procedural, and covered in point form (e.g. the sections under precedent and custom). There is a continuation from the previous section throughout this section of the introduction and use of legal terms. It is clear, from the terminology, from the content and from the structure of this section that this is the introduction to law proper, or to what was described in the previous section as the concrete object law. The section ends abruptly, with no attempt at conclusion.

The following page contains a table of the "main divisions of law". Although each level of the table sets out a different distinction that can be drawn within the concrete object (national law / international law, public law / private law, for example) there is no explicit connection between the different levels of the diagram. The table is thus very difficult to interpret: it is not clear, for example, that level 3 of the table (civil procedure / criminal procedure / law of evidence) are all divisions of one of the categories in level 2 (procedural law), and are not connected to the categories under which they appear (civil procedure, for example, appears under substantive law). This obscurity is strange in this section with its very clear definitional logic, and seems to connect more with the imprecision and ambiguity of the first section.

7.3.5 Essay writing

One further section of the course-pack must be mentioned: the course-pack contains an entire chapter on "Legal Writing" to aid students in formulation of their essays. Although the section is termed 'legal' writing, with the exception of referencing style which is specific to the legal field, the guidance given is appropriate to any form of academic writing, and does not cover legal drafting per se.

The section covers topic analysis and task words, paragraph and essay structuring, using quotations and referencing. With regard to paragraph structuring, the student is advised that a paragraph is a "set of sentences that all relate to a common point being made" (p.90), that there should be one main idea per paragraph, but that there should also be linking sentences allowing for 'flow' between paragraphs, and that the main idea is normally provided in the first sentence of a paragraph, and is then developed through the addition of detail in following sentences.

With regard to essay writing, the student is advised that an essay must contain a main argument, and should "agree or disagree with the topic, or take a view and substantiate it" (p.92). The student is informed that an essay must have a logical structure including an introduction, body and conclusion. The introduction should "make clear your attitude to the topic; outline your argument in relation to the topic; state how your argument will be structured; (and) define the meaning of concepts contained in the topic in the argument" (p.93). The body should develop argument logically, "paragraph by paragraph", and should cite authority and give examples. The conclusion should sum up the argument, and the text must be correctly referenced.

The student is further informed that "(g)iving point-form answers to essay questions is always to be avoided, even in tests and exams. The reason is that examiners are not simply testing your knowledge by means of the essay question; they also want to test your ability to analyse the material and organise it into logical and persuasive form" (p.95). A checklist for evaluating paragraphs and essays is provided (p.91): although the questions provided for the paragraph do cover the structure of the paragraph as outlined above, the questions relating to the essay are predominately about authority and referencing, and do not include any references to structure .

7.4 Lecture analysis

7.4.1 Data and transcription

The full set of lectures for the course was taped and three lectures were chosen for transcription. The transcript of these lectures is provided in Appendix 15 (volume 2). The following conventions have been used in transcription:

The text is numbered by line. Instances where the lecturer is speaking are indicated by **'L:'**; where the segment of lecturer-speak is fairly lengthy, the transcription has been paragraphed at points that seem appropriate. Instances where a student is talking is indicated by '**S:'**. No attempt has been made to identify the voices of individual students, except where the same student responds more than once in the same section of interaction: in these cases this has been indicated by marking the student as **'S1'**. The number allocated to a student does not indicate identity across the text (i.e. numbers are not allocated sequentially), rather, the number is simply used to indicate that the same student has responded more than once within the specific interaction. Omissions in the transcript due to inaudibility of the tape are marked by '[…]'. Omissions where the transcript has been cut, either due to a long period of inaudibility or due to a lack of specific relevance of the topic to this analysis, are indicated by '[… …]'. Transcription notes are indicated in brackets '{…}'.

The three lectures transcribed all relate to the task of defining law. These lectures are the second, third and fourth in the series: later lectures pick up on topics such as sources of law and court structure, which are not unrelated to the task but which are not essential to it. The first lecture in the course is used as an introduction to the course as a whole. 'Housekeeping' items are dealt with, followed by a long interaction on a legal problem. The problem is a controversial one and is based on an actual case: three men stranded in a boat are starving, the youngest is dying, the other two men decide to kill and eat the youngest is order to survive themselves. What is the legal problem or

solution to this case?

Student responses to this problem are typically highly emotional, invoking religious and moral views. The lecturer's role in this discussion is as 'devil's advocate', continually challenging any view that a student may express. This is the Socratic teaching method: it is characterised by high student involvement, the constant challenge to students to 'think', and the lack of adoption of a particular position by the lecturer. No course-substantive content is covered in this lecture until final few moments of the lecture: a student has suggested that the case be seen as 'survival of the fittest':

> **L:** That's a good point. If you can put it into legal terms. What you are saying is the way a lay person would say something, in other words a person who doesn't know the law. Formulate that, what you've said, in a legal sense… Can somebody do that?... What kind of law is this?
>
> **S:** Natural
>
> **L:** Who said natural law, which star would you like? Ladies and Gentlemen, it is natural law. It is natural law. The way to answer this question, and although I am extremely impressed by all the wonderful answers that you have given me, very nuanced and indicative of a very clever class, the way to answer the question is it depends. And I know what I am going to say now will not find general application, but it depends on the philosophical framework with which you approach the law. The big word that we use for that is jurisprudence. … Jurisprudence is the philosophical school that we use to interpret the law. What all of you lacked, and although some of you touched on the correct answers, is a jurisprudential framework for analysis of the problem…

7.4.2 Analysis

For the purpose of analysis, the text has been subdivided into segments based on the primary function

that the segment is performing in the text. Two functions are distinguished: connective or substantive. The connective function is allocated where the segment serves the function within the text of initiation, linking, structuring or disengagement (for example, indicating a topic change), and is further subdivided on the basis of content into instructional regulative ('housekeeping', which serves also a broader cohesive function within the course as a whole), and textual cohesive (providing explicit links or structure within the text). The second primary function is pedagogical or substantive: these are portions of the text that deal specifically with aspects of concept coverage, and these are divided further in terms of the content that they cover. Note that instances of instructional and textual cohesion are to be found within the substantive segments: the classification is a broad one, intended merely to group text by its primary purpose.

The classification of the segments of text according to primary function is shown in a table in Appendix 16 (volume 2). The pattern revealed shows that the connective function is used irregularly, in some instances framing the substantive, in other instances, not. However, a closer examination of the text shows that this is a result of the use of connective text too short to be classified as a segment and which has been included in the substantive segment. Thus, between substantive segments 4 and 5 there is a short framing move in lines 199 – 200, between segments 5 and 6 there is a regulatory move in lines 250 – 252, a very brief concept overview is provided between segments 9 and 10 in lines 485 – 486, the word 'finally' serves a connective function between segments 14 and 15, and the break between segments 21 and 22 is preceded by a library task in lines 1004 – 1007 (library tasks have in other instances been classified as regulatory: however, this particular one relates specifically to the substantive content of segment 21). Thus, the connective does, in all instances frame the substantive: the brevity of this framing is, however, made obvious through this classification.

Each segment outlined in the table has been analyzed for notable features: this analysis is shown in Appendix 17 (volume 2). Note that this analysis is not quantitative, i.e. features have not, except descriptively, been linked to number of lines of text (there are, in fact, too many gaps in the transcript

for this to be done meaningfully). Analysis is also not comprehensive and does not aim to examine every instance of an occurrence; rather, the occurrence/s of features within the text is analyzed in terms of the main trends evident.

a) Overview

The lecturer has a somewhat unconventional style: this style is simultaneously flamboyant and informal, is humorous, and at times, almost too personal. Because this is done in a light-hearted manner, however, it is not poorly received by students, and the lecturer typically receives high student ratings in evaluation. The lecturer is himself an English second-language speaker (with Afrikaans as a first language): this is evident in occasional slips in his grammar.

The language used in the lectures is, on the whole, informal. This is evidenced through the use of short sentence structure, lacking many of the features typical of academic and legal academic text. Thus the text does not typically display features such as passive voice, conditional phrases and compound nouns. Whilst there are instances of technical terms, these are not frequent, although the use of formal terms (such as 'archaic', 'utopian', 'implore') is scattered throughout the text. Latin phrases are found in a number of instances, as may be expected within the legal domain.

The lecturer's form of address to the class is moderately formal, with the class as a whole generally being addressed as 'ladies and gentlemen'. This form of address gives a 'professional' feel to the interaction, a texture enhanced by the occasional reference to students as 'my gentle friends'. Students are, where possible, addressed by title and surname (e.g. Mr Lukhele), never by first name: in instances where the name is not known, students are identified by their dress (blue jacket; sweatshirt).

The focus on dress is not incidental: by their final year of study law students typically have a

professional manner of dress that distinguishes them from students of more generic degrees. The lecturer's focus on dress as an identifier in lectures, in some instances specifically noting dress features that are perhaps not appropriate to context (a surfer, a cap pulled too far over the eyes) may contribute to this growing professionalism. In addition, the political implications of wearing certain popular clothing labels are discussed in one segment of interaction.

The lectures are characterized by a fairly high level of interactivity, although the true Socratic style used in the first lecture is not achieved again in any of the lectures under analysis. The form of interactivity varies: in some instances, single-word answers are sought; in others the dialogue is freer. A notable feature of the interaction is the high level of controversial topic coverage (in some instances discussed, in others merely alluded to): in the course of these three lectures this coverage includes pornography, politics, lying, homosexuality, religion, prostitution, drugs, and abortion.

b) Connective segments

On the whole, within the connective segments, the instructional regulatory moves predominate over the textual cohesive moves. There is no reference within the regulative sections to the concept itself: the focus in these sections is rather on construal of 'student-hood', and on the activities that constitute this being. Reference in these sections is thus to items such as essays, tutorials and the register: activities which are core to being a student. With one negligible exception there are no instances of interaction in these segments.

The regulative sections clearly are important to the overall cohesion and operation of the course, but they are used also to disconnect sections of substantive discussion in the lectures. This is evident both in the structure of the transcript (with regulative sections falling between different substantive topics) and also in the brief regulative instances within the substantive components. With the exception of the 'student lateness' theme which occurs dependent on that lateness, all other instances of regulative

comments (which refer primarily to lecture times and to the register) occur at places in the text, usually after the first sentence of the segment, where the lecturer appears to be 'gathering his thoughts'.

Within the regulative segments there is a high incidence of strong positioning statements. Thus, in segment 1 (lines 1 - 16), there is a very explicit constitution of a 'good student' as one who is not late, hands in essays on time, does research and forms their own opinion. In segment 11 (lines 576 - 577) students are positioned, not through reference to the ideal, but rather as young, inexperienced novices ("so full of hormones and so enthusiastic and so energetic"), in section 16, students are positioned as children (lines 721 - 723), and in section 20, as 'mortals' or non-experts (this 'non-expert' positioning is also found in segment 3).

The authority of the lecturer in the context is established in these segments both directly (in segment 3, for example, where he says "you must ask me, not somebody else. He doesn't know. He's just in the same position as you are. I have five degrees…", lines 145 - 146), and indirectly through the non-negotiable tone adopted in these segments: for example, in lines 142 - 144, with regard to the first essay task, the lecturer says :"Have you all handed in the assignment? Please make sure that you hand in your assignment before the end of the day. It will be too late tomorrow. If you have not handed in your assignment by tomorrow you will get zero. No marks". There is also an obvious imbalance of power in the context. Thus, although students are expected to hand in their essays on time (for example, lines 142 - 143) and not be late for lectures (for example, lines 14 - 16), the lecturer does not display a similar responsibility: the course-pack is not available at the start of the lecture (segment 1), there is confusion about when the lectures and tutorials are (e.g. segments 1 and 7), essays are not marked by the end of the fourth lecture (and probably will not be ready for the next one as the lecturer does not wish to "ruin his weekend", line 941 - 942), and a lecture is missed by the lecturer (segment 17). This imbalance serves to contribute to a sense of context-authority, and student lack of control.

Academic skills are not referred to within the regulative segments, with the notable exception of the skills of library use. There is strong positive value placed on this skill, again directly ("please, please, please, may I beg of you to see if you can attend those tours, otherwise you are not going to be able to unlock the library for yourself", lines 298 - 299), and indirectly, through constant reinforcement of this skill (attending tours in segment 7, finding an article in segment 16, and finding and reading an article in the substantive segment 21).

Connective segments with a textual cohesion function are used only four times in the transcript. The function is used three times in the text to establish linkage by means of reference to material previously covered. In one of these instances, a distinction is re-explained, with the addition of a new term (segment 8), in the other, the summary given simply outlines topics that have been covered (segment 11). In the latter instance, the task itself (the essay on defining law) is specifically mentioned. This task is also mentioned in segment 13, but simply to shut-down the topic and not to revise it. There are only two instances in the cohesive segments of pre-structuring of material to be covered: these are found in segments 13 and 18, and primarily list the topics that are to be covered in the lecture. Student positioning is not marked within these segments, with the exception of a single positioning of students as an 'object' of law ("if you do not adhere to the law, if you do not follow the law, then you are in trouble", line 313 – 314 in segment 8).

b) Substantive segments

The most notable feature of the substantive segments is the lack of an explicit, linear, structure to these segments. An examination of the segment table in Appendix 16 (volume 2) shows the repetition of concepts (natural law is covered twice in the segments under examination and once in the first lecture, positivism is covered three times), and the fact that there is movement backward and forward across the concrete and abstract definitions of law. This lack of apparent structure is exacerbated by the low level of concept linkage and pre-structuring performed in the cohesive segments. The lack of

apparent structure may, however, particularly in the case of the repeated concepts, be misleading: examination of the discussion within these segments shows that an additional level of complexity is added in each telling. The structure used may thus be spiral, rather than linear.

The apparent confusion at the level of structure is echoed in the content of these sections. The lack of distinction between the abstract and concrete concepts at the structural level is amplified by a lack of explicit address of this distinction within the content. An opportunity to address this distinction, provided through a student question in segment 2, is not well used (the explanation given simply reflects the fact that "philosophies are the speculative, the more argumentative classification of law", lines 83 - 84), and the introduction of the abstract concept in segment 5 is not fore-grounded with an explanation of the differing object of discussion. The lack of distinction in the latter instance is compounded by the lecturer's use of the phrase 'the natural law' as if speaking of a concrete object. The introduction of the Marxist / capitalist distinction in segment 9 is similarly not linked to previous distinctions drawn or content covered, and the intention of this segment is therefore unclear. Although the lecturer refers to the "imprecision" of law only within the discussion of the divisions of law (segment 2), both the structure of the presentation and the lack of linkage between concepts serves to reinforce this sense of the irresolute.

Explicit value is attached to content in the substantive segments through repetition and overt statement. Repetition is evident between segments; however, all segments covering the concrete concept are dealt with only once. Topics connected with the abstract concept (natural law, positivism, sociological school) are repeated and thus given weight. This valuing accords with the explicit value placed on philosophy in the last lecture, and particularly in the second segment of that lecture (segment 18, see also the excerpt from lecture 1 above).

Repetition is also used to emphasize distinctions within segments. Thus, for example in segment 2, the division between public and private law is given weight over all other divisions (concrete

concept), both by repetition of the terms (lines 38 – 40, 44 – 45, 65 - 68), and through explicit statement ("the most important division", line 44). In segment 5, the distinction between the natural and positivist approaches is given weight through the same means (repetition of the terms three times in lines 199 - 201; this distinction accorded explicit weight also in segment 18, where these two approaches are covered "extensively" and others only "cursorily", lines 756 - 757).

Other instances of explicit value statements made by the lecturer include a clear valuing of the natural law approach (segments 5 and 19), and a negative value attached to positivism, both through association of this philosophy with apartheid (segment 5) and through the description of philosophers associated with this paradigm as 'boring' and 'poor lawyers' (segment 21; the approach is also described as 'difficult' in segment 21). A positive value is placed on the constitution itself, both as the "most comprehensive … in the world" (line 524 - 529), and as the highest authority (line 608 - 612). Notably, the concept 'justice' is not covered at all in the lectures, although equality is raised in both sections relating to natural law.

There is no explicit focus in the lectures on skills development of any sort. However, there is implicitly a modelling and value of the skills of argumentation. This is evident, for example, in the segment transcribed above from the first lecture. The answer is, the lecturer tells us, that it 'depends'. Not just that it depends, but that it depends on philosophical framework. This exact position-taking structure is modelled again in segment 15, where a student responds to a lecturer question with the answer 'it depends'. The lecturer's answer is clear: "Why does it depend? You can't 'depend' everything. You must draw the line somewhere. What does it depend on, blue jacket?" A similar position-taking, or possibly justificatory, structure appears to be the issue in an extract from segment 9 where a student responds to the lecturer's question 'is it a good system' with the answer "It's not". The lecturer responds humorously: "it's not, really? I thought it was a good system". A further rule of argumentation is advanced in segment 22: "you're using another system now to attack this system. You must use the sociological approach to attack the sociological approach" (lines 1048 – 1049). In

the broader sense, argument construction is modelled in segment 19, in the discussion of Locke's work. The lecturer describes his work as a "wonderful, balanced, elegant argument", and then suggests that students "go back this evening and you go and sort this argument out for yourself, you will see it will flow like a flow chart, one argument into the other" (lines 861 - 863).

There are other instances of the implicit modelling of the value in the substantive sections. Rational thought is valued in line 972 ("I'm asking you to think…"), and on a stress on what is 'meant' (lines 254, 328, 332), connecting to the explicit value of rational thought raised in the connective sections (at lines 10 and 742). The notion of thinking, or speaking, like a lawyer raised in the first lecture ("put it into legal terms…") is alluded to again in segment 2 when the lecturer says "No, that's inaccurate, it's not wrong but it's not elegantly put" (line 117). The notion of elegance is clearly valued, with the terms being used regularly throughout the text (e.g. lines 121, 150, 861, 892). The value of inclusivity is established not only through substantive content (the constitution, lines 524 - 531) but also through a deliberate attempt to include different religions (line 222), political views (segment 9) and cultural differences (segment 10).

The substantive segments do not, on the whole, contain strong positioning moves. Students are, in two instances, positioned as "not expected to know" (lines 89 and 952); they are also, however, frequently described as "clever" (e.g. lines 254, 655). The focus in these sections, far more than on overt positioning, is on the kind of implicit modelling described above, and on interactional moves.

The interaction within the substantive sections for the most part is high, although this interaction varies in form from a simple one-word answer style, to a more dialogical style. The Socratic-style used in the first lecture is not re-attempted in these three lectures, however, interactive sessions that approach this style are found within the discussions on the Marxism / capitalist distinction (segment 9) and the morality section (segment 15). There are multiple strategies used to ensure student participation: these include the directing of questions at specific students identified by name or dress

(on multiple occasions throughout the text), invitations to students to make mistakes (e.g. line 89 and 952), invitations to students to disagree with what has been said (e.g. lines 405 - 406), and the refusal to allow a single student to speak too often (line 191). The lecturer frequently asks students whether they understand, and whether there are any questions (e.g. lines 42 - 43, 142, 563, and 612). The value of participation is reinforced through the lecturer's responses to a lack of student response to his questions: thus in line 201, for instance, he whistles when students don't reply, in line 280 he utters a "whooo" at their continued non-response to a question. On occasions where students have written down something that they don't understand without asking about it, he takes issue with them (e.g. in the extract 612 – 615, also in 838). The strong positive value on participation in these segments, combined with the positive value of 'thought', make for a complex mix; this complexity is exacerbated by the tendency of the lecturer to 'close-down' on difficult questions asked. This closing down technique is evidenced throughout the text (and may be a regulative move to keep to the point at hand), for example, when a students asks a question about apartheid being justified as God's will (lines 244 - 249), or when a students asks how divisions of law relate to philosophies of law (lines 79 - 82). Other instances of this strategy are found at lines 192 - 196, 271 - 275 and 546 - 552.

7.5 Analysis summary

There are some interesting parallels and divergences between the two mediatory means. Of particular significance is the strong authority conveyed with regard to the instructional regulatory moves in both instances. Thus the weight and tone of the 'Mark Allocation' section of the course-pack is echoed in the lecturer's tone when discussing assessment, and when discussing other issues relating to course maintenance, such as punctuality. The power imbalance in the context is established in a similar manner in both instances: in the course-pack through the frequent mistakes made in numbering, and in the lectures through the lack of lecturer responsibility evidenced in the non-return of assignments, and non-attendance at a lecture. Lack of concern for student learning is evidenced both through this

means, and through the lack of explicit focus on such learning: tutorials are not mentioned in the course-pack, and are organized very late in the lecture series. The lack of a content index in the course-pack, and similar lack of explicit focus on structure in the lectures further proves this point. Content, rather than learning, is the organizational principle for the course, and authority, or the power to frame that content, rests with the lecturer not the student. Successful 'student-hood' is, in both instances, constructed as compliant behaviour: working hard, attending lectures and 'applying the mind'.

Certain of the values expressed with regard to the content are evident in both texts. These include a strong valuing of the abstract concept: jurisprudential understandings or the 'philosophical approach' are stressed in each instance, explicitly, through repetition, and through the use of structuring moves in these sections and not in others (the outlining of 'objectives' in the course-pack, and the explicit pre-structuring evident in segment 18 of the lecture transcription). An implicit core value of the difficulty of definition of the concept 'law' (indeterminacy of the concept) is also evident in both texts, although this is stronger in the case of the course-pack. Neither text provides an adequate distinction between the abstract and concrete concepts of law, which reinforces the sense of indeterminacy.

The two mediatory means differ in the extent of interactivity that they display. There is low interactivity evidenced in the course-pack, in sharp contrast to the high interactivity evidenced in the lectures. However, in contrast to the course-pack's use of relational moves to bring the student from the position of outsider to the position of insider, the strong student positioning 'as student' is evidenced throughout the transcribed lectures. There is also a marked difference in formality between the two, with the written mediation displaying more of the formal features associated with legal academic discourse than is evident in the informal lecture style.

Although both texts construe the task as 'difficult' (indeterminate), this difficulty is established at

different levels within each discussion. In particular, the course-pack emphasizes the difficulty of definition because of diversity, and the lectures emphasize the difficulty of definition within diversity (for example, in the distinction between different types of law in the schematic representation which is described as a "figment of … imagination", line 18). This difference is partly reconciled by the use of the somewhat confusing table in the course-pack, which serves to create an impression also of the difficulty of definition within diversity.

Other instances of differences found between the course-pack and the lectures are as follows: the word and concept 'source' is not used in the lectures; the concept morality is given more weight in the course-pack than in the lectures; the concept 'justice' is not covered in the lectures; the historical approach is not covered in the lectures; the primary division of the concrete object is in the course-pack referred to as the criminal law / civil law distinction, and in the lectures as the public law / private law distinction; there is more frequent use of specific legal technical terms in the course-pack than in the lectures; and the high value placed on the natural law approach in the lectures is not evident in the course-pack. Rather, a cautionary note with regard to this approach is sounded in the course-pack, and an implicit value is placed on the positivist approach.

7.5.1 Meanings and models

The final section in this chapter is used to attempt to plot the message or messages that that emerge from the interaction in its broadest sense. These messages, to some extent, reflect the teacher's task definition in the context, and provide some indication of the insider's cultural model of the concept. No claim is made that these meanings represent the full range of meanings associated with the cultural model: this would be beyond the scope of this analysis. However, the ideational, relation and textual meanings that are evidenced in the mediation, and the contradictions evident between the two mediation texts, are examined. The discussion covers three areas: structure and features, concept and

ideational values, and relational values. In addition, a comparison is made of the themes raised in the course with the themes identified in the analysis of the first student essays.

a) Structure and textual features

The value of appropriate structure and form is strongly conveyed in both of the mediation texts. The most overt message on appropriate structure is provided in the course-pack chapter on essay-writing: from this, we learn that an essay should have an introduction, body and conclusion, that it should contain a main argument which is developed paragraph by paragraph in the body of the text, that the introduction should outline (pre-structure) this argument, and that the conclusion should briefly summarize it. There is a reinforcement of the value of this 'argument' style in the lectures: students should take a position on an issue, minor arguments should 'flow' into the main argument, and critique should occur from within the paradigm being critiqued. Paragraphs, we are told in the course-pack, should contain one main point, usually placed as the first sentence within the paragraph, and should be linked. Point-form is actively discouraged. Structure should therefore be discursive but linear, clearly defined, and signposted.

In contrast to this, both forms of mediation examined show an ill-defined structure and a lack of linearity. Although this is more evident in the lectures than the course-pack, both have as characteristics repetition and a structural conflation of the abstract and concrete concepts. The technique of pre-structuring is not well used in either account, and where evident, is simply in the form of a list of topics to be covered. Although the technique of paragraphing is well modelled in the course-pack, and introductory paragraphs are used, conclusions are frequently absent. Moreover, although there is a flow between paragraphs within sections, the lack of linkage between sections, as well as the use of topic headings for each section gives an overall point-like structure to the account. The course-pack is, of course, not designed to be an essay, but the use of this point-like structure may,

if used as a model for writing, unintentionally confuse.

There are contradictory messages also in the styles adopted by the two media: the informality of the lectures is in sharp contrast to the formal style of the course-pack. This formality is evidenced in the course-pack by grammatical features typical of academic (not necessarily legal) prose: the text is author-evacuated and passive tense, the subject is often not in sentence-initial position, and there is a high frequency of prepositional phrases and qualifiers to the verb. Technical terms are introduced and used in the second chapter of the course-pack. In the lectures, however, sentence structure tends to be short rather than complex, and although the words used are not always simple, they are not specifically technical, with the exception of the Latin phrases adopted. In contrast to the more dramatic style of the lectures, the presentation of the course-pack is formal (devoid of ornamentation) and dense.

b) Concept and ideational values

In summary of the coverage in the course of the concept itself, the section below provides, in effect, a 'concept map' of the topics related to the concepts, and the hierarchical relations between them. In a very literal sense, this is the outline 'model answer' to the question 'what is law', as sketched in the course. It is literal in at least two senses: it contains none of the values with respect to the content conveyed in the course, and thus none of the Discourse meanings of the concept (these are discussed later). Secondly, in its simplicity, it negates a core understanding of the course: that law is a difficult concept to define.

> Law, as an object of study, can be approached in two ways. On the one hand, it can be approached philosophically in terms of its broader role, meaning and function in society: this has been described as the abstract concept 'law'. On the other hand, it can be approached purely as a 'body of rules': this has been described as the concrete object law. This body of rules can be

described as prescriptive.

The abstract concept ‘law’ can be approached in two, not unrelated, ways. Firstly, it can be approached by means of studying concepts related to, but not identical with, law. These concepts would include religion, morality and justice. In Western societies, religion is primarily seen as an origin of law, morality is seen as an overlapping, but distinct concept, and justice is seen as an ideal of law. In part, an approach of this nature serves to define law by its distinction from these concepts. Secondly, the abstract concept can be described in terms of existing schools of thought, or philosophies, on the nature of the concept. Examples of these schools of thought would include the natural law approach, positivism, the sociological school, the historical school, and the economic school. Within these schools, a distinction can be drawn between those that approach the concept in terms of an ideal, and those which approach the concept from a focus on existing practice. Positivism is an example of the latter approach: in this approach, the notion of an ideal is rejected. The historical school also focuses on the actual, but approaches this as a function of development. The natural school and the sociological school both look to the ideal; in the case of natural law the ideal may be derived from religion (God’s law), or from rationality, in the sociological school, from a balancing of societal interests. (The economic school would approach law, not from the perspective of its role in society, but rather its role in the economy. The Marxist approach to law would be an example of such a school.)

There are three means of describing the concrete object ‘law’. Law can be described in terms of its divisions, its forms, or its sources. There are two critical forms of law, the written and the unwritten: the South African Constitution is an example of written law, the British common law system is an example of unwritten law. Within South African law, there are five critical sources of law: the constitution, legislation, precedent, customary law, and common law. Law is differentiated by type into ‘divisions’ of law. The primary division is between national law and international law. At this level there also laws relating to the conflict of laws, which mediate in

> instances where there may be disputes between different jurisdictions. Within national law, a distinction can be drawn between substantive and procedural law. Examples of procedural law would be civil procedure, criminal procedure and evidence. Substantive law can be further subdivided into public and private law. The most prominent example of public law is criminal law; other examples would be constitutional law, administrative law, labour law and taxation. Private law can also be described as civil law and examples of this would include the law of persons, mercantile law, property law, succession, delict, and contract.

Although the description above sketches the linkage between the sub-concepts in a definitive manner, this linkage is purely the researcher's attempt to give structure to the whole. Linkage in the course itself is poor, and connections are not well modelled. Moreover, structure modelled, particularly in the lectures, is non-linear. The distinction between the concrete and abstract objects is not clear and the entire account is framed in terms of indeterminacy and imprecision.

Within the subdivisions of the concept, positive value is placed on the abstract concept (the 'theories of law' section), and on the natural school/ positivist school distinction. Although both texts allocate the highest discussion time (length) to the natural law section, only in the case of the lectures is value explicitly placed on this approach. The course-pack, by contrast, issues a cautionary note regarding this approach, and, implicitly, appears to favour the positivist approach. Within the concrete concept, emphasis is placed on the public law / private law distinction by the lecturer and the criminal law / civil law distinction by the course-pack. The Constitution is highly valued in both accounts, whilst the 'justice' topic is highly valued in the course-pack, but is omitted from the lectures. The 'morality' topic is also given greater weight in the course-pack than in the lectures. The skill of library use is emphasised by the lecturer, and reinforced by the emphasis on quotation and referencing skills in the course-pack.

c) Themes

There is little relation between the themes identified in the previous chapter and the content coverage in the course. Although certain of the themes are alluded to, these are not in the same hierarchical organisation as was evident in the student essays: thus, for example, justice is a theme of the course, but as an ideal, not a basis, for law. Examination of the major themes identified in the themes table shows that, within the course, 'denotation' is used with regard to a system of rules, but is not used in the sense of a practice or a process. 'Nature' is used with regard to differentiation of form; indeterminacy rather than variation is suggested as a sub-theme. The theme 'basis' is not used in the course, although morality is set up as an overlapping concept and justice as an ideal. 'Origin' is used in the course in the historical sense, but the sub-themes 'imposed' and 'developed' are not well-established. 'Function' is used only in relation to form, and the societal and individual intentions and effects are not eluded to, except perhaps with regard to the 'ideal' of natural law. Neither 'consequence' nor 'implementation' is a focus of the course. There is thus a considerable difference between the scientific and the spontaneous concept in this instance.

There is, however, at least some overlap between the course coverage and the cultural model suggested for the white students: within that model, variation, relative value and imperfect nature were identified as a major theme cluster. These do not seem totally at odds with the concept-indeterminacy theme of the course. Moreover, form diversity is a major theme of the course and was the most frequent theme addressed in the essays of white students. Other indications of a similar task definition are evident in the formality of the tone, and in the opinion-with-justification (or rudimentary argument) style, adopted by these students. There is no similar overlap between course coverage and themes identified as frequent for the African black students: control, imposed, determination, regulation, sanction, maintain, protect and guide are not issues dealt with in the course. Moreover, the interpretation of the task by that group as one requiring validity or accuracy is at odds with the preferred argument-development style.

d) Relational values

The message with regard to student situation and positioning is, overtly at least, contradictory. This contradiction draws from the authoritativeness of the context, on the one hand, and the strong value placed on participation on the other. With regard to the former, it has been suggested that power in the context is evidenced in the strong regulatory authority exerted with regard to the instructional domain. In both texts this authoritative instructional domain, in effect, frames the substantive. Moreover, this sense of authority is strengthened by the lack of interactivity of the course-pack text, the strong positioning of students 'as students' in the lectures, and the lack of student framing of the content.

The apparent contradiction is between this strong authority and a strong value placed on student participation, and on the contribution of students' own thought or opinions, in the lectures of the course. Closer examination of the latter, however, suggests that it is not so much 'own opinion' as position-taking within an argument structure which is valued. The value on participation, moreover, seems to have a second dimension: that of involvement at the personal (identity) level. This is evidenced both through the lecturer's direct address to individual students in the lectures, through his questioning techniques (no student may be a silent participant in this class) and comments, for example, on their appearance, and through the extent of topic coverage in the course itself. Thus, aside from the topics specifically associated with the concept, discussions in the class cover areas as diverse and controversial as politics (views of capitalism and socialism), apartheid, cultural differences, homosexuality, abortion and the use of drugs. Few areas of a student's personal life remain untouched by these discussions and the involvement is thus far more than strictly pedagogical.

The entire account could be read as one of community formation: in order to become an insider a student must accept the authority of context and content, should become involved, not at a superficial

level but at a deeper level of identity, and should be prepared to take a position and defend it within an argument structure. A more superficial reading of this message may, however, result in a confusion of context authority with personal authority, or, given that the difference between position-taking and expressing opinion is not made clear in the course, a personal involvement and opinion value.

There is, in this analysis, some confirmation of the findings suggested in the discussion of the broader context of culture with regard to legal education. It was hypothesized in that account that authority in this context is likely to be high, that content framing is likely to be high, and that identity constitution is likely to be strongly determined. This analysis shows how these dimensions of context are realized through the texts in the context of situation. The high level of contradiction evident in the two mediation texts may simply be a function of the different modes of textual presentation in this instance: however, they may also indicate shifting values in the broader context of situation of this study as a result of some of the pressures which have been described as facing that context.