

**FROM 'PARADISE' TO PRAGMATISM – REFLECTIONS ON A VISIT
TO YORK LAW SCHOOL FROM THE PERSPECTIVE OF
A LARGE, TRADITIONAL, CONTINENTAL LAW SCHOOL**

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York Law School benefited from a privilege of being established only ten years ago. Although universities and law schools in particular cherish their long history, it gave York a chance to design their curriculum and pedagogy from scratch and establish a teaching team committed to that. For various reasons² they decided to introduce an intellectually robust yet practical, skills oriented, curriculum based on the application of theory to practice using problem-based learning (“PBL”). Doubtful as it may have then appeared, ten years of experience have brought student satisfaction, respect from other law schools, some of which are even trying to learn something from York, and certainly good ratings.³

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² The problem-based learning approach had already been used at York medical school and as a newly designed law school, York probably wanted to distinguish itself on the law school market. Last, but not least they considered this way of law teaching a good (if not best) way to teach law.

³ York Law School is a highly rated law school. See for example rankings at <https://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=law> or <https://www.theguardian.com/education/ng-interactive/2017/may/16/university-guide-2018-league-table-for-law>.

Following recommendations from various clinicians, I decided I needed to see York teaching strategies with my own eyes. The reality might, after all, differ from University PR including its website praising the school as an *'inspirational place for both study and research... with innovative teaching and forward thinking approach that keeps us at the forefront of legal education.'*⁴ I must confess it did not.

For a week, I found myself in the middle of a well-oiled educational machine, following elaborate curriculum consisting of a very large number of given scenarios, case studies, analytical exercises and clear and articulated lesson plans put together in a thoughtful way to guide students from first shy steps towards leaving in three years as lawyers, at least partially, equipped for their future careers. Now, every law school, at least in theory, shares this goal and many law schools may achieve this. It was however the practical curriculum at York, more than previous visits in the UK, US and elsewhere, that made me seriously reflect on the way we educate lawyers in continental Europe.

York, at least to my knowledge, chose PBL as the main teaching method because it had already been successfully used at York medical school. As a newly designed law school, York probably wanted to distinguish itself on the law school market. Last, but not least they considered this way of law teaching a good way to teach law. Problem-based learning is a student-centred approach to teaching that makes students learn through the experience of solving open-

⁴ See <https://www.york.ac.uk/law/>.

ended problems introduced by teachers (usually called tutors). These problems might be real or fictitious and students in small groups (usually 6-12) analyse them, identify legal issues and agree on what more they need to know and how they will obtain information they lack. The focus is not so much on solving the problem, but on proper analysis of the problem. Once the group identifies what needs to be found out, each student individually does the research needed and the group meets again to discuss what they have found out and how it helps them to understand the problem. Teachers do not lecture, but just briefly introduce the problem and then leave as much activity as possible on students. Only when they struggle too much, omit important legal issues or fail to find key literature or cases, teachers step in to gently navigate the group. Apart from searching for the solution of the presented problems, this type of learning aims at cultivating students' skills and attitudes. Initially used in medical schools, problem-based learning is now being used for teaching other disciplines, including law.⁵

PBL, as well as other alternative teaching methods, naturally has its limits: teachers need to be well trained (especially to hold themselves back and let students take their time to solve given scenarios, and to only subtly guide students towards expected goals when they are lost) and students need to be

⁵ See Grimes, R. (2014). *Delivering legal education through an integrated problem-based learning model – the nuts and bolts*. International Journal of Clinical Legal Education. Vol 21, No 2, [online] Available at: <http://www.northumbria-journals.co.uk/index.php/ijcle/article/view/388> or Hedlund, R. (2018). *A case study from York*. In Grimes, R. (2018). *Re-thinking legal education under the civil and common law: a road map for constructive change*. New York, NY: Routledge, pp. 47-59.

far more active than students traditionally are. To make sure students understand how important their own activity for the whole learning process is, all York students are interviewed before being accepted, well-informed about the specifics and demands of York law school and welcomed in a special culture where the majority of students adopt rather active roles. Each student also has their personal tutor from members of the school staff. Of course, York benefits from being an alternative to more traditional British law schools and undoubtedly attracts students more inclined to participatory learning. PBL as well as other alternative teaching methods might not suit everybody, but the same surely applies to traditional teaching methods. Many lecture halls in classical law schools are far from being overcrowded since a number of students decide to acquire information by other means.

Coming from an institution with its roots in the Middle Ages (1348), teaching masses of students through lectures (more than 600 in each year) and seminars for groups of up to 40 students, a week in York made me wonder whether a traditional continental law school can implement any of the successful practices of the York curriculum. The first encounter made me feel that unless I became a minister of education or established a completely new law school there is no way to transform York experience into our everyday practice of law teaching. Day after day at York, however, I was recovering from the first impression and started finding ways to imagine the transfer of York's good practice to the setting of the continental law school. In this paper, I attempt to summarize the

main points of inspiration that could relatively easily improve my work and that of my colleagues in the more traditional law schools in continental Europe and possibly elsewhere. They are not unique to PBL which makes them even more suitable for using at other law schools, even though they do not fully implement PBL.

Small groups are key to effective learning. Lectures to several hundreds of students, and seminars for 30 – 40 participants, are still an unfortunate norm in number of traditional law schools. The experience of teachers in York and elsewhere suggest that everything works better in small groups.⁶ They are the foundation for learning at York Law School. Students know each other and their teachers, who likewise know the students and are able to observe and support their progress. The groups of around 10-12 students with the same group membership throughout the academic year meet regularly (once or twice a week) creating a secure, even intimate, learning atmosphere which promotes trust, cooperation and responsibility within the groups, founding

⁶ As Professor Warren Binford summarizes it, “Over 700 studies have confirmed what many of us know based on our own experience as students: Lectures are among the least effective methods for achieving almost every educational goal ever identified. In fact, for some education goals, lectures have been identified as the least effective learning method. Others suggest that they may be worse than no teaching at all since attending a lecture leads to less studying afterward.” Binford, W. (2015). *How to Be the World’s Best Law Professor*. *Journal of Legal Education*, Vol 64 No 4, pp. 542-561. See also Attard, A., Di Iorio, E., Geven, K., & Santa, R. (2010). *Student-Centred Learning: Toolkit for Students, Staff and Higher Education Institutions*. Brussels: European Students Union; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; Tiberius, R. G. (2013). *Small group teaching: A trouble-shooting guide*. Routledge; or Springer, L., Stanne, M. E., & Donovan, S. S. (1999). *Effects of small-group learning on undergraduates in science, mathematics, engineering, and technology: A meta-analysis*. *Review of educational research*, Vol 69 No 1, pp. 21-51.

stones of all effective learning. If those of us teaching at large continental law schools cannot influence the number of students enrolled in our compulsory subjects, we can certainly limit student numbers on optional courses, accepting only 10-20 students. In larger compulsory seminar groups, activities such as fishbowl or role-play⁷ can be performed by 10-15 students with the rest of the class observing and reflecting on the performance. This is an option available for any subject.

Another huge advantage of small groups is that it allows and sometimes even supports students to assume active roles, a function traditionally belonging to the teacher. When students are given clear instructions, materials and outcomes (or indeed encouragement to find their own learning goals), they are able to assume much of the work that is traditionally expected from the teacher – bringing facts, presenting cases, chairing discussions and making notes of the most important points said. Teachers may turn into active observers, helpers, commentators and tutors asking students important questions and reminding them of what they might be missing in their discussions or research, and still be doing their teaching job correctly. In fact, in some aspects even far more effectively. It is, after all, an educational myth to believe that the more words a teacher says during the class, the better s/he is and the more students

⁷ See <http://www.teachingmethodsonline.com/etm/m75/> and Silberman, M. (1996). *Active Learning: 101 Strategies To Teach Any Subject*. Boston: Allyn and Bacon, 1996.

understand.⁸ Often, it works the other way round: a good teacher says only little and lets the students do the work instead. “Talk less, teach more” is an insightful slogan Law Society of Ireland has put on their T-shirts to remind themselves that talkative teachers tend not to be the best teachers.

Another good way to keep teachers’ talking down and student participation up is to change traditional **room seating** – more often than not comprising of rows of desks facing the lectern. On many occasions I have considered moving the classroom furniture at my law school, breaking rows of desks into more discussion-evoking seating, where the teacher is not the centre of attention all of the time. It takes some time and effort to do so – not to mention noise! Having been to a law school where alternative seating is the norm, I now promise myself not to hesitate in the future anymore and will ask my students to change the room seating on every occasion if this complements the method and subject for study at that particular session.

⁸ Many authors stress the key importance of student’s activity for efficient learning. It is an integral part of constructivism, a theory of learning stressing that students must construct and reconstruct knowledge in order to learn effectively, as well as all of the student-centred learning strategies, experiential education, action learning, participatory learning (and participatory teaching methods) and many other alternative teaching and learning approaches. See Attard, A., Di Iorio, E., Geven, K., & Santa, R. (2010). *Student-Centred Learning: Toolkit for Students, Staff and Higher Education Institutions*. Brussels: European Students Union; Lea, S., Stephenson, D. and Troy Y. (2003). *Higher Education Students’ Attitudes to Student-Centred Learning: Beyond ‘Educational Bulimia’*. *Studies in Higher Education*, Vol 28 No 3, pp. 321–334; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; McCabe, A., O’Connor, U. (2014). *Student-centred learning: the role and responsibility of the lecturer*, *Teaching in Higher Education*, Vol 19 No 4, 350-359; Stuckey, R. T. (2007). *Best practices for legal education: A vision and a road map*. Clinical Legal Education Association, pp. 119-132; or Silberman, M. L. (Ed.). (2007). *The handbook of experiential learning*. John Wiley & Sons. For the importance of attention for memory retention, see also Shaw, J. (2016). *The memory illusion: Remembering, forgetting, and the science of false memory*. Random House.

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Over the time, with the help of like-minded colleagues we might even persuade the law school administration to change the default room seating in couple of classroom.

Most law teachers realize that no matter how hard they try, their students need to work in between the classes in order to progress their understanding of law.

However, many students do not do their homework and are not well prepared, which can adversely affect following classes. What are the ways around it? The

York experience advises us not to give up and instead of working less with the homework, so that our lessons are independent of how well the students prepared, but to make homework far more central part of the following lesson.

This can be done by devoting part of the class to answering questions from self-study, identifying important legal issues and linking it to previously acquired

legal knowledge. In this way, students will learn that preparation is key and an integral part of study. Working intensively with homework helps to bridge

lessons and support the idea that learning is a continuing process, which cannot be fully satisfied during classes or in the exams period. For reasons given

above, it is clearly easier to persuade your students to prepare for lesson in small-groups environment, but the above described principles apply equally to

larger seminars. Bigger groups support anonymity and reduce chance to be called upon, but the choice whether and to what extent to work with homework

is still up to the teacher to decide.⁹ Another York experience advises teachers to pass, at least for part of the lesson, the role of a chair to a student. When students take turns in chairing discussion about what they have learned when doing their homework, peer pressure is on teachers' side and motivates the students to prepare.

Another York way to motivate students to work in between classes is to introduce **reflective journals**. Following the reflective learning principles, journals help students to see their learning as a process in which they are continually required to look back on their and the groups experiences and actions in order to improve their own and everyone else's knowledge, skills and attitudes and how they might now approach new tasks or their learning more generally. Such journals do not have to be formally assessed, or at least not unless the curriculum calls for that at certain points. They represent a far freer form of capturing learning (unlike e.g. essays), are personal to each student (unlike reading cases or articles) and represent a useful tool for tracking learning progress. Journals might be submitted to teachers for their comments, but given time constrains in bigger classes, they may also be submitted only at key points for the award of relevant credits. Alternatively, students might be obliged to submit them two or three time every semester knowing that the

⁹ Arguably one way not to encourage your students to prepare is to use a police-like approach heavily built around powerful external sanctions. Notoriously, some US law schools operated around this model, which is captured e.g. in the *The Paper Chase* movie from 1973.

teacher will send their comments only to e.g. one student out of four. Another option is to ask graduates of the particular subject to help with providing feedback to new students, or ask a fellow student to read the work of their colleagues. It should not be difficult to provide for confidentiality and their feedback, enriched with their recent experience of the same course, might be very useful to new students. On top of that, credits need not to be given based on “correctness” of the journals and information they contain, but predominantly on the fact that students were reflecting their learning experience and able to identify what they need to do better (and why) in the future.¹⁰

An understandable fear of a traditional teacher is that students will not keep their journals. After all, many fail to do even their seminar homework, which tend to be less frequent. To prevent that, it helps to introduce the journals at the very beginning of the course and make sure students really understand all benefits of keeping them – ideally students formulate the benefits themselves in a role play or other interactive activity. One of the most important points is to be aware that journals help students to track their progress. Some pressure is taken away when students learn that the form and language of the journal in

¹⁰ For more information on assessment, see Gibbons, J. *Assessment in legal education: qualification or quantification?* In Grimes, R. (2018). *Re-thinking legal education under the civil and common law: a road map for constructive change*. New York, NY: Routledge, pp. 135-142 or Grimes, R., Gibbons, J. (2016) *Assessing experiential learning – us, them and the others*. International Journal of Clinical Legal Education. Vol 23, No 1, [online] Available at: <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/492>.

mostly up to them. After all, some students in fact enjoy writing, especially when they are not held back by formal restrictions, which are rather typical for legal documents. Example journals of students from previous courses might serve as a motivation too.

Additionally, the existence of reflective journals gives lessons a natural ending point: each student (or only some students in larger classes) formulates what they take from today's meeting and are asked to note it down and expand on this in their journals. The necessity to formulate in what way, if any, today's lesson has developed their knowledge, skills or understanding of law is a simple, but surprisingly powerful learning tool. For the teacher this can be rewarding too, because you leave the class with numerous examples of what your students have actually learned and clues to what might be done differently and better in future classes. Ending your lessons in this way naturally helps your students to keep their journals, because they leave the session with the core of their entry ready. Since all teachers fight with time constraints, it is very easy to skip the reflective stage of each lesson, especially when teaching university students who we tend to believe must know how to reflect on their learning progress. The truth is that they generally don't and if they do, they might become far better at it, with the help of their teachers. Even if you don't want your students to keep their journals (yet), your lessons can still end with the "What have you learned today?" question.

When walking through corridors of traditional law schools and listening, unless there is a break, you will mostly hear one dominant voice through each door. The voice belongs to the teacher. Alternative schools such as the York one attempt to include where possible in every class an experiential element that makes students get on their feet (literally or metaphorically), engage in small group discussion, play out a scenario that helps them to experience principles and to apply that knowledge and to revisit the subject time and time again to reinforce and develop the learning. Put simply: instead of talking about things, let the students experience them through carefully designed case studies.¹¹ Students' engagement logically increases their motivation and coupled with reflection through journals and discussion enhances the learning process. A visitor to this type of a law school hears, to revisit our previous example once more, a mix of voices, most of which are rather young.

The overall principle that runs through personal engagement and experience and the examples of best practice described above is connected to the issue of responsibility. Who bears larger amount of responsibility for the process of learning? The teacher or the students? At York there is no doubt that it is up to the students to be engaged during small group seminars, to play active part in simulations, role-play and various games, to do their homework and be ready

¹¹ They might demonstrate different philosophical approaches to the law, let students simulate alternative dispute resolution or results of cooperation and non-cooperation of both parties to a contract.

to discuss its results in the following class, to track their learning progress in reflection journals and to identify and fulfil their learning outcomes. To put it simply – to assume responsibility for their own studies. As challenging as this sounds, it can be equally difficult for teachers to let go of their typical all-powerful position. Traditionally, teachers were responsible for everything – from classroom equipment, providing a safe learning environment and having sufficient knowledge to design, impart and control the substance of students' learning and progress. Alternative approaches ascribe teachers an equally crucial and active, but less obviously leading position as supporters, mentors and helpers. Strange as it may sound at first, in combination with students' responsibility for their own learning progress, it appears to be more effective role than that of the clear lesson leader.¹²

All of the mentioned elements of York approach to law teaching can be, at least partially, implemented into a large continental law school practice. What I still find hard to imagine is to follow York decision not to teach traditional subjects (civil law, land law, criminal law, tax law), but to arrange case studies and scenarios in such a way that students simultaneously deal with matter from several legal disciplines. It certainly prepares students better for the practice, in

¹² See Bujan, J. (1996). *Increasing Students' Responsibility for Their Own Learning*. Available at <https://eric.ed.gov/?id=ED400072>; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; Beard, C., & Wilson, J. P. (2013). *Experiential learning: A handbook for education, training and coaching*. Kogan Page Publishers, chapter Coaching and facilitation, good practice and ethics, pp. 53-90.

which your boss typically asks you to “solve the legal issue”, not to “look at it from labour law perspective only”. To implement this approach, however, means to dissolve traditional division of law into subjects and branches and expect law teachers to teach several subjects. That would be nothing less than a revolution, which for its success needs years of preparation and a persuasive dean able to gain general acceptance of the teachers. Before it happens (if it ever happens at all), every teacher willing to improve their teaching may enrich their classes with tips described earlier. Luckily, they need neither approval nor cooperation of their colleagues for that.

Even if the law school holds on to its more traditional curriculum and pedagogy, individual teachers can of course decide to apply the problem-based learning method in their seminar, especially in voluntary courses where it is up to the teacher to decide course outcomes and number of participants.¹³ Their students will, I believe, benefit from their decision, but the consequences of this change will understandably be only limited, since many other school classes will continue to be delivered in a traditional way. It is understandably tempting to think that the only way to transfer what PBL teaches is to introduce the full version of it at your law school, ideally in more subjects at once. Even though I would like to see this rapid change at many law schools, in this text I argue for

¹³ It may be more difficult in compulsory subjects as outcomes are defined by the head of the department (e.g. civil law), guarantee of the course (mostly a distinguished professor) or agreement of all colleagues teaching the particular subject. Additionally, students will be assessed based on these outcomes, not alternative approaches tried out in seminars.

a pragmatic approach: if it is for various reasons not possible to transplant the full PBL version, let's introduce at least its elements described in this text. They have been chosen in the way that even traditional large law schools can implement them rather easily and promptly, especially in elective courses. What PBL does greatly is that it encourages student participation and responsibility for their learning outcomes. The full version, of course, does it better than individual elements described in this text, but even they have a potential to spark student engagement and responsibility. As teachers employing these elements would confirm, even these relatively minor changes bring significant changes.

Should a group of devoted teachers or even the school management decide to implement problem-based method in its full version, it makes sense to apply it to students of one particular module.¹⁴ A practical skills module, containing subjects aiming at developing students' presentation, interviewing and argumentative skills, appears to be a natural start for such a change. The good practice might then start spreading, or the module might remain unique in the teaching methods it applies.

All of the described principles, techniques and pieces of good practice naturally work best when applied in a complementary way. However, it is true in ecology as well as pedagogy that every little counts. Even a small enrichment

¹⁴ By a module I mean a group of subjects that share same area of law (e.g. civil or criminal law) or outcomes (subjects aiming at developing students lawyering skills).

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of a standard large continental law school curriculum and pedagogy will deliver its results over time. Neither teachers nor curricula typically change overnight. Should one piece of my York experience enrich the teaching style of a reader, my text by all means fulfilled its goal.