

'Skulls full of mush': Reflections upon 'thinking like a lawyer' as a threshold concept in legal education

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In the 1973 film *The Paper Chase*, Harvard law professor Charles W Kingsfield Jr (played by John Houseman) tells his students: 'You teach yourselves the law. I train your minds. You come in here with a skull full of mush, and if you survive, you'll leave thinking like a lawyer.' Learning how to 'think like a lawyer' has since become one of the most frequently identified objectives of legal education. For many, 'thinking like a lawyer' simply refers to engaging in formal legal reasoning: recognising legal issues, locating and understanding the relevant legal rules, applying the rules to the facts of a problem, and reaching a justifiable conclusion. For others, it is better understood more broadly as style of thinking characterised by certain traits such as resistance to jumping to conclusions, a tolerance of ambiguity, and a preference for facts over emotions. Still others conceptualise 'thinking like a lawyer' as a form of critical thinking. In any event, 'thinking like a lawyer' is not only something a law student must be able to do upon graduation; it is something they must be able to do throughout their legal studies. It is a pre-requisite to engaging with the content of every law course. Thus 'thinking like a lawyer' is better conceived of as a threshold concept rather than as a graduate attribute or objective of legal education, something troublesome for law students, transformative, and central to the understanding of law as taught at law school. Thinking like a lawyer is something that must be taught explicitly rather than implicitly, mastered by students earlier rather than later, and conceptualised in a manner sympathetic to its central importance in framing the students' subsequent learning.

This paper offers a conception of 'thinking like a lawyer' that draws upon the concept of critical legal thinking, as well as a detailed justification for treating it as a threshold concept rather than a graduate attribute. It also offers some reflections upon the author's experiences in teaching this threshold concept to first year law students, including the observation that in order to do so effectively one must be clear with the students and with oneself precisely what type of lawyer whose thinking students are learning to emulate.

References

- Aaronson, MN, 'Thinking like a fox : Four overlapping domains of good lawyering' (2002) 9(1) *Clinical Law Review* 1
- Donald, JG, *Learning to think: Disciplinary perspectives* (2002) San Francisco: Jossey Bass
- Land, R, Meyer, JHF, and Smith, J (eds) *Threshold concepts within the disciplines* (2008) Rotterdam: Sense Publishers
- Meyer, JHF and Land R (eds) *Overcoming barriers to student understanding: Threshold concepts and troublesome knowledge* (2006) London: Routledge
- Sanson, M, Worswick, D, and Anthony, T, *Connecting with law* (2008) South Melbourne: Oxford University Press.
- Schauer, F, *Thinking like a lawyer: A new introduction to legal reasoning* (2009) Cambridge: Harvard University Press
- Sullivan, WM, Colby, A, Wegner, JW, Bond, L, Shulma, LS, *Educating lawyers: Preparation for the profession of law* (2007) San Francisco: Jossey-Bass/Carnegie Foundation for the Advancement of Teaching
- Wegner, JW, 'Reframing legal education's "wicked problems"' (2009) 61 *Rutgers Law Review* 867-1009