

CHAPTER 6

TOWARDS A CULTURAL MODEL UNDERSTANDING OF THE CONCEPT 'LAW'

6.1 Introduction

The starting point for the empirical component of this study is the cultural models held by students at the outset of study. The question that this section asks is, from an outsider perspective (the perspective held by students prior to instruction in the course), how is the concept 'law' defined? The primary purpose of this analysis is to attempt to find the situated meanings, which derive from differing cultural models, that students bring to their legal studies. In ZPD terms, the aim of this section is to provide a broad account of the students' task or situation definitions (individually or culturally defined) prior to instruction. Given that the aim of the study is to construct a genetic account of concept development, this first analysis will also serve as a base-point against which later student work can be compared (and which might serve to explain appropriations, mis-appropriations, or non-appropriations of the insider construction of the concept).

In order to construct this account, initial student essays on the topic "What is Law" were consulted. These essays were completed in the first week of term, prior to commencement of the teaching of the formal content of the course. Course-packs were not available to students at this time, and it was hoped that student responses to the topic would be intuitive rather than informed by course framing (however it was evident that, although instructed otherwise, certain students did consult an earlier version of this course-pack prior to writing their essays).

The task with regard to the writing of these essays, as distributed to students at registration as part of the course outline, was as follows:

The first assignment of 5% for the course must be handed in on the 21st February 2000. The topic for this assignment is “What is Law?” Students are not expected to research the topic, but rather to write their own ideas on the topic. Only 1 page of writing is required. The main object of the assignment is to assess the students’ language performance (English usage, formulation and writing skills) and to provide students with early feedback as to how they are likely to perform at university should they not take advantage of the various help schemes available (advice schemes, academic development tutorials etc.).

Photocopies were made of the assignment submissions of all students who had given permission for their work to be used in this study, after the essays had been marked, and prior to them being returned to students. Since the actual marks obtained by students were primarily granted for language use, and were intended to serve a formative function, these marks were not consulted in this analysis. The process of analysis of the texts is described below.

6.2 Process of analysis

6.2.1 Sequence of analysis

To develop an account of students’ conceptions of the concept ‘law’ prior to instruction which captures both form and content of the responses, the research examines the following dimensions of student texts: what themes are appealed to in student understandings of the concept; how these themes are related; what contrasts are evident in these understandings; and what evidences of student identity location can be found in student texts? Evidence is then sought of understandings common to each student group analysed.

In order to address these questions the method of analysis adopted followed a three-phase sequence. In the first phase, an initial thematic analysis was undertaken in order to provide categories for the subsequent analysis of individual scripts. The second phase of analysis consisted of three steps: the first step was an in-depth analysis of individual scripts examined in terms of the themes and contrasts raised in the text; the second step was an analysis of theme relations, and the third step was an examination of the identity relations evident in the texts. Further elaboration on the methods used in the first and second phases of analysis is given in the relevant sections below. In the third phase of analysis, the individual analyses on each domain were compared in a search for commonality and difference, and in an attempt to render an account of the culturally-defined situated meanings operating in the context. The focus in this final section was on attempting to construct the cultural models appealed to and recruited from in the individual construction of meaning, rather than on the individual meanings themselves. Although the group-comparative method employed to construct this section is crude, and is quantitative rather than qualitative, a broad reading of similarity and differences was obtained through this process, and was felt to be sufficient for the purpose of later analysis.

6.2.2 Sample

In Chapter 2, the initial sample of 84 students from which further samples for analysis were drawn was described. From this sample, scripts were divided into groups depending on the racial classification of the student. For the purpose of this analysis, only the African black group (24 students) and the white group (39 students) were retained for analysis. Further sampling of this group for phase 1 and phase 2 of this analysis was performed as follows: scripts from this combined sample (of 63 students) were randomly chosen for the initial themes analysis (phase 1). Sampling in this instance was cumulative, proceeding until it was felt that a point of saturation (Kruger, 1979) sufficient for the purpose of this analysis had been reached. 16 Scripts were analyzed in this process. After this analysis, scripts were re-grouped into the two divisions, and 10 scripts were randomly

selected from each group for further analysis (phase 2). It was felt that this number would both provide sufficient breadth of analysis, as well as allowing for sufficient depth in analysis. Biographical information relating to each of the students thus selected is given in Appendix 2 (volume 2). The broad demographic data for these two groups can be summarized as follows:

All students were in their first year of study. The African black group consisted of 4 males and 6 females. 2 of these students had matriculated through schools previously associated with 'educational advantage' (see Chapter 1); 3 had converted to an 'advantaged' school in their final year of school study; 4 students had matriculated through a school previously associated with 'educational disadvantage'; and 1 had matriculated through a foreign matriculation authority. 6 of these students were registered for the LLB degree, 3 for a BA degree and 1 for a B.Com degree. The mean matriculation rating for this group was 19. The white sample was comprised of 2 males and 8 females. All had matriculated through schools previously associated with educational advantage. 4 of these students were registered for a B.Com degree, 4 for a BA degree, and 2 for an LLB. The mean matriculation rating for this group was 28.

In comparison with the broader sample from which this restricted group was drawn, for the African black sample there was a higher proportion of females represented in the restricted than in the broader sample (60% and 46% respectively); for the white sample the gender proportions were roughly equivalent between the two samples (74% and 80%). The higher proportion of African black students than white students registered for the LLB degree in the restricted sample was consistent with the registration pattern in the broader sample, and the difference in the mean matriculation rating for the two groups was also consistent with that found for the broader sample.

6.2.3 Data transcription

Prior to the three-phase analysis process, in order to render the data into analysable form, the

‘discourse organisation’, or line and stanza structure, as described by Gee (1990), of each text was sought. This line and stanza structure, according to Gee, “is universal, the product of the mental mechanism by which humans produce speech” (op cit, p.117). Gee bases his definition of a line on the notion of an ‘idea unit’ (attributed to Chafe, 1979), or “a single focus of consciousness” (op cit). These idea units thus convey a single element of meaning within the text, and, according to Gee tend to consist of only “a single clause, with one piece of new information towards the end of the clause It is only when the subject of the clause, or an adverbial element is new information that it constitutes an idea unit by itself” (op cit). A stanza is a set of such lines, generally linked by an overall theme, and structurally distinguishable as a unit.

The process of data transformation was as follows: all of the essays in the sample were typed up in original form (maintaining paragraph and sentence breaks). Obvious spelling errors were corrected in the process, however, invented words and grammatical errors were retained, as it was felt that these may perform a prosodic function within the text. Each text was then rendered into a rough line form, based on the splitting of text into clauses. Further examination of the structures and meanings within the text was conducted and a more sophisticated rendering of the line and stanza structure was sought. The process was repeated (approximately five times) for each text until a structure which was justifiable on the basis of syntactic and semantic evidences in the text, and which contained a sense of ‘wholeness’, was reached. Although certain texts proved more difficult to render into this form than others did, such a structure did emerge in all instances.

The full data, in line and stanza form, for the scripts analysed in the in-depth theme and contrast analysis is reproduced in Appendix 2 (volume 2). Lines are enumerated on the left hand side of the page and stanzas are numbered in superscript at the beginning of each stanza. Original paragraph breaks (which always indicate a new stanza) are indicated in the texts by a double backslash (//). Other punctuation within the original texts is retained.

6.3 Phase 1: Theme identification

The first phase of the analysis consisted of an identification of themes commonly raised by students in their attempts to define the concept. The procedure adopted for this thematic analysis was loosely based on a phenomenological method outlined by Kruger (1979). In line with this methodology, no prior analytical framework was imposed on this reading of the texts, rather, by this method “(t)he researcher aims at describing as accurately as possible the phenomenon as it appears” (op cit, p.119). Data are rendered into analysable form by means of being broken down into ‘Natural Meaning Units’ (NMU) which are defined as “a statement made by S [the subject] which is self-definable and self-delimiting in the expression of a single, recognised aspect of S [the subject’s] experience” (op cit, p.128, citing Cloonan, 1971, p.117). The process outlined by this method is as follows: each meaning unit (stanza) within the text is examined and “the intention conveyed by each NMU is then expressed in a reduced form as concisely and as accurately as possible” (p.128). The listed reductions are then examined, and duplications or obvious irrelevancies are eliminated. This provides the researcher with a ‘first order profile’, which, in a full application of the phenomenological method, is converted into a ‘constituent profile description’ or a “condensed summary of the original data, containing the essence of what the subject expressed” (p.129). A second order profile, or second reduction, is then created on the basis of the constituent profile descriptions.

In the phenomenological method, the second order profiles thus created are then used as a basis for analysis and “those descriptive statements with similar, though not identical meanings (are grouped) into clusters which are termed Categories ... These Categories are then arranged in a hierarchical fashion ...” (p.130). These categories are then used as the basis for the creation of an ‘extended description’ of the phenomenon under investigation.

The adapted method applied in this research can not be described as phenomenology proper, since the

aim in this section was not to provide as full a description as possible, but was rather to provide a reduction of the data. Data was reduced to the 'line and stanza' structure outlined by Gee, which although not identical to 'natural meaning units' (the meaning chunks tend to be larger than clauses or lines, and in phenomenology are not structurally defined), perform a similar function in the text, and the two concepts have been taken as synonymous for the purposes of this research. Also for the purposes of this research, and since the aim in this phase of the research was not an accurate rendition of individual understandings, but rather a broad identification of related themes, constituent profile descriptions were not created, but rather second order profiles, reduced to basic thematic elements, were created directly from the first order profiles. The final phenomenological stage of extended description was not applied in this research.

In analysis, initial thematic categories were created on the basis of the second order profiles obtained from four student scripts. Additional profiles were created and categories were modified incrementally, until the categorical description obtained served adequately for further text analysis, and no, or very little, additional information was provided through further examination of scripts. Sixteen scripts, drawn from the broad sample of African black and white students in the class, formed the basis of this analysis. Note that no claim is made regarding saturation of the categories thus obtained: what was sought was not an accurate rendition of the whole, but rather a tool useful for the description and analysis of individual scripts.

In order to illustrate the process of the creation of the categories in the theme table, stages in this process, illustrated through the use of two student text examples, are attached as appendices. (The use of one of these student texts as an example of the analysis process is continued later in the Chapter.) Appendix 3 (volume 2) shows the initial theme table created on the basis of four student scripts. Appendix 4 (volume 2) shows the theme table after the analysis of a further four scripts and prior to the analysis of Student 8 (example 1). This theme table differs from the original in the addition of the third level of the hierarchy, and the modification of the function theme to include

‘object’ as ‘focus’, and to include ‘inverse function’. The category ‘identity’ has also been dropped at this point, as it had not proved useful (a decision was taken to explore the concept of student identity at a later stage of the research, rather than attempting a simplistic rendition of this identity into a theme table at this point). Appendix 5 (volume 2), as an example, shows the first order and second order profiles for Student 8. On the basis of this second order profile, the ‘origin’ category was modified into two sub-categories: people (created and negotiated) and government (‘laid’). At a later stage of analysis the people / government distinction was dropped, in favour of an origin imposed / developed split.

In a second example (four scripts later), Appendix 6 (volume 2) shows the category table prior to analysis. This table differs from the previous one in the renaming of ‘connotation’ to ‘basis’; with the addition within this of the sub-theme ‘norms’; in the addition of the theme ‘consequence’; and in the modification of the ‘nature’ theme to reflect the sub-themes ‘adaptation’ (evolution and diversity) and ‘form’ (previously a main theme ‘type’). The sub-themes ‘order’ and ‘chaos’ within function societal effect, have, at this stage, become ‘create’ and ‘prevent’ respectively. As a result of the profiles created for student 10 (see Appendix 7, volume 2), ‘determination’ and ‘choice’ were taken out of ‘consequence’ and placed into a new ‘authority’ sub-theme within the ‘nature’ theme. In addition, the sub-theme ‘substance imperfect’ was also added to the ‘nature’ theme.

The final version of the theme table which was adopted for use in further analysis is reproduced below (Table 3). Some evidence of the relations between themes and sub-themes is provided in the hierarchies within the table; however the structure in the table is very simple, aiming more at generalisation than at specific rendering of data. Specific relations for individual texts are provided in the individual analyses (see Appendix 2, volume 2), in the form of propositions between themes.

It is important to note that no claim is made for an independent status for the theme table outside of this research. It does not purport to provide a complete (comprehensive) representation of student

views or concepts held. The table may not contain full theme saturation (further themes may arise in subsequent analysis), and may contain redundancies. In addition, adopting the same method of analysis on a different set of scripts may well have produced a different scheme of categories. However, the table was developed for use as an analytical tool, and as a basis for further analysis. This function was adequately fulfilled by this table.

Table 3: Theme table: Themes invoked by students in answering ‘What is law?’

Student	denotation		nature			basis			origin		function										consequence		implementation		
											focus society					focus individual									
	process		system	variation		substance	authority		form	justice	ethics	practice	developed	imposed	effect		intention	reciprocity		effect	intention	empowerment	sanction	structure	imp-s
	den-v-d	nat-v-e	nat-a-d	nat-s-i	nat-a-c	bas-p(n)	bas-p(c)	bas-e(m)	bas-e(v)	bas-j(i)	bas-j(l)	ori-d(n/r)	func-s-i-b	func-s-i-m	func-s-i-r	func-s-e-c	func-s-e-p	func-r	func-i-i-c	func-i-i-g	cons-e	cons-s	imp-p	imp-s	
den-v-e	nat-v-d	nat-a-d	nat-s-i	nat-a-c	bas-p(n)	bas-p(c)	bas-e(m)	bas-e(v)	bas-j(i)	bas-j(l)	ori-d(n/r)	func-s-i-b	func-s-i-m	func-s-i-r	func-s-e-c	func-s-e-p	func-r	func-i-i-c	func-i-i-g	cons-e	cons-s	imp-p	imp-s		

The abbreviations provided in the table are those used in the description of individual texts in Appendix 2 (volume 2).

6.4 Phase 2: Individual analysis results

Individual analyses of the scripts were performed on the basis of the restricted sample of 20 students as described above. In order to make for easier reading, full details relating to each of the students whose scripts formed part of this analysis have been kept together in Appendix 2: this appendix thus contains for each student biographical details, essay transcript, and analysis results. A three-step analysis of each text was performed on the following dimensions: in-depth theme and contrast analysis, theme relations analysis, and identity positioning analysis. Methods used for these analyses are discussed below. Individual results obtained in these analyses are not discussed in any depth in this section although the analysis of student 8's essay is used as an example throughout: rather, phase three of this analysis picks up on a comparative analysis of the individual analyses presented in Appendix 2.

6.4.1 In-depth theme and contrast analysis

The first part of the analysis of individual scripts aimed to examine the specific themes addressed by each student (drawn from the outline of themes provided by the theme table above). In addition, as a tool for examining the 'underlying meanings' of the text, text contrasts, as outlined by Gee (1990), were sought in the data.

Gee (1990) outlines five interrelated discourse subsystems of discourse which can be used as analytic devices in text analysis: these are prosody, cohesion, discourse organization, contextualization signals and thematic organization. Although prosody as an analysis of rhythmic organization of the text

refers primarily to emphases indicated in oral modes (pitch, loudness, stress and pauses), within written text some indication of the closure or continuation of an idea or theme may be sought within the formal sentence structure (punctuation) of the text. Cohesion refers to the links or interrelations within the text which establish the sense of the text, and may be sought through examination of the conjunctive devices used in the text. Discourse organization is an examination of the structure of the text, and the patterns within this structure evident through the line and stanza structure of the text. The contextualization subsystem “signal(s) to the hearer what the speaker takes (wants) the context to be, and how the speaker wants the hearer to construct that context in her mind” (op cit, p.109). Indicators of context and identity construction or location in the form of choices of specific words or phrases, and terms of feeling and belief are thus sought.

For the purpose of this analysis, the fifth subsystem, thematic organization, is the most important. This sub-system uses understandings gained through the other four sub-systems, as well as “patterns of word and syntax choice, repetition and parallelism” to explore the way in which “themes (images, contrasts, focal points of interest) in the text are signalled and developed” (op cit, pp.105 - 106). Contrasts in the meaning of the text are sought, since “(m)ost - perhaps all - instances of sense making in language are organised around contrasts, usually binary contrasts” (op cit, p. 109). Thus, themes and contrasts explicit within the text may be mirrored within its structure, often signalled by contrast and resolution within that structure. These contrasts were explicitly sought in this analysis.

The understandings generated through this analysis were used to create a reading of each student text which highlighted the contrasts appealed to in each text through reference to the themes addressed. Results from this analysis for all students are presented in Appendix 2. The transcript and the results of the theme and contrast analysis for student 8 are presented below as an example of this investigation.

Student 8’s essay (in transcribed line and stanza form) was as follows:

1 ¹Law is somekind of rules
2 laid by a government
3 to make peace among people.

4 ²For example when it was possible for individual person to have his own land,
5 there will be no reason to produce law in that particular area
6 cause he is living alone
7 and can do whatever he wants at anytime

8 ³cause he is disturbing no one.
9 But when it happens that a second person is coming to live,
10 certain rules have to be made
11 to make peace between the two.

12 ⁴//Law is laid to be obeyed by people
13 but also giving them their legal rights
14 and freedom.

15 ⁵//To maintain peace and unity among the community,
16 people have to follow the orders of law
17 made by authorities or by a government.

18 ⁶//Whoever disobey the orders of the law is being punished
19 the way he deserve to be punished.
20 He can be fined or put in prison.

The theme analysis for student 8's essay shows that this essay plays mainly with the themes of origin and function. In abbreviated form, the thematic structure of the essay is as follows:

den - (s) - r and ori - i and func - s - i - m and func - s - e - c through func - s/i - i - c and func - i - e - pun

The abbreviations are explained by reference to the theme table provided in Table 3 above. Thus, the themes referred to by this student are as follows: the denotative definition of law is as a system of rules; the origin is imposed; the function at the societal level has the intention to maintain and the effect of creation; through an intention to control and a punishment effect at the individual level.

The contrast identified in the essay was as follows: Stanza 1 (lines 2-3), in juxtapositioning the imposed nature of law creation with a maintenance of social peace function, could suggest a thematic contrast. However, the student seems to realise this, and spends the following two stanzas expanding on this juxtaposition, effectively neutralising the contrast with origin ('rules have to be made' line 10) through a rationalisation of the maintenance function (with a repeat of the peace theme in line 11). Stanza 4 picks up the origin / function contrast again, but this time with function at the level of individual control ('law is laid to be obeyed by people' line 12): this appears to be the primary contrast in the essay, and an overt attempt to resolve this is immediately made by invoking a second social function of law, the creation of rights and freedom (lines 13 - 14). The real resolution to this contrast is however provided in stanza 5, where a hierarchy is set up within the function theme: the individual control function is subordinate to and necessary for the social maintenance function. The structure of the stanza provides further evidence of the resolution: the control sub-theme (line 16) is sandwiched between the previously resolved contrast themes of maintenance and origin (lines 15 and 17). The final stanza carries the function control theme further into the effect of individual punishment. However, the resolution has been established, and the student raises no further issues in this regard. In fact, the resolution has carried through to the point of personal identity, and in the

student's view, 'he deserve to be punished' (line 19).

6.4.2 Theme relations

Although some evidence of theme relations are provided in the hierarchies in the theme table itself, not evident in this table is the manner in which the themes contained in the table are related to each other by individual students. These relations are (somewhat clumsily) expressed in the propositions used to connect themes in the individual theme structure analyses. In order to determine whether there was any commonality at this level, between or within groups, the relations were examined firstly to determine their complexity, and secondly to establish the connections that they served to make.

The propositions used in the theme analyses express two different forms of relation. The first is additive, signalled by the use of 'and' or 'with', where themes are accumulated in a linear manner. The second type of relation is hierarchical, commonly signalled by the connectors 'through', 'in order to', 'needed to', 'thereby' and 'which have' and less frequently signalled by 'which are', 'of', 'equals', 'which can lead to', or 'based on'. Different levels of hierarchy are established through the action of a hierarchical connector on a previous hierarchical connector. Specific connections between themes, usually also tied to a hierarchical structure, are indicated in the abbreviated theme outline for each student by the use of square brackets.

An examination of these connectors, and the structures which they generate, allows for the creation of a pictorial representation of the thematic arrangement expressed in a particular essay. Examples of these pictorial representations are shown in Appendix 8 (volume 2). To follow the example that has been used above, the thematic analysis of student 8's essay given in this appendix shows predominately additive connectors (indicated by the use of the word 'and'), with a second level of hierarchy established in only one instance through the connector 'through'.

The complexity of these arrangements is evidenced in the number of levels of hierarchy that are established through the theme connections. Appendix 9 (volume 2) shows the relations used, and the number of levels of hierarchy generated, by each student.

6.4.3 Construction of identity positioning

An attempt to construct a cultural model account of a concept through a reading of the situated meanings attached to the concept by students must necessarily take account of the fact that these meanings will not only be situated in terms of the cultural understandings of the concept existing in the student's primary discourse, but will also be situated within the particular context of use. How students construe the situation, and the task within that situation, is thus of importance in interpreting the meanings which they bring to the task. As explored in Chapter 4, the concept of identity is critical to a discourse understanding of meaning: the extent to which identity is constructed in terms of primary Discourse or target Discourse, and the extent to which identities within primary Discourses are confirmed or negated by the overlap between this discourse and the target discourse will, to a large extent, determine uptake of, or development in, the target Discourse. In this stage of the analysis therefore, a means was sought to describe student identity positioning in so far as this could be read from the texts.

Ivanic (1997, see Chapter 4) suggests three aspects of specific writer identity which can be read through the writing of that individual: the autobiographical self, the discoursal self, and the authorial self. Although the three are difficult to prize apart from each other, and discoursal self, in particular, is difficult to distinguish from the ideational component since evidence of discourses or cultural models held will be conveyed through that content, the aspects provide a useful means of framing this analysis.

With regard to autobiographical self, evidence was sought of both explicit and implicit identity location within the text. For the purpose of this analysis, the task can be seen to consist of two levels (the distinction is somewhat artificial, but provides a useful interpretative frame): there is the level of the content of the task (hereinafter referred to as the 'concept'), and the level of the action necessitated by the task (defining the concept, hereinafter referred to as the 'act'). How students work within and across these two levels provides some indication of their location with respect to the task, and thus to the Discourse context.

Some evidence of identity location is provided in the form of explicit identity reference within the texts (for example "I believe ..." or "I am a law student ..."). This explicit location may be at either or both levels of the analysis (concept and act). In the case of the concept, location is evident through the writer's relation to the content of the text. An initial reading of the data yielded two possible identity positions in this regard: as a subject of law (law is described as experienced, it acts on the individual); and as an object of law (as a recipient or beneficiary of law; identity is described in terms of membership of a society in which law operates for the general good). Explicit positioning with regard to the act might, for example, include positioning as a law student, as an outsider, as someone who has an opinion, or as someone who doesn't know.

Much of the evidence for identity location is, however, at an implicit level within the text. An indication of how the individual positions themselves with respect to both the concept and the act of defining the concept is provided through examination of the structure of the text, and an examination of the relation between the levels of analysis. In this regard, the structure may be unified with regard either to concept or act, providing no reference to the other level of analysis; it may be integrated or constantly moving between concept and act; or there may be a structural separation of aspects relating to concept from those relating to the act, where the structure used is either attached (first one then the other), or framed (beginning and ending on one, with the other sandwiched in the middle). Whereas unified or integrated structures show no disjunction between the act of defining and the definition

itself, the latter two structures (framed or attached) seem to indicate some distancing of the self from the task.

The learner's overall location with respect to the Discourse task itself, or the extent to which the discursial self presented is in congruence with the target Discourse, may be evidenced by the extent to which the form of the target Discourse is apparent within the syntactic and semantic elements of the text, and by the familiarity with which this form is used. An examination of the tone and style used in the text (eg. Baudelot, 1994) thus provides an indication of the situated-ness of the author (authorial self). The tone adopted may be that of opinion (indicating either Discourse familiarity or uncertainty) or authority (where this authority may be derived from the content matter itself (pseudo-authority) or from a personal location with respect to that authority). The style may be informal or formal, where formal relates to the extent of use of academic discourse. In this regard, the six style indicators of academic Discourse outlined by Gee (2001, in seminar) are useful. These are: the use of 'heavy' subjects (long phrases rather than pronouns); processes and actions named by nouns or nominalisation rather than verbs; passive main verbs; passives inside nominalisation; modifiers which are more content-ful than the nouns they modify; and complex embedding.

In this section student writings were thus analysed on four dimensions: structure (act / concept relations); explicit location (where identity is explicitly positioned with respect to act / concept); tone and style.

Attempting to read identity positioning from a text is a difficult interpretative task, and findings are necessarily tentative. The complexity of the task, in this instance, is magnified due to the nature of the task itself: there are two main elements of the set assignment, the first is an instruction for students to 'write their own ideas' on the subject and the second is the assessment criterion given as 'language performance'. There are varying student interpretations of this task, evident in the differing combinations of tone and style adopted. An opinion tone (or alternately, an authoritative tone) might

therefore be combined either with a formal or an informal style. These differing interpretations confound any attempt to read discourse familiarity directly from these two constructs. The task is further complicated by differing language status of the two groups (first or second language speakers): language ability and Discourse competence are difficult to pry apart. Nonetheless, an attempt has been made to plot student ‘voice’ on these dimensions, and from this, to read individual task interpretation and location. Results of this analysis are presented in Appendix 2 (volume 2). The results of this analysis for student 8 were as follows:

<i>Structure:</i>	<i>Unified at level of concept (no explicit reference to act of defining)</i>
<i>Explicit location:</i>	<i>None (distanced). The word ‘deserve’, line 19 may indicate an concept - object location</i>
<i>Tone:</i>	<i>Diminished authority (‘somekind of rules’, line 1 indicating uncertainty; ‘for example’, line 4 and ‘cause’, line 8 have a justificatory tone)</i>
<i>Style:</i>	<i>Informal</i>

This leads to an overall reading of this student’s task interpretation, or identity location, as being that “the overall position is one of uncertainty. Lack of familiarity with Discourse is indicated by the informal style and the tone of uncertain authority (which could indicate a reading of the context as authoritative, but a positioning of the self outside of this)”.

6.5 Phase 3: Comparative analysis

The aim of this section of the research was to seek patterns across the individual accounts that might provide an indication of the broader meanings or cultural models attached to the concept by students, or by different groups of students, where the salient category for analysis is race. In order to construct this account, a comparative analysis of the results from the analysis of the individual scripts was performed at each level of the analysis. This comparative analysis thus sought to determine the relative frequency of theme address, the type and complexity of theme relations, the type and nature of contrasts identified, and the frequency of different identity positions adopted by the different groups. The results are presented below.

In this stage of the analysis the relative frequencies of theme citation by the two groups of students were examined. Appendix 10 and 11 (volume 2) show these frequencies for each group, with Appendix 12 (volume 2) providing a summary of this data. Evident from a broad comparison of the theme tables for the African black and the white groups is the relative complexity of the latter, in terms of number of themes addressed, over the former: for the African black group, the mean number of themes raised was found to be 6.0, with a range of 4 - 8. For the white group, the mean was found to be 7.9, with a range of 6 - 12. This difference in complexity is found also at the level of the relations between themes (see below): what is not apparent from this research is whether this difference in apparent complexity reflects a more differentiated concept structure for the white students, or is better understood as a result of the difficulties for African black students in working in a language which is not their mother tongue. Since it is not possible, on the basis of the data analysed, to address this question, this apparent difference in concept complexity is not regarded as a significant finding of this research.

A brief look at the predominance of themes within each group shows that for the African black group, the most frequently mentioned themes were those of function (with social and individual focus each receiving twelve responses), origin (seven responses in all) and nature - authority (six responses in total). For the white group, the most frequently mentioned theme was again function (with sixteen responses received at each of the social and individual levels). Other frequently mentioned themes were basis (fourteen responses in all), and nature - variation (seven responses in all). Within the function theme, the most frequently mentioned sub-themes for the African black students were maintenance and regulation at the social level, and protection at the individual level, followed by guide and control. For the white students, the most frequently mentioned sub-themes at the social level were regulation and creation, and at the individual level were guide and protect.

An explicit comparison of the differences in the patterns of themes addressed by the two shows the following: for the African black group, the nature-authority theme (either determination or choice) was raised fairly frequently (with three addresses to each sub-theme); this theme was raised only once by the white group. The origin theme also figured strongly in the African black responses (with four responses on 'imposed' and three on 'developed'); this theme was not as frequently addressed in the white responses (four responses in all). Although both groups made frequent reference to the function theme (twelve responses each at the levels of society and individual for the African black group, and sixteen responses at each level for the white group), within this theme, the sub-theme of (social - intention) maintain was mentioned more frequently by the African black students. Also mentioned by this group, and not by the other, was a denotative definition of law as a process (two students), possibly connecting to the implementation - procedure theme (also mentioned by two students in this group, and by only one student in the other group).

The themes mentioned with a comparatively high frequency by the white group include a denotative definition of law as a practice (mentioned by three students in this group and only one student from the African black group). The nature - variation theme (either evolution or diversity) was more frequently mentioned (seven students as opposed to two), as was the nature - form (differentiated) theme. Strong differences between the groups were found in the use of the basis - ethics (values) and basis - justice (literal) sub-themes, with these themes being commonly raised by the white group, but not by the African black group. Within the function category, mentioned more frequently by this group were the social - effect - create and the individual - intention - guide sub-themes.

In order to test the significance of the comparative differences between the groups, a simple two-sided t-test of difference of percentages was performed on the relative response frequencies of each group to each sub-theme, and to the three overall themes where differences seemed apparent. The results of this analysis (shown in Appendix 12, volume 2) show that the only differences found to be significant

at the sub-theme level were within nature - authority - choice (which African black students mentioned more often than white students) and within basis - ethics - values (which white students mentioned more often than African black students). At the broader theme level, significant differences were found within the nature - authority theme (in favour of African black students), and within the basis theme (in favour of white students).

Of interest also in Appendix 10 and Appendix 11 (volume 2) is a record of themes raised in essays which were not listed in the initial categorisation. Examination of these themes show that, for the African black students, notions such as equality, protection of rights and freedom, that had been associated in the initial categorisation with basis - justice were, in four instances in this group, placed in a function category (where the function of law is seen to be to create or protect justice, rather than justice being the basis of law. In another case in this group, justice was seen as a consequence of law). This functional notion of justice was appealed to by only one student in the white group. Other unlisted categories tended to relate to the denotative definition of law: additional categories here included den - basis (once in the African black group and twice in the white group), den - guide (once in each group), den - study (once in the African black group), den - tool and den - boundaries (one each in the white group).

The results of this analysis seem to indicate that, although both groups provide essentially functional definitions of law, there is variation (some of which could be described as significant) in the types of understandings described. It seems possible to suggest that these variations may result from or relate to differing cultural model understandings of the concept held by the different groups on entry to law study: this is explored further in the final section to this chapter.

Differences in the complexity of theme structures used were apparent across the two groups: for the African black group of students, hierarchies were found to typically contain two levels (one student used one level, six students used two levels, two students used three levels and one student used four levels). For the white students, however, the use of three levels tends to be more common (three students used two levels, four students used three levels and three students used four levels). The structures generated by the African black students are thus, in general, less complex than those generated by the white students: this does not appear to result directly from the fact that fewer themes were, in general, raised by these students, but rather seems to reflect a greater reliance on the additive connectors than on the hierarchical connectors. As mentioned previously, this finding could be a result of these students operating in a second language (prepositions have in other research been found to pose particular difficulties for African black second language students, e.g. Gardner, 1980).

In the second part of this analysis, the specific connections drawn between themes in the pictorial representations were examined in order to determine whether there are themes which are typically connected in a non-additive fashion. Examination at this level showed that, for the African black group of students, hierarchies tend to be established through function (seven students), within function (two students), through origin (two students) or through implementation (two students). For the white group of students, function again plays an important role, with hierarchies being established most commonly through function (eight cases), within function (six cases), and through basis - ethics - values (three cases). Examination of the particular relations between themes and sub-themes addressed showed no obvious connections for either group of students: even for the 'within function' hierarchies drawn by the white students, sub-themes tend to be linked in different ways.

6.5.3 Comparison of contrasts

In order to compare the contrasts outlined by individual students, and to determine whether, through these contrasts, any evidence of a cultural model understanding could be found, the most basic contrastive elements identified in these contrasts were studied. Patterns were sought in these contrasts at two levels: the nature of the contrast (themes raised in contrast or resolution), and the form (structure) of the contrast.

With regard to the nature of the contrast, an initial comparison of the specific contrast and resolution themes drawn upon by students found no patterns evident within or across the groups. The specific contrasts identified thus do not appear to be stable across individuals. Rather, an understanding of contrasts, not as direct evidence of conflicts or contradictions in cultural models, but as rhetorical device may be necessary. It is through these contrasts that students structure their essay responses, and bring into play the thematic elements which, for them, have some significance. The significance of the theme, rather than its specific position in the contrast or resolution is thus what appears to be the critical element. These significant themes, identified by their use in either explicit or implicit contrast or in resolution, were therefore compared.

A simple quantitative reading of these significant themes does reveal differences between the two groups, the most significant of these being on the themes of the imposed origin of law (the most frequently mentioned theme in the African black group, with four references to this theme, and mentioned by only one member of the white group), and on the theme of variance in law (the most frequently mentioned theme by the white group with six references, as opposed to only two by the African black group). This method of analysis, however, fails to capture the dynamics of the contrasts and the nature of themes addressed in contrast which may be extra- or super-ordinate to those identified in the original theme table.

A clustering of themes frequently mentioned in contrast or resolution provides a more subtle means of analysis, which does allow for an identification of pattern difference between the two groups. For the African black group, the themes frequently mentioned are control, imposed, determination, regulation, sanction, maintain, protect and guide. Division of these themes into two groups, the first indicative of an element of social power (control, imposed, determination, regulation, sanction), and the second indicative of a shielding effect (maintain, protect, guide) provides a means of broad description of the contrasts provided by this group. Five out of ten of the essays in this group can be directly described in terms of a contrast between social power and a shielding effect (students 1, 4, 7, 9 and 10). A further two essays provide a contrast which is within the social power theme alone (students 5 and 8; in the latter case the 'shield' dimension is brought in within the resolution to the contrast), and one student provides a contrast between social power (origin imposed) and origin developed (which does not explicitly fall within the 'shield' category). Only two essays in this group cannot be described in terms of this basic contrast: student 2, who contrasts a social maintain function (build, create, prevent) with variation and indeterminacy, and student 3, who provides a non-contradictory contrast using the themes of choice and variation.

Only four students in the white group provided contrasts which could be described in terms of the power / shield categories. Far more significant for this group, however, was an appeal, either in contrast or in resolution, to aspects indicating the relational nature of the concept. Variation or individual variance, relative values and imperfect nature fall into this category, and a model which places these relational aspects in contrast to the social power themes outlined above provides greater descriptive power for this group. Seven essays in this group can be described in these terms (students 11, 14, 15, 16, 17, 19 and 20). Student 12, in addition, worked with these categories, but expressed the social power dimension as a need for the resolution of social conflict. Two essays in this group cannot be described in terms of this model: student 18, whose contrast can be described in terms of the model outlined for the African black group, and student 13, whose essay could possibly be classified according to the previous model identified, but who focused on creation at the social level,

contrasted with individual effect (protect or punish), more broadly conceived than the 'shield' category. A re-examination of the two essays in the African black group which did not fit within the model identified for that group showed that although both make reference to the relational category identified for the white group, in neither instance was this contrasted with a social power element.

With regard to the form of the contrast, for the African black group of students the typical structure was that of an explicit opposition-type dual contrast (nine of the ten essays fit this pattern; student 3, however, provided a contrast which was not of an opposition nature). Resolution of this contrast tended to be through recourse to an additional theme. Where a second contrast was identified in the essay, this was in all cases implicit rather than explicit (four cases), and tended to be a further opposition-type contrast between two additional themes (in three cases: students 1, 5 and 10; student 7 further explored a theme from the primary contrast in the implicit contrast). Examination of the contrasts drawn by the white group showed that they tended to be 2-level structures (in nine of the ten cases; student 19 provided a single level opposition-type contrast with additional theme resolution. Note that the two-level contrast structure is not to be confused with the three-level concept structure). The second level was established through further exploration of the themes identified in the first level of the contrast in six cases, was established through contrast of additional themes in two cases, and in one case, was evident through the use of a super-ordinate theme (with 'individual effect' covering both the protect and punish themes in student 13's essay). Resolution for this group was in some cases obtained through the addition of a theme (four cases), and in others, was established through a modification of the contrast elements (five cases): in four of these latter cases the resolution came about through explicit acceptance that the contrastive elements must operate together in context (students 11, 13, 19 and 20).

The structural differences that have been identified between the two groups (opposition-type contrast with additional theme resolution versus multi-level contrast with resolution often through acceptance) are strongly suggestive of the developmental scheme in forms of understanding outlined by Perry

(1970). In this scheme, student development in terms of forms of understanding moves through nine positions, from a basic duality (position one), through a series of positions involving the modification of dualism and the realisation of relativism, to a final series of three positions involving the evolving of commitment. The scheme is regarded as developmental since “the forms of his later assumptions subtend those of his earlier assumptions in a coherent manner, as cannot be said in reverse” (op cit p.2). This understanding of development, with its generic rather than context specific focus, is not the understanding adopted in this study. However, if this development is seen in relation to a particular context goal (such as legal / academic Discourse acquisition) the understandings that the Perry scheme brings, particularly with regard to identity and commitment, may prove generative in other research of this nature.

6.5.4 Comparison of identity positioning

The sketches that are drawn in Appendix 2 (volume 2) of individual identity positioning or ‘task interpretation’ are necessarily tentative. In order to avoid an over-interpretation of these results, rather than using these sketches as a basis for comparison, reference is made in this section to the primary indicators on which these sketches were based. Analysis is quantitative, but the same process of interpretation that was applied to the individual accounts is applied here also.

For the African black group of students, a wide range of act / task structural arrangements were found: three students provided a unified - concept account, three students used an attached structure, two students used a framed structure and two students used an integrated structure. Explicit positions with respect to the concept were provided as object in five cases and as subject in three cases (no explicit position evident for the remaining two cases). Explicit location with respect to the act was provided by five students, two of whom adopted a student position. Seven students used an authoritative tone, whilst three used an opinion tone; five used a formal style, whilst four used an informal style (one was classified as mixed). When tone and style are examined together, five

students used authoritative-formal, two used opinion-informal and two used authoritative-informal.

The style arrangement for the white students was found to be integrated in five cases, unified-act in two cases, and unified-concept, framed, and attached in one case each. Explicit location with respect to the concept was found to be as object in five cases and as subject in two cases. Five students provided explicit location with respect to act (of whom two gave student positions), and two students had a strong implicit location in this regard. Eight students used an opinion tone, with two using an authoritative tone; seven students used a formal style with two using an informal style (one classified as mixed). In the joint tone-style examination, five students were found to use opinion-formal, two students to use authority-formal, and two students opinion-informal.

Examination of the similarities and differences of these findings shows that, with regard to structure, a unified - concept approach is more likely to be used by the African black students than the white students; these students were also more likely to use an attached or framed structure. White students were more likely to use an integrated structure than any other structure. Explicit locations identified were not found to differ between the groups: both groups were more likely to adopt an object than a subject position with regard to the concept, and were equally likely to provide explicit locations within the act and as students. African black students strongly identified with the authoritative tone, while white students preferred the opinion tone; although both groups showed more evidence of formal than informal style, this was more pronounced in the case of the white students. The authoritative tone, formal style arrangement preferred by the African black students was not a strong choice for the white group; more striking in this regard however was the combination of opinion tone and formal style which was strongly adopted by the white group and was not adopted by any student in the African black group.

African black students were therefore more likely to show evidence of distance or detachment in their relation of concept to act, indicating perhaps a distancing or detachment of identity in the task context.

This group was also more likely to view this context as authoritative (where right and wrong is clearly distinguished), and their task as being to appropriate this tone and style. Where the task was interpreted as being to provide an opinion, this was always done in an informal style: opinion is thus distanced from Discourse context (which provides further evidence of identity distancing). White students on the other hand, provided less evidence of distancing through their preferred choice of the integrated structure. The task, for this group of students, was more likely to be interpreted as being to provide opinion: this did not present a problem within the Discourse context as indicated by their ability to combine this tone with a formal style. Familiarity with the discourse is thus more evident for this group.

6.6 Towards a cultural model account

This chapter has attempted to sketch individual understandings of the concept at the outset of study through an examination of the themes addressed in initial student essays. In addition, an attempt has been made to sketch the situated task meanings signalled by students in their essays. The final question asked in this chapter is whether, on the basis of the analyses results, inferences could be drawn regarding a ‘cultural model’ account of the concept.

Throughout this analysis, data were analyzed based on the division of this data into two groups (African black and white); although some instances were found where the analysis of an essay from an individual in one group was more in line with the general trend identified for the other group of students, for the most part, the findings obtained provided evidence that different cultural models, held by students from different cultural and educational backgrounds, might be operating in the context.

The section below provides a very broad generalization of the findings from each of the groups

studied. These findings are based on a 'majority position' in a collation of the individual analyses above: the description is thus an idealized version, rather than a true account, of the differences between the groups. It is possible that no individual student essay within either of the two groups fits entirely within the description provided below.

For the African black group:

The context is interpreted in terms of its formal Discourse requirements, but, for the most part, although there is recognition of these requirements, the ability to work within these is inconsistently achieved. Significantly, there is an attributing to the context of authority, seen not only in terms of its power / expertise dimensions, but also in a validity / accuracy sense. There is a 'right answer' that must be sought, regardless of the explicit instruction to provide 'own ideas'. The task is thus interpreted as a very explicit situating of self-as-student in the context and as an alignment of self with that context, in the context's terms. At another level of identity, this leads to a distancing of self from the context, due not only to lack of familiarity with the context, but also to the nature of the concept.

The concept itself is defined fairly simply (two-level structure), predominately through function, with complexity created through the assimilation of additional themes, rather than through analysis of themes. At a content level, the concept is seen primarily in terms of its social functions to maintain and regulate, with the functions at the individual level of protection, guidance and control. The origin of law is seen to be an important construct, with an exploration of its imposed or developed nature. Also important is an exploration of the authoritative nature of law: the level of determination by law, or individual choice with respect to compliance with law. The model of law adopted tends to be that of a process, seen in terms of an implementation account. The predominant contrast outlined is in terms of an opposition between the social

power effects of law, and its individual shielding effects.

For the white group:

There is strong Discourse familiarity evident, both in recognition of the formal Discourse context, and in the ability to operate easily within this context. Although the task is interpreted as being to provide opinion, the situation of this opinion within the formal Discourse style, as well as the provision of justification or reflection with regard to that opinion, provide further evidence of Discourse familiarity. Location of self within this context tends to be implicit rather than explicit, and there is no obvious distancing or disconnection of identity from the context.

Although the concept is defined primarily in terms of function, the concept structure relies as much on integration as it does on assimilation (three-level structure). With regard to content, the social function of the concept is seen in terms of regulation and creation, and the function at the individual level as guidance and protection. Variation is seen as an important aspect of the nature of law: this is explored in terms of diversity, evolution or differentiated form. A further important construct of law is its basis, which is explored in terms of understandings of ethics and justice. The model of law which is adopted is that of a practice, at either an applied or a theoretical level. The predominant contrast evident is between the social power effects of law and its relational nature: this contrast is not resolved, but is rather accepted.

The final note in this chapter must address the question of validity of analysis. The individual analyses performed are highly interpretative, relying heavily on a classificatory scheme devised specifically for this purpose. The joint accounts reflect a quantitative manipulation of this same data which has no status independent of the individual accounts. From other methodological perspectives, this analysis could thus be open to questions of 'accuracy'. In this research, however, the understanding that has been adopted (in line with Gee's notion of validity, see chapter 2) is that the

question that must be asked is not how accurately the analysis presents reality (although accuracy in process remains an issue,) but rather how ‘trustworthy’ the analysis is, and how generative it is for further research. The value of this analysis scheme within this research project is examined in chapter 9. With regard to trustworthiness, it is worth noting that there is a fair amount of overlap in these findings between the different analyses performed. This provides some evidence of validity in terms of analysis convergence, but should not be over-read, as the analysis in each instance proceeded from the same frame.

Trustworthiness can further be established by referencing findings obtained here to those found in the literature. The literature relating to the ‘Africanisation’ of law, or an ‘African Jurisprudence’ outlined in chapter 5 (see van Niekerk, 1998) provides some evidence for the existence of a distinguishable ‘African’ cultural model relating to the concept of law. Drawing from this literature, student conceptions of law based on African conception of jurisprudence could be expected to incorporate themes of protection (over sanction), social maintenance and guidance (over social control), communal values rather than individual rights, could be expected to incorporate contrasting notions in a non-conflicting manner, to promote themes of consensus and reconciliation, and, due to the fact that conflicts in indigenous law are all communal matters which are referred to the chief for resolution, and could be expected to lack differentiation of form.

Although perhaps more eloquently formulated here than in the research above, these findings do accord with the meanings found to be attached to the concept by the African black group of students. Maintenance and protection are the dominant functions; ‘rights’, which tend to be associated with Western notion of justice, do not feature as a predominant theme, much less as a basis of law; consensus and reconciliation are evident through explorations of the ‘developed’ origin of law; and there is no reference to form differentiation. Some evidence for the existence of a cultural model distinct from that held by ‘insiders’ in legal education (or the Western model more broadly) can thus be confirmed.