



Signature pedagogies and legal education in universities: epistemological and pedagogical concerns with Langdellian case method

Áine Hyland & Shane Kilcommins

To cite this article: Áine Hyland & Shane Kilcommins (2009) Signature pedagogies and legal education in universities: epistemological and pedagogical concerns with Langdellian case method, *Teaching in Higher Education*, 14:1, 29-42, DOI: [10.1080/13562510802602517](https://doi.org/10.1080/13562510802602517)

To link to this article: <http://dx.doi.org/10.1080/13562510802602517>



Published online: 14 Jan 2009.



Submit your article to this journal [↗](#)



Article views: 133



View related articles [↗](#)



Citing articles: 1 View citing articles [↗](#)

Signature pedagogies and legal education in universities: epistemological and pedagogical concerns with Langdellian case method

Áine Hyland^a and Shane Kilcommins^{b*}

^a*Department of Education, University College Cork, Cork, Ireland;* ^b*Faculty of Law, University College Cork, Cork, Ireland*

This paper offers an analysis of Lee S. Shulman's concept of 'signature pedagogies' as it relates to legal education. In law, the signature pedagogy identified by Shulman is the Langdellian case method. Though the concept of signature pedagogies provides an excellent infrastructure for the exchange of teaching ideas, Shulman has a tendency to portray the concept in Manichean terms with the forces of light of professional education (where students are engaged in a rigorous and systematic education) ranged against the forces of darkness of non-professional education (where students are non-participative and where education is to some extent in a state of flux). It will be argued in this paper that the signature pedagogy of law has a number of pedagogical and epistemological shortcomings that should make those from non-law and non-professional backgrounds cautious about imitating its various constituent elements in their respective disciplines.

Keywords: signature pedagogies; legal education; case method

Introduction

Many educators interested in higher educational issues are increasingly beginning to focus on developing mediums for the exchanges of ideas on the characteristics and dimensions of teaching practices which operate in specific domains. In particular, Lee S. Shulman, the eighth president of the Carnegie Foundation for the Advancement of Teaching, has developed an infrastructure, a common currency, to help trade teaching ideas across various departments and institutions. This infrastructure is known as the 'signature pedagogy', and it represents the ways in which knowledge is organised and presented in different disciplines. As part of this process, Shulman has become interested in professional education given its attempts to promote deep understanding, practical skills and higher order thinking. Professional education, it is argued, offers 'compelling educational challenges that can and should inform all sectors of education' (Shulman 2005a, 18).

In law, the signature pedagogy identified by Shulman is the Langdellian case method (sometimes referred to as formalism). It emphasises objective formal knowledge, the empiricism and rationalism of law, library learning, case law, and the operation of legal principles in a closed system. Langdellianism has many benefits. It encourages the coherency and determinacy of law, and its separateness from social, moral and political determinants. It also hones the analytic reasoning

*Corresponding author. Email: s.kilcommins@ucc.ie

and argumentative skills of law students. There are undoubtedly elements of this method which may be of interest to those interested in education in other professional and non-professional disciplines. But there are also epistemological and pedagogical flaws in the Langdellian model. The purpose of this article is to highlight these in the hope that they can act as a cautionary tale for all non-lawyers intent on employing Shulman's signature pedagogy of law to reflect on teaching in their own specific domains. The article will commence with a detailed look at signature pedagogies before examining their operation in law. It will then examine some of the inherent flaws in case method as a signature pedagogy.

The concept of signature pedagogy

Many commentators, looking to find 'a common language' between teaching and learning in the various disciplines (Huber and Morreale 2002, 3) are increasingly drawn to the education of professionals – such as architects, engineers, doctors, lawyers, nurses and accountants – where the aim is to mould a novice to think, act and conduct herself or himself like a professional in the chosen field (Sullivan et al. 2007, 22). Professional education, it is argued, is designed for deep understanding, complex practice, practical skills, ethical conduct and higher order thinking (Shulman 2004, 529) and a very important common thread is that course designers are all faced with the same demand – to prepare students for professional work and to align educational experience with professional ways of thinking, behaving and performing. This demand is usually met by dividing the professional learner's education into three segments or 'apprenticeships'. The first is *intellectual or cognitive*, and is premised on knowledge and ways of thinking. The second apprenticeship is *expert practice*; its focus is on practice-based learning, employing techniques such as case-studies, clinical training or simulated practices. The third apprenticeship is one of *identity and purpose*; this attempts to inculcate the professional learner with the values of the particular profession (its standards, code of conduct, responsibilities, norms of behaviour, etc.) (Shulman 2004, 28). Ideally, a learner in any of the professions should be initiated into all three apprenticeships. However, each of the professions value the various apprenticeships differently. In law, for example, it is argued that the intellectual or cognitive apprenticeship is strongly engaged in educating students, whilst the 'expert practice' apprenticeship has a more peripheral role.

At the Carnegie Foundation for the Advancement of Teaching in the US, there is a strong belief that professional education throws up interesting pedagogical questions that can illuminate all sections of education, but especially undergraduate liberal education where 'students are disengaged, invisible, unaccountable and emotionally disconnected most of the time' (Shulman 2005a, 24). Shulman urges those interested in pursuing 'trading zones' in teaching and learning to study the various forms of professional education because they are rich in distinctive forms of teaching and learning (Gardner and Shulman 2005, 13–18). For these distinctive forms of teaching and learning, Shulman has coined the phrase 'signature pedagogies'.

Although signature pedagogies can operate at all levels of education, they are mostly associated with professional education. The professions, it is argued, develop the most interesting signature pedagogies given that they must be of a standard that

satisfies both pedagogical and professional criteria. These pedagogies set epistemological boundaries in the respective professional fields and are organised in a manner that bridges theory and practice by persistently seeking to transform *knowledge attainment* into *knowledge in use* (Shulman 2005b). Signature pedagogies in the professions also have some common, distinctive features. First, the relevant signature pedagogy is pervasive. For example, the case-dialogue method in law, it is argued, is employed across all law courses. This deliberately ensures routine, helping to formulate ‘rules of engagement’ and inculcate ‘habits of mind’ (Shulman 2005c, 52–9). Novelty, which is a key pedagogical ingredient for teaching in other spheres, is not part of the pedagogical rules in the professions. The novelty, it is presumed, derives from the subject matter itself, rather than from the lecturer inventing new ways to present the material. Secondly, signature pedagogies in the professions almost always entail public student performance, emphasising the importance of active, visible, and accountable students.

In medicine, for example, the signature pedagogy is the ritual of clinical rounds, comprised of a ‘clinical triad’ of patient, physician, and student which embodies case presentations, questions, a discussion of alternative possibilities, working diagnosis, and treatment plans. In the education of the clergy, homiletics (learning to preach) is signposted as the key signature pedagogy, teaching students how to connect the interpretation of sacred texts with shifting social, political and cultural problems. Engineering faculties put students together in collaborative design studios, but again the emphasis is very much on accountability, visibility, and readiness to perform (Calder 2006).

Many of the common characteristics of signature pedagogies can be corralled under three headings: pedagogies of uncertainty, engagement, and formation. The first of these, *uncertainty*, refers to the natural habitat of professionals, a world of uncertainty where they will be required to think and act on their feet. Pedagogies of the professions are built somewhat around this uncertainty so as to socialise students to the world of practice (Shulman 2005b). In law, for example, teachers and students must be prepared for contingency in the lecture hall – the case law method ensures that unexpected questions can be thrown at students, and the lectures themselves may also be taken down unintended avenues of enquiry through the responses thrown up. Signature pedagogies are also pedagogies of *formation*, inculcating habits of mind through the routinisation of analysis, helping to construct ‘identity and character, disposition and values’ (Shulman 2005b). Shulman refers to the American Realist, Llewellyn (1960, 15) to further explain this thread. In Llewellyn’s famous book, *The Bramble Bush*, he urges first year law students at Columbia Law School in 1929 and 1930 to leave their consciences and common sense standards of fair play at the door of the lecture hall.

In terms of pedagogy of *formation*, Llewellyn was already in this introductory lecture inculcating in the students the notion that it would be their role in professional practice to anticipate what courts would do in a given situation, and tailor their clients’ conduct and desires in view of that anticipation. The ethics or fairness of the conduct or the desires of the client were far less important (in fact it got in the way) than the cold logic underpinning whether or not it would pass muster with judicial authorities. All the ‘bad man’ wants to know is what the courts will do in fact; it is the lawyer’s job to inform him, and keep him as far as possible the right side of the legal line. It is not the lawyer’s job to engage in a morality exercise about

the nature of the badness or its ethical consequences. Signature pedagogies are also pedagogies of *engagement* in that they are highly participative, demanding dialogical interaction.

Signature pedagogies have four dimensions. To begin with, they have a *surface structure*, which comprises the observable, operational features (of teaching, demonstrating, questioning, interacting and learning). They also have a *deep structure*, embodying assumptions about their respective rationales, and how best to prioritise, value and impart knowledge. Thirdly, signature pedagogies have an *implicit structure*, which embodies a core set of beliefs about professional attitudes, values and dispositions (Shulman 2005c, 52–9). In characterising and describing a signature pedagogy, Shulman also asks us to consider what it is not, or what is missing from its formulation and implementation. In particular, he asks us to consider what it does not address in terms of professional practice, what is the absent pedagogy in its configuration or what is the pedagogy that is only weakly engaged (Shulman 2005c, 52–9; Sullivan et al. 2007, 24).

In law, for example, the surface structure of the case law method comprises a set of dialogues about legal principles, reasoning and facts. This structure is controlled by the lecturer, but the student is required to actively engage. Its deep structure rests on the belief that what is really being taught is the ‘theory of law and how to think like a lawyer’ (Shulman 2005c, 52–9). This is ‘modelled through the relentless confrontation of interpretations in the inherently competitive character of the classroom’ (Sullivan et al. 2007, 24). What Shulman is referring to here is the craft of law, the analytic reasoning skills that underpins much of legal thinking and doctrine. The implicit structure of the case law method, its ‘hidden curriculum’, comprises issues such as the removal of moral norms and standards of fairness from the law student’s reasoning process, and an emphasis on developing confrontational skills. Finally, in considering what is missing from its pedagogical configuration, Shulman suggests that clinical legal education (performance and practice) is very much confined to a peripheral role in legal education (Shulman 2005c, 52–9). But though each signature pedagogy is flawed in some respect, they continue to survive and prosper. This longevity is another striking feature of signature pedagogies. They have not been surpassed by other pedagogical means. As Shulman (2005a, 22) suggests, ‘signature pedagogies survive because they succeed more often than they fail in producing student learning’.

Finally, professional education is seen as a continuum, defined by poles at either end – at one end, ‘by an exclusive emphasis on purely cognitive training in the classroom setting, and, at the other end, by an exclusive employment of forms of teaching tied directly to settings of practice’ (Sullivan et al. 2007, 81). All of the signature pedagogies fit in somewhere along this continuum. Moreover, the pedagogies of the professions can provide important insights for liberal arts programmes, other professional fields and for the training of teachers. This is an important thread running through much of Shulman’s discussion and interest in signature pedagogies.

Signature pedagogies and law

The signature pedagogy of law derives from the teaching approach adopted by Christopher Columbus Langdell, Dean of Harvard Law School, who in 1855,

introduced a new pedagogy in law that was designed around Socratic teaching. Prior to this, most common law jurists had emphasised the importance of artificial, natural law reasoning which was prone to be more subjective, speculative, value laden, and ultimately illogical (Davies 1994, 110). This new pedagogy placed law cases at the centre of students' learning, and demanded much more from the students in terms of analysis and defence of legal explanations. In particular, it involved a case-dialogue method, where students are called upon to recount facts, argue legal principles and explain their reasoning in the lecture hall before an authoritarian lecturer. All of this was designed to mirror the combative realities of adversarial proceedings. So, for example, in a lecture, the professor might demand a student, the facts of a case, the legal points at issue, the court's reasoning by reference to other cases, the underlying legal doctrine or principle, and the effect that an altered fact pattern might have on the outcome.

The case method was premised on a number of propositions. First, the study of law was designed around two *scientific* components: empiricism and rationalism. As regards empiricism, the raw data of appellate cases were for the lawyer what chemical compounds were for the chemist. Students were expected to read cases for themselves and discover and understand legal principles. The rational component was the assumption that legal reasoning must be deductive (Hoeflich 1986, 120). Rigorous logical reasoning, honed through reading case law, was the trump concern, even at the expense of other legal skills.

For this purpose, the *library* rather than the courtroom or law office was the appropriate workshop. As Langdell noted:

We have also constantly inculcated the idea that the Library is the proper workshop of professors and students alike; that it is to us all what the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists (as quoted in Hoeflich 1986, 120).

Thirdly, law is viewed as a *closed* system. Broader social, cultural, moral or political considerations should be abandoned in pursuing these hermetically sealed legal principles. In this way, law could be viewed as determinate, an 'apolitical, value-free, technocratic discipline' that was divorced from practical outcomes or concerns of justice (Carrington 1995, 707). Fourthly, the lecture method of teaching law was to be replaced by the Socratic *case method*, whereby general principles of law on particular issues would be worked out in the classroom through interaction between the lecturer and students on relevant cases (with the headnotes omitted) (Chase 1979, 332). In terms of student learning, this represented an important switch away from the emphasis on *learning legal rules* to an emphasis on *learning legal skills* (analysis, argument, reasoning, synthesis). Fifthly, the *casebook*, rather than the textbook, would be employed as a teaching aid in which the really important cases in a particular field were selected and arranged in systematic sequence (Kenny 1916, 187). Finally, Langdell's conception of law was '*court-centred*', premised on case law as the primary source and *modus operandi* of law (Twining 1985, 12).

Gradually, Langdell's case method approach became a model for most other university law schools who valued the systematic and rigorous training that it provided. The law schools of Columbia, Michigan, Northwestern, Western Reserve University, Cornell, Chicago, Cincinnati, Stanford, Illinois, Notre Dame, Hastings, New York and Yale all adopted the method by the early twentieth century (Kimball

2004, 34). It was also employed by Australian and English professors. As Theodore S. Woolsey at Yale noted in 1924, ‘The old way bred great lawyers. But like the caste mark of the Brahmin, the case system is the cachet of the crack law school of today (as quoted in Bartholomew 2003, 388)’. Langdellian case method has dominated US legal education for much of the twentieth century. There has also been much in the way of educational imitation in other common law countries, particularly in relation to the emphasis on formal legal rules and principles, with student learning structured and formulated around the lecture hall and the law library. It is thus a legacy which endures.

The significance of Shulman’s ‘signature pedagogy’ in law

The concept of signature pedagogy is undoubtedly a good one. Thinking about the assumptions, commitments, priorities and ‘pathways of enquiry’ that underpin teaching practices in a specific domain can act as an excellent heuristic device producing questions and critiques that can not only improve the actual domain but also be transferred across to other domains via the medium of ‘trading zones’. As regards legal education, Shulman was undoubtedly correct to identify Langdell as being deeply important and influential in relation to debates over the dominant paradigm of legal education (Kimball 2004, 277–338). Langdell will be forever recognised as the exemplar of ‘classical orthodoxy’ – emphasising the importance of substantive law and legal rules and principles – and the man most responsible for formulating the law school experience for students around the ‘library law’ and closer interaction with their professors. His adoption of Socratic dialogue encouraged lecturer–student interaction, ensuring better participation and deeper understanding of the legal issues being discussed. As Kimball and Blake Brown note (2004, 40):

His innovations – including the admission requirement of a bachelor’s degree, the graded and sequential curriculum, the hurdle of annual examinations for continuation and graduation, the independent career track for faculty members, the transformation of the library from a textbook repository into a scholarly resource, and the inductive pedagogy of teaching from cases – became the norm to which leading law schools, medical schools, and finally, schools of other professions in the twentieth century aspired. He thus transformed legal education from an undemanding, gentlemanly acculturation into an academic meritocracy.

Moreover, the case method (the signature pedagogy identified by Shulman in law), is important in training students in the basic skills of law, especially in analysing, distinguishing and synthesising cases. It also encourages students to trace historical precedents to their original sources, and hones their reasoning and argumentative skills in concrete situations. It is concerned with demonstrating what the courts would do in fact, excluding thereby social, political, theoretical and historical contexts. This encourages students to place rules into categorical systems, to understand law’s internal point of view. The desired learning outcome emanating from the case method is that a student will understand that law emerges from a rigorous analytical procedure called legal reasoning. In making a science of legal reasoning, it helps to validate the law, to give it a ‘structure of truth’. There are, however, weaknesses in the Langdellian approach, which may, in part, undermine its epistemological and pedagogical contribution. In the remaining sections of this

article, we will seek to demonstrate that Langdellianism, as an epistemological and pedagogical construct, has a number of shortcomings that undermine its credibility, and casts doubts on the desirability of its imitation in teaching in other academic disciplines (as Shulman desires).

The epistemological shortcomings of Langdellianism

To begin with, some of the criticisms of Langdell and his methods were quite personal. For example, an important Legal Realist critic, Frank (1933, 907), observed that ‘the method of teaching...used in law schools (and accepted by them as more or less sacrosanct) is founded upon the ideas of Christopher Columbus Langdell. It may be said, indeed, to be the expression of that man’s peculiar temperament’ (Frank 1947, 1303). Grant Gilmore, an influential American academic, surmised that Langdell was ‘an essentially stupid man’, and indeed employed the term ‘Langdellian’ pejoratively, to dismiss those who he perceived as being challenged as regards critical insight (Carrington 1995, 692). For him, the case method was little more than ‘a method of indoctrination through brainwashing’ (as quoted in Kimball 1999, 59). Similarly, Oliver Wendell Holmes, a justice of the US Supreme Court between 1903 and 1931, wrote that Langdell ‘represents the powers of darkness. He is all for logic and hates any reference to anything outside of it, and his explanations and reconciliations of the cases would have astonished the judges who decided them’ (as quoted in Blake Brown and Kimball 2001, 279–80).

More generally, commentators have also increasingly begun to question whether it was proper for law to be categorised as a science in the way that we perceive the natural or physical sciences. Is Langdellianism not merely dogmatism emphasising ‘taxonomic stock-taking’ (Hutchinson 1999, 302) through the raw data of reported judicial decisions? Is it not simply a vital part of the project of modernity whose primary function was to rid the western world of local, contingent, irrational, and non-objective phenomena? Interpreters of social rules that are designed to regulate human behaviour, do not always operate with data or methods which provide systematic exactitude or yield reliable predictions. Law is premised on facts and a grammar of rules that do not easily lend themselves to algebraic formulas. Of course, and as far as practicable, law should attempt to rout personal equations and the contingent from the courtroom so as not to be arbitrary, corrupt, or partial. This is an important ideal that should be strived for – and is enshrined in the conception of the Rule of Law – but Langdell goes further in attempting to make a science of law.

The value of cloaking legal method in a scientific garb are obvious; it will appear objective, value free, rational and fair. ‘Establishing the scientificity of law, as Davies notes, has “seemed an essential way of reinforcing law’s claim to truth”’ (Davies 1994, 97). This begs two questions? First, to what extent is our law system based solely on a rigid scheme of deductions derived from *a priori* principles? Secondly, even if it is not, could we guarantee that it would be in the future? As to the first question, whether law is a pure geometrical exercise, most commentators would agree that judicial decisions do not have an intrinsic order. They ‘are not the products of logical parthenogenesis born of pre-existing legal principles but are social events with social causes and consequences’ (Cohen 1935, 847). An analysis of cases in any particular field of law will not therefore simply reveal any rigorous science – premised solely on *a priori* propositions – in operation.

As to the second question, law is a social endeavour. This limits the extent to which certainty can be achieved. Because it is social (and normative), legal propositions are not verifiable in the same way that empirical propositions are (i.e. the boiling point of water). How, for example, can one be sure that different judges would arrive at the same deductions in any give case (given their social conditioning, the vagueness of language, and the elusiveness of facts). How, particularly in times of rapid social and industrial change, can it be guaranteed that for every legal dispute there is a fixed antecedent rule already in place which will permit simple, formal syllogising. In addition, is it sufficient and morally just that a judicial finding is valid simply because it follows a deductive logical form? What about the ethics of the finding, and the morality of the decision? Moreover, even the traditional sciences rely on particular ways of knowing and organising events and data that are not fixed and absolute (Foucault 1991; Kuhn 1970), but are influenced by power relations, shared beliefs, and subjective interpretations of collecting and interpreting data. All of these phenomena militate against the possibility of ever achieving the mechanistic application of deductive–inductive logic in law through the legal syllogism.

Other commentators would suggest that certainty and determinacy in law is a myth for a number of reasons. To begin with, fidelity to the *a priori* principles of the past in some instances will be unsuitable in a contemporary context having regard to changes in cultural, social, political, economic and moral contexts (Pound 1908, 605–23), and will demand that the trier of fact (judge or jury) either overturn the earlier precedent, or manipulate it to produce a fairer result. In this sense, legal rules are not hermetically sealed from broader considerations. Secondly, law is based on language, not algebraic concepts, and language by its very nature has an open texture that often gives rise to a number of legitimate interpretive choices. Language is not (always) a transparent, objective medium. It is enmeshed in subjective reference points (signifiers) for both the listener and the speaker (Patterson 1996, 151–80), that militate against the objectivity of interpretation. Langellianism, therefore, relies on a form of essentialism, when it posits the view that there are essential meanings to words that can be objectively understood through a process of adjudicative neutrality, rather than meanings having to be chosen through a process of interpretive construction.

Thirdly, much of Langdell's approach is also centred upon the reasoning set out in upper-court decisions. But these courts are not fully representative of the workings of the territory of law (Grossman 2006, 67) or even the court system more particularly. Moreover, there appears to be something indeterminate about the process by which judges deductively apply rules to facts as part of the seamless web of law. In short, there appears to be an element of hollowness to formalist claims about the objectivity of doctrinal legal rationality. Some commentators suggest that the coherency of law is inseparable from *subjectivity* (which formalism seeks to deny) (Balkin 1993, 103). To begin, there will be often a choice in the rules, principles or standards to apply (and the enforceability of same), or exceptions to invoke, thereby permitting arguments which purportedly follow the logic of legal reasoning to lead in different directions with different outcomes. Statutes, too, can 'be extended pretty widely and contracted pretty narrowly...to catch or let out the situation you are deciding' (Radin 1925, 361). It will also be possible to confine a particular ruling to its particular facts so as to avoid having to follow it. Thus doctrinal legal rationality is a process which is much more open to manipulation than that conceded by those

committed to Langdellian case method: ‘every decision is a choice between different rules which logically fit all past decisions but logically dictate conflicting results in the instance case’ (Cohen 1931, 215). Furthermore, whilst appeal courts mostly concern themselves with the niceties of legal particulars (substantive and procedural rules), trial courts have to contend themselves with facts, and facts by their very nature are elusive. They do not comprise the hard, objective, untainted data of science.

The interpretation of facts and legal rules are also in part based on the predispositions of the trial judge. Individuals are not asocial, apolitical or amoral automata. Although there may be specific reasoning skills, some commentators would argue that the ‘correct legal solution’ is usually nothing more than the ‘correct ethical and political solution’ at a particular point in time (Kennedy 1983, 20). We all have attitudes, preconceptions and beliefs, and operate within particular social and cultural paradigms, which colour our view of the facts and affect us in our judgments (Quinn 2002, 146). Why should judges be any different (Frank 1947, 1308)?

Of course, attempts to highlight uncertainty in our legal system can be as dogmatic and one-dimensional as Langdellian claims to certainty. Such attempts can ignore the inner logic of law and the importance of analogical reasoning, the constraints placed on the judiciary by fidelity to precedents and various canons of interpretation and construction, the importance to judges of being part of ‘an interpretive community’ who dislike their judgments being overturned, and the fact that many cases are relatively straightforward where there will be broad agreement on the relevant facts, legal principles and the interpretation of language (Dworkin 1986, 238–9; Hart 1961, 132). All of this is true. Nevertheless the issues documented here about the possibility of uncertainty in law should raise sufficient doubts about the epistemological credibility of Langdellianism as a means of producing truth in law. Law is more impermanent, flexible and artificial than formalists would have us believe. Moreover, it should also cast doubts on Shulman’s concept of *pedagogies of uncertainty* which he suggests is inherent in the signature pedagogy of law (Langdell’s case method). If one accepts, as Shulman does, that Langdellianism is the signature pedagogy of law, then it must be conceded that as a pedagogy it is premised on a logic and politics of certainty. That being the case, it seems impossible to incorporate an element of uncertainty into this signature pedagogy and remain consistent with its fundamental postulates.

The pedagogical shortcomings of Langdellianism

Langdellianism reified common law principles, premised on case law. By its very nature this gives students a very partial view of the legal system, ignoring for example all ‘law jobs’ that do not involve court work, but also downplaying other sources of law such as statute law which has grown exponentially in the recent past. But even its approach to court work was partial (Llewellyn 1935, 675; Pound 1939, 26), premised on the paper rules of casebooks (law in books) rather than actual court practice (law in action). But even if one ignores the distinction between law in books and law in action, his introduction of the casebook as the standard teaching aid can also be criticised for narrowing the reading horizons of law students. It also ensured that legal academics engaged their energies in largely unoriginal casebook research work, tracing the celestial lines of development of various legal rules emanating from

upper-court decisions, but never engaging in broader discursive analysis of the working of rules, the ideological, economic and socio-political currents running through them (Cohen 1935, 833), the dynamics of how they change, and the policy and contextual implications for choosing one rule over another (Lasswell and McDougal 1943, 203). The narrowness of Langdell's approach to legal education seemed ill-fitted for university life which was meant to stir the creative and critical emotions in students in a 'House of Intellect' type environment (Kahn-Freund 1966, 128; Twining 1995, 293). Can Langdellian law really be considered a university discipline if law students are not required to engage with the political, ethical and social consequences of the practice of law? As Griswold (1967, 300–1) asked about law teachers, 'We encourage imagination – in small ways, and perhaps in analogical reasoning. But do we encourage imagination in the broad sense? Do we encourage our students to devise new premises, to start out on whole new lines of reasoning, to come up with new solutions?' Finally, the case method also ensured that whilst learning was participative, it was hardly student focused. Its central axis point was the authoritarian law lecturer, who dictated the flow of questions before a large student audience (Feldman and Feinman 1984, 930).

Many commentators would also argue that the formalism advocated by Langdell was essentially conservative in nature, designed to preserve economic and political power in the hands of the wealthy and powerful. His approach to teaching law served to provide a cloak of legitimacy for the underlying structural inequalities of power which are imbricated in the cross-currents of society. It also helped inculcate a set of attitudes towards the legal system in society, exhorting in particular its legitimacy on the basis of its 'bloodless', apolitical and neutral nature (Banks 1999, 456). But this ideology of objectivity, egalitarianism and the strict application of rules masked and mystified law's partiality, particularly its capacity to preserve and maintain the status quo for those in power (Horowitz 1992, 253–4). In other words, although law, as part of an overall ideological hegemony, will serve the interests and values of the powerful, it is packaged as if it is value free.

Hiding behind the formal cloak of Langdellianism – and the search for *a priori* principles that could be deductively applied to facts – 'was a small set of operative first principles that were deployed to uphold the political imperatives of individualism, an adamant support of the most conservative interpretation of individual rights embodied in the Constitution; a preference for common law precedents over novel social legislation; an anti-majoritarian bias stemming from the conception of the individual as occupying a sphere of absolute rights broaching no encroachment; a preference for the continuity of traditional customs over the uncertainties of social progress; and a bias in favour of the interests of the privileged classes over the clamouring agitations of the oppressed' (Goetsch 1980, 231). This also had implications for legal education, particularly through the way in which teachers (unconsciously) mystify legal reasoning, thus serving a variety of hierarchical interests. As Kennedy noted (1982, 40–61), 'bias arises because law school teaching makes the choice of hierarchy and domination, which is implicit in the adoption of the rules of property, contract, and tort, look as though it flows from and is required by legal reasoning rather than being a matter of politics and economics'. Finally, formalism also has implications for legal practice, particularly the notion that what lawyers actually do is apolitical and independent, merely following the inner

technical logic of the law. This might be reassuring, but it is a denial of the political and social realities of legal practice (Hutchinson 1999, 307–8).

Conclusion

Shulman's thesis on signature pedagogies is undoubtedly an excellent heuristic device, producing questions and interpretations that can in the course of time be subject to comprehensive debate and analysis. The infrastructure he provides – through the *characteristics*, *apprenticeships* and *dimensions* of signature pedagogies – will help to assess pedagogical practices in specific domains, and it will also encourage the development of 'trading zones' more generally. These zones can offer much in terms of reflection on issues such as the different forms of evidence and argument valued by individual disciplines, techniques for making students visible and accountable, the importance of routine in learning, and the absentee pedagogies inherent in different teaching programmes. Shulman's identification of the Langdellian case method approach in law, for example, serves the useful purpose of bringing attention to bear on all of these issues (lecturer–student interaction, its emphasis on coherency and certainty, its absentee pedagogy, and 'learning to think like a lawyer').

But the purpose of this article has been to point out the flaws in Shulman's thesis that Langdellianism is the signature pedagogy of law. It is submitted that Shulman fails to appreciate fully the gaps between Langdellian case method and legal practice and the implications of Langdellianism (a desire for certainty) in relation to his *pedagogy of uncertainty*. Shulman believes that Langdellianism attempts to contend with the unpredictability of professional legal practice through this pedagogy of uncertainty, but fails to appreciate that as a pedagogy it is designed to make law students understand that law is certain, coherent and predictable. The unpredictability of professional practice is completely downplayed in Langdellianism and this has proved to be one of its enduring failures as a pedagogy. Indeed the absentee pedagogy of Langdellianism, i.e. clinical practice, facilitates the creation of this environment of *predictability* (thinking like a Langdellian law student), not *unpredictability* (thinking like a lawyer), but Shulman's surface level generalisations would prevent him from identifying such subtleties.

Shulman also confuses legal theory with the case method and employs the longevity and durability of Langdellianism as evidence of its success without seriously considering other factors that may be responsible (including inertia, financial attractiveness, politics, fidelity to tradition, and the priority given to pedagogical concerns in academic institutions). Finally, he accepts unquestioningly the scientific orientation of law, its certainty in application, its rejection of broader considerations, its ideology of impartiality and objectivity, and its participative nature. Langdellianism has its benefits, but those from non-law backgrounds who wish to imitate its constituent elements in other disciplines should be aware of the ramifications of adopting it as a strategy choice (its organisation around the lecturer rather than the student, its dogmatism, its rejection of other disciplines and the ethical dimensions of law, its narrow focus on particular aspects of legal knowledge, and its capacity to mystify real power relations and the subjectivity of decision making).

Though beyond the scope of this article, those from non-law backgrounds interested in signature pedagogies should also be aware that there has been a

pedagogic trend away from Langdellianism and towards making law more socially and culturally relevant, challenging the perception of law as a single monolithic expression of social rules. This, to some extent, has ensured that the learning outcomes for law have altered to reflect a 'House of intellect' type education as befitting of a university (incorporating interdisciplinarity) rather than a closed self-legitimizing educational exercise. This trend increasingly employs the use of techniques (from history, philosophy, sociology, English literature, psychology) which demonstrate that legal rules are very often premised on interpretive constructions that are not coherent, objective, or value free (thus facilitating a pedagogy of uncertainty that is anathema to Langdellianism). Thus whilst lecturers still continue to frame their subjects in terms of the relevant legal rules, increasingly they also encourage students to distrust the idea that rules as expressed in the form of legal doctrine 'are the heavily operative factor' in producing court decisions.

Furthermore, over the past three decades attempts have been made to make legal education more inclusive, to incorporate a greater variety of learning materials and to offer students more opportunity for critical engagement with the subject matter (Thomas 2006, 239–53). These attempts include much greater interdisciplinarity (law and history; law and economics; law and literature; law and sociology; law and politics); greater use of clinical legal education; an increased willingness to engage with theory (i.e. feminisms, critical race theory, etc); a greater emphasis on legal writing; an increased willingness to view law from the perspective of different groups (employees, women, persons with a disability, homosexuality and lesbianism etc.); the incorporation of policy perspectives designed to facilitate democratic change in society; the increased use of information technology and computers which moves lecturer–student interaction beyond the lecture room (the use of Blackboard, for example); the massive expansion in access to legal information (i.e. Westlaw, Lexis, Bailii) which moves the student learning experience far beyond the traditional casebook; an increased willingness to incorporate legal ethics into the curriculum; and an increased emphasis on student learning and student understanding. All of these streams are flowing in a different direction to that signposted by Langdell. Therefore, in addition to the epistemological and pedagogical flaws of Langdellianism, those wishing to seriously engage with it as a signature pedagogy must also take cognisance of the fact that many at the coal-face of legal education no longer want to be strait-jacketed by it in their dealings with students or their respective subject areas.

References

- Balkin, J.M. 1993. Understanding legal understanding: The legal subject and the problem of legal coherence. *Yale Law Journal* 103: 105–76.
- Banks, N.K. 1999. Pedagogy and ideology: Teaching law as if it matters. *Legal Studies* 19, no. 4: 445–67.
- Bartholomew, M. 2003. Legal separation: The relationship between the law school and the central University in the late nineteenth century. *Journal of Legal Education* 53: 368–403.
- Blake Brown, R., and B. Kimball. 2001. When Holmes borrowed from Langdell: The ultra legal formalism and public policy of northern securities. *American Journal of Legal History* XLV: 278–321.
- Calder, L. 2006. Uncoverage: Toward a signature pedagogy for the history survey. *Journal of American History* 92, no. 4. <http://www.historycooperative.org/journals/jah/92.4/calder.html> (accessed July 27, 2007).
- Carrington, P. 1995. Hail! Langdell! *Law and Social Inquiry* 20, no. 3: 691–760.

- Chase, A. 1979. The birth of the modern law school. *American Journal of Legal History* 23, no. 4: 329–48.
- Cohen, F. 1931. The ethical basis of legal criticism. *Yale Law Journal* 41: 201–20.
- Cohen, F. 1935. Transcendental nonsense and the functional approach. *Columbia Law Review* XXXV, no. 6: 809–49.
- Davies, M. 1994. *Asking the law question*. London: Sweet and Maxwell.
- Dworkin, R. 1986. *Law's empire*. Cambridge, MA: Harvard University Press.
- Feldman, M., and J.M. Feinman. 1984. Legal education: Its causes and cure. *Michigan Law Review* 82, no. 4: 914–31.
- Foucault, M. 1991. Truth and power. In *The Foucault Reader*, ed. P. Rainbow, 51–75. Harmondsworth, UK: Penguin Books.
- Frank, J. 1933. Why not clinical lawyers schools. *University of Pennsylvania Law Review* 81, no. 8: 907–23.
- Frank, J. 1947. A plea for lawyer schools. *Yale Law Journal* 56, no. 8: 1303–44.
- Gardner, H., and L. Shuman. 2005. Professions in America today: Crucial but fragile. *Daedalus*, 134 Summer: 13–18.
- Goetsch, C. 1980. The future of legal formalism. *American Journal of Legal History* 24, no. 3: 221–56.
- Griswold, E. 1967. Intellect and spirit. *Harvard Law Review* 81: 292–307.
- Grossman, L. 2006. Langdell upside – down: The anticlassical jurisprudence of anticodification. <http://lawbepress.com/expresso/eps/1004> (accessed August 20, 2007).
- Hart, H.L.A. 1961. *The concept of law*. Oxford: Clarendon.
- Hoeflich, M.H. 1986. Law and geometry: Legal science from Leibniz to Langdell. *American Journal of Legal History* 30, no. 2: 95–121.
- Horowitz, M.J. 1992. *The transformation of American law, 1780–1860*. Oxford: Oxford University Press.
- Huber, M., and S. Morreale. 2002. Situating the scholarship of teaching and learning: A cross-disciplinary conversation. In *Disciplinary styles in the scholarship of teaching and learning: Exploring common ground*, ed. M. Huber and S. Morreale. Washington, DC: American Association for Higher Education and The Carnegie Foundation for the Advancement of Teaching. <http://carnegiefoundation.org/publications/sub.asp?key=452&subkey=610> (accessed July 28, 2007).
- Hutchinson, A.C. 1999. Beyond black letterism: Ethics and legal education. *The International Journal of Legal Education* 33, no. 3: 301–9.
- Kahn-Freund, O. 1966. Reflections on legal education. *Modern Law Review* 29, no. 2: 121–36.
- Kennedy, D. 1982. Legal education as training for hierarchy. In *The politics of law*, ed. D. Kairys, 54–75. New York: Pantheon Books.
- Kennedy, D. 1983. *Legal education and the reproduction of hierarchy: A polemic against the system*. Cambridge, MA: Afar.
- Kenny, C. 1916. The case-method of teaching law. *Journal of the Society of Comparative Legislation* 16, no. 2: 182–94.
- Kimball, B. 1999. ‘Warn students that I entertain heretical opinions, which they are not to take as law’: the inception of case method teaching in the classrooms of the early CC. Langdell, 1870–1883. *Law and History Review* 17, no. 1: 57–140.
- Kimball, B. 2004. The Langdell problem: Historicizing the century of historiography, 1906–2000s. *Law and History Review* 22, no. 2: 277–338.
- Kimball, B., and R. Blake Brown. 2004. ‘The highest legal ability in the nation’: Langdell on Wall Street, 1855–1870. *Law and Social Inquiry* 29: 39–104.
- Kuhn, T. 1970. *The structure of scientific revolutions*. 2nd ed. Chicago, IL: University of Chicago Press.
- Lasswell, H.D., and M.S. McDougall. 1943. Legal education and public policy: Professional training in the public interest. *Yale Law Journal* 52: 203–95.
- Llewellyn, K. 1935. On what is wrong with so called legal education. *Columbia Law Review* 35, no. 5: 651–78.
- Llewellyn, K. 1960. *The bramble bush: On our law and its study*. New York: Oceana.
- Patterson, D. 1996. *Law and truth*. Oxford: Oxford University Press.
- Pound, R. 1908. Mechanical jurisprudence. *Columbia Law Review* 8, no. 8: 605–23.

- Pound, R. 1939. A generation of law teaching. *Michigan Law Review* 38, no. 1: 16–29.
- Quinn, G. 2002. The judging process and the personality of the Judge: The contribution of Jerome Frank. *Judicial Studies Institute Journal* 2, no. 2: 141–62.
- Radin, M. 1925. The theory of the judicial decision: Or how judges think. *American Bar Association Journal* 11: 357–62.
- Shulman, L. 2004. Theory, practice and the education of professionals. In *The wisdom of practice*, ed. L. Shulman, 521–44. San Francisco, CA: Jossey-Bass.
- Shulman, L. 2005a. Pedagogies of uncertainty. *Liberal Learning* 91: 18–25.
- Shulman, L. 2005b. The signature pedagogies of Law, Medicine, Engineering, and the Clergy: Potential lessons for the education of teachers. Math science partnership workshop, February 6–8, 2005, in Irvine, California. <http://hub.msnet.org/index.cfm/11172> (accessed July 27, 2007).
- Shulman, L. 2005c. Signature pedagogies in the professions. *Daedalus* 134, no. 3: 52–9.
- Sullivan, W.M., A. Colby, J.W. Wenger, L. Bond and L.S. Shulman. 2007. *Educating professionals: Preparation for the profession of law*. San Francisco, CA: Jossey-Bass.
- Thomas, P. 2006. Legal education: Then and now. *The Law Teacher: The International Journal of Legal Education* 40, no. 3: 239–53.
- Twining, W. 1985. *Karl Llewellyn and the realist movement*. Norman, OK: University of Oklahoma Press.
- Twining, W. 1995. What are law schools for? *Northern Ireland Legal Quarterly* 46, no. 3: 291–303.