Mikkel Jarle Christensen
Oktober 2016

TLHE programme case study

How Students Press for a Hidden Curriculum: An analysis of structural challenges in course design.

Graham Gibbs (1999) seminal text on strategic assessment of student learning was one of the building blocks for the creation of the new course *Law, morality and politics* (LMP) – a mix between sociology of law and legal philosophy. My case study is an analysis of this course, its implementation and some of the challenges – mainly structural, but also more social in nature – that are not featured in Gibbs' article. As such the study will highlight potential challenges to Gibbs' model or to successful implementation of this model. The empirical material for the survey has been collected during the seven weeks of active course work and is composed of statistics on student participation as well as more qualitative material collected at the end of specific classes in the form of a questionnaire sent to all students in my two classes.

The course in summary

The course is mandatory for all 6th semester students at the Faculty of Law; some 600 students. The individual classes have 50-55 students. It is organized around a portfolio exam as students hand in weekly papers every Wednesday following an introduction class Monday. The Monday and Friday session are both organized around exercises targeted helping the students reflect on the relation between the texts and the case: how the text can be used actively to analyze the case in question. The concrete usage of the text on the case is then evaluated every Friday, using concrete examples from the students' own papers focusing on the best examples. The student had the option of handing in seven papers in total during the course but only two were mandatory. At the end of the course they had to select the two papers they thought were the best. They then formed part of the portfolio exam alongside a 24-hour home exam that used the same theoretical texts they had been trained in using during the seven weeks of course work. The exam tests the ability of the students to identify relevant concepts in a theoretical paper and use them actively in an independent analysis.

I have been a central part of designing the course from the very beginning and have been responsible for its sociological and pedagogical elements in particular.

The teaching is problem based. Each week is organized around a concrete case of legal sociological and philosophical relevance. For this case, four different theoretical perspectives, two from each discipline, are provided and introduced Mondays. The students must choose one of the four perspectives and four related questions as his or her answer for that week's part of the portfolio exam. Fridays are reserved for collective feedback on the case of the week where the teacher draws out the best answers and uses them as the point of departure for discussing the different ways of answering the respective questions. This feedback mechanism was planned to evolve and half way through the course the collective feedback was supplemented with individual peer feedback in small groups. This process was meant to alleviate the pressure of correcting all papers ourselves, an option not possible with more than 70 students, and to help the students internalize the quality criteria they need for selecting the two papers that go into their portfolio exam and to complete the 24-hour element of their exam.

The purpose of this structure was to make sure that the out-of-class work of the students was actually allocated to work that matched their exam. The seminar classes were aimed at supporting this activity but in reality most learning took place in study groups and in the individual papers where students would delve into a specific topic, pick a specific theoretical text and demonstrate active and independent use of this text on the case at hand.

The number of students who replied to the questions fluctuated. Out of a total of 76 students (one class of 48 and one of 28) a total of 17 handed in the first case (8 and 9), 23 handed in the second (13 and 10), 35 the third (22 and 13) 42 the fourth (29 and 13), and finally 33 the fifth (20 and 13). The number of students who attended the classes also varied from an average of 25 the first weeks for the first group and 14 for the second to 10 and 6 the fourth and fifth case. Numbers spiked in the sixth week where more than 40 and 16 attended the introductory seminar class.

A culture apart

From the very beginning, there was a widespread skepticism towards the class from a loud group among the students. They saw it as too difficult and were constantly looking for the 'hidden curriculum' that could help them pass the exam with a minimum of effort. Their frustration was increased by the fact that the course did not offer fixed solutions and predefined questions. In other words, the exam and the course itself is radically different from anything else they learn during their education at the Faculty of Law.

While there was a large degree of selectivity among the students both classes had a number of students who handed in every week. These students significantly increased the quality of their work, something that also showed on the evaluations we did in class every Friday. Not only did the quality of their written work in the form of the language and structure of their papers increase they also showed a better understanding for the threshold concepts of the respective philosophers and sociologists they chose to work with. The very concrete work of the 'Friday Lab' as we started calling it also increased their confidence when choosing a handling a specific text – identifying core concepts they wanted to use actively. As a bonus these students also reported spending less and less time on their papers – papers that paradoxically became better and better.

In other words, the classes became split in two different groups. Students who handed in almost every week, and students that did not. Among the most active group there were both 'cue seekers' and 'cue conscious' and they generally took and implemented most feedback, collective as well as individual. 'Cue deafness' was generally only found in the remaining group, a sign that the most active group possibly also represented some of the stronger students.

Generally the strategy of the course yielded appropriate learning activities, but mainly among a select group of the students (related to points 2,3 and 4 of Gibbs typology cf. Gibbs 1999, 47). While the students are still generally unsure whether they have the ability to assess the quality of each-others work, sampling of the students peer feedback exercises show that they are able to capture some of the most fundamental mistakes and problems if supported by comprehensive collective feedback and examples of best practices.

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Structural difficulties

A problem not raised in Gibbs article is the structural difficulties related to the teaching of a whole year where students can in fact vote with their feet. Structurally the choice between 'voice' and 'exit' as A. O. Hirschman (1970) identifies as ideal typical responses to dissatisfaction in an organization is askew in the case of teaching a whole year. More concretely, the different styles of the teachers assigned to the course led to students following the courses of other teachers. While I have not been able to ascertain how many of my potential students have 'exited', the professor of the course ended up teaching for over 100 students four times a week, some students routinely bringing their own chairs. Something that further made the group work and discussions originally envisaged as part of the course difficult.

Asked directly why they seek out other teachers, the students answer that the professor 'explains everything in detail' and that they feel his answers were more authoritative. In other words, the exercise based teaching seems to have been in competition with what the students perceived to be the truth spoken by the professor. Although there is no 'hidden curriculum' as such in a course where all questions are relatively open, the students seem to be under the impression that the professor of the course gives them a better access to an easier way to pass the course. Another element could be that the professor is precisely a professor. Academic hierarchy is not lost on the students.

The perception of the professor as being the voice of authority is also visible in other cases. In a complaint case made against the course by a group of students this is evident in the claim that the professor has provided his students with a "best practice" structure for the portfolio exam. Going through the power points such a structure is nowhere to be found, but it is the collective perception of the students that such an esoteric structure does exist and is being kept from the students who did not follow the teaching of the professor. Indeed the inflow of students to the professor's teaching was in itself a factor that made the idea of feedback difficult. With more than 100 students in each class the professor necessarily had to resort to a more 'old fashioned' role.

The tendency to actively seek out what is perceived as an easier and more authoritative way of receiving education runs contrary to what we had actually envisaged when designing the course. In fact other teachers testified to 'civil disobedience' as students actively searching for ways of teaching that were actually abandoned with the study reform of 2011: concretely students expressed desire for forms of lecturing in which they could remain passive and receive the wisdom of the professor. The culture clash between the course and the student culture could be an explanatory factor in this dynamics as the students' frustration at the difficulty of the texts and the weekly demands threatened to begin a veritable race to the bottom where teachers feel obliged to help the students meet the standards of the course, explaining the theories in detail and guiding them in the direction of the right response or the right type of response. This has also triggered a predictable social reaction from some teachers nervous about losing to many students and being stuck with a small class. The students exerted substantial pressure on the individual teachers to construct a 'hidden curriculum' even if it went directly contrary to the pedagogical reflections on which the course itself was founded.

These problems are not addressed by Gibbs but form a central challenge for any course that deals with as a lot of students and where activity goes on under different teachers as is the case with *Law, morality and politics*. Voting with their feet and choosing to exit the class rooms the students are in fact putting

considerable social pressure on the teachers afraid of being seen a bad educator among colleagues or the students . This social pressure coexists with the constant appeal for more help from the teachers that prompts them to return to more old fashioned forms of teaching as it is the only way 'they can get around the many texts'. Strikingly the students who chose to exit and most frequently voice this criticism are among the group that does not hand in weekly papers and are among the least active. By voicing their frustration under the threat of voting with their feet they have successfully challenged some of the intended objectives of the course.

The voices of students of classes 15-16 and 23

In an effort to debunk the many myths and free floating perceptions that have characterized the discontent of the students to the teaching, I asked my two classes to complete an online questionnaire in Absalon. I announced the existence of the questionnaire on two different occasions sending a mail to all students signed up for the course. I also gave them 5 minutes in one of my classes to complete the questionnaire. However, only about 40 percent of 76 students replied to the questions. As the questionnaire was anonymous I do not know who answered but from some of the answers I gather that it was most frequently the students who were also active in class.

About 25 percent of the students had followed the classes of other teachers – it is safe to assume that they attended the class of the professor, as indeed some stated that they had. These students also mentioned the structure provided by the professor that could be used as a model for all papers. As most respondents also reply that they have followed the teaching throughout the semester, but the number of students at each session was not staggering, a large number of students probably either did not follow classes at all or only followed those of the professor.

When it comes to the learning outcomes of the course and the portfolio exam the students have been quite strategic about the handling of the work load in the course. The course had a two submission minimum as mandatory for the portfolio, but allowed the students to hand in up to seven papers in the course of the semester. While about 25 percent handed in only two papers none handed in all seven. However there was a relatively high number of students who handed in between 5-6 papers, the total percentage being about 30 percent of all students, or at least of all students who answered the questionnaire. The students followed the course closely when they had handed in a paper, but were, unsurprisingly, less inclined to come to class if they had not handed in the paper in that week. 75 percent of students followed the seminars when they handed in. Only 37 when they did not.

These strategies are also evident in the responses to how the different texts used for their respective papers were chosen. 70 percent say that the work load of the semester was a deciding factor in their choices and 60 percent state that they chose the texts that would get them through the course in the easiest manner. However, at the same time 65 percent of the respondents also said that they had chosen the texts they found the most interesting and 50 percent had chosen the texts they thought would yield the best result when analyzing their case. The fuzzy picture of these choices may also be a design flaw in the questionnaire having provided the students with too many options. That being said the students that showed up to class told a similar story and remained adamant on the unproblematic correlation between

choosing the easiest text and the text that they saw as the best fit for the case. In other words, the easiest text for them might signify not necessarily the text that was the easiest read but the one they find the most obvious for the task – a practice that is in good accordance with the teaching objectives of the course.

When asked directly whether they had improved their writing and analytical skills during the course, the picture is very varied. More than 60 percent of students reported that they had improved during course, and some 15 percent reported they had improved very much. Simultaneously when asked about their academic take away from the course generally, 60 percent report a medium take away while some 25 percent perceive of their learning outcome as high. It seems that at least a small majority of the participants become better writers and have improved their analytical skill set, while only a quarter of the students have a high learning outcome. On the other hand 7,5 percent of students report having a very low learning outcome and 10 percent a low outcome. These numbers are of course based on the self-perception of the students rather than a more sophisticated measurement of their actual progress.

As the course was organized around peer-feedback in combination with collective feedback from the teacher, the questionnaire also inquired into the role of this feedback in the perceived learning of the students. 52 percent of students saw the peer-feedback exercises as having some influence on their learning while 20 percent reported a high correlation between their own learning and the peer-feedback. 17 percent of the respondents did not participate in the peer-feedback sessions and 10 percent did not find a connection between them and their learning outcome. When asked why they had answered as they had, the most voices that were the most negative stated that the peer-feedback did not provide enough individual feedback as to the quality of the papers and their chance to get a good grade. Some also stated that it was too difficult to provide feedback when they were unsure of the quality of their own paper. These arguments look like the authority argument in disguise. And this criticism has been carried over into the complaint made against the course that also features a demand for individual feedback.

The more positive voices state that the peer-feedback provided them with important tools of assessing their own paper and thus of deciding whether it would go into their portfolio exam. They also mentioned that the feedback, combined with the collective feedback of the teacher, helped them find holes in their own way of answering the questions, gave them inspiration for future papers and helped them assess their own learning. The peer-feedback seems to have had an impact among most of the students while about a quarter did not see it as beneficial for their learning. However, a significant number of the students had positive experiences with the feedback.

The complaint and relation to answers from classes 15-16 and 23

After the end of the semester a group of students lodged a complaint against the course in the study board. The complaint was based on the excessive number of pages expected read, the number of theories treated in the course, the portfolio exam, the timing of the course – it runs parallel to the Bachelor's project, discriminatory teaching practices (not all students had access to the fabulous power points of the professor), and finally the lack of individual feedback. These criticisms were argumentatively related to the complaints of the relevant class of law students who are the first on the new study reform and as such feel like "guinea pigs".

These criticisms can also be found in the answers to the questionnaire. While some of the criticisms are recognizable for the teachers as well – the course certainly dealt with too many theories and the parallel timing with the Bachelor's had not been well thought through – some of them echo the mythologies created in the class more generally and are actively engaged in trying to create a "hidden curriculum". As a result of the complaint our professor and associate professor have held meetings with representatives of the class where these criticisms have been repeated and followed up by demands to "go easy" on the students come exam time and to factor the complaints into the grading of the students.

To understand the complaint the cultural divide between the course and the rest of the legal education is pivotal. When they reach the sixth semester and LMP they are heavily socialized into a legal dogmatic form of thinking, something they themselves point to in the questionnaire when suggesting the course be placed at a much earlier stage in the education. The rift between LMP and the other courses on the Bachelor's Degree mirrors a much deeper professional difference between the teachers of this course and other more classical legal courses. While the teachers of LMP come from very different backgrounds including sociology, philosophy and political science, the rest of the education is driven by lawyers. In that sense the complaint against the course reproduces an internal battle between different social groups at the legal faculty, the legally educated majority and a minority of multi-disciplinary scholars and teachers. The majority performs the bulk of the education at the faculty, and they are as such the typical kind of professional the students meet – supplemented by the some 300 external lecturers used by the faculty. They set the tone for the professional socialization of the future lawyers.

Conclusion

As the experience with the course *Law, Morality and Politics* clearly shows, the structural conditions around a given class are central for any successful implementation of a course and of some of the challenges highlighted in Gibbs' article. The structural conditions, particularly the previous schooling and professional socialization of students and the institutional struggles they are embedded in, set the tone for any course and its pedagogical goals and learning objectives.

Additionally what Gibbs refers to as looking for the hidden curriculum is in fact a much more sophisticated social process where students, individually and collectively, are actively engaged in *creating* a hidden curriculum. The LMP course is frustrating to them partly because they cannot find the hidden curriculum and the criticism they raise is targeted at crafting it. This is precisely what the criticism about discriminatory practices is about. In the perception of the students, the professor of the course has shown the hidden curriculum to some of the students. The demand for the generalization of this insight is also the demand for the creation of a skeleton key to the course that none of the creators of the course had imagined existed. As the course tests the analytical skills of the students when applying a theoretical text to a given case, it is difficult to create a check list or hidden curriculum that would actually help the students. None the less the students, who are used to this type of learning from other courses where the trick is precisely to figure out the hidden curriculum, the rules of thumb needed to pass tax law, corporate law etc., repeatedly press the teachers for help to find the esoteric rules governing the access to good grades.

The students employ different strategies for applying social pressure on the teachers and course organizers. They voice their criticism individually in class and collectively as part of the complaint, criticism that correspond to the answers in the questionnaire although these also contained positive results that

were not part of the complaint. However, perhaps the most influential form of social pressure is the exit performed by large groups of students as they left their respective classes to follow instead those of the professor who became seen collectively as providing the closest equivalent to a hidden curriculum. This form of social pressure left individual teachers vulnerable of being singled out as bad teachers and more generally attracted attention to the course as being too difficult and badly planned, something that provided ammunition to the internal struggles already present at the faculty more generally. In this context, the very positive feedback from many students risk being lost in the larger scheme of institutional divergences.

These structural conditions – that include both institutional socialization and the simultaneous teaching of 700 students who use strategies of voice as well as of exit to influence the course taught – turned out to be absolutely central to the process of teaching LMP. The evaluation of the course has, so far, focused precisely on the issues raised by the most critical students in an attempt to "save the course" and insulate it from future criticism. Simultaneously the ambitions learning objectives of the course have not featured in the debate about the course. As the more positive voices are muted the critical students seem to have been able, at least when it comes to the evaluation of the course, to set a course insisting on the need to make explicit a hidden curriculum that is nowhere to be found and exerting in the process a strong social pressure that pushed teachers and organizers to create precisely the type of hidden curriculum that the course was originally formed in opposition to.