

# A Curricular Framework for English for Academic Legal Purposes

*by*

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## Abstract

The decline of the requisite linguistic skills of law students around the world has been documented comprehensively through legal scholarship. While ameliorating initiatives attempt to remedy law school education, the curriculization of English for academic legal purposes (EALP) has been neglected, resulting in the absence of a principled curricular framework for developing EALP syllabi. The proliferation of legal English communication across the circles of world English has accentuated the deterioration of students' linguistic skills and exacerbated the educational challenges confronting law schools. These premises were influenced and validated by the researcher's experiences as student and teacher of law and language.

Three research questions address the rationale and guide the research: (1) Which curricular principles can be deduced from theoretical linguistics, second language (L2) pedagogy, and legal education to constitute a framework for EALP? (2) Which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks? (3) As research outcome, how can the literature review and textbook analysis be synthesized into a cohesive curricular framework for EALP that can be applied across the circles of world English?

The cyclical research strategy that underpinned this qualitative study relied on a social constructionist worldview, case study methodology, and qualitative content analysis method. The literature review probed theoretical linguistics, L2 pedagogy, and legal education as tributary disciplines of EALP. Insights gleaned from the literature review informed the qualitative content analysis of a purposive sample of EALP-type textbooks (N = 44). The textbooks were coded to create a typology and to determine the clusters of linguistic skills introduced during law school and across the circles of world English.

The literature review led to the formulation of theoretically informed, curricular principles from the three disciplines that underpin EALP. The qualitative content analysis resulted in the creation of a typology of textbooks that exhibits clusters of linguistic skills that are scaffolded throughout law school. While academic

communication skills were accentuated, legal linguistic skills incorporate additional clusters of thinking, research, and pedagogic skills. Together these skills constitute the skill of “thinking like a lawyer.” A synthesis of the theoretical principles and skills clusters provides a holistic curricular framework for EALP that is sensitive to the local diversity within the circles of world English. The curricular framework for EALP draws legal English from the periphery to the center of law school education by accentuating the legal linguistic skills needed both in academia and in legal practice.

The main limitations of the study are the challenges posed by the inclusion of original EALP syllabi and the manual coding of the textbook sample.

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## List of abbreviations

CDA	Critical discourse analysis
CLA	Critical language awareness
EALP	English for academic legal purposes
EAP	English for academic purposes
EFL	English as a foreign language
EOP	English for occupational purposes
EPP	English for professional purposes
ESL	English as a second language
ESP	English for specific purposes
FLA	Foreign language acquisition
L1	English as a first language
L2	English as a second language
LSASP	Law school academic support program
LSAT	Law school admissions test
SFL	Systemic functional linguistics
SLA	Second language acquisition
ZDP	Zone of proximal development

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## Chapter 1: Introduction

### 1.1 Background and purpose

In contrast with 18<sup>th</sup> and 19<sup>th</sup> century notions of communication skills that focused on learning to read, contemporary literacy requirements have changed dramatically as a result of industrialization, globalization, and technological advances. Today, literacy is generally understood as the “capacity to identify, understand, interpret, create, and communicate knowledge, using written material associated with varying situations in changing contexts” (Schleicher 2010:433; *cf.* Lindner 2010:13-14).<sup>1</sup> Although the importance of literacy is recognized throughout academia and industry, university students around the world exhibit a severe academic literacies deficit.

The shortage of academic literacies has become a global phenomenon that has prompted concerned inquiry from all corners of the academic world. In South Africa, for instance, only half of the university freshman population possesses the necessary academic literacy to succeed at university (MacGregor 2009:n.p.; Pretorius 2002:169). Similar ominous trends dominate in tertiary education in America (Kim & Anderson 2011:29); Australia (Salamonson, Koch, Weaver, Everett, & Jackson 2010:414; Skinner & Mort 2009:547); and South Korea (Park 1997:211; Shin 2011:233). The decline of literacies observed at the university level may be attributed to a range of factors extending beyond primary and secondary education. Although it is imperative to address the challenges of pre-university education, the scope of this project remains within the parameters of tertiary education.

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<sup>1</sup> Because of its interdisciplinary nature, five technical differences should be recognized that characterize the study. Firstly, referencing in the text and list of references is based primarily on the Harvard method. Minor amendments have been made to simplify citations and assist reading. Secondly, as a Latin abbreviation, *cf.* is italicized and refers to the original meaning of the word *viz. to confer* or *consult*. Thirdly, in contrast to legal scholarship, it is not customary to use footnotes in educational or linguistic research papers. However, footnotes are used sparingly to supplement the primary text with essential information that may otherwise disrupt the natural flow of the main text. Fourthly, direct quotations have not been amended unless otherwise mentioned. Finally, American English writing conventions were followed throughout the study.

The decline of literacies and the necessity to provide ameliorating initiatives for university students is manifest across disciplines: from health sciences (Salamonson *et al.* 2010:414) and engineering (Shin 2011:233; Skinner & Mort 2009:547), to accounting (Evans & Rigby 2008:59) and law (Edelman 2010:112). Within the law school curriculum students need to master an extensive range and intricate set of communication skills from academia and practice. This study addresses the communication skills shortage of law students and the possibility of ameliorating such deficits through a curricular framework for English for academic legal purposes (EALP).<sup>2</sup>

Hence, the study reports on a qualitative investigation and analysis of the three tributary disciplinary strands of EALP *viz.* theoretical linguistics, applied linguistics, and legal education. Because legal language has been taught internationally for an extended period, its disciplinary underpinnings could be conceptualized diachronically and within the three circles of world English (*cf.* “Conceptual definitions” below). Law students across the three circles of world English work to master the perplexing set of legal communication skills. One possible method to determine and account for these communication skills is to conduct a qualitative content analysis of a purposive sample of EALP-type textbooks. The main purpose of this study is to synthesize the disciplinary underpinnings with the qualitative content analysis to construct a skills-based curricular framework for EALP that may be transferred across the circles of world English.

### *Chapter preview*

To achieve this purpose, Chapter 1 outlines the rationale of the project in part two. This is followed in parts three and four, respectively, with clearly formulated research questions and objectives. In part five, a list of eight terms and phrases are reified to

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<sup>2</sup> Reference to the thesis or dissertation is made by using the terms *study* and *project*. Thesis and dissertation are avoided because of their contrasting meanings in different countries. Thesis may also refer to an untested theory or hypothesis, which may appear ambiguous in relation to the chosen qualitative research approach (*cf.* Chapter 2).

provide conceptual clarity and accuracy throughout the project. Chapter one concludes with a navigational diagrammatic chapter outline.

## 1.2 Rationale

Justification for the project hinges on five interconnected premises:

- the decline in the requisite fundamental linguistic skills of law students around the world;
- the research paucity on the curriculization of EALP;
- the absence of a principled framework for developing EALP syllabi;
- the proliferation of international legal English communication through globalization; and
- a personal, vested interest in EALP as student and teacher of law and language.

The first premise centers on the limited reading and writing skills of undergraduate EAP students around the world (Alaka 2010; Larcombe & Malkin 2008). Pretorius (2002) refers to it within the South African context as a “crisis.” Although the problem manifests across disciplines and cultures, additional language groups are particularly affected (Carstens 2008; Johns 1995; Read 2008). However, the occurrence of inadequate reading and writing skills is not isolated to EAP. In fact, it necessarily implies a skills shortage in a more specialized field such as EALP.

Personal collaboration with colleagues at different institutions verify that L1 and L2 EALP students display inadequate English linguistic skills with which they can effectively participate in the academic and professional discourse communities (correspondence with Prof. Simon Win at Zhaoqing University, China; Prof. Nicola Sergeant at Yonsei University, South Korea; and Prof. Given Lee at Seoul National University, South Korea). Because of this identified inadequacy, Deutch (2003:125) conducted an empirical needs analysis to determine the priorities of EALP syllabi in Israel. Law is generally recognized as a linguistically demanding course; hence, Larcombe and Malkin (2008:319) argue for additional language support for international and domestic Australian law students. In a similar vein, Edelman (2010:112) argues for a foundational legal writing course for law students around the world. Such acute international appeal for the development of EALP programs confirms that law students are in urgent need of language support.

In order to approach and remedy the inadequate English communication skills of law students, it would be prudent to address the possible causes that contribute to and exacerbate the problem. Addressing the possible causes means that the curricular framework for EALP investigates the symptoms as well as the origins of inadequate communication skills.

- Law students enter university education with limited academic communication skills (Alaka 2010:344; Bhatia 1989:223; Bruce 2002:321-322; Larcombe & Malkin 2008:321).<sup>3</sup> Bok (2006:82) declares that American “freshmen have never arrived at college with impressive writing skills.” From an integrated communication skills perspective, Bok’s claim is confirmed by Kim and Anderson (2011:29) who report that 62% of twelfth graders perform below proficiency levels in reading. Among others, this lack of efficient communication skills could be attributed to the evolution of secondary education that systematically eradicates the teaching of grammar (Alaka 2010:345). While teaching a legal research and writing course at the University of Texas, Laycock (1990) portentously reflects on the impossibility of university-level legal writing courses to ameliorate the inadequate writing skills of first-year law students:

It is now clear to me that the first-year writing program can do very little in direct pursuit of this goal. My conceptual mistake was to assume that students entered law school with the basic skill, which is general writing, and that we could immediately begin to improve on that skill. But that is wrong. The basic skill is legal writing, and students do not have it when they enter (Laycock 1990:83).

Consequently, educators are faced with the challenge of imparting specialized communication skills when a shortage of general communication skills already exists.

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<sup>3</sup> Within the South African context it is worth noting that such limited communication skills are, in the interim, the result of segregated education under apartheid laws. Universities are still admitting “significant numbers of persons from previously disadvantaged groups,” which means that “more students are entering the law faculties with insufficient preparation from high schools” (Maisel 2007:400). Moreover, legal education is conducted mainly in English (or Afrikaans), neither of which are the native languages of most disadvantaged communities.

- Students commence demanding legal studies ill-informed of the extent of the academic skills required (Alaka 2010:344; Hanson 2003:1). Being ill-informed means that students have a limited context in which to accommodate the expectations of the legal language class. Law school, therefore, contradicts students' expectations that step-by-step legal writing techniques will be imparted. Instead they are faced with "difficult 'inside out' critical thinking that is integral to effective legal analysis and writing" (Felsenburg & Graham 2009:4-5).
- The increase of sophisticated economies and rapid population growth are responsible for over-crowded classrooms (Bok 2006:18-19; Johns 1995:181). As Saha (2009:19) reports in the Tanzanian context: "[...] offering instruction in legal writing to a large undergraduate class with nearly 400 students in the time frame of one semester is a daunting task."
- It is also argued that EALP syllabi are not entirely appropriate or successful in transferring the necessary academic and professional discourse abilities (Candlin, Bhatia, Jensen, & Langton 2002). Students might be able to manage the textual features of some professional genres; however, "they are still unaware of the discursive realities of the professional world" (Bhatia 2008b:161). In other words, the need arises for curricula that integrate the interdiscursivity of academic and professional genres. In addition to the absence of interdiscursivity, Fish (2009) discovered that basic academic writing courses focus insubstantially on the "craft of writing." He recommends that these courses should focus exclusively on grammar and rhetoric as supported by Johns (1995:181).

It is important to note that the causes that contribute to and exacerbate inadequate legal English communication skills do not include or refer to dialectical variants considered by language purists. In this regard, it would be prudent to endorse Firth as quoted by Kachru (1976:231):

Educated English shows a wide range of permissible variation. Speakers of this kind of English do not necessary submerge all signs of social or geographical origin. Their accent is often unmistakably local and characteristic of a class. Educated English is spoken by all classes of people all over the English speaking (sic) world. This is the only kind of English that has the remotest chance of universality even in Great Britain itself.

The second premise identifies scholarly voids within academia. English for specific purposes (ESP) abounds with research; however, its subfield EALP is relatively neglected. Mertz (2007b:513) articulates this need as follows: “In today’s law school, there is no systematic analysis of teaching of the limitations that are tacitly built into the very framework of legal language.” A number of reasons explain this research paucity:

- The lack of research about EALP could be attributed to the level of specialty that it requires in teaching and learning; EALP is usually taught by EAP instructors who have not necessarily received formal legal training (Kurzon 1997:136). Conversely, legal educators do not necessarily have the required language teaching expertise (Van der Walt & Nienaber 1997:v). As a result, legal educators and “EAP teachers will be seen as overreaching themselves and pretending to an expertise that they can only feign or simulate” (Bruce 2002:324).
- In conjunction with the expertise required in both substantive law and language pedagogy, EALP is also an interdisciplinary field that hinges on anthropology, linguistics, philosophy, psychology, and sociology (Conley & O’Barr 1998:1). The interdisciplinarity of the field could deter researchers. Ties to certain academic institutions or disciplines often encourage disciplinary specialization, which discourages entry into the interdisciplinarity of EALP (Golde & Gallagher 1999:282).
- In accordance with the interdisciplinary nature of EALP, Candlin *et al.* (2002:299-320) identify the isolation in which professional genres have been researched without consideration of professional practice. An isolated view of genre, for example, undermines the interdiscursivity between professional genres and their practices (Bhatia 2004:391; 2008a; 2008b; 2010).
- Legal language is notorious for its impenetrability because of its prolixity, nominalization, and (Latin) terminology (Venturi 2010:22; Wydick 1998:3-4). These qualities of legal language deter outsiders. The “resistance” that the legal profession displays toward plain legal language and genre transformation maintains the legitimacy of the profession (Van der Walt & Nienaber 1997:v), but it could also hamper the development of EALP.



The third premise, the absence of a principled framework, focuses on the separation between academia and legal practice. Instructors and curriculum designers of EALP-type courses need assistance to balance the demands of academia with that legal practice. However, practice is not a “second-order derivative” of academia that is representative of theory. Instead, academia (theory) and practice are invoked as a blending of discourses that are summoned to the EALP class (Valentine 2010:177). Moreover, “theory is a form of discursive action, and thus itself a practice” (Gergen & Zielke 2006:306). For example, English for specific purposes (ESP) curricula at Yonsei University (Seoul, South Korea) adhere to the *Common European Framework of Reference for Languages* (Council of Europe); however, they ought to pay heed to the cultural diversity of students and the demands of international businesses in South Korea’s free economic zones.

The fourth premise considers the demands of industry and cultural diversity as emblematic of the challenging ramifications of globalization for education. South Korea’s rapid economic development has attracted unprecedented foreign investment. In 1997, only 3,600 foreign companies invested in the country. By 2007, that number increased to 14,700 companies from across the world (Global Career Forum 2009). Consequently, foreign investment increases employment opportunities in South Korea. It also stimulates and requires prospective employees to be proficient in professional English - the international business *lingua franca* (Seidlhofer 2005:339). Today, these prospective employees attend culturally diverse EALP classes that should prepare students to collaborate efficiently in an equally diverse globalized workplace.

As a result of global migration, student bodies are becoming increasingly diverse (Read 2008:180). The diversity extends beyond nationality and disciplines and includes diversity of linguistic, educational, and academic backgrounds (Bok 2006:18-19). For example, 15% of the students of the Melbourne Law School originate from China, Singapore, and Malaysia (Larcombe & Malkin 2008:321). International students are not only attempting to comprehend course content, but they also have to come to terms with the “cultural and educational requirements of the dominant cultural literacy” (MacKinnon & Manathunga 2003:133).

The cultural diversity of the student and lecturing bodies (Lustbader 1997:842) and the increase of transnational law firms (Silver, Phelan, & Rabinowitz 2009:1431) drive globalization and its intrinsic need for efficient cross-cultural legal communication. A skills-based, curricular framework for EALP could systematize the law school curriculum because it prioritizes skills at local levels as well as skills that transcend the circles of world English.

The fifth premise refers to my personal experience as a law student and later as legal English teacher that confirmed a disparity between law school pedagogy and the needs of legal practice. For example, as a law student during the latter part of the 1990s, I expected to have instruction and practice on the production of both academic and legal genres in written and oral format. However, written academic genres received precedence, and oral participation was replaced by listening to lectures. I wanted instruction on how to conduct professional presentations, consult with clients, and implement the principles of plain legal language - skills that the legal profession appreciated.

Today, despite productive efforts to restructure the curriculum (*cf.* Chapter 9), law school pedagogy remains a world apart from legal practice (Joy 2014:181; Ribstein 2010:1649). Class sizes grow as the world population explodes, and tuition fees escalate as inflation increases. Therefore, instructors are still confronted with overcrowded auditoriums consisting of students who question the return on their educational investment. Because of the demands of the modern university, instructors are under immense pressure from faculty to “publish or perish,” while they have increased lecturing duties, and they are confronted with the needs of students who hold the trump card: teacher evaluations. The demands of the university lecturing environment, therefore, lead to an untenable situation of balancing a diversity of (dis)agreeing interests.

### 1.3 Research questions

The concerns raised in the rationale section illustrate that this project is motivated relatively equally by theoretical and practical considerations. Theoretical quandaries are primarily the consequence of the failure to envision an applicable curriculum that could be operationalized with relative success. The theoretical issues are explored and

analyzed in the extensive literature reviews on the three tributary disciplines. The practical problems manifest primarily in the context of the EALP classroom where the law school curriculum and EALP syllabus are implemented. One possible, reliable and verifiable source of the implemented curriculum and syllabus manifests in the EALP classroom through EALP-type textbooks. These textbooks are not equated to curricula or syllabi, but they could serve as structural tools that (re)present the goals of the curriculum and objectives of the syllabus. Ideally, the curriculum and the teaching of EALP should be the result of multidirectional influence and validation between theory and practice. Therefore, the research questions probe the theoretical underpinnings of the three tributary disciplines and analyze the manifestation of the curriculum as represented by a purposive sample of EALP-type textbooks.

*Question 1: Which curricular principles can be deduced from theoretical linguistics, L2 pedagogy, and legal education to constitute a framework for EALP?* Question one addresses the theoretical dimensions of the rationale. While ameliorating pedagogic initiatives (*cf.* Chapter 9) attempt to remedy law school education, the curriculization of EALP has been neglected, resulting in the absence of a principled framework for developing EALP syllabi.

*Question 2: Which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks?* This question accounts for the qualitative content analysis that is informed by the literature reviews. Question two probes the qualitative content of EALP-type textbooks.

*Question 3: How can the literature review and the EALP-type textbook analysis be synthesized into a coherent curricular framework for EALP that can be applied across the circles of world English?* Question three articulates the research outcome of the project. Yet, the question-format is maintained to create cohesion between the research questions and to direct the research process to a clear objective, *viz.* a curricular framework for EALP.

#### **1.4 Research objectives**

Similar to the research questions, the research objectives are formulated in response to the rationale above. The research objectives mirror the research questions. The

objectives envision steps that can be taken to *describe, analyze, and design* the curricular framework for EALP.

*The first objective is to describe the linguistic, applied linguistic, and legal educational underpinnings of EALP that form the basis of a common set of principles that can be applied across the circles of world English.*

*The second objective is to analyze a purposive sample of EALP-type textbooks that impart legal communication skills across the circles of world English.*

*The third objective is to design a curricular framework that is underpinned by principles derived from the theoretical underpinnings and EALP-type textbook analysis.*

## 1.5 Conceptual definitions

Because this project is subsumed under the opaque interdisciplinary scholarship of three disciplines, it is essential to define certain terms as they pertain to this study. In conjunction with the research questions and objectives, these terms signal the research parameters and position the project relative to certain paradigms. The following terms are reified because of their lexical and semantic importance to the literature review and the facilitation of the flow of thought throughout the study:

- theoretical and legal linguistics;
- applied linguistics and applied legal linguistics;
- world English, L1, L2, and EFL;
- legal language;
- English for academic legal purposes;
- linguistic domains;
- layers of curricularization and L2 pedagogy; and
- model, theory, and framework.

### 1.5.1 Theoretical and legal linguistics

Modern *theoretical linguistics* has its roots in the philosophy of language that developed during the Age of Enlightenment (between the 17<sup>th</sup> and 19<sup>th</sup> centuries).

Philosophers such as Descartes and Locke made valuable contributions; however, their perspectives are almost exclusively Eurocentric, which renders it “speculative and *a priori*” (Trask 2007:156; *cf.* Gergen 2001:804). From its philosophical roots and because of its theoretical nature, Rajagopalan (2004:398) refers to linguistics as *linguistics proper*, which is “the academic discipline concerned with the study of language in general” (Cook 2010:9). Today, there is shared agreement that linguistics proper or *theoretical linguistics* is concerned with theories that explain the structure of language and applied linguistics attempts to solve language problems, especially in the field of pedagogy (Trask 2007:156; *cf.* Halliday 1993:94).

As a scientific form of inquiry, theoretical linguistics asks “what” questions. For example, what is universal about legal language in the three circles of world English? Alternatively, as Solan (1995:1069) questions: “Is there really anything in the field of legal decision making where a linguist has better information than the judge?”<sup>4</sup>

Modern interest in legal language began with Mellinkoff’s *The Language of the Law* (1963), and interest has increased since 1985 when the first conference on “Language in the Judicial Process” was held in the United States (Levi 1995:772). Together with fervent interdisciplinary interest in legal language, a new scholarly field emerged called *legal linguistics*.<sup>5</sup>

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<sup>4</sup> In order to answer such questions, linguists rely on different theoretical traditions that postulate questions and hypotheses about human language (*cf.* Ainsworth 2006:658). Traditional subfields of theoretical linguistics include among others:

- semantics (the study of the meaning of language itself);
- pragmatics (the study of the meaning of language in context);
- syntax (the study of sentence organization);
- lexicology (the study of the meaning of words);
- morphology (the study of word structures); and
- phonology (the study of sound patterns) (Levi 1995:772; Rajagopalan 2004:398; *cf.* Trask 2007 for a comprehensive nomenclature of linguistic traditions).

<sup>5</sup> The avid interdisciplinary interest that led to the development of legal linguistics should be credited for kindling the law and society movement. Social interest in legal language is also a result of the public attack on the language of bureaucracy of the profession (Danet 1980:453). Scholars who identify with the law and society label come from virtually all the disciplines within the social sciences, humanities, and law. “Despite the diversity inherent in so broad a sweep of the academic world, law

Law is profoundly linguistic and its language extraordinarily powerful. Gibbons (1999:156) eloquently describes the interconnectedness between substantive law (codified law), legal language, and linguistics as follows:

Laws are coded in language, and the processes of the law are mediated through language. The legal system puts into action a society's beliefs and values, and it permeates many areas of life, from a teacher's responsibilities to a credit card agreement. The language of the law is therefore of genuine importance, particularly for people concerned with addressing language issues [linguists] and problems in the real world – that is, Applied Linguists.

Today, the field of legal linguistics is particularly important because legal language is distinctly different from other professional languages (Bhatia, Hafner, & Miller 2010:143), and legal life is internationalized through globalization. English serves undisputedly as the lingua franca of law, the legal profession, and international legal education (Goddard 2010:1; Maurais 2004:16-17). The global extension of legal English is accompanied by jurisdictional proliferation: laws are being promulgated, enforced, and interpreted across national jurisdictions (Bhatia & Candlin 2008: 140; Bhatia *et al.* 2010:144; Voermans 2011:53). Therefore, legal linguists and other scholars probe the English language where it intersects with international law, legal hermeneutics, substantive law, and jurisprudence or the philosophy of law and language (Tiersma 2009:28). “Legal linguistics examines the development, characteristics, and usage of legal language” (Mattila 2006:11). Hence, legal linguistics may be described as a synthesis of substantive law, legal theory, and theoretical linguistics (*cf.* Galdia 2009:86; Mattila 2006:11).

### 1.5.2 Applied linguistics and applied legal linguistics

Within modern linguistic history, *applied linguistics* may be described as a reaction by structural and functional linguists to theoretical linguistics (Davies & Elder 2004:1; Grabe 2002:3). During the 1960s and 1970s, research in linguistics began to focus more on language teaching, acquisition, assessment, literacy, policy, teacher

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and society scholars seem united about their basic concern – showing how law really works in practice” (Conley & O’Barr 1998:11). The socio-legal concern for the practice of law came at a similar time during the 1960s through 1970s when the need for clinical legal education arose (*cf.* Chapter 8) and the applied linguistic concern for “real-world” problems and solutions developed.

training, multilingualism, language and technology, and corpus linguistics (Grabe 2002:4; Trask 2007:21; Weideman 2007:591; Widdowson 2003:7). Collectively these strands are also known as *educational linguistics* (Halliday 2005:133).

As research became focused on practical issues related to language teaching, the description of applied linguistics became associated with “real-world” problem-solving outcomes. Therefore, applied linguistics came to be known as “[t]he application of the concepts and methods of [theoretical] linguistics to any of various practical problems involving language” (Trask 2007:21; *cf.* Weideman 2007:591-592; Widdowson 2003:7). Widdowson (2003:13) describes applied linguistics as the application of methods to resolve the concerns of the various fields within theoretical linguistics. These methods often involve qualitative or quantitative data to ameliorate socio-linguistic problems (*cf.* Kaplan as in Davies & Elder 2004:4). Applied linguistics attempts to answer “how” questions. For example, how does one learn a language, and how could different pedagogic approaches be integrated coherently into a curricular framework for the teaching of EALP?

The use of the term *applied legal linguistics* is not yet recognized by scholarship. For the most part, the application of linguistics to law invokes images of the forensic linguist. Forensic linguistics “refers to the use of linguistic knowledge and methodologies to solve factual issues that are relevant to legal disputes” (Tiersma 2009:29). Forensic linguists work in three fields of law: the language of written legal texts, the spoken language of legal proceedings, and as expert witnesses in court (Coulthard 2010:15; Shuy 2011:83-88). Forensic linguistics is indeed an applied legal linguistic endeavor. However, the meaning of applied legal linguistics should be broadened in the same manner as has the meaning of applied linguistics.

Although the term is not recognized in scholarship, research in applied legal linguistics is prolific. For example, Brostoff (2007) provides a probing reflection on the use of culture to enhance the learning experiences of foreign students studying American law and legal English in the United States. Another example includes Candlin *et al.* (2002) who reviewed legal English textbooks to develop legal writing materials for L2 learners. These examples also illustrate how scholars from different disciplines (law, linguistics, education, and anthropology in particular) contribute to



the proliferation of applied legal linguistics. Because this study integrates theoretical linguistics, L2 pedagogy as applied linguistics, and law school education, it could most appropriately be called an applied legal linguistic study.

### 1.5.3 World English, L1, L2, and EFL

In *World Englishes: Agony and Ecstasy*, Kachru (1996:135) describes the pluricentricity of English as: “overwhelming, and unprecedented in linguistic history.” The pluricentricity of English can be described in terms of the three concentric circles of world English (*cf.* Figure 1.1). The *inner circle* consists of countries where English functions as the norm-providing first language (L1). The *outer circle* denotes countries, mostly those with colonial histories, where English functions as norm-developing second language (L2). The *expanding circle* accommodates countries where English is not recognized as an official language, and serves a norm-dependent EFL function (Kachru 1996:136-138).

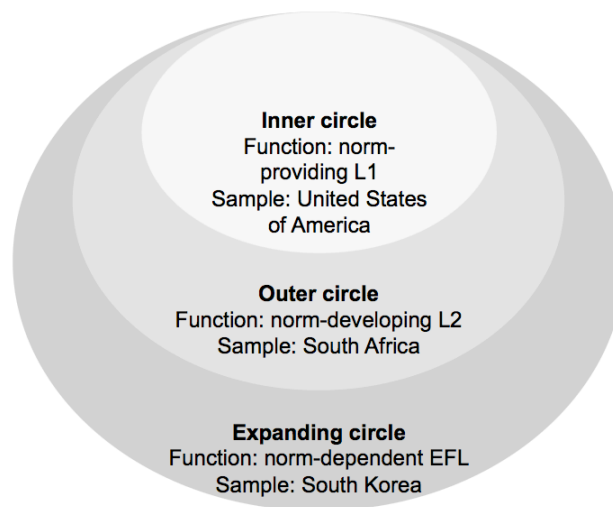


Figure 1.1: Circles of world English (adapted from Kachru 1996:136-138).

In addition to describing the functional purpose of the population in each circle, the three circles also perform a methodological function. The distinct characteristics of each circle may be interpreted as case studies. The three circles of world English perform a vital role in the conceptualization of the sample of EALP-type textbooks selected for the qualitative content analysis described in Chapter 2.



Within applied linguistics and the circles of world English a distinction is made between L1, L2, and EFL. The distinction is made for at least two practical reasons. Firstly, learner needs and teaching methods may be different across the circles of world English because of the language proficiency of learners. Secondly, because English performs different socio-political roles across the circles of world English, its different functions are recognized through acknowledging it as a first, second, or foreign language.

*English as a first language*, generally abbreviated as *L1*, may be defined as the norm-providing first language that determines the sociolinguistic identity of the population. In countries such as the United Kingdom and the United States, political, professional, and educational interactions are conducted primarily in English defined as L1. Thus, English is acknowledged as *the* official language.

*English as a second language*, generally abbreviated as *L2*, may be defined as the norm-developing L2, yet it does not signify the sociolinguistic identity of the general population, which may prefer a native or mother tongue as linguistic identity. In South Africa, for example, English is used prolifically in political, professional, and educational interactions. Nevertheless, English is recognized and functions as one of the 11 official languages, which represent the sociolinguistic identity of the population.

*English as a foreign language*, generally abbreviated as *EFL*, may be defined as the norm-dependent foreign language that is neither recognized as the official language nor the sociolinguistic identity of the population. For instance in South Korea, English is used to a limited extent in the public domains of business and education.

What are the effects of these definitions on the description of legal English for language teaching? Legal English may be considered as a *foreign* or *additional language* across the circles of world English. Lewis (in Bhatia 1989:233) recognized this characteristic of legal English in 1972 when he observed: “[...] much of a law student’s confusion, bewilderment and frustration arises because he [she] is not being taught law only – he [she] is being taught a foreign language as well” (*cf.* Danet 1980:470). It is generally accepted by linguists that legal English is sufficiently

different from everyday English to be able to regard it as a separate language. The sociolinguist O’Barr (in Danet 1980:470), describes it as “incomprehensible to well-educated users of American English. Lawyers serve as interpreters because the [...] lexicon and syntax are alien to twentieth century American English [...]. Its similarities to contemporary English deceive the ear [...].”

As a “new” language, legal English has a leveling effect because L1 and L2 students become essentially foreign language learners (EFL). At best, legal English could be recognized as L2 in the inner and outer circles and EFL in the expanding circle. Consequently, the study elaborates primarily on L2 pedagogy. Because law students across the circles of world English are learning an L2 language, collectively they are referred to as *additional language learners*.

Although these definitions are embraced throughout the study, two caveats are added: (1) where necessary, the distinctions are maintained to recognize pedagogic difference; and (2) within the general population of each circle, individuals or groups may dissociate from the definitions provided above based on their unique sociolinguistic configurations and experiences.

#### **1.5.4 Legal language**

In addition to recognizing legal English as a foreign or additional language in the pedagogic domain, scholarship differentiates the relationship between law and language through various lexical configurations. Most notably these terms include the *language of the law*, *legal language*, and *language and the law*.

In this regard it is imperative to turn to Kurzon’s (1997:120) delicate distinctions between legal language and language of the law. On a macrolinguistic level, Kurzon recognizes jurisdictional (national) variations of legal language, such as legal English or legal Korean. On the metalinguistic level, he distinguishes between legal language and language of the law as illustrated in Figure 1.2. *Legal language* refers to the sources of the law that are interpreted and explained through legal language, in either written or oral form. Legal language, for example, may be understood as the authority of law that is vested in the power of its language as expressed through legislation, for example.

“*Language of the law* is the language or the style used [...] in documents that lay down the law” (Kurzon 1997:120).<sup>6</sup> In terms of systemic functional linguistics, language of the law may be understood as the legal register that is determined by the context of situation of the legal discourse community (*cf.* Chapter 3). Language of the law, therefore, recognizes the lexico-grammatical, rhetorical, and genre peculiarities that distinguish legal language from medical language as these characteristics manifest in legislation, for example.

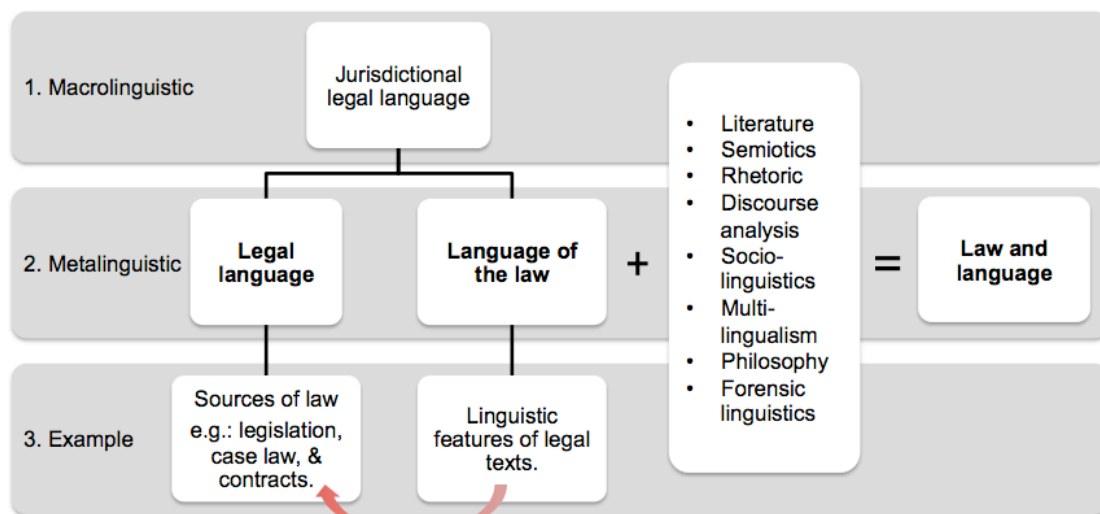


Figure 1.2: Taxonomy of legal language (adapted from Kurzon 1997:120-122).

A third term that accentuates the interdisciplinarity of legal language may also be distinguished, *viz. language and the law*. According to Tiersma (2009:9) *language and the law* refers to an emerging interdisciplinary field positioned at the interface between linguistics and applied linguistics and legal studies. Because of the interdisciplinary nature of this project, in addition to being an applied legal linguistic study, it may also be called research into language and the law. The following subfields operate under the language and the law banner: law and literature; law and semiotics; law and rhetoric; discourse analysis, sociolinguistics and the law; multilingualism and legal translation; philosophy of language and law; and forensic linguistics (Tiersma 2009:24-31).

<sup>6</sup> Emphasis added

Across the circles of world English, legal English discourse could be distinguished as a particular language that integrates words from other cultures and countries. Bhatia *et al.* (2010:144) describe the nature and context of interpretation of legal discourse as distinctly different from other professional discourses. Other professional discourses allow some freedom of interpretation; however, legal discourse is bound to “sites of engagement” (Bhatia *et al.* 2010:144). These “sites of engagement” should be navigated through clarity, precision, unambiguity, and all-inclusiveness (Bhatia *et al.* 2010:144). Wagner (2010:78) notes that legal language “[...] nurtures and develops itself from words of different cultures and countries. This fuzzy, evolutive, plural language is a source of progress. It expresses the suitable, the unsuitable, the fuzzy and the allegedly permanent. It also integrates societal evolution within the structuring elements of legal thought.” Unless explicitly qualified following Kurzon’s definitions, legal English is used in this study in accordance with the definitions of Bhatia *et al.* (2010) and Wagner (2010), as an umbrella term that subsumes legal language, language of the law, and language and the law. Legal English is absorbed and imparted by law school as EALP.

### **1.5.5 English for academic legal purposes**

Within the circles of world English, English language teaching (ELT) serves as a hypernym that refers to a prolific field of research about English instruction. In an attempt to taxonomize ELT, the field can be subdivided into the teaching of English as L1 and L2. Both L1 and L2 teaching include English for specific purposes (ESP), English for academic purposes (EAP), and English for professional purposes (EPP).

Hyland and Hamp-Lyons (2002:2) differentiate between ESP and EAP based on the function of language. They argue that ESP focuses on teaching and learning of language for occupational purposes. In contrast, EAP grounds language research and instruction in the “understanding of the cognitive, social and linguistic demands of specific academic disciplines” (Hyland & Hamp-Lyons 2002:2). This distinction between the academic and occupational use of English is artificial because the cognitive, social, and linguistic demands of a specific academic discipline are also present in the pursuit of its occupational purpose.

Dudley-Evans and St. John (1998:4-5) provide a comprehensive definition of ESP that does not recognize the distinction that Hyland and Hamp-Lyons draw between ESP and EAP. In fact, the definition of ESP by Dudley-Evans and St. John subsumes EAP and EPP. Their definition comprises the following five variables:

- ESP may be related to or designed for specific disciplines;
- ESP may use, in specific teaching situations, a different methodology from that of general English;
- ESP is likely to be designed for adult learners, either at a tertiary level institution (EAP) or in a professional work situation (EPP). It could, however, be for learners at secondary school level, as well;
- ESP is generally designed for intermediate or advanced students; and
- ESP courses assume some basic knowledge of the language system, but it may also be used with/for beginners.

This comprehensive understanding of ESP recognizes pedagogic diversity and the academic and professional use of ESP that is endorsed and emphasized in this study. This definition also serves as a hypernym for the ESP taxonomy depicted in Figure 1.3. At different ends of the ESP spectrum, the taxonomy positions EAP and EPP (often referred to as English for occupation purposes (EOP)) (Johns & Price-Machado 2001:44).

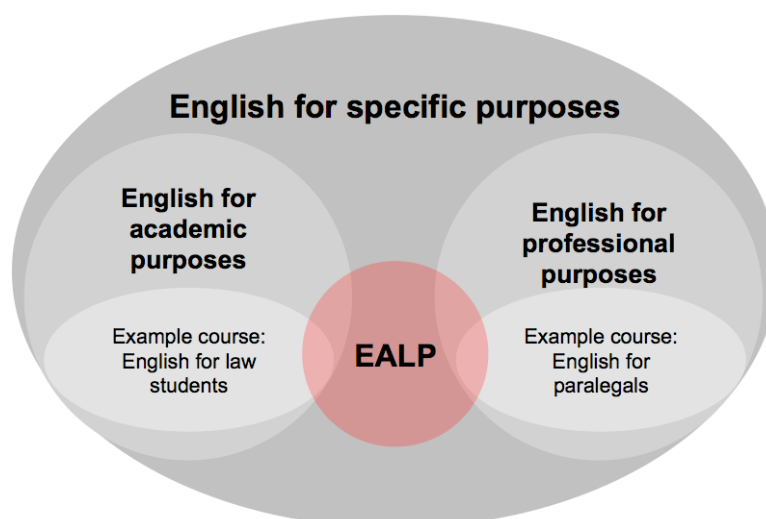


Figure 1.3: EALP in the ESP taxonomy (adapted from Johns & Price-Machado 2001:44).

The latest developments in legal English textbook design contradict the assumption that EAP is substantially different from EPP based on a distinction of purpose, focus, and skills acquisition (Hyland & Hamp-Lyons 2002:2; Jordan 1997:4). For example, in *International Legal English: A Course for Classroom or Self-Study Use* (Day, Krois-Lindner, & TransLegal 2006), *Legal English* (Haigh 2009), and *Legal Skills* (Finch & Fafinski 2011) the textbooks impart a comprehensive spectrum of skills that include: academic and professional legal communication skills, thinking skills, research skills, and pedagogic skills (*cf.* Chapter 10). In contrast with dated EALP-type textbooks (Candlin *et al.* 2002), recent publications between 2003 and 2013 seem to sanction an integrated pedagogic approach to the teaching of legal English skills in the EALP classroom. These contemporary examples merge the purposes and outcomes of EAP and EPP in response to the demands of academia and legal practice.

As a result of the definitions of ESP and legal language, EALP may be defined as the teaching and learning of legal English as an ESP subject that subsumes the academic dimensions of EAP and professional dimensions of EPP. It is taught at the tertiary level across the circles of world English and known by a variety of course titles, such as *Legal Research and Writing* at Harvard University, *Jurisprudence* at the University of Pretoria, and *Legal Communication* at Yonsei University.

### 1.5.6 Linguistic domains

The literature review of L2 pedagogic methods and approaches and the analysis of EALP-type textbooks revealed that legal English functions in at least three realms, *viz.* micro-, meso-, and macrolinguistic domains (*cf.* Figure 1.4). It is vital to recognize the differences among these linguistic domains as they set pedagogic, curricular, and linguistic parameters throughout the study.

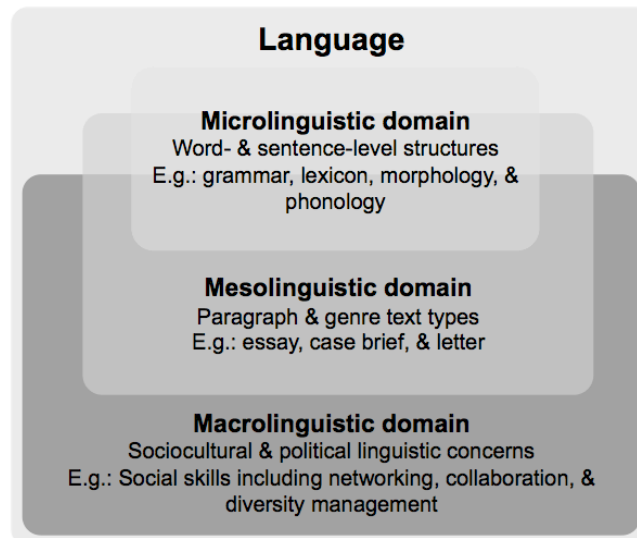


Figure 1.4: Linguistic domains

*Microlinguistics* denotes grammar, lexicon, and punctuation as units of analyses, that is, word- and sentence-level structures. The unit of analysis in the *mesolinguistic domain*, a term not yet in use, constitutes a collection of linguistic and substantive features arranged according to certain organizational patterns, outlines, and genres. This domain accounts for the paragraph and genres, such as the essay, case briefs, and contracts. *Macrolinguistics* are concerned with linguistic structures and the effects of sociocultural and political influences on language learning. Macrolinguistic domains include legal discourse communities and the circles of world English, for example. The linguistic domains are of particular importance to determine the implications of L2 pedagogic methods and approaches on the curricularization of EALP.

### 1.5.7 Layers of curricularization and L2 pedagogy

The title of the study refers explicitly to a “curricular framework for EALP.” *Curriculum* and *syllabus* describe the layers of curricularization and are often used erroneously as interchangeable terms. Within the layers of L2 pedagogy, *approach*, *method*, and *technique* are also used interchangeably, yet unfittingly so. The terms in the layers of curricularization and L2 pedagogy are intricately connected, and their associated meanings should be clarified and reified prior to the review of the literature. These descriptions should be read in conjunction with Figure 1.5 to facilitate comprehension.



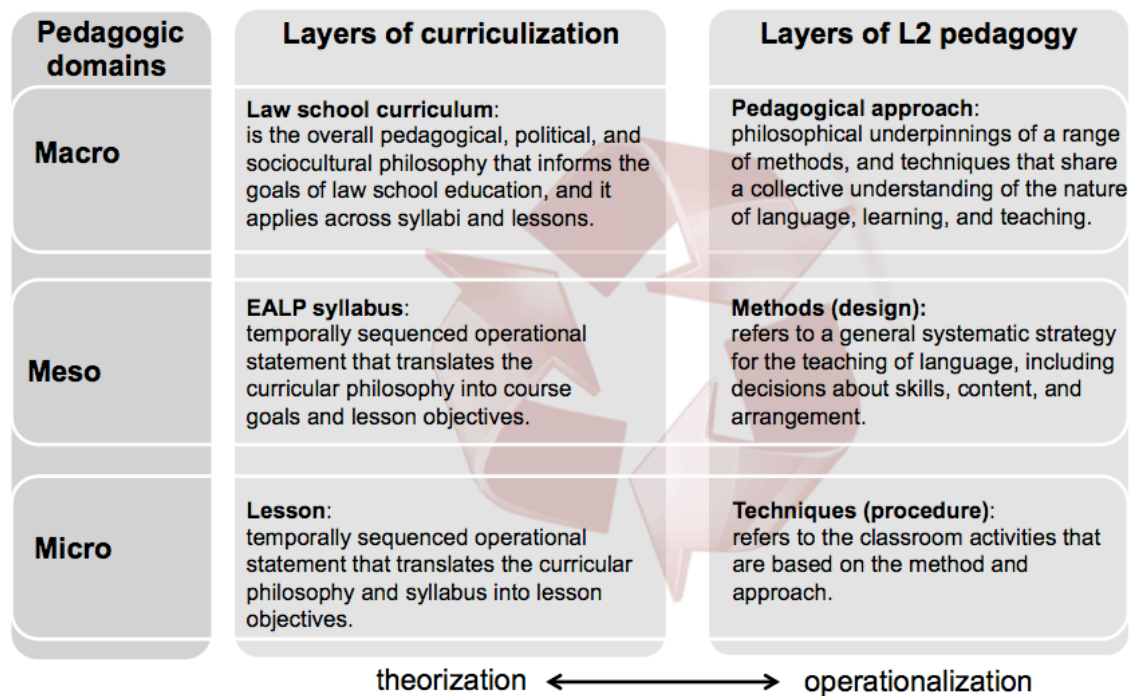


Figure 1.5: Layers of curricularization and L2 pedagogy

Curricularization consists of at least three components, *viz.* curriculum, syllabus, and lesson. *Curriculum* functions on the macropedagogic domain and can be defined as the “[...] planning, implementation, evaluation, management, and administration of educational programs” (Nunan 1988:8). A more progressivist understanding of curriculum involves the “interaction of (1) the nature of the learner, (2) the world of knowledge, and (3) society” (Tanner & Tanner 2007:99). Nunan’s definition addresses the actions involved and the performance of the curriculum while Tanner and Tanner accentuate the elements that inform the curriculum.

Subsequently, scholars integrate the performative and informative values of the curriculum. According to Dubin and Olshtain (2000:34-35), a curriculum “contains a broad description of general goals by indicating an overall educational-cultural philosophy.” McNeil (1977:1) articulates the curriculum as the “[...] intellectual backdrop or policy for instructional plans.” Therefore, the curriculum is theoretically focused and could be applied across subjects. Hence, the curricular framework considered in this study is described as the set of overarching goals that articulate the educational-cultural philosophy of EALP. These goals and the underlying ideology focus on legal language teaching and learning and subject content related to EALP.



A *syllabus* functions in the mesopedagogic domain and is described as “[...] a more detailed and operational statement of teaching and learning elements which translates the philosophy of the curriculum into a series of planned steps leading towards more narrowly defined objectives at each level” (Dubin & Olshtain 2000:35). The syllabus is concerned with the selection, sequencing, and grading of course content (Nunan & Lamb 2001:36; Richards 2009:2). In this study, the syllabus is only considered as far as the “planned steps” are concerned - that is, the operationalization of the curriculum.

A *lesson* functions in the micropedagogic domain, which implements the goals of the curriculum and objectives of the syllabus in the classroom. The parameters of this study are defined by the research questions and goals to limit the scope of the project. This excludes the micropedagogic domain of the lesson.

Three key terms in L2 pedagogy emerge that need to be distinguished, *viz.* approach, method, and technique. A pedagogic *approach* is broad in meaning and encapsulates the philosophical underpinnings of a range of methods and techniques that share a collective understanding of the nature of language, learning, and teaching. Based on the pedagogic approach, *method* (or design) refers to a general systematic strategy for the teaching of language, including decisions about skills, literacies, content, and lesson arrangement. *Technique* (or procedure) refers to the classroom activities that are based on the chosen method and approach (*cf.* Brown 2007:14; Richards & Rogers 2001:19).<sup>7</sup>

In the context of the curriculum, the layers of L2 pedagogy may be associated with different operational domains that extend beyond L2 pedagogy. Pedagogic approaches are informed by (and occasionally inform) the curriculum. Methods function within the syllabus, and techniques are employed to realize lesson objectives. For example, the law school curriculum (usually determined by governments, bar associations, and universities) subsumes the EALP course syllabus (usually designed

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<sup>7</sup> In contrast to the longevity of approaches, methods are relatively short-lived because of their fixed structures and limitations on interpretation. Although methods are credited for providing clear instructional guidance and for creating communities of instructors with common purposes, by the 1990s all-purpose methods were scrutinized and a “post-methods era” dawned (Richards & Rodgers 2001:247).

by the teacher and approved by the law school). The syllabus subsumes lessons (usually designed by a teacher) on issues such as legal briefs, the reading of cases, and advocacy (*cf.* Dubin & Olshtain 2000:34-35; Richards 2009:2). Figure 1.5 illustrates the domains in which pedagogy is theorized and operationalized. The layers are relatively stratified yet imbricated and ideologically referential-responsive as signified by the margins and recycling icon in the center. Curriculum development may begin with the philosophical principles in the macropedagogic domain and proceed toward classroom techniques and practice in the micropedagogic domain. Ideally, a central nexus of multidirectionality (similar to Freire's *praxis*; *cf.* Chapter 6) enables informative reciprocation among stakeholders concerned with the curriculization of EALP as L2 pedagogy.<sup>8</sup>

At this point it would be prudent to describe *curriculum development*. Nunan and Lamb (2001:37) consider curriculum development as a process that consists of three phases, *viz.* planning, implementation, and evaluation. In theory the phases follow sequentially; however in practice, the phases may develop multidirectionally. For example, program evaluation does not occur only at the end of a semester (phase 3), but it can occur continuously. Figure 1.6 illustrates how the three phases intersect and how the curriculum develops as a result of such multidirectional intersection.

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<sup>8</sup> The cross-connectivity and multidirectional influence among components of the curriculum and L2 pedagogy is evident in the creative confluence of these concepts in different disciplines. Scholarship reports on various approaches and methods that are integrated as follows: negotiation pedagogy for political science (Zartman 2010); case-based pedagogy for information science (Spackman & Camacho 2009); project-based pedagogy for natural sciences (Krajcik, McNeill, & Reiser 2007); problem-based pedagogy for legal studies (DiMatteo & Anenson 2007); task-based language teaching for English language teaching (ELT) (Littlewood 2004; 2007); content-based pedagogy for foreign language teaching (FLT) (Pessoa, Hendry, Donato, Tucker, & Lee 2008); competency-based pedagogy for adult English second language teaching (ESL) (Auerbach 1986); and inquiry-based pedagogy across the curriculum (Justice, Rice, Roy, & Hudspith 2009).

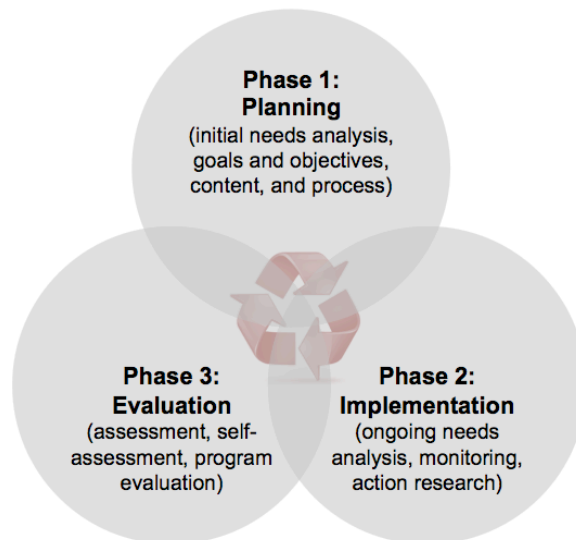


Figure 1.6: Phases of curriculum development (adapted from Nunan & Lamb 2001:37).

Richards (2009:2) describes the steps involved in curriculum development more explicitly with reference to the components of the curriculum. Curriculum developers should do the following:

- determine the needs of a group of learners;
- develop aims or objectives for a program to address those needs;
- determine an appropriate syllabus, course structure, teaching method and materials; and
- carry out an evaluation of the language program that results from these processes.

The descriptions by Nunan and Lamb (2001) and Richards (2009) contain a similar conceptual limitation. The needs analysis component (phase one) is exceedingly limited for EALP. Although the needs of a “group of learners” are essential, learning occurs in the political and sociocultural contexts of academic institutions, legal practice, governments, and the international community. Instead, the needs analysis for EALP curriculum development should account for the needs of the wider “legal discourse community.”

With the parameters of the curriculum determined, the longevity of the curriculum may be questioned. Richards and Rodgers (2001:246) provide a list of questions that may help to determine the longevity of a curricular approach:

- Does the new approach offer advantages over previous approaches?
- Is the new approach compatible with existing beliefs held by teachers and institutions?
- How complicated is the new approach?
- Has a pilot study been conducted?
- Have the benefits of the approach been articulated?
- How functional is the new approach?

Two additional questions should be pondered. What are the goals of the new approach, and how is the approach reconcilable with political and sociocultural contexts of the legal discourse community? These questions are not important to solidify a curricular framework for EALP as a hegemonic metanarrative; they are important because the repetition of the phases of curriculum development encourage *curricular plasticity*, which entails (re)planning, (re)implementation, and (re)evaluation.

### 1.5.8 Model, theory, and framework

The necessity and justification of the term *framework* is similar to the justification of *curriculum*; both are used explicitly in the title of the study. Initially the terms *model* and *theory* were considered. A *model* is described as “a system [...] or simplified description [...] of a system or process [...] used as an example to follow or imitate” (New Oxford American Dictionary). As such a *model* is similar to a pedagogic *method* as described by Richards and Rodgers (2001:245). A method provides detailed specifications on language instruction, and teachers learn how to apply the relatively inflexible procedures of a method. The creation of a model example implies that this study sets out to create a sample curriculum or detailed teaching method, which is not the intention.

*Theory*, on the other hand, encapsulates more than *model* and reflects the objectives of the study more accurately. A theory consists of at least three parts, which include “a system of ideas intended to explain something” and provides “a set of principles on which the practice of an activity is based” and “justifies a course of action” (New Oxford American dictionary). Theory does not imply a sample curriculum like model,

but it accurately refers to the set of principles that justifies certain curricular choices.

Therefore, a theory performs the following functions:

- analyzes or describes a phenomenon or condition,
- synthesizes data to create a clear understanding of the condition, and
- suggests possible ways to apply the synthesis.

The research questions and objectives of this project adhere to the imbricated and analytical process imbedded in the conceptualization of a theory.

*Framework*, however, encapsulates the meaning of theory but emphasizes more prominently the outcome of the project. A framework is described as “a basic structure underlying a system, concept, or text” (New Oxford American dictionary); it corresponds with and includes pedagogic *approach* (Richards & Rodgers 2001:245). An approach formulates a theory about the nature of language and how language is learned and taught. Such an approach is flexible and can be interpreted within varying contexts. In other words, *framework* includes both theory and approach.

## 1.6 Project preview

The study is structured to answer the research questions. As such, Chapter 2 explicates the research approach that explains how these questions will be answered through the social constructionist ontology and epistemology, the case study-based methodology, and a qualitative content analysis as method. Chapters 3 through 9, the literature reviews, answer research question one. These chapters are also arranged according to the three tributary disciplines, *viz.* theoretical linguistics, applied linguistics, and legal education. Chapter 3 probes the diachronic development of theoretical linguistics arranged according to the following four overarching traditions: (1) traditional, formal linguistics; (2) functional, contextual linguistics; (3) interactional, constructionist linguistics; and (4) critical linguistics. Chapters 4 through 6 provide a diachronic analysis of L2 pedagogic methods and approaches by categorizing them into three thematic chapters *viz.* traditional, transitional, and contemporary L2 pedagogy. In Chapters 7 and 8, traditional and contemporary legal pedagogy are analyzed and critiqued. Solutions to the challenges posed by legal pedagogy are addressed in Chapter 9, which is the conclusion of the literature reviews and the answer to the first research question. The second research question is

answered in Chapter 10, the qualitative content analysis of EALP-type textbooks. Chapter 11 concludes the study by answering the final research question as it is phrased in the title of this study. The concluding chapter is the synthesis of the preceding chapters. Figure 1.7 illustrates the chapter preview graphically.

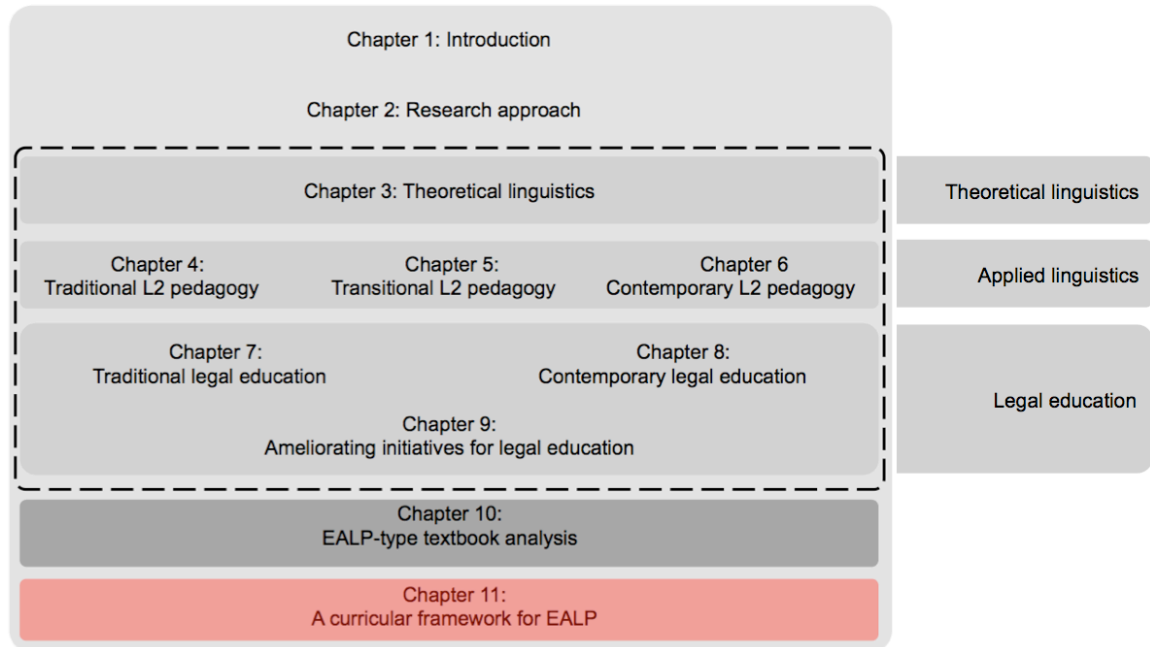


Figure 1.7: Project preview

## Chapter 2: Research approach

### 2.1 Introduction

The research approach is comprised of and illuminates ontology, epistemology, methodology, and method. Together, these concepts provide the qualitative underpinnings of the entire project and may collectively be termed the research approach (Creswell 2014:247). The ontology and epistemology provide the philosophical and ideological background of the project; the methodology provides the design principles and theoretical justification for the method; and the method describes the research procedure, that is, how data is collected and analyzed.

#### *Chapter preview*

Chapter 2 consists of seven main parts. Part one introduces this chapter through the chapter preview, and it defines terminology that is critically important for the description of the research approach. In part two, the discussion focuses on how the philosophical worldview (ontology and epistemology) informs and justifies the production of knowledge and meaning in this study. Part three explains the case study methodology that facilitates the presentation of L2 pedagogic realities across the circles of world English. Part four describes the qualitative content analysis method that consists of the data collection and analysis procedures. Part five considers the elements that determine the quality of qualitative research. In part six, relevant ethical considerations are deliberated. This chapter concludes with summative notes on the research approach.

#### *Research terminology*

Carter and Little (2007:1316-1317) propose an explicit and unambiguous description of the relationship among the cornerstones of the research approach. However, this description is evasive when the meanings of the terms are obfuscated by scholarship that attributes different meanings to similar research concepts (Creswell 2007:19). Because of their entwined relationship and importance to the research process, it is imperative to reify the meanings of *worldview* (*ontology* and *epistemology*), *methodology*, and *method* as they relate to this study.

Creswell (2014:6) defines *worldview* as a “general philosophical orientation about the world and the nature of research that a researcher brings to a study.” The researcher’s worldview “underlies and informs a style of research” (Sapsford 2006:175; *cf.* Sumner 2006:92). A philosophical worldview consists of assumptions about ontology and epistemology. *Ontology* is a “branch of metaphysics [that is] concerned with the nature of reality” (Lichtman 2013:324). *Epistemology* means to provide an explanation (*logos*) of knowledge (*episteme*) (Stone 2008:264). Epistemology can be defined as the “branch of philosophy dealing with the theory of knowledge, the nature of knowledge, or how we know what we know” (Lichtman 2013:322). Epistemology can also be described by asking “[w]hat is the relationship between the researcher and that being researched?” (Creswell 2007:17). The researcher’s worldview influences both the interpretation of research results and the manner in which he or she theorizes the methodology and conducts the research through method (Carter & Little 2007:1317).

The term *methodology* is often used synonymously with research method (Carter & Little 2007:1318). However, the two terms describe phases within the research process with distinctly different functions (Willig 2001:8). Kaplan defines methodology as “the study – the description, the explanation, and the justification – of methods, and not the methods themselves” (as in Carter & Little 2007:1317; *cf.* Schensul 2008:516). Methodology aims not to explicate the products of research but the research process itself (Cohen, Manion, & Morrison 2005:45). Examples of methodology include ethnography, grounded theory, action research, and case studies.

*Methods* are the techniques or tools used to gather and process data (Carter & Little 2007:1317, Schensul 2008:521). Quantitative methods test “objective theories by examining the relationship among variables [...]”, whereas qualitative methods provide the “means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem [...]” (Creswell 2014:246-247). In this study, the qualitative content analysis of EALP-type textbooks attempts to apprehend the problems that contribute to and exacerbate the feeble communication skills of law students.



Qualitative research methods share four characteristics: (1) they are conducted in communicative or discursive interchanges; (2) they emphasize the meaning constructed by participants; (3) they consider the sociocultural, political, and physical backgrounds within which people live, work, and interact; and (4) they focus on understanding the perspectives of others (Schensul 2008:521-522). Examples of qualitative methods as tools include content analysis, discourse analysis, interviews, reviews, and observations (Crocker 2009:17-18; Holliday 2007:16).

Carter and Little (2007:1317) describe the relationship among worldview, methodology, and method as cyclical with iterative instances. These three underpinnings of the research approach can be seen as a system that collaboratively justifies, evaluates, and produces knowledge (or the research outcome) (*cf.* Figure 2.1). Reciprocation among the underpinnings of the research approach endorses the practice of revisiting and reevaluating the worldview, methodology, and method when the research outcome has been achieved. Such iterative reflection is also in keeping with the qualitative standard of dependability addressed in part five of this chapter.

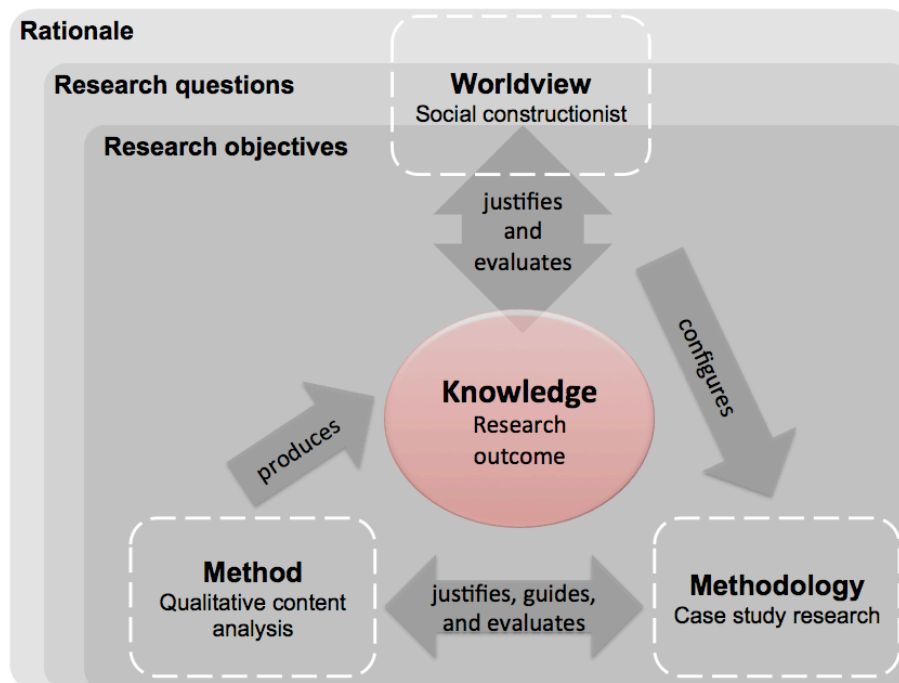


Figure 2.1: Cyclic progression of the research approach (adapted from Carter & Little 2007:1317).

In accordance with Creswell (2007:16), a justificatory comparison between qualitative and quantitative approaches is omitted because qualitative research is a paradigm in

its own right. Qualitative research is evaluated against its own criteria and does not have to be contrasted with a quantitative research approach to gain legitimacy. Denzin, Lincoln, and Giardina (2006:773) phrase it in a more spirited way by arguing that “we must resist conservative attempts to discredit qualitative inquiry by placing it back inside the box of positivism.”<sup>1</sup>

## 2.2 Social constructionist worldview

The purpose of part two is to conceptualize social constructionism as the underpinning worldview. Therefore, five important issues must be considered. Firstly, the significance of a personal worldview is justified. Secondly, the main features of a social constructionist worldview are illuminated. This is followed by a brief overview of the characteristics of four relatively dominant worldviews and their associations with social constructionism. The last two sections consider the implications of the social constructionist worldview for the methodology and method.

### 2.2.1 Justification of a personal worldview

The description of a personal worldview is essential for at least two reasons. Firstly, Pennycook (1990:303-314) cautions against a blatant acceptance of European Enlightenment thought by advocating the development of meticulous ontologies and epistemologies. The hegemony of European and American metanarratives may lead scholars to neglect their epistemological and ontological views by accepting the status quo. Remaining silent about the worldview diminishes the dependability, confirmability, and credibility of qualitative (interpretive) research. Secondly, Cunliffe (2008:125) advises that, if one subscribes to a social constructionist approach to research and pedagogy, it is vital to consider the assumptions involved in the creation of social realities. Cunliffe emphasizes that a personal worldview is a malleable perspective that exists in relation to other worldviews. Therefore, one should consider the effects of such assumptions on knowledge, research, and teaching.

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<sup>1</sup> The following sources provide useful analyses of and comparisons between qualitative and quantitative methods as used within the specified disciplines: *Research Methods in Education* (Cohen et al. 2000); *Research Methods in Applied Linguistics* (Dörnyei 2007); *Second Language Research Methods* (Seliger & Shohamy 2011); and *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Van Hoecke 2013).

Carter and Little (2007:1326-1327) argue that “[r]esearchers generally treat social concepts as if they are real enough to be named, investigated, and analyzed.” Yet, the knowledge base (epistemology) that supports such taxonomical, investigative, and analytical claims needs to be explained and justified, hence the importance of explicating the underpinning worldview.

## 2.2.2 Features of a social constructionist worldview

In general, scholarship traces the origins of social constructionism to the pivotal work of Berger and Luckmann entitled *The Social Construction of Reality* (1966). Indeed, their epistemological view of the social nature of knowledge persists in current social constructionist thought (Anderson 1997:48-54; Burr 1995:34). In addition to its epistemological origin, contemporary social constructionism embraces ideological, literary-rhetorical, and critical social paradigms. Scholarship across these paradigms agrees on at least three suppositions that form the underpinnings of current social constructionism. These suppositions include the multiplicity of truth, the social origins of knowledge, and the political dimensions of knowledge (Gergen & Gergen 2008:817).

### 2.2.2.1 Multiplicity of truth

“What we take to be experience of the world does not in itself dictate the terms by which the world is understood” (Gergen 1985:266). Reality is not reflected or mapped through scientific theory. In support of this argument, Gergen asks: “How can theoretical categories be induced or derived from observation [...] if the process of identifying observational attributes itself relies on one’s possessing categories?” (Gergen 1985:267). The positivist-empiricist discovery and existence of omnipotent truth is unimportant, but the implications of taking such truth claims seriously are essential (Gergen 1985:267; Gergen & Gergen 2008:818). Because social constructionists endorse the multiplicity of truth, the knowledge that constructs various truths cannot be singular.

### 2.2.2.2 Social origins of knowledge

Human relationships are the sources of knowledge about the world and the self. All knowledge is constructed through “historically and culturally situated social processes” (Gergen & Gergen 2008:817). This view critically challenges traditional

positivist views of objective, individualist truth. The tradition of the rational, individual knower, who is a knowledgeable agent of action, has to contend with the notion that “[...] knowledge, reason, emotion, and morality reside [...] in relationships” (Gergen & Gergen 2008:817; *cf.* Cunliffe 2008:125). Similarly, a personal worldview resides in iterative relationships.

The collective construction of knowledge challenges the assumption that science can proclaim objective truths. Social constructionists believe that “no one arrangement of words is necessarily more objective or accurate in its depiction of the world than any other” (Gergen & Gergen 2008:817). Disciplines produce useful truths within their communal (communicated or discursive) traditions. The social origins of knowledge can therefore be traced to the intricate combinations of social relationships between and among the selves and others (Cunliffe 2008:130).

### 2.2.2.3 Political nature of knowledge

Because knowledge is considered to be social, and social relationships are affected inevitably by politics, knowledge assumes political dimensions. As such, a social constructionist worldview corresponds with critical postmodern pedagogic approaches. In particular, it resonates with Pennycook’s (1990; 1996; 2004) critical linguistic approach, in which he questions applied linguistic research that is asocial, apolitical, or ahistorical, and it associates with the political dimensions of Freire’s critical literacy pedagogy. These critical strands in L2 pedagogy are explored in detail in Chapter 5 on contemporary applied linguistics.

The creation of categories, accepting that they are true, and the application of these categories have immense repercussions for society and research. Therefore, Gergen contemplates: “How can theoretical categories map or reflect the world if each definition used to link category and observation itself requires a definition?” (Gergen 1985:267). In response to Gergen, one may argue that categories, for instance, those created during qualitative content analysis, are temporarily reified and continuously renegotiated. Alternatively, one may question “[i]n what sense do the taken-for-granted realities of the scientist sustain ideologies inimical to a particular group”, such as the conventions of the academic legal discourse community (Gergen & Gergen 2008:818).

Gergen (1994:414) is of the opinion that social constructionism does not diminish research practices. Rather, it elicits a broad historical, cultural, and linguistic contextualization of research (*cf.* Willig 2001:7). From a critical linguistics perspective, Pennycook (2010:16.2) supports a holistic social constructionist perspective by suggesting that “we would also do well to be more humble in the world, listening to many alternative views of language and learning, rather than preaching our views as the newest and best.” Similar to pragmatism, the social constructionist worldview nurtures a holistic perspective that challenges oppressive hegemonies without being hegemonic itself, and it encourages understanding of alternative views, especially those of the subaltern.

Across disciplines, three approaches to social constructionism can be identified, *viz.* a subjective cognitive approach, a critical poststructuralist approach, and a relational social constructionism. These approaches are summarized in Table 2.1. The worldview underpinning this project draws on all of the segments that constitute social constructionism.

Table 2.1: Social constructionist approaches to research, knowledge, and theory (adapted from Cunliffe 2008:128).

	Subjective cognitive approach	Critical theory & poststructuralism	Relational social constructionism
<b>Foci &amp; Questions</b>	<ul style="list-style-type: none"> <li>Focus on how reality is objectified through interactive, discursive, constructive processes, and sense-making.</li> <li>Reality is selectively perceived, rearranged cognitively, and negotiated interpersonally.</li> <li>How is meaning made in social contexts?</li> </ul>	<ul style="list-style-type: none"> <li>Focus on social construction at a macro-level.</li> <li>How are power-infused discursive practices objectified in social structures, relations, and subjectivities?</li> </ul>	<ul style="list-style-type: none"> <li>Focus on social construction at a micro-level.</li> <li>How do people within a particular setting create meanings intersubjectively through their embodied dialogical activities?</li> </ul>

The advantages of a social constructionist worldview can be summarized as follows (George 2010:3):

- A social constructionist approach, for both researcher and teacher, inspires questions from outside of the obvious discourse of the discourse community.

- Such questions do not necessarily produce answers but suggest deeper comprehension of the social processes through which meaning is constructed.
- A social constructionist perspective instills the notion that answers are merely transient.
- Knowledge as a product of social interaction cannot exist in isolation.
- Questions regarding the social, historical, economical, and aesthetical are connected to politics.

The characteristics and advantages of a researcher's worldview do not emerge instantaneously. Instead, they are the result of prolonged interactions with disciplinary orientations, scholarship, and people, for instance. The worldview is a personal intellectual extension of the researcher's accumulated interactions with multiple truths, realities, and fragments of knowledge (*cf.* Creswell 2014:6). Therefore, it would be contentious to argue that the worldview is "chosen" to meet the requirements of the project. It would be more apt to postulate that the project is configured to agree with the worldview (*cf.* Figure 2.1). Burr answers these questions by explaining that social constructionists reject the idea that reality can be understood in terms of grand theories or metanarratives. Instead, our communal, pluralist existence is accentuated; therefore, social constructionists argue that no single worldview can support all knowledge (Burr 1995:80-85). For the purposes of this study, the worldview draws primarily on the insights of social constructionism in its interchanges with other worldviews.

### 2.2.3 Social constructionism in relation to prominent worldviews

Postpositivism, constructivism, transformative approaches, and pragmatism represent a continuum of prominent philosophical worldviews (Creswell 2014:6; Lichtman 2013:25). These worldviews are acknowledged as equally valid perspectives, but they do not necessarily associate equally with social constructionism. In this brief overview, the social constructionist worldview is contrasted and justified in relation to the four most prominent worldviews.

*Postpositivists* agree that reality and knowledge are produced through the "observation and measurement of the objective reality that exists 'out there'"

(Creswell 2014:7). This objective reality is governed by laws and theories that are subjected to verification through the testing of cause-effect relations. In contrast, social constructionism supports multiple, subjective social realities and forms of knowledge associated with the diversity of the globalized law school. Therefore, theories analyzed in the literature review are considered as they explain various approaches to language pedagogy and co-construct the pedagogic realities of EALP across the circles of world English. The acceptance of an objective reality would negate the differences across the circles of world English.

The second prominent worldview, (social) *constructivism*, is not synonymous with *social constructionism*; however, they share a research focus on understanding the multiplicity of meanings that are socially and historically constructed and in which the researcher is subjectively involved (Creswell 2014:8-9). Constructivism and social constructionism can be contrasted based on the following differences: their origin, the distinction between internal and external realities, and their critical stances. Firstly, in contrast with the social origins of social constructionism (Berger & Luckmann 1966), constructivism has its roots in the biological explanation of perception and cognition as described by Maturana and Varela (1987), Von Foerster (1988), and Von Glasersfeld (1989). Secondly, earlier versions of constructivism accentuate cognitive structures that are used to interpret an external reality (*cf.* Chapter 3). Social constructionism does not distinguish between internal and external cognitive realities because realities are social (Anderson 1997:48-54; Burr 1995:34; Gergen 1985:266-275). Even “internal schemata” are a result of social interactions. Thirdly, social constructionism displays an explicit critical dimension as it supports a political epistemology similar to a transformative worldview (Creswell 2014:9). This critical political dimension is essential to recognize the autonomy of the outer and expanding circles of world English. An uninformed political agenda may not necessarily recognize the status quo “imposed” by the norm-providing inner circle.

Similar to social constructionism, the *transformative* worldview recognizes “asymmetric power relations” (*cf.* Creswell 2014:9-10). However, the change agenda of the social constructionist worldview proposed in this study is not as participatory as the transformative view that engages participants during the research process. This may be considered a limitation of the study, but it can be addressed in future research,



since research parameters are justified (*cf.* Chapter 11). As the transformative view pursues the empowerment of subjugated groups, the worldview in this project seeks to benefit EALP teachers and students through the framework of curriculum development.

The fourth prominent worldview is *pragmatism*, which considers ontological questions as unproductive; instead it “emphasizes the research problem and uses all approaches available to understand the problem” (Creswell 2014:10). Such an all-inclusive perspective is attempted through mixed methods research that combines qualitative and quantitative forms of research (Creswell 2014:244; Lichtman 2013:324). In this study, the diversity of approaches is achieved by recognizing the diachronic development of the three tributary disciplines of EALP and their most relevant theories, methods, and approaches that contribute to addressing the research problems.

The social constructionist worldview permeates the methodology and method. Therefore, it is prudent to consider the possible implications of the worldview for the methodology and the method.

#### **2.2.4 Implications of the worldview for the methodology**

The purpose of the worldview is to modify the methodology and to justify and evaluate the contribution to knowledge (Carter & Little 2007:1317). The case study methodology aligns harmoniously with the social constructionist worldview because their philosophical underpinnings are similar in at least two respects.

Firstly, in general, methodologies rely on internal networks of suppositions that justify the manner in which knowledge is conceptualized (Gergen & Gergen 2008:819). The case study methodology “understand[s] and interpret[s] the world in terms of its actors” (Cohen *et al.* 2005:181). In this project, the three circles of world English and the countries within each circle provide a network of L2 “actors” necessary to conceptualize EALP. Therefore, similar to the social constructionist worldview, the case study methodology confirms the researcher’s “commitment to the realities, values, and practices of a particular community” (Gergen & Gergen 2008:819). Through the extensive literature review and EALP-type textbook analysis,



this project attempts to include the realities, values, and practices of the theoretical linguistic, pedagogic, and legal discourse communities that inform the circles of world English and eventually the EALP curriculum.

Secondly, because a social constructionist worldview endorses egalitarian properties, claims of authority are subverted. While the case study methodology encourages an in-depth examination of the case (Lichtman 2013:92), it needs to refrain from posing as a positivist grand theory or metanarrative. Such authority cannot be claimed, because the “[r]ealities of today depend on the agreements of today” (Gergen & Gergen 2008:819). Therefore, the case study serves as a necessary, temporary reification of EALP and its current challenges.

In summary, the social constructionist worldview requires the case study methodology to be politically sensitive to multiple truths and realities. As such, it requires the methodology to meet the confirmability requirement of qualitative research addressed in part five of this chapter.

### **2.2.5 Implications of the worldview for the method**

Through its influence on methodology, the worldview also affects method. This influence is exercised in two domains, *viz.* the relationship between the researcher and the case and the quality of the method (Carter & Little 2007:1321-1322).

The object of analysis of the method is the EALP-type textbook. Instead of an empirical view of the textbooks as passive objects, they are considered active contributors that create a comprehensive understanding of EALP. The textbooks create meaning collaboratively to serve the ends of the cultures and disciplines to which their meanings pertain (*cf.* Gergen & Gergen 2008:820).

The worldview also influences the way in which the quality of the method is demonstrated. Unlike qualitative research, in which multiple sources are used to triangulate data to enhance understanding, quantitative research involves multiple sources to produce more data but not necessarily to produce more accuracy. The qualitative content analysis provides rigor, richness, and complexity (Denzin & Lincoln 2008:7). By acknowledging the multiplicity of truths and realities created

through EALP-type textbooks and relating it to the three tributary disciplines, the qualitative content analysis offers credibility to the research approach. The worldview, therefore, encourages the method that recognizes the EALP-type textbooks as social participants that co-create EALP.

### 2.3 Case study methodology

In this part, the definition of case study methodology introduces the composition of the case study for this project. Then the project is evaluated against the criteria of case study research. The discussion of the methodology concludes with a review of the advantages and disadvantages of case studies and a summary of the primary features of case study research.

Methodology, also known as research design, can be defined as the “types of inquiry [...] that provide specific direction for procedures in a research study” (Creswell 2014:247). Being informed and modified by a social constructionist worldview, a suitable methodology will display hermeneutical and dialectical characteristics. Within qualitative research, several methodologies emerged as strategies to articulate the “reconstructed logics of qualitative research” (Carter & Little 2007:1318). Scholarship agrees on the following six categories of qualitative methodologies (Carter & Little 2007:1318; Creswell 2007:53-84; Denzin & Lincoln 2008:30; Holliday 2007:16-17):

- grounded theoretical approaches;
- narrative, life history, testimonials, and biographical methodologies;
- different ethnographies;
- participatory action research traditions;
- different phenomenological or phenomenographic traditions; and
- other case study approaches.

Case study research is well suited for an interpretive, subjective research approach that attempts to “understand and interpret the world in terms of its actors” (Cohen *et al.* 2005:181). Case study research is defined as an “approach that uses in-depth investigation of one or more examples of a current social phenomenon, utilizing a variety of sources of data” (Keddie 2006:20; *cf.* Lichtman 2013:90). Although case

studies refer to people, other entities, such as educational institutions, discourse communities, curricula, and syllabi with “clearly defined boundaries”, may also be considered as case studies (Dörnyei 2007:151).

In general, three types of case studies can be distinguished: (1) *intrinsic case studies* attempt to explicate the inherent intriguing nature of one specific case; (2) *instrumental case studies* focus on a broader issue than the case itself; and (3) *multiple or collective case studies* are similar to instrumental case studies; however, collective case studies refer to various cases that investigate a general phenomenon (Dörnyei 2007:152; cf. Figure 2.2).

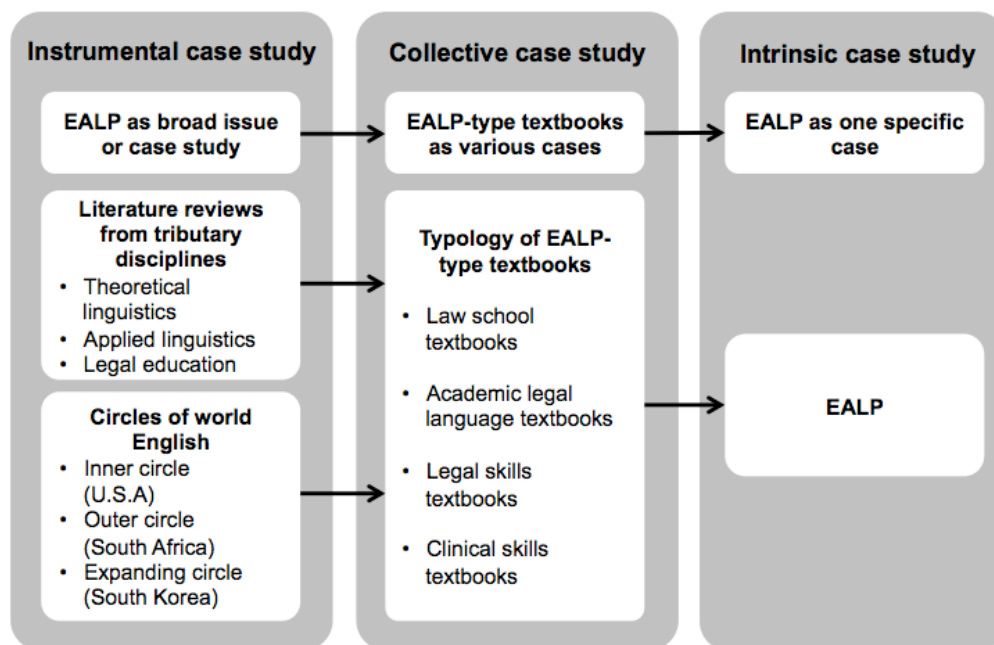


Figure 2.2: Composition of the case study methodology

The social phenomenon (EALP) and the variety of sources of data from the tributary disciplines can be conceptualized as three case studies. Firstly, the three circles of world English conceptualize legal English as a local social phenomenon within each circle to constitute *circles of legal English*, and it conceptualizes legal English as a universal social phenomenon that transcends the individual circles to constitute *circles of world English*. The circles of world English may be considered an instrumental case because they conceptualize EALP as a broader issue that crosses the three circles of legal English. The instrumental case study also explains the composition of EALP as a theoretical social phenomenon through the literature reviews of the three tributary

academic disciplines. Secondly, the sample of EALP-type textbooks can be described as a collective case study. Each textbook is considered as a case study because of its particular worldview and linguistic and pedagogic orientations that distinguish it from other EALP-type books. However, the EALP-type textbooks are sufficiently homogenous to validate the inherent intriguing nature of one specific intrinsic case, *viz.* EALP. Finally, EALP may be considered an intrinsic case study because the EALP-type textbooks, the circles of world English, and the reviews of the tributary disciplines are all concerned with explicating the inherent intriguing nature of EALP. Figure 2.2 illustrates the conceptualization of the case study.

The following criteria are listed as the hallmarks of case study research (Cohen *et al.* 2005:182):

- It is concerned with a rich and vivid description of events relevant to the case.
- It provides a chronological narrative of events relevant to the case.
- It blends a description of events with the analysis.
- It focuses on individual actors or groups of actors and seeks to understand their perceptions of events.
- It highlights specific events that are relevant to the case.
- The researcher is intimately involved in the case.
- An attempt is made to portray the richness of the case in writing up the report.

How does this project meet the criteria? The literature reviews of the instrumental cases provide rich, diachronic, and chronological descriptions of EALP in the three circles of world English and in the context of theoretical linguistics, applied linguistics (L2 pedagogy), and law. These reviews extend from Chapter 3 through Chapter 9. While describing linguistic theory, L2 pedagogy, and legal education, the literature reviews provide detailed analyses of relevant theories, movements, and perspectives. Because of the diachronic structure of the literature reviews, significant events are highlighted such as the interpretive turn and the linguistic turn. The researcher's personal involvement in the cases emanate from teaching American law and legal English at the University of Zhaoqing, the registration of this project at the University of Pretoria, and current employment as an L2 teacher at Seoul National University.

Setting several parameters, such as geographic, institutional, temporal, descriptive, and functional limitations, delineate the cases (Cohen *et al.* 2005:182). Geographically, the case studies are limited to three countries and three institutions that represent each circle of legal English. The literature reviews extend from approximately 1900 to the present. The qualitative content analysis of EALP-type textbooks is limited to the decade between 2003 and 2013. A general description of EALP (*cf.* Chapter 1) is accepted by the academic discourse community that distinguishes EALP from other ESP subjects. In terms of the qualitative content analysis of EALP-type textbooks, a detailed description of such textbooks is provided in the discussion of the qualitative content analysis below. These parameters delineate the case studies to manageable proportions and correspond to the framework of purposive sampling (Dörnyei 2007:153; Olivier 2006:244).

Case study research has several advantages and disadvantages. The advantages of case study methodology result from the thick descriptions that it supports. A thick description is defined as “a stratified hierarchy of meaningful structures in terms of the” subject content (Geertz 1994:215). Such meaningful and compound descriptions may lead to completeness, complex analyses, readability, and the generation of new hypotheses and models (Dörnyei 2007:155). However, case study research is criticized for not being sufficiently representative to allow generalizations (Keddie 2006:20). This challenge is addressed by configuring the non-probability, purposive sample (White & Marsh 2006:35). Because the research focus is tapered, the sample of EALP-type textbooks is sufficiently homogenous for research transferability within the circles of EALP. This eliminates the necessity of a probability sample. However, the relative homogeneity across the circles of EALP should not be confused with the heterogeneity of the population of legal English students and local legal jurisdictions in the circles of legal English (*cf.* Chapter 1).

Case study research may be summarized by describing its purposes, foci, key terms, and characteristics (*cf.* Table 2.2). Indeed, this project conforms to the purposes of case study research, since it attempts to understand the uniqueness of EALP within L2 education by conducting interpretive and inferential analyses of the realities of the three circles of EALP.

Table 2.2: Primary features of case study research (adapted from Cohen *et al.* 2005:79).

Case study research			
Purposes	Foci	Key terms	Characteristics
To present, analyze, and understand the uniqueness of actual situations through accessible accounts	Individuals and local settings	Uniqueness	In-depth, detailed data
	Unique instances	Detailed analyses and thick descriptions	from wide data sources
To understand the complexity and situatedness of behavior	Specific cases	Interpretive and inferential analyses	Holistic approach to phenomena
	Bounded phenomena and systems:	Subjective, descriptive, analytical, understanding of specific situations	What can be learned from particular cases?
To contribute to action and intervention	<ul style="list-style-type: none"> <li>• individual</li> <li>• group</li> <li>• roles</li> <li>• organization</li> </ul>		
To represent the realities of selected cases	<ul style="list-style-type: none"> <li>• community</li> </ul>	Sincerity, complexity, particularity	

Through its focus on bounded phenomena, the case study research methodology informs the conceptualization of the collection, description, and presentation of selected cases, groups, and communities. Although case study research is identified by the key term *detailed analysis*, it does not sufficiently describe the data analysis procedures, such as coding and the construction of the research outcome. To meet these additional requirements, the qualitative content analysis of EALP-type textbooks facilitates the analysis of data and the description of a curricular framework for EALP. The qualitative content analysis of the EALP-type textbooks constitutes the method of this project.

## 2.4 Method

Research methods equate to research action, “the most flexible, pragmatic, and intrinsically a-theoretical component of the research process” (Carter & Little 2007:1326). Without method, methodology is left to the proverbial madness; research questions cannot be answered and objectives cannot be met without method (Carter & Little 2007:1326). The discussion of the method comprises two parts, *viz.* data collection procedure and qualitative content analysis.

### 2.4.1 Data collection procedure

The data collection procedure includes a description of the data collection type and the literature search strategy. The data collection type focuses specifically on public documents within the academic domain and their advantages and disadvantages in relation to this study. The literature search strategy defines the literature, expounds the search and screening criteria, and explains in detail how the literature searches were conducted.

#### 2.4.1.1 Data collection type

Qualitative data collection types include observations, interviews, documents, and audio-visual material. In this study, data was collected from documents. Generally, document types include two categories of texts: (1) public documents such as meeting minutes or newspapers; (2) and private documents such as journals or letters. The advantages and disadvantages of documents as data collection type are summarized in Table 2.3.

Table 2.3: Advantage and shortcomings of documents as a data collection type (adapted from Creswell 2014:191-192).

Advantages of documents	Shortcomings of documents
<ul style="list-style-type: none"> <li>• Access to the language of the target community</li> <li>• Unobtrusive information</li> <li>• Focus on relevant data</li> <li>• Reliability of reviewed and edited data</li> </ul>	<ul style="list-style-type: none"> <li>• Discrepancies in authorial articulation</li> <li>• Protected private information</li> <li>• Request information</li> <li>• Transcriptions necessary</li> <li>• Digital texts necessary for computerized coding</li> </ul>

The advantages and shortcomings of documents as a data collection type had certain repercussions for the study. Textbooks were considered public documents within the academic domain. As public documents, EALP-type textbooks do not contain protected private information. The textbooks were not particularly inaccessible because they could be retrieved from university libraries in the circles of world English. Because the coding was conducted manually, digitalization and transcriptions were unnecessary. At the time of data collection, none of the textbooks were available in digital format from the university libraries.

#### 2.4.1.2 Literature search strategy

The literature search for EALP-type textbooks depended on the sequential casting of clearly defined parameters. Following the definition of case studies in terms of the circles of world English, EALP-type textbooks were defined to straddle the circles of legal English and to consider EALP as an intrinsic case.

The delimitation of the literature was achieved by using three focal parameters or selection criteria that define EALP-type textbooks as being (1) concerned with the instruction of legal English (2) for law school students at university level (3) across the circles of world English. The *curricular framework* referred to in the title of this project requires that legal English be interpreted in the broader context of the law school curriculum instead of being limited to the EALP syllabus. As such, the EALP-type textbooks display a broad comprehensive approach to legal English instruction within the law school curriculum. Not only does the title broaden the scope of the textbooks analyzed, it also broadens the perspective and range of the study as a whole and adheres to the worldview that promotes multiple realities and the objective of case study research to formulate thick descriptions (Dörnyei 2007:155).

#### *Search criteria and screening of textbooks*

The search criteria include time parameters, specificity of EALP-type textbooks, circles of world English, target population, and initial screening.

- The literature search was limited to a specific *time frame*. Candlin *et al.* (2002) conducted a review of legal English textbooks covering the period from 1985 through 2002. This study focuses on the decade after the Candlin *et al.* (2002) review; therefore, the parameters were set between 2003 and 2013.
- *Specificity* of EALP-type textbooks refers to the scope of the sources. For example, textbooks limited to plain legal English and sources focused on legal drafting alone were excluded because of their exceedingly specified foci often aimed at audiences beyond law schools. However, this does



not mean that EALP-type textbooks selected for this study do not include sections on plain legal English or drafting (*cf.* Chapter 10).

- Preliminary and final searches were conducted on various databases and catalogues; however, textbooks included were retrieved from three university library catalogues, each representative of a *circle of world English*, thus adhering to the case study parameters. At the time, the project was registered at the University of Pretoria (South Africa), which provided access to the Oliver Tambo Law Library and is representative of the outer circle of world English. Interlibrary agreements provided access to the Harvard University Library (the United States), which is representative of the inner circle of world English. My employment at Seoul National University (South Korea) provided immediate access to its Central Library, representative of the expanding circle of world English. Textbooks included in the qualitative content analysis were limited to those available in the three library catalogues because these libraries provide public access to the textbooks.
- In conjunction with the circles of world English, the *population* was delineated to include textbooks targeted at university law students. Although relevant, “textbooks” with an academic focus on teacher training, such as *The Language of Law School: Learning to “Think Like a Lawyer”* (Mertz 2007a) and *Thinking Like a Lawyer: An Educator’s Guide to Legal Analysis and Research* (Redfield 2011), were excluded from the analysis. The readership of textbooks was determined through the initial screening of prefaces and the lists of content as the units of analyses.
- The initial *screening* was limited to significant parts of the textbooks. As the databases were probed for the different search terms, the textbook titles, lists of content, and prefaces were instrumental to determine whether textbooks met the above criteria. At face value, the titles established associations with the search terms, and the lists of content

established connections with the extensive literature reviews of the project. The textbook prefaces were essential, as they define the readership and purpose of the publications.

### *Literature search management*

An information specialist and the researcher conducted the literature searches for EALP-type textbooks *simultaneously*. Liana Viljoen, an information specialist at the Oliver Tambo Law Library (University of Pretoria), conducted several searches. After a briefing about the objectives of the project and based on her professional expertise, Viljoen conducted searches using the following search terms and phrases: *legal English*, *legal literacy and literacies*, and *legal skills*. Viljoen conducted searches on SABINET, SACat, ISAP, and SAE Publications, all of which are South African databases; HeinOnline and Westlaw, comprehensive, American-based online legal research services; Bookfinder, a meta-search engine of approximately 100,000 bookstores; and WorldCat, a collection of approximately 72,000 international library catalogues. Although the Oliver Tambo Law Library did not have access to the catalogues of Harvard University and Seoul National University, Viljoen was of the opinion that WorldCat would suffice.

Because of an emic perspective, I conducted searches using overlapping and marginally different search phrases. This flexibility provided a broader spectrum of search results that could be screened for availability at the university libraries. I used the following terms and phrases: *English for academic legal purposes*, *academic legal language*, *legal English*, *thinking like a lawyer*, *legal skills*, and *legal literacies*. These initial search phrases were indicative of the larger categories of the qualitative content analysis. The last two terms were included because authors often use skills and literacies to refer to language instruction.

The term *legal literacies* did not deliver any relevant textbooks in the searches conducted by both inquirers. *Legal literacies* frequently refers to issues related to street law; that is, legal literacies refers to programs that educate the general public on human rights, protection of the vulnerable, and gender justice and the legal, social, and political implications of such programs (Kumar 2012; Xu 2011). Legal literacies are therefore not similar to literacies as recognized by L2 pedagogy scholarship.

Consequently, the searches on *legal literacy* and *literacies* conducted by both inquirers were discarded because the textbooks that refer to legal literacies are not relevant to EALP instruction (*cf.* Chapter 6). Pedagogic scholarship may insist on translating language skills to literacies, but this translation is not supported because of the dichotomous meaning it elicits in legal scholarship. Instead, the term *skills* is used throughout the study.

The search phrase *thinking like a lawyer* was initially excluded; however, whilst writing Chapter 9 on ameliorating initiatives for legal education, it became evident that this skill, the most significant in legal scholarship, was essential to conceptualize EALP within the law school curriculum. The inclusion of the search phrase *thinking like a lawyer* during data collection is merited by the method of direct, qualitative content analysis, which allows the inductive identification of themes and patterns derived from theory prior to and during data analysis (Hsieh & Shannon 2005:1281; Lincoln & Guba 1985:208; White & Marsh 2006:35).

The searches were then triangulated for three reasons: (1) to validate the inclusion of texts identified by both the information specialist and the researcher; (2) to contribute to data saturation when additional EALP-type textbooks beyond the set parameters failed to deliver new clusters or categories (Lichtman 2013:261); and (3) to facilitate thick descriptions as required by case study research to increase the credibility of qualitative interpretations (Creswell 2014:189-201).

Overlapping search results were identified that revealed prominent (or perhaps dominant) publications that may be preferred by the readership for various reasons. These reasons include practical usefulness; comprehensiveness of the subject matter; applicability or conformity to the law school curriculum; and economic, social, and political reliance on communities in the inner circle of world English. The analysis of overlapping search results alone would provide a slanted purposive sample of textbooks available across the circles of world English that favors publications and authors from the inner circle of world English. Therefore, based on the search and screening criteria above, the search results were teased out judiciously for the inclusion of relevant textbooks not necessarily available via multiple university catalogues but representative of the circles of world English. Based on the criteria

above, the searches were then integrated into a coherent list of search results (*cf.* Appendix B).

With the EALP-type textbooks selected, the data analysis began. The initial screening of textbooks, during which a qualitative codebook (notebook) was developed to identify main categories, was the first step toward the data analysis.

#### 2.4.2 Qualitative content analysis

In this second section, the qualitative content analysis is accounted for. First, a general description of qualitative content analysis is provided with a specific description of summative content analysis. This is followed by the contextualization of the objectives of summative content analysis within this study. The method section is concluded with a description of the three imbricated phases of qualitative content analysis, also known as the phases of the coding process (Hsieh & Shannon 2005:1285).

Qualitative researchers employ different kinds of analyses; for example, the constant-comparative method, content analysis, conversation analysis, discourse analysis, interpretive phenomenological analysis, narrative analysis, and qualitative comparative analysis (Lichtman 2013:259-260). Qualitative content analysis is defined as “a multipurpose research method developed specifically for investigating a broad spectrum of problems in which the content of communication serves as a basis for inference” (Cohen *et al.* 2005:164). In keeping with the definition of qualitative content analysis, the EALP-type textbooks can be conceptualized as communicative, educational tools that contain content that provide a basis for making linguistic, pedagogic, and legal inferences for EALP curriculum development.

Content analysis is flexible enough to be reconciled with different worldviews and methodologies, and it can be conducted quantitatively or qualitatively. With its origin in quantitative studies, content analysis developed to answer “what” questions. However, as a qualitative method, it attempts to answer “why” questions, through which it constructs meaning (Hsieh & Shannon 2005:1277; Julien 2008:120). In contrast to the predetermined categories of quantitative content analysis, qualitative content analysis usually derives categories *inductively as the data is analyzed* (Lincoln & Guba 1985:208; White & Marsh 2006:35) or *a priori*, after an initial

inspection of theory and the literature (Cohen *et al.* 2005:164; Hsieh & Shannon 2005:1286), but before the actual content analysis.

The method through which initial codes are developed distinguishes the three approaches to qualitative content analysis. In *conventional content analysis*, codes result during data analysis. *Direct content analysis* requires the researcher to identify codes prior to and/or during data analysis. *Summative content analysis* relies on keywords that were identified prior to and/or during data analysis in relation to particular content (Lichtman 2013:259). This study utilizes the coding scheme of summative content analysis because keywords were identified in advance to locate particular content related to EALP. However, additional refined categories were established during data analysis. Table 2.4 provides a brief summary of the differences among the three methods of qualitative content analysis. Although three distinct approaches may be identified, characteristics of one approach can influence and overlap with another.

Table 2.4: Coding differences among approaches to qualitative content analysis (adapted from Hsieh & Shannon 2005:1286).

	<b>With what does study begin?</b>	<b>When are codes or keywords defined?</b>	<b>From what sources are codes or keywords derived?</b>
<b>Conventional content analysis</b>	Observation	Codes are defined during data analysis	Codes are derived from data
<b>Direct content analysis</b>	Theory	Codes are defined before and during data analysis	Codes are derived from theory and/or relevant research findings
<b>Summative content analysis</b>	Keywords	Keywords are identified before and during data analysis	Keywords are derived from researcher's interest and/or review of literature

Two levels of analyses occur within summative content analysis. Manifest level analysis occurs when texts are analyzed for particular content or the “surface meaning of the data [...]” (Dörnyei 2007:245-246). At this point, the analysis remains quantitative because it focuses on “counting the frequency of specific [...] content” (Hsieh & Shannon 2005:1283). For example, textbook content was screened for specific words, such as the four traditional language skills, *viz.* writing, reading,

listening, and speaking. Consequently, 42 textbooks were identified to comprise the communication skills content cluster (*cf.* Appendix C).

The second level is the latent level analysis that involves the “interpretive analysis of the underlying deeper meaning[s] of the data” (Dörnyei 2007:246). Mayring (2000:1) provides an apt description of latent level analysis as a method that classifies “[...] themes and main ideas of the text as primary content [manifest level analysis] and context information as latent content.” Qualitative content analysis is less concerned with the content itself; it is more focused on the content as evidence of latent fundamental phenomena. For example, content that explicates the use of language in social settings was categorized as social, communication skills. However, textbooks did not necessarily identify the keywords *networking*, *collaboration*, and *diversity management* as social communication skills. By grouping these keywords together, a category can be formed that provides deeper insight into the cluster of law school communication skills (*cf.* Appendix C).

In the context of the analysis of EALP-type textbooks, the purposes of qualitative content analysis can be summarized as follows (*cf.* Cohen *et al.* 2005:165):

- to describe trends in the communicative content of EALP-type textbooks;
- to correlate the characteristics of communicative tools with the messages that they produce;
- to audit communicated content against the principles of theoretical linguistics, L2 pedagogy, and legal education; and
- to describe patterns of communication.

The main advantage of qualitative content analysis as a flexible and intuitive approach is the subjective and reflexive involvement of the researcher (Hsieh & Shannon 2005:1277). Naturally, this is also a disadvantage in the eyes of researchers in search of illusive “objective” interpretations. However, a researcher must remain vigilant not to read unintended meanings into texts. Using the exact words or phrases of data sources can circumvent unintended interpretations. In qualitative content analysis, the researcher is encouraged to maintain a “fluid and creative analytical position that is not constrained by procedural traditions and that allows new theories to emerge

freely” (Dörnyei 2007:246). In a similar vein, Julien (2008:120) recognizes that the text under qualitative content analysis remains open “to subjective interpretation, reflects multiple meanings, and is context dependent.” These contextual underpinnings are provided in the detailed literature reviews.

#### 2.4.2.1 Coding procedure of qualitative content analysis

The summative content analysis of this study was conceptualized as three sequential phases (*cf.* Creswell 2014:197-200; Dörnyei 2007:246; Lichtman 2013:259): (1) a generative phase that consisted of the coding for content clusters, categories, and keywords; (2) an interpretive phase during which coded clusters, categories, and keywords were interpreted (*cf.* Chapter 10; Appendix B); and (3) a theorizing phase, which culminated in the main objective of this project, *viz.* a curricular framework for EALP (*cf.* Chapter 11).

##### *Phase 1: Coding procedure*

Phase one consists of three steps that fulfill the quantitative dimension of the project: (1) coding for search terms and phrases to isolate a sample of EALP-type textbooks; (2) coding for textbook groups to create a typology of textbooks; and (3) coding for content clusters, categories, and keywords within textbooks. The first step of coding during the summative content analysis occurred when search terms and phrases were identified prior to data collection and analysis and during the review of the literature. This resulted in the identification of specified search terms and phrases. These search terms and phrases were used to identify the relevant textbooks accounted for in Appendix B.

The second step in the coding procedure entailed recoding textbooks according to categories based on the lists of content and the textbook prefaces. To identify EALP-type textbooks, the coding led to manifest level analyses that numerically accounted for textbook categories. As textbooks were coded according to the search terms, categories or “bracketing chunks” (Creswell 2014:197) emerged. The EALP-textbooks included were categorized into the following four groups: (1) textbooks with a focus on general law school skills; (2) textbooks that concentrate on academic legal language skills; (3) textbooks with a comprehensive focus on general legal

skills; and (4) textbooks that emphasize clinical skills. To simplify the typology and to avoid confusion with the excessive use of *skills*, the textbook groups were named:

- law school textbooks
- academic legal language textbooks
- legal skills textbooks
- clinical skills textbooks

Categories may also be imposed from existing literature, therefore, *a priori* application (Benaquisto 2008b:86; Julien 2008:120). *A priori* coding occurred by associating the Candlin *et al.* (2002) review that provided the time frame parameters. In their review, Candlin *et al.* (2002) created a typology of four kinds of legal writing books. Table 2.5 provides a summary of their typology of textbooks and associated pedagogic approaches.

Table 2.5: Summary of Candlin *et al.* (2002) typology of legal writing textbooks and associated pedagogic approaches

Typology of legal writing textbooks	Associated pedagogic approaches
<ul style="list-style-type: none"> <li>• Lexico-grammar based books</li> <li>• Rhetoric-based books</li> <li>• Books that include legal content</li> <li>• EALP books</li> </ul>	<ul style="list-style-type: none"> <li>• Scientific-modernist approaches</li> <li>• Rhetorical approaches</li> <li>• Content-based approaches</li> <li>• EAP approaches</li> </ul>

Methodologically, the Candlin *et al.* (2002) review does not report its search terms used to identify relevant legal writing books. With the exception of a time frame and definition of legal writing books, the Candlin *et al.* (2002) review does not include criteria that would determine the inclusion or exclusion of books. Therefore, with such an *ad hoc* data collection procedure, the quantitative component of the Candlin *et al.* (2002) study is questioned. Consequently, their research contribution is based on their interpretations, but it is not supported by the transparency or rigor of their research methodology. The Candlin *et al.* (2002) review informed category formation, but it did not determine the categories created in this study.



The purpose of the third step of coding was to identify relevant content to create conceptual content clusters. The content clusters were divided into categories, which in turn were described by keywords. The third step of the coding procedure occurred by opening up EALP-type textbooks through a final round of coding. The coding was informed by the coding conducted in steps one and two and the units of analysis for step three. The units of analysis were chapter headings and subheadings, which were coded for keywords. The keywords were converted into larger, encompassing categories. Through manifest level analysis, content clusters, categories, and keywords were enumerated. Latent level analysis provided interpretations of the content clusters. Step three is accounted for in detail in Chapter 10.

In conclusion, the three steps in phase one of the qualitative content analysis can be summarized most aptly in table format. Table 2.6 provides a holistic understanding of the relationships between the coding steps and the logical sequence of the coding process. The three steps of phase one provided the foundation for phase two.

Table 2.6: Summary of phase one of the coding procedure

	Purpose	Unit of analysis	Method of coding	Beginning of coding
<b>Step 1</b>	<ul style="list-style-type: none"> <li>Coding for search terms and phrases</li> </ul>	<ul style="list-style-type: none"> <li>Literature reviews</li> <li>Information specialist</li> <li>Researcher's experience</li> </ul>	<ul style="list-style-type: none"> <li>Coding</li> </ul>	<ul style="list-style-type: none"> <li>Keywords</li> </ul>
<b>Step 2</b>	<ul style="list-style-type: none"> <li>Coding for textbook categories</li> </ul>	<ul style="list-style-type: none"> <li>Lists of content</li> <li>Prefaces</li> </ul>	<ul style="list-style-type: none"> <li>Coding</li> <li>Manifest analysis</li> </ul>	<ul style="list-style-type: none"> <li>Keywords</li> </ul>
<b>Step 3</b>	<ul style="list-style-type: none"> <li>Coding for content clusters</li> </ul>	<ul style="list-style-type: none"> <li>Chapters</li> <li>Subheadings</li> </ul>	<ul style="list-style-type: none"> <li>Coding</li> <li>Manifest analysis</li> <li>Latent analysis</li> </ul>	<ul style="list-style-type: none"> <li>Keywords</li> </ul>

### *Phase 2: Making interpretations*

The second phase of summative content analysis consists of making interpretations or qualifying the data (Hsieh & Shannon 2005:1285). During the second phase of summative content analysis, the data was “reassembled” to identify (inter)relationships. In doing so, questions were asked to identify structures, processes, and outcomes. This enabled the identification of cause-effect relationships

(Benaquisto 2008a:52; Dörnyei 2007:260-261). These relationships exist among the main categories of EALP-type textbooks and the theoretical perspectives analyzed in the literature reviews. Both phases one and two of the qualitative content analysis are integrated in Chapter 10. Phases one and two eventually informed the “theory building” of a curricular framework for EALP in Chapter 11.

### *Phase 3: Creation of a curricular framework*

Phase three consists of the creation of a curricular framework for EALP. This phase concludes the sequence of summative content analysis by interpreting all of the data gathered and by creating an applied and generative framework. Naturally, this last phase builds on the provisional analyses and summaries generated throughout the other phases. Dörnyei (2007:257) aptly characterizes phase three as follows:

In qualitative research, the main themes grow organically out of the foundations that were laid during the analytical process and therefore the process of drawing the final conclusions involves taking stock of what we have got, appraising the generated patterns and insights, and finally selecting a limited number of main themes or storylines to elaborate on.

The nomination of main themes is based on the prominence of the idea and its association with other concepts in the field. Main categories or themes were formulated in such a way that they (re)present the whole. This final stage of qualitative content analysis is characterized as a balancing act, during which the holistic meets the particular and an overarching principle (the sum) presents and preserves its constituting parts and their contextually situated meanings (Dörnyei 2007:257).

## **2.5 Quality of the qualitative research approach**

The quality or soundness of qualitative research is not measured by traditional quantitative standards because of their fundamental paradigmatic differences (Creswell 2014:201). Qualitative research is evaluated in terms of the following principles: *dependability*, *transferability*, *confirmability*, and *credibility*.

### 2.5.1 Dependability

Dependability accounts for the changes in research content and admits that qualitative research is not a photographic fixation on a moment in time (Jensen 2008b:208). Dependability is similar to reliability in quantitative research (Lichtman 2013:322). Dependability is influenced by changes related to the following: (1) the research participants, subjects, and themes, and (2) the research design (Brown 2004:494). Accounting for such changes helps to contextualize the research. For example, such accounting for the ever-changing context of research occurs in Chapter 1, in which the use of terminology in the title is deliberated and re-evaluated. After the defense of the research proposal, the title was re-configured to substitute *model* or *theory* with *framework*.

### 2.5.2 Confirmability

Confirmability entails revealing the data on which interpretations are based and is contingent upon transparency of the research design and (re)presentations (Brown 2004:494; Richards 2009:160). Confirmability verifies the two fundamental goals of qualitative research: “(1) to understand a phenomenon from the perspective of the research participants, and (2) to understand the meanings people give to their experiences” (Jensen 2008a:112). Because the worldview inculcates an understanding of the EALP-type textbooks as active contributors that create multiple social understandings of EALP (*cf.* Gergen & Gergen 2008:820), they verify the two fundamental goals of qualitative research referred to by confirmability.

Confirmability equates to objectivity in quantitative research (Lichtman 2013:321), and it may be “expressed as the degree to which the results of the study are based on the research purpose and not altered due to researcher bias” (Jensen 2008a:112). All prejudices held by the researcher should be admitted and neutralized through methodological action. As a student and teacher of language and law, my worldview is inevitably influenced by these disciplinary orientations. Being on the giving and receiving ends of education may contribute to relatively balanced interpretations, as the findings of qualitative research depend on the researcher’s involvement (Creswell 2014:202).

However, confirmability of qualitative research does not mean that other researchers will necessarily make similar “objective” interpretations (Lichtman 2013:299). When the same researcher reinterprets the same qualitative data, he or she may not necessarily make the same interpretations because of temporal variables that bring about hindsight.

### 2.5.3 Transferability

Transferability “requires researchers to describe the research design, context, and conditions so well that the readers can decide for themselves if the interpretations apply to another context with which they are familiar” (Brown 2004:495). Transferability is similar to external validity or generalizability in quantitative research (Lichtman 2013:326).

Although the study design can be simulated, the underlying epistemology cannot be replicated. Because of the attenuated sample, the transferability of the research product is evaluated by asking “[w]hy will knowledge of a single or limited number of cases be useful to people who operate in other, potentially different situations?” (Donmoyer 2008:372). To be sure, no replicated study or situation can simulate the exact research parameters of this project or, for that matter, any other project. However, consumers of the research may be able to assess such transferability; that is, EALP teachers in the different circles for legal English may draw on certain insights from this study with greater or lesser applicability. Differences do not preclude the creation of “enriched cognitive schema”, which can lead to “intellectual generalization” (Donmoyer 2008:372).

### 2.5.4 Credibility

Credibility equates to internal validity (the effect of the independent variable on the dependent variable) in quantitative research (Lichtman 2013:322) and is also called qualitative validity (Creswell 2014:201). Credibility is concerned with the accuracy of interpretations, which can be enhanced through certain procedures such as the following: triangulation, thick descriptions, discrepant information, and prolonged engagement (Creswell 2014:201-203; Davis 1995:445).

Triangulation may be described as the use of several data sources to justify coherent themes (Creswell 2014:201; Lichtman 2013:326). Triangulation occurs among theories and perspectives in the literature reviews, among textbooks in the qualitative content analysis, and across literature reviews and the content analysis. For example, triangulation occurred with the identification of clusters, categories, and keywords in the qualitative content analysis of EALP-type textbooks. The smallest content cluster regarding pedagogic skills was justified by 16 textbooks. Within this cluster, the two categories (legal epistemology and law school teaching methods) were justified by nine and 10 books, respectively (*cf.* Appendix C). Such qualitative triangulation is not provided to increase the objectivity of the project but to enhance its legitimacy (Lichtman 2013:303).

Thick descriptions also contribute to the credibility of the project. The literature reviews, for instance, provide detailed diachronic descriptions of theoretical linguistics, L2 pedagogic approaches, and legal education that may “transport readers to the setting” of their development (Creswell 2014:202). Chapter 7 introduces traditional legal education through a descriptive, personal narrative of the law school experience; the personal narrative is reticulated with several similar experiences by legal scholars. As such, the personal narrative attempts to enhance the credibility of the study.

A final example illustrates how the involvement of external auditors enhanced the credibility of the project (Creswell 2014:202). The results could be verified because the information specialist and the researcher conducted the literature searches simultaneously. Based on the search results, the coding scheme was developed for the content analysis and audited by Professor Kyla Mitsunaga, an ESP specialist at Yonsei University, South Korea. Professor Mitsunaga holds a postgraduate degree from Harvard University and has been involved in ESP syllabus design for more than a decade.

In addition to dependability, transferability, confirmability, and credibility that determine the quality of qualitative research, ethical considerations are equally important.

## 2.6 Ethical considerations

Ethical considerations provide the “moral principles, rules, or standards” that govern the research project. Ethical issues are encountered throughout different phases of the research process. It is prudent to reflect on the ethical issues as they occurred during the initiation, composition, and finalization of the project (*cf.* Creswell 2014:92).

During *initiation*, an institutional review board needs to approve the project. The project has been granted ethical clearance by the Ethics Committee of the Faculty of Education at the University of Pretoria (*cf.* Appendix A). The ethical clearance was granted for inclusion of human participants at international institutions from the circles of world English. During the research process, the involvement of human participants was reconsidered. However, as the qualitative content analysis of the EALP-type textbooks gained momentum it contributed significantly more qualitative data than anticipated. The inclusion in the final report of the analyses of interviews with human participants will not contribute more to the quality of the data and may enlarge the project substantially.

During the *composition* of the study, the research questions and objectives and the data analysis posed ethical considerations. The research questions were formulated based on the researcher’s personal experience as a teacher and a student of language and law. In addition, Chapter 1 reports that the inadequate linguistic skills of law students were discussed informally with colleagues at Zhaoqing University and Yonsei University. The personal experience and informal discussions served as needs assessment, and the needs were confirmed by scholarship to provide the rationale of the study. The research objectives were then formulated to address the needs of the EALP community (*cf.* Chapter 1). Because the EALP community functions across the circles of world English, the data collection and analysis were sensitive to multiple perspectives in accordance with the social constructionist worldview. For example, an attempt was made to include EALP-type textbooks from each circle of world English by utilizing one library catalogue from each circle. Despite this attempt, the inner circle of world English contributed 42 of the 44 (95.45%) sample textbooks (N=44).

In *finalizing* the project, the following issues were considered: honest reporting, plagiarism, unambiguous language, and the sharing of the data (*cf.* Creswell 2014:94).

- Reporting was conducted in accordance with international academic conventions.
- The Harvard citation style was used to refer to all consulted sources (paraphrased or quoted directly), and complete references are provided in the reference list.
- Throughout the study, a language-conscious policy was upheld to avoid ambiguity attested to by the conceptual definitions provided at the beginning and/or throughout each chapter. Because writing conventions across disciplines are divided on the capitalization of names of approaches or movements, the egalitarian principle of the social constructionist worldview is espoused by not capitalizing the names of approaches or movements unless the noun phrase includes the proper name of a person or place, such as the *Socratic method* or the *London School*. It would be unfair to capitalize *New Rhetoric* but not *postmodern*, as both can be used as proper names of movements.
- Upon completion, the study will be made public by submitting it in hard and soft copies to the University of Pretoria.

## 2.7. Summative notes

Chapter 2 elucidates the worldview, methodology, and method that constitute the mainstay of the qualitative research approach. Figure 2.3 provides a holistic summary of the research approach, as it directed the entire project to answer the research questions.

Research question one is answered by conceptualizing the literature review as instrumental case study that consists of the tributary disciplines. Together with the diachronic structure, the circles of world English provide a substructure to facilitate a trenchant analysis.

Research question two is answered in Chapter 10 and conceptualized as a collective case study that consists of a typology of EALP-type textbooks. The qualitative content analysis method facilitates the creation of the typology through the specified steps of the coding procedure.

Worldview	Question 1: <i>Which curricular principles can be deduced from theoretical linguistics, L2 pedagogy, and legal education to constitute a framework for EALP?</i>	Question 2: <i>Which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks?</i>	Question 3: <i>How can the literature review and the EALP-type textbook analysis be synthesized into a coherent curricular framework for EALP that can be applied across the circles of world English?</i>
<b>Methodology</b>	<b>Instrumental case study</b> Tributary disciplines Circles of world English	<b>Collective case study</b> Typology of EALP-type textbooks	<b>Intrinsic case study</b> EALP
<b>Method</b>	<b>Qualitative content analysis</b> <ul style="list-style-type: none"> <li>Phase 2: Making interpretations</li> </ul>	<b>Qualitative content analysis</b> <ul style="list-style-type: none"> <li>Phase 1: Coding procedure: Steps 1 -3</li> <li>Phase 2: Making interpretations</li> </ul>	<b>Qualitative content analysis</b> <ul style="list-style-type: none"> <li>Phase 3: Creation of a curricular framework</li> </ul>
<b>Placement in study</b>	Chapters 3 - 9	Chapter 10	Chapter 11

Figure 2.3: Summary of the research approach

Research question three is answered in Chapter 11 as the research outcome. English for academic legal purposes, as conceptualized across the circles of world English and in different EALP-type textbooks, is considered as an intrinsic case study that explicates the inherent nature of one specific case, *viz.* EALP. Phase three of the qualitative content analysis method facilitates the assembly of the constituting parts (identified through research questions one and two) to create a new configured whole, *viz.* a curricular framework for EALP.



## Chapter 3: Theoretical linguistics

### 3.1 Introduction

Legal language is profoundly ontological and epistemological in that it creates and determines multiple realities, truths, and forms of knowledge. Chapter 3 initiates the analysis of linguistic theories to illuminate the confluence of the ontological and epistemological linguistic underpinnings of EALP. Consequently, the primary goal of this chapter is to review the field of theoretical linguistics. To this end, the diachronic and thematic structure of this chapter facilitates secondary objectives. These secondary objectives endeavor (1) to determine relevant traditional, functional, social, and critical linguistic principles that may advance EALP curriculum design; (2) to probe the ontologies, epistemologies, and descriptions of language of the relevant linguistic theories; and (3) to lay the theoretical underpinnings for the diachronic and thematic arrangement of applied linguistic perspectives (pedagogies) in Chapters 4 through 6.

The diachronic and thematic arrangement used throughout the literature review is advantageous for at least two reasons. First, it assists in achieving the primary goal of this chapter; the diachronic and thematic arrangement facilitates the synthesis of law and language as it pertains to EALP (*cf.* Galdia 2009:64). The goal of the theoretical linguistic exposition is not to establish whether law and linguistics share a semiotic system; their functional, social, and critical interrelations are paramount. The second reason for considering diverse linguistic theories relates to the confirmability of qualitative research and the critical epistemology of social constructionism (*cf.* Chapter 2) and critical discourse analysis (*cf.* Chapter 3). Researcher bias toward favorable approaches could be limited through the analysis of a diverse collection of theoretical approaches (*cf.* Jensen 2008a:112). Pennycook (1990:13) cautions that “disregard for linguistic history and politics cannot explain contending struggles over meaning.” Disregard for historical, anthropological, and socio-linguistics indicates neglect of major questions about the power of language and linguistic inequality (Pennycook 2010:16.2; Blommaert 2005:37). Since legal English has the power to create historical, anthropological, and socio-political hierarchies, different

interdisciplinary linguistic views on legal language are not only warranted but imperative to avoid the favoring of privileged discourses.

### Chapter preview

The evolution of theoretical linguistics reveals the diachronic succession of thematic clusters of approaches. Figure 3.1 illustrates the diachronic sequence of thematically grouped theoretical linguistic approaches. Linguistic approaches function in synergetic relationships, which render their hermetic compartmentalization obsolete. These broadly demarcated approaches are imbricated as they developed from theoretical linguistics as positivist, natural science during modernity to theoretical linguistics as social practice during postmodernity and beyond (*cf.* Richards & Rodgers 2001:20-21; Trappes-Lomax 2004:133).

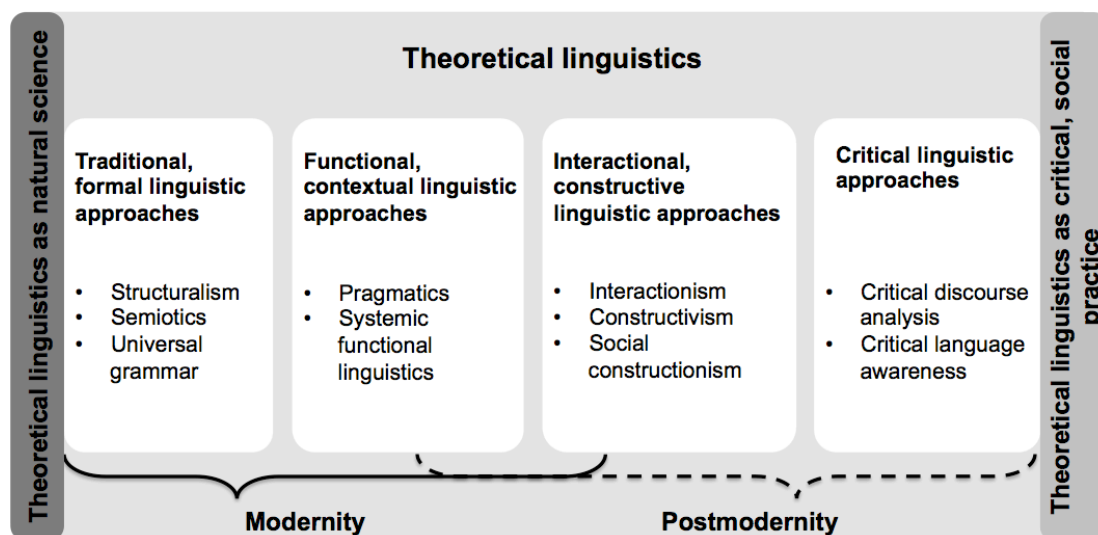


Figure 3.1: Continuum of theoretical linguistic approaches

Without engaging the philosophical debates raging in the treacherous intellectual territory between modernity and postmodernity (*cf.* Childs 2000:1-3; Malpas 2003:7-11), it is imperative to describe the intellectual shift that characterizes this period because of its profound impact on theoretical linguistics, L2 pedagogy, and legal education. Wellington (2006:136-137) provides a sober account by describing modernity as mechanistic, deterministic, progressive, rational, and certain. Postmodernity, in contrast, signifies a probabilistic worldview, doubt, uncertainty, pluralism, and complexity. Table 3.1 identifies the general ontological and epistemological differences between modernity and postmodernity.

Table 3.1: Ontological and epistemological differences between modernism and postmodernism (Silverman 2006:316-319; Wellington 2006:137).

	Modernism	Postmodernism
<b>Ontology</b>	<ul style="list-style-type: none"> <li>• Universal reality and truth</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple realities and truths</li> </ul>
<b>Epistemology</b>	<ul style="list-style-type: none"> <li>• Knowledge is scientifically and objectively verifiable</li> <li>• Knowledge is produced from a center, foundational, authoritative competency</li> <li>• Knowledge is based on continuity and consistency</li> </ul>	<ul style="list-style-type: none"> <li>• Different forms of knowing are equal</li> <li>• Knowledge is dispersed, fragmented, and theoretically varied</li> <li>• Knowledge is based on discontinuity and inconsistency</li> </ul>

Admittedly, Table 3.1 provides a cursory, binary, and oppositional conceptualization of modernity and postmodernity. However, it would be naïve to classify the theoretical linguistic, applied linguistic, and legal approaches considered in this project as either modern or postmodern. Much of theory and practice transcends the conceptual and diachronic parameters of reified ontologies and epistemologies.

Chapter 3 is structured according to the diachronic and thematic clustering of theoretical approaches, and consists of four parts. Theories examined in part one are grouped as traditional, autonomous linguistic approaches that include structuralism, semiotics, and generative grammar. Part one introduces theoretical linguistics as it arose from positivism, behaviorism, and scientism. Part two investigates functional, contextual linguistic approaches such as semantics, pragmatics, and systemic functional linguistics (SFL). These approaches accentuate the functional and contextual dimensions of linguistic theories. Part three of this chapter signifies the social turn with interactional and social constructivist and constructionist linguistic approaches. Social constructivist and social constructionist approaches are collectively referred to as *constructive* approaches. Part four heralds the postmodern turn and its incredulity toward dominant modern discourses as exemplified by critical linguistic approaches such as critical discourse analysis and critical language awareness.

### 3.2 Traditional, formal linguistic approaches

Traditional, formal linguistic approaches should be seen in the context of the scientism of behavioral and cognitive psychology. The behaviorist psychology of Skinner and Watson laid the methodological foundation for structuralism and semiotics based on observable linguistic behavior. Structuralism and semiotics explain language learning in terms of operant condition, replication, repetition, and reinforcement that result in habit-formation. In contrast, cognitive psychology and universal grammar embrace a mentalist approach with cognition as domain of inquiry. An exploration of traditional linguistic approaches would not be complete without a closer consideration of structuralism, semiotics, and universal grammar.

#### 3.2.1 Structuralism

Structuralism considers language as a holistic structured system where words have meaning through their relationships with other words (Cruse 2006:17; Trask 2007:277). Structuralism is neither atomistic (concerning the semantic units of words) nor philologist (concerning the diachronic development of language) because it emphasizes the synchronic structural relationships of language units (semiotic signs) (*cf.* Matthews 2001:2; Pennycook 1990:312).

Structuralists consider meaning in the relationships between words as linguistic units (Childs 2000:64). “[U]nits of any one kind are related to others of their own or another kind; and through these relations, which will be in part hierarchical, successively larger ‘structures’ are quite clearly formed. In that sense, any ‘synchronic or diachronic analysis of language’ cannot be anything else but ‘structural’” (Lepschy in Matthews 2001:3). Therefore, the main purpose of structuralist analysis is to determine how the different parts of language relate to each other to constitute meaning (Trappes-Lomax 2004:135).

The relationships between signs are facilitated through *langue* (language as code, grammar, or unobservable abstract competence that exists in the collective) to produce *parole* (language use or performance, as observable behavior of the individual) (*cf.* Bauer 2007:41; Brown 2007a:11; Danet 1980:453). This distinction acknowledges the interrelated theoretical and functional dimensions of language because meaning resides both in *langue* (grammar or theory) and in *parole* (language

use). Structuralist methodology is strongly influenced by the scientific method of behaviorism; therefore, *parole* as observable behavior constitutes the primary research focus.

Structuralism includes two important consequences for ensuing thought. First, a departure from atomistic linguistic theory signifies a holistic approach that recognizes the meaning of semiotic signs only in relation to other semiotic signs in an integrated system. Second, because of the holistic approach, structuralism recognizes the social dimensions of language that heralds social linguistic approaches such as Vygotsky's social constructivism in pedagogy and Gergen's social constructionism in psychology. The holistic and social attributes of structuralism are the cornerstones of semiotics.

### 3.2.2 Semiotics

Semiotics originated in pre-Socratic times when Hippocrates interpreted physical symptoms as *signs* of illness. It was only at the turn of the 20<sup>th</sup> century that semiotics became a fully-fledged linguistic theory with at least three branches of theoretical linguistics: semantics, pragmatics, and syntax. Semiotics developed through the autonomous work of the Swiss structuralist, De Saussure, and the American philosopher, Peirce (Mick 1986:197). In this section the semiotics of De Saussure and Peirce are used to relate language to law. This is followed by a description of Wagner's legal semiotics and related to the use of semiotic iconography in contemporary ESP textbook design.

Semiotics is the “study of the social production of meaning from sign systems” (Trask 2007:253; *cf.* Cruse 2006:162). Together, signs function as a system to create a *code* that is governed by certain grammatical rules to facilitate the manipulation of the code through individual utterances that create meaning. As such, semiotics attempts to answer two questions: a hermeneutic question that ponders the nature of meaning, and a hermeneutic-ontological question that examines how reality acquired meaning (*cf.* Mick 1986:197).

De Saussure probed these questions by defining the linguistic sign as an indeterminate, dyadic relationship between a signifier and a signified. The *signifier* (e.g., the word “book”) refers to the *signified* (e.g., the actual book). In agreement with the

philosophical views of Descartes and Locke that consider meaning to be endogenic and a product of individual thought, traditional linguistics took an atomistic view of language (Trask 2007:277). In contrast to these traditional perspectives, De Saussure's main contribution is a shift from the recognition of "the nature of things in and of themselves to a relational [worldview]" (Mick 1986:197). Thus, reality becomes meaningful because it is structured according to certain codes that humans learn and inhabit from birth.

In contrast to De Saussure's dyadic relationship between signifier and signified, Peirce conceived of communication as a triadic relationship consisting of a *sign*, an *object*, and an *interpretant*. Through a process called semiosis, the sign represents an object to the interpretant within a context to create meaning. By interpretant, Peirce means the interpreter's reaction to the sign through which the interpretant, in turn, becomes a sign. Peirce's tautological argument led him to declare that humans are thoughts and signs themselves (Mick 1986:199).

One of Peirce's most productive contributions is the categorization of iconic, symbolic, and indexical signs.

- An *icon* is a sign where the signifier resembles the signified, such as the printer icon in a word-processing program.
- A *symbol* relates to an object in a conventional manner, is culturally specific, and requires the participative presence of the interpreter (*cf.* Burks 1949:673-674; Mick 1986:199). For example, case names become symbolic of certain legal opinions and precedents (Broekman & Backer 2013:35).
- An *index* shares a causal relationship with its object based on a factual correlation, such as written traffic rules that regulate traffic; for example, there is a direct connection between traffic rule violations and car accidents (Parker, Reason, Manstead, & Stradling 1995).

Similar to De Saussure, Peirce argues that signs (regulated by *langue*, the abstract language system) create meaning. Because signs depend on social agreement for their significance, meaning is also situated in interactions among signs, objects, and interpretants (Mick 1986:199). In a similar vein one may argue that iconic, indexical,

and symbolic legal signs describe, determine, and create relationships of reality. As such, law is not just a legal matter; semiotics emphasizes the ontological functions of legal English that are subsumed by the EALP syllabus (Broekman & Backer 2013:35).

Danet (1980:448) maintains that both law and language are “rule-governed symbolic systems that are uniquely human and essential to the fabric of society.” Language (code) is governed by grammar, and law is governed by substantive jurisprudence. It could be argued that the legal code is a modification of or alternative to a rudimentary language code (Goodrich 1984:523-534). Therefore, semiotics developed as an appropriate tool for the analysis of legal language because law may be described as a system of signs (Trask 2007:254).

Legal semiotic analysis combines theory and practice by utilizing sources in law and other sciences. “This confrontation produces a practical reasoning in the prism of science where phenomena of languages and interactions become complementary and sources of mutual enrichment” (Wagner 2010:78). As such, legal semiotics functions as an interdisciplinary conduit between cognitive (universal grammatical), linguistic, and communicative elements of language. Wagner (2010:78) postulates that because of its interdisciplinarity, legal semiotic analysis enables the scrutiny of signs on two axes:

- The y-axis presents a continuum with common words and disciplinary terminology at opposite ends.
- The x-axis denotes the meaning of specialized, disciplinary terms by evaluating their significance from linguistic (lexico-grammatical), pragmatic (contextual), and environmental perspectives.

Wagner’s semiotic axes of cross-terminological analyses are shown in Figure 3.2. The y-axis depicts common language and specialized terminology at opposite ends of a functional continuum. When a word is used in a specialized context, a factorial typology on the x-axis clarifies the contested meaning. These levels of analyses enable researchers to determine the ambiguity and legal porosity of the legal lexicon by addressing the dimensions of context: (1) the linguistic context of utterances, (2) the pragmatic context of a shared epistemology between signs and their social

relations, and (3) the environmental context of the physical situation (*cf.* Cruse 2006:35). Warner’s cross-terminological semiology could assist legal scholars and students in apprehending the meaning of legal terms.

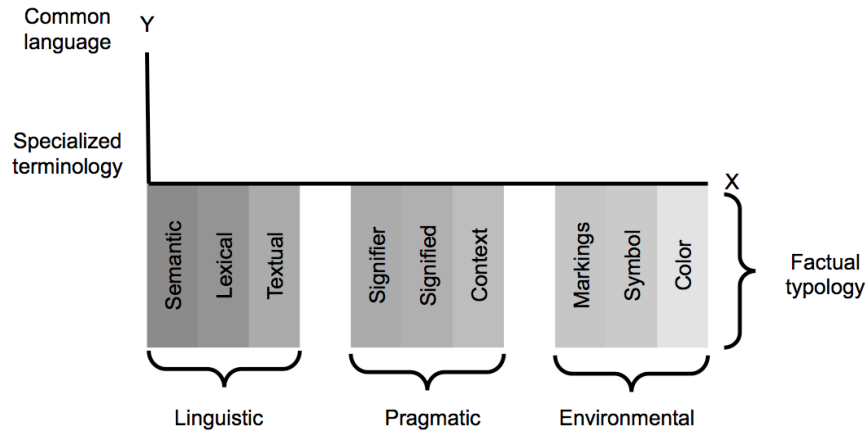


Figure 3.2: Visualization of Wagner’s cross-terminological semiology

Wagner’s semiology of signs should be considered in the context of her proposal that legal terminology could be conceptualized as iconographic codes. Wagner (2010:80) maintains that signs in the language system, as visual or iconographic codes, are likely to express “multiple levels of meaning and often represent concepts that are challenging to articulate explicitly due to their complexity [...]”. These iconographic codes should be relatively stable, easy to comprehend, and serve as appropriate substitutes for written text.

Iconographic codes are already in use to various degrees of success in the fields of textbook design and technical writing, such as medication instructions (Mohan, Riley, Boyington, & Kripalani 2012:123) and instruction manual warnings (Young 1990:637). Semiotic iconography has become increasingly important in language education (Bezemer & Kress 2009:260) and content-based ESP pedagogy (Early & Tang 1991:34; Knox 2012:n.p.). In their review of 23 high school English textbooks printed from the 1930s to 2000s, Bezemer and Kress (2009:260) found an increased use of “(typo)graphically irregular writing and image-based elements placed fluidly on a two-page spread.” According to Bezemer and Kress (2009:260), in the 1930s English was a “story” arranged into successive chapters. However, contemporary textbooks compartmentalize English as a study program of temporal units. Without



images in traditional English textbooks, the text remained cohesive; conversely, the text in science textbooks becomes less cohesive without images.

A brief review of *Technical English 1* (Bonamy 2008a), *Technical English 2* (Bonamy 2008b) and *English for Science and Engineering* (Williams 2007), confirms that the omission of iconographic features would render these ESP texts for science and engineering incomprehensible. However, depending on readers' expected language proficiency, the ratio between text and iconographic features varies. More proficient readers need fewer iconographic features and vice versa.

The association between cohesiveness of text and the use of images illustrates the multimodal nature of contemporary ESP textbooks. Contemporary textbook design illustrates Wagner's (Figure 3.2) pragmatic social relations between textbook authors (emitters), users (receivers), and situation (educational context) as production discourses move from the originating site to the pedagogic site.

In EALP, iconographic codes could be useful in light of the following humorous excerpt from a Florida (the United States) ordinance that attempts to reduce incidents of indecent exposure by defining the human behind as:

[...] the area at the rear of the human body (sometimes referred to as the *gluteus maximus*) which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top of such line being one-half inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom line being one-half above the lowest point of the curvature of the fleshy protuberance [...] (Tiersma 2013:n.p.).

As pedagogic tools for EALP, iconographic codes may be utilized to translate relatively uncomplicated legal lexicon or even complex legal procedures as visual presentations. For example, flow diagrams efficiently explain the hierarchy of courts (Finch & Fafinski 2011:101; McKay, Charlton & Barsoum 2011:145-146). The use of icons, symbols, and indexes in EALP textbooks may be limited (*cf.* Chapter 10). However, the inclusion of such visual pedagogic tools is reminiscent of the visual appeal and intertextuality of Web 2.0 pedagogy, and it is necessary to accommodate

the needs of contemporary students who belong to an interactive, visually stimulated, digital discourse community (*cf.* Chapter 6).

Although useful, the translation of complex and convoluted legal terms into iconographic codes may not necessarily contribute to semantic, pragmatic, and syntactic clarity. To be effective, such new icons would have to be embraced, internalized, and used by the legal discourse community. Moreover, how could common law doctrines such as *res ipsa loquitur* (in tort law) or *mens rea* (in criminal law) be presented visually when their connotations evoke jurisdictional differences and voluminous case law and scholarship?<sup>1</sup>

The effect of structuralism and semiotics as theoretical linguistic approaches to applied linguistics is that language learning is considered as the acquisition of the structure of the phonological, grammatical, and lexical elements of a language. The audiolingual method fosters such learning through “mechanical habit formation”, analogy drills, and cultural immersion conducted in the tradition of a behaviorist methodology (Richards & Rogers 2001:56; *cf.* Chapter 4). Similarly, the behaviorist aim to teach external behavior influenced the competence movement and the learning of sequences of behaviors that would meet “learning outcomes” (Winch & Gingell 2008:22). Where structuralists consider language learning as external input of linguistic units, cognitive perspectives, particularly innatism (universal grammar), focus on internal output of innate grammatical abilities.<sup>2</sup>

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<sup>1</sup> To illustrate, *res ipsa loquitur* is defined in the *Merriam-Webster's Dictionary of Law* (1996:429) as “a doctrine or rule of evidence in tort law that permits an inference or presumption that a defendant was negligent in an accident injuring the plaintiff on the basis of circumstantial evidence if the accident was of a kind that does not ordinarily occur in the absence of negligence.” *Mens rea* is defined as “a culpable mental state [...] one involving intent or knowledge and forming an element of a criminal offence” (*Merriam-Webster's Dictionary of Law* 1996:311).

<sup>2</sup> In general, cognitive frameworks support representationalism; that is, symbolic activities in the mind connect with representations in the world. However, not all cognitive frameworks support an innatist perspective. Empiricism, for example, supports an experiential theory of learning. Constructivists argue that representations are constructed “by the mind as a result of the engagement of pre-existing mental structures with experience” (Winch & Gingell 2008:29).

### 3.2.3 Universal grammar

A revolutionary contribution to theoretical linguistics came with the publication of Chomsky's *Syntactic Structures* (1957) as a revolt against previous social and behaviorist language theories (Mitchell & Myles 2004:32) and the taxonomic methods of structuralism (Matthews 2001:3). Universal (or generative) grammar supports epistemological and methodological shifts away from empiricist structuralism toward a rationalist orientation (Dresher 2010:1). Table 3.2 contrasts the main propositions of structuralism and generative grammar.

Table 3.2: Differences between structuralism and generative grammar (*cf.* Brown 2007a:9-12; Dresher 2010:1).

	Structuralism	Universal grammar
<b>Scientific roots</b>	Behavioral psychology	Cognitive psychology
<b>Linguistic focus</b>	Construction of meaning and analysis of the surface structure of language	L1 acquisition and the analysis of the deep structure of language
<b>Subject of inquiry</b>	Observable corpus of utterances of a specific language	Observable and mental linguistic patterns of languages
<b>Research purpose</b>	To classify units (signs) of the corpus	To specify and generalize grammatical rules of sentence construction
<b>Research methods</b>	Objectively perceived discovery and description procedures	Objective description and explanation of states of consciousness, thinking, and concept formation
<b>Language learned through</b>	External input of linguistic units	Internal output of innate grammatical abilities

Generative grammar is a cognitive or psycholinguistic theory that attributes two features to language. First, humans possess an innate, *competence* (intellectual aptitude) for grammar, metaphorically called a language acquisition device. Second, the linguistic competence enables humans to conduct linguistic *performance* (Brown 2007a:28; Wooffitt 2005:19). Competence provides a map (deep structure) that is supplemented as more rules are acquired (Winch & Gingell 2008:29-30). Because humans are assumed to possess this innate linguistic competence, generative grammar is also referred to as universal grammar.

Chomsky proposed the idea of generative grammar as a quest for universal principles of language similar to the rules of mathematics, and thus the metanarrative of formal linguistics assumed its reign (Trask 2007:156; Yule 2006:86). With the sentence:

“Colorless green ideas sleep furiously”, Chomsky illustrates that, although syntactically (grammatically) correct, the sentence is semantically anomalous (Chomsky 1957:15).<sup>3</sup> The use of generative grammar is therefore limited to the syntactic structures of a sentence as unit of analysis. It appears as if the theory of universal grammar corresponds with the classical, grammar translation method that teaches L2 learning through sentence translation without considering context or content (*cf.* Chapter 4). However, Chomsky’s example has meaning in the context of literary or poetic genres.

Generative grammar exercised considerable influence over L1/L2 language pedagogy and theoretical linguistics. Generative grammar is a theory of first language acquisition (FLA) based on a subconscious or an innate process (Brown 2007b:36). When applied to second language acquisition (SLA) as a conscious process, generative grammar may have inspired the direct language teaching method. The direct method proposes that SLA should be similar to FLA with a pedagogic focus on oral interaction, spontaneous language use, limited translation between L1 and L2, and minimal analysis of grammatical rules (Brown 2007b:21). One point of critique, however, is that the direct method rests on a weak theoretical foundation that does not account for the differences between L1 and L2 learners. Universal grammar is not representative of current cognitive SLA perspectives (Long 1997:322).

Linguistically, generative grammar could be challenged because “language data stubbornly failed to fit the predictions of the generative semantics framework” (Ainsworth 2006:659).<sup>4</sup> The critique does not deny knowledge of formal grammars, but it does question the abstraction of classes of grammar at the expense of specific

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<sup>3</sup> The formalist models of Europe and America are often criticized for perpetuating the “centrifugal, homogenizing tendencies of Western thinking” (Pratt in Garrett & Baquedano-Lopez 2002:348). Pratt argues that theories that emphasize so-called “normal and straightforward” communication exclude considerations of language socialization.

<sup>4</sup> Another consequence of cognitive psychology and generative linguistics is the emergence of cognitive linguistics in the 1980s under the auspices of Lakoff and Langacker. Cognitive linguistics is based on three main premises: (1) the function of language is to convey meaning; (2) linguistic aptitude is inseparable from cognitive ability; and (3) meaning is intangible; hence, it requires conceptualization (Cruse 2006:27).

grammars (Gross 1979:882). Generative grammar would therefore not recognize the variants of legal English in the different circles of world English.

In subsequent theoretical linguistic development, such as Pennycook's (1989; 2004) critical applied linguistics, attention is drawn to the power relations between grammars and the power of legal language specifically. This shift is also associated with the ascent of functional, contextual linguistic approaches, which "hold that language is primarily used for communication and does not exist without [the specificities of different] language users" (VanPatten & Williams 2007:57).

### 3.3 Functional, contextual linguistic approaches

Traditional, formal linguistic approaches are firmly rooted in modernity. Functional, contextual linguistic approaches imbricate modernity, but they have begun to recognize the multiplicity of context-based meaning associated with postmodern worldviews (*cf.* Brown 2007b:420). Linguistic functionalism does not necessarily reject structuralism or generative grammar; however, the function of language to express meaning is more pronounced in functionalist research (Brown 2007a:33; Trask 2007:94). Where structuralist approaches focus mainly on the grammatical structure of language, functionalist approaches accentuate its semantic and communicative dimensions (Richards & Rodgers 2001:21). "Functionalist approaches have proved fruitful, but they are usually hard to formalize, and they often work with 'patterns', 'preferences', 'tendencies' and 'choices', in place of the explicit rules preferred by non-functionalist linguists" (Trask 2007:94). In this section *pragmatics* and *systemic functional linguistics* (SFL) are primary examples of functional, contextual approaches.

#### 3.3.1 Pragmatics

Pragmatics is directly connected to semiotics through the linguistics of Peirce. From a semiotic perspective, Peirce contends that meaning is situated in the interaction among signs (Mick 1986:199). From a pragmatist perspective, and in contrast to cognitive perspectives, Peirce argues that meaning (knowledge) is gained through active interaction (Winch & Gingell 2008:160). The knowledge that people obtain is directly related to their own practical or theoretical concerns. It would be prudent to begin this section by distinguishing pragmatics from semantics as two perspectives on

the study of meaning. The functionality of pragmatics is then illustrated in the context of legal hermeneutics. Because legal hermeneutics is concerned with the creation of reality and meaning, the ontological and epistemological underpinnings of pragmatics are considered. Legal hermeneutics, an essential legal linguistic skill, is also addressed by EALP-type textbooks. As a hermeneutic perspective, pragmatics may explain language learning.

At the time of generative grammar and partly in reaction to it, linguists in the 1960s distinguished two types of linguistic meaning, *viz.* semantic and pragmatic. Semantics considers meaning as intrinsic to the linguistic form, and pragmatics considers linguistic meaning as a result of interaction between linguistic form and context (Trask 2007:253). In contrast to pragmatics as a functional approach, semantics may be defined as a formal approach because it describes linguistic meaning independent from context (Cruse 2006:136). In semantic analysis, similar to legal purposive interpretation, context is limited to the conventional meaning of the words in the text. “This technical approach is concerned with objective or general meaning and avoids trying to account for subjective or local meaning” (Yule 2006:100) which is in stark contrast to social linguistic approaches.

Legal hermeneutic research by Bhatia and Candlin (2008:127-143) illustrates how the major developments in sociolinguistics and law and society have permeated the understanding of legal language and indeterminacy. Because legal writing is exceedingly intertextual and because hermeneutics could be described as an interdiscursive activity, the comprehension of legal texts requires reference to the socio-political intentions of the text. Therefore, “legal interpretation based on purely syntactic information can be misleading, and [...] interpretation often relies on a consideration of socio-pragmatic factors lying outside specific linguistic textualisations” (Bhatia & Candlin 2008:138).

Ontologically, pragmatics recognizes contextual realities. In contrast to structuralists, pragmatists argue that words do not refer to objects; people do. The user of a language enables another user to identify something (Yule 2006:115). Alternatively, as Van der Walt (1998:72) refers to Nietzsche: “language and the meaning that we establish in language are never a reflection of a reality out there.” As such, pragmatics

recognizes the social role of language and meaning as expressed by Gergen, who states that “the chief locus of understanding is not in ‘the psyche’ but in social relationships” (1997:724).

Epistemologically, pragmatics is concerned with the creation of meaning (knowledge) in the context of “particular occasions of use” (Cruse 2006:136). Pragmatics broadens the understanding of context for the creation of meaning to include (1) linguistic context, that is, the surrounding co-text; and (2), physical context that includes the cognitive representation of the physical. In terms of the pragmatics of discourse, Van Dijk (2009:249) explains cognitive representations as context models collected in episodic memory. Mental context models enable the production and understanding of communicative discourse and control semantics. The cognitive representation of the physical extends beyond the text to include the “participants in the speech event, their interrelations, knowledge (schemata), goals, and the social and physical setting of the speech event” (Cruse 2006:136).

In terms of language learning, pragmatics aims to empower learners. It achieves this goal by showing learners how meaning is produced in certain disciplines regardless of students’ academic communicative competence or the position that learners or teachers occupy in the three circles of world English (Hyland 2006:31). As students need to master genres with “cultural capital”, disciplinary imperialism suppresses creativity and encourages conformity to the privileged way of meaning making. However, pragmatic pedagogy enables learners to “reflect on and critique the ways in which knowledge and information are organized and constructed in their disciplines” (Hyland 2006:31). Pragmatics promotes teaching that is thoughtful of discursive contexts and the use of (legal) language in those contexts (Hyland 2006:30). Because EALP is inherently pragmatic, pedagogically situated, and based on local social needs (*cf.* Johns 2002:7), a pragmatic pedagogy is warranted. Second language acquisition methods that rely on pragmatics include communicative language teaching (Brown 2007b:36) and the concept-oriented approach (VanPatten & Williams 2007:57; *cf.* Chapter 5).

### 3.3.2 Systemic functional linguistics



The second functional, contextual linguistic approach is SFL. In contrast to the highly theoretical European linguistic tradition that developed during modernity, by the late 1950s British scholars of the London School, such as Malinowski and Firth, directed linguistic theory toward functionalism and contextual grammar (Trask 2007:156). Firth's theory corresponds with contemporary structuralism, and he was also the teacher of systemic functional linguist, Halliday (Joseph 2004:355). Systemic functional linguistics developed as a reaction to the limits of generative grammar and with the aim of understanding and explaining language – socially. “This restoration of a human-centered, naturalistic perspective on the functions as well as the structure of language is one of the major forces that has helped lead linguists to the domain of language and the law” (Levi 1990:8; *cf.* Chapter 1).

Under the auspices of Halliday, SFL (also known as the Sydney School) developed at institutions in Sydney. Halliday, initially a structuralist and Marxist, developed a form of etic text analysis to expose “the hidden ideologies that structure the use of language” (Joseph 2004:355; *cf.* Trappes-Lomax 2004:138) for the “social production and reproduction of signs and their political consequences” (Joseph 2004:348). As Halliday envisions SFL, it is a comprehensive genre-based theory that describes language as a:

[...] semiogenic (meaning-making) resource, one governed by tendencies not rules, and whose categories (as is typical of semiotic systems) are ‘fuzzy’ rather than determinate. It is formulated in terms of strengths rather than of deficits or constraints: what the speaker can do (and what the language ‘can do’) (Halliday 2005:134).

Halliday's description of language as malleable is in stark contrast with language as rule-based according to generative linguists. This definition of SFL should be understood in terms of three main characteristics: (1) language as system of choices; (2) language as text in context; and (3) and the functions of language.

### 3.3.2.1 Language as a system of choices

First, SFL considers language as a system of *linguistic choices* (Christie 1999:759). Each choice produces variations in meaning; or in an adapted Hallidayan (2005:134) metaphor, language could be viewed as a city plan where traffic could reach similar intended destinations through the same or alternative routes. Language is a



communicative system that produces meaning through different lexical and syntactic choices.

### 3.3.2.2 Language as text in context

Second, language may be recognized as text with *social purpose* that illustrates its social and semiotic functions. Christie (1999:760) describes the close relationship between text and context as follows: “text is known only because of the context that gives it life; conversely, context is known only because of the text that realizes it.” Language, therefore, has to be understood within its broad cultural and situational contexts.

Because language and learning are considered socially, an SFL worldview is based on notions of contextualism. Firth’s contextual theory of meaning is aptly paraphrased in the following quotation: “In the primary speech situation ‘meaning’ is as much a property of the situational context of people, things, and events as of the ‘noise’ made by the speaker. The noise is important, but not nearly so important as purists and others believe” (Kachru 1976:228). Thus the context of language use is paramount in the construction of linguistic ontologies and epistemologies.

Two kinds of context could be distinguished, *viz.* context of culture and situation. First, *context of culture* is global and involves the members of a community, their values, norms, and knowledge, and it determines the genres they produce. Van Dijk (2009:154) aptly describes context of culture as “macro-context.”<sup>5</sup> For example, the same genre may be produced differently across disciplines. However, content variation may account for more conspicuous differences than form variation (*cf.* Bhatia 2004:32).<sup>6</sup>

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<sup>5</sup> *Cf.* Van Dijk (2009:162-164) for a discerning cross-cultural analysis and understanding of the conceptualization of context categories.

<sup>6</sup> Benesh and Czarnezki (2009:130-132) provide an insightful quantitative content analysis of ideologically based legal decision making, which illustrates context of culture in the legal system. In the Seventh Circuit of the United States Court of Appeals, they found that judges who cited originalism as interpretive framework voted more conservatively than judges who cited legislative history. This ideological preference affirms how the values and norms embedded in context of culture affect the production of meaning as well as the genre (e.g. sentencing).

Second, *context of situation* refers to local settings, that is, “situation specific variables that combine to produce the particular ‘register’ of a text” (Carstens 2009:34). Context of situation musters extralinguistic elements that determine the lexico-grammatical features of a text that distinguish legal English from literary English.

However, neither context of situation nor context of culture should be seen in a vacuum since they influence each other reciprocally to construct meaning. Halliday and Hasan (1989:11-12) argue that “[i]f we treat both text and context as semiotic phenomena, as modes of meaning, so to speak, we can get from one to the other in a revealing way.” Because of its dependence on various contexts, which necessarily imply various systems, language is seen as polysystemic.

### 3.3.2.3 Parameters of context of situation and metafunctions of language

Finally, the third characteristic of SFL relates to genre that is based on the functions of language. Language is functional because its structure shows the multiple purposes for which it is created and used. Language is theorized in terms of three metafunctions accompanied by three situational contextual variables: field, tenor, and mode (*cf.* Carstens 2009:34-35; Christie 1999:760; Halliday 1978:143).

Scholarship often presents convoluted explanations and variations on Halliday’s original conceptualization of situational context and the metafunctions of language (*cf.* Wigglesworth & McKeever 2010:116). However, Macken-Horarik has to be credited for her eloquent and coherent summary and integration of genre into the critical aspects of context of situation in *Genre in the Classroom: Multiple Perspectives* (2002:24-25). Table 3.3 provides an adaptation of Macken-Horarik’s astute analysis.

Table 3.3: SFL parameters of context of situation and metafunctions of language (adapted from Macken-Horarik 2002:24-25; Bawarshi 2000:336-338).

Parameters of context of	Metafunctions of language
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<b>situation</b>	
<b>Genre (Why?)</b>	<b>Genre metafunction</b> Genres are staged, goal-oriented language processes; we use different genres to get things done in language; the goals or purposes of the users affect the type of text they contract. Each stage of the text contributes to achieving the overall social purpose of the participants.
<b>Field (What?)</b>	<b>Ideational metafunction</b> This is the social activity of the participants (what is going on). Subject matter is one aspect of field. In written language, the field is the subject matter. This is because the reader is dependent on language alone to reconstruct the field.
<b>Tenor (Who?)</b>	<b>Interpersonal metafunction</b> This refers to the relationship assumed between participants in the communication event (who is taking part). What are the status, familiarity, and degree of feeling assumed in the interaction? In written language, the relationship assumed is often one of differential status (apprentice to expert), with marked social distance between writer and reader (that is, an impersonal tenor).
<b>Mode (How?)</b>	<b>Textual metafunction</b> This refers to the role played by language (how language is being used). The simplest distinction is that between spoken and written language. Mode can be represented as a continuum – moving from texts which are most “spoken” to those which are most “written.” The mode is also influenced by semiotic distance of two kinds: (a) the distance of the speaker or writer from the events about which language is used (from language in action to language as reflection); and (b) the distance of the participants themselves in the interactions (from communication with maximum feedback to that with delayed or no feedback).

The genre metafunction in Table 3.3 is borrowed from Bawarshi (2000:336-338) who coined the term in response to Foucault’s author-function in structuralist and poststructuralist literary theory.<sup>7</sup> The genre function reflects Martin’s development of genre theory within SFL since Halliday’s concern is more with connecting “form, function, and social context” (Hyon 1996:697). Martin, Christie, and Rothery describe genre as “*staged, goal-oriented social processes*, structural forms that cultures use in certain contexts to achieve various purposes” (in Hyon 1996:697). Hence the

<sup>7</sup> The author-function should be understood in terms of a series of questions Foucault asks regarding the relationship between author and text. “What is it that delimits discourse so that it becomes recognized as a work that has certain value and status? [...] what is it that plays the role of the regulator of the fictive? (Bawarshi 2000:336-337). The answer is, the author-function. A parallel could be drawn between the author-function and the genre-function. Just as the author-function furnishes a text with a particular cultural position and value, the genre-function endows genre with form, function, and social context.

description of genre reflects its relatively static form, dynamic functionality, and situated social character.

As Martin integrated genre in SFL theory, he distinguished register from language. In the famous quotation below, Martin describes the intricacies between genre, register, and language:

Genres are how things get done, when language is used to accomplish them. They range from literary to far from literary form: poems, narratives, expositions, lectures, seminars, recipes, manuals, appointment making, service encounters, news broadcasts and so on. [...] Genres are realised through registers, and registers in turn are realised through language (Martin 1984:250).

Van Dijk (2009:252) provides an enlightening description of register as a “combination of grammatical properties of sets of genres.” As genre provides form and structure, register (the specialized form of language) constructs the genre. The global context of culture determines the genre form. The context of situation determines the register (for example legal terminology). Genre is then realized through the text and the register through lexico-grammatical features (*cf.* Carstens 2009:36). The analysis of EALP-type textbooks (*cf.* Chapter 10) indicates that it is at the level of register that developments toward plain legal language reform technical legal language to become more accessible or “spoken-like” (Gibbons 1999:161).

Bhatia (2004:391) extends the relationships among genre, register, and contextual factors by integrating them with academic disciplines. Although field, mode, and tenor configure register, an academic discipline has a notable effect on register, hence the subject-specific terminology. *Context of culture* transcends disciplines as it may refer to the academic discourse community and the genres unique to academia. *Context of situation* refers to the registers unique to different disciplines. Figure 3.3 illustrates the association among registers, genres, and disciplines in academic discourse and in relation to the contexts of culture and situation.

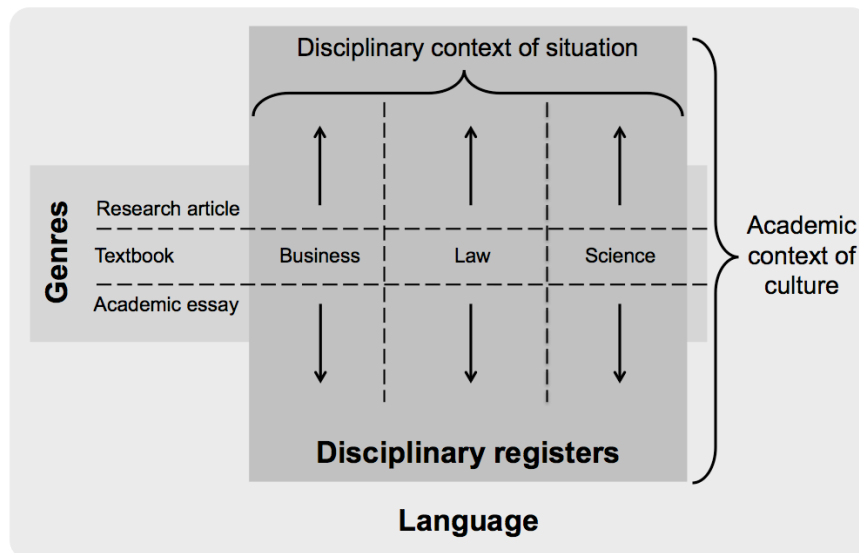


Figure 3.3: Relationships among academic registers, genres, and disciplines in SFL contexts (adapted from Bhatia 2004:391).

Systemic functional linguistics provides a model of the relationships among contexts of culture and situation, language, registers, genres, and disciplines. However, the model could be extended to overcome the hurdle that context of culture has erected between academic disciplines and their associated professional communities. In traditional and contemporary legal education, context of culture inhibits the transfer of genres between law school and legal practice. With various degrees of success, the skills approach of clinical legal education is facilitating the transfer of legal genres between academia and legal practice (*cf.* Chapters 8 and 9). A curricular framework for EALP suggests that context of culture should facilitate genre transfer to enhance legal pedagogy.

As a competence- and performance-based theory of language, SFL supports functional grammar (Grabe 2002:3; Martin 2002:52) and a socio-cultural theory of learning (Hyland 2007:153). Functional linguistics and a socio-cultural theory of learning complement each other because both consider language and learning as socially situated (context of situation) (Hyland 2007:153). Similarly, clinical legal education advocates the acquisition of functional legal and linguistic skills through experiential learning that is socially situated within law school clinics. Systemic functional linguistics would therefore be a fitting linguistic theory for clinical legal language education. However, EALP extends beyond clinical legal education and the

parameters of SFL and should consider the full spectrum of theoretical linguistic approaches.

Systemic functional linguistics initiates the beginning of an intellectual shift and alternative conceptualization of linguistics and language pedagogy that include genre and social context (Flowerdew & Wan 2010:80; Hyland 2002:115; Paltridge 2007:932-933). The intellectual shift may be deemed as a response to the reduction of focus in the late 1950s brought about by generative linguistics. Because linguistic theories began to display socially accountable roles and interest in language problems, such as SLA, such endeavors came to be known as *applied linguistics*.

By the late 1960s applied linguistics focused intently on L2 teaching. “In this respect applied linguistics began to emerge as a genuine problem-solving enterprise” (Grabe 2002:4). During the same time clinical legal instruction became much sought after at law schools in America. This desire came as a result of a perceived imbalance between theoretical and practical legal education (Spiegel 1987:578; Wilson 2004:421). The linguistic evolution toward a practical, problem-solving initiative coincides with the development in legal education that has been aspiring to integrate theory and practice. Theoretical linguistic approaches that complement the desire of legal education to integrate academia with practice are the interactional, constructive (constructivist and constructionist) linguistic approaches.

### **3.4 Interactional, constructive linguistic approaches**

Interactional, constructive linguistic approaches signify a major shift toward a postmodern worldview. Part three of this chapter consists of three sections: In the first section, interactional linguistic approaches are traced from their philosophical and sociological origins to their linguistic applications. Section two initiates the transition to constructivist approaches with their collective origin in psychology. Section three considers social constructionism as an unconventional linguistic theory that explicates a linguistic epistemology for EALP.

### 3.4.1 Interactional approaches

Mead, the American philosopher-psychologist, could be credited with founding interactionist thought in the 1930s. Mead stated that individual and private experiences interact in a shared world rather than constitute separate levels of existence (Harré 2006:233). Positivists criticize Mead's theory as untestable (*cf.* Maines 1977:236). However, in the 1960s, Blumer, Mead's student, elaborated upon the idea of interacting experiences to establish symbolic interactionism. *Symbolic interactionism* could be interpreted as a theory of learning based on three principles: (1) interaction between humans and humans and objects is based on the meanings assigned to them; (2) these meanings emanate from social interaction; and (3) an interpretive process manages and alters these meanings that humans use to constitute and direct their social worlds. Blumer's perspective has been described as indeterminate, subjectivist, and neglectful of politics (Maines 1977:236). However, Snow (2001:369-375) addresses these points of criticism with an additional four principles based on interactive determination, symbolization, emergence, and human agency.

Interactionism entered mainstream linguistics through the scholarship of Long in the 1980s. Long challenged Krashen's monitor model that includes the "comprehensible input hypothesis" or  $i + 1$ . Learning occurs when an individual ( $i$ ) faces an appropriate linguistic challenge ( $+1$ ) that is within her/his intellectual range (*cf.* Brown 2007b:89). As conceptualized by Krashen, comprehensible input is difficult to determine and is unidirectional. Instead, through the interaction hypothesis, Long suggests that modified linguistic input and interaction facilitate language acquisition and output (Long 1981:270-275). Persistent modifications (questions, repetitions, or paraphrases) increase the comprehensibility of linguistic input and lead to appropriate linguistic challenges ( $+1$ ) (Mitchell & Myles 2004:160).

Interactional approaches present several advantages and disadvantages. In terms of SLA theory, interactionist approaches are credited for indicating the following:

- L1 and L2 speakers work actively to create mutual understanding;
- understanding involves linguistic and interactional modifications;
- L2 speakers use the language of the L1 interlocutor; and

- if speakers are tested on it, negative feedback may be advantageous (Mitchell & Myles 2004:191).

Mitchell and Myles (2004:191) criticize interactional approaches for a lack of research to suggest that the “negotiation of meaning’ is a universal phenomenon.” Long’s (1981:270) modified linguistic input and interaction hypothesis has been criticized for preventing predictions about the usefulness of interaction in domains of variability (Mitchell & Myles 2004:192). The critique, however, is founded on a modernist epistemology that seeks predictable, universal rules of grammar and language learning.

In general, interactional perspectives consider language as a medium to comprehend interpersonal relations. Language is used to facilitate “social transactions between individuals” (Richards & Rodgers 2001:21). Interactional linguists attempt to identify and describe the patterns of actions, negotiation, and interaction in conversational exchanges (*cf.* Gardner 2004:276). Although being criticized for excluding contexts from SLA (Firth & Wagner 1997:285), Long (1997:318-323) cites an exhaustive list of scholarship in the SFL and interactional traditions that focus explicitly on context. In this respect interactional scholarship corresponds with social linguistic approaches, such as constructivism and constructionism that focus on “culturally specific contextual presuppositions” (Trappes-Lomax 2004:138).<sup>8</sup>

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<sup>8</sup> The structuralist notion of language as socially situated, gave rise to sociolinguistics in the mid-1960s under the auspices of the American linguist, Labov (Conley & O’Barr 1998:10; Morgan 2004:9). “While theoretical linguistics for many years focused on the study of language in ways that were thought to be ‘independent of context,’ linguistics in other subfields, especially sociolinguistics and psycholinguistics, were from the start intensely interested in how context affects language use and language behavior” (Levi 1995:772). Therefore, sociolinguists support a communicative-semiotic conception of meaning where individual meaning is produced alongside social meaning. This understanding emphasizes contextual elements more than linguistic elements. Nevertheless, it highlights the main contribution of sociolinguistics as it focuses on the “distribution of linguistic resources in society” (Blommaert 2005:12). The contributions of sociolinguistics are important to contextualize the origins and epistemology of critical discourse analysis in the final section of this Chapter 3.



The ontological roots of qualitative social approaches, such as interactionism, constructivism, and constructionism could be traced to numerous pivotal moments in the diachronic development of language theory. *The Social Construction of Reality*, in which Berger and Luckmann (1966) argue that social reality has a dual character, is one such moment. Berger and Luckmann made two main arguments. Firstly, humans seek to understand the worlds or realities they construct. Secondly, because the construction of reality occurs intersubjectively, reality “achieves a kind of independence and, over time, accretes a ‘commonsense’ reality with layers of institutionalization, tradition, and socializations” (Fox 2008:662). As a result of these processes, meaning becomes relatively stable, sense-making becomes limited, and reality appears to be quasi-objective. This reification of meaning illustrates how social approaches focus on the “societal function of language” (Stone 2008:266).

Another influential text is *The Interpretation of Cultures* (1973) by Geertz. Like Berger and Luckmann and resonating postmodernity, Geertz (1973) argues for pluralistic, interpretive, open-ended perspectives that construct meaning from local narratives. Scholarship in the 1970s started to obfuscate boundaries between the social sciences and humanities; the scientific article shared journal space with the essay, and this period became known as the *blurred genres* period (Denzin & Lincoln 2008:24). The voice, authority, and presence of the authors are emphasized as subjective realities gain importance. In this period, social constructionism emerged as a social perspective.

Perhaps because of some epistemological and ontological similarities referred to in Chapter 2, scholarship does not recognize the distinction between variants of *constructivism* and *social constructionism* (Staver 1998:504; Young & Collin 2004:375-376). Therefore, it would be prudent to distinguish the two approaches.

### 3.4.2 Constructivist approaches

In general, constructivist approaches (also called social cultural theories) are critical of the “Saussurean idea of language as an autonomous abstract system” (Mitchell & Myles 2004:220) in which learning follows a transmission model of communication. Constructivist approaches go beyond the interactional negotiation of meaning because they support an epistemology based on the collective construction of meaning

(Weinstein 2001:179). “Constructivists believe that the complexity of language emerges from associative learning processes being exposed to a massive and complex environment” (Ellis in Mitchell & Myles 2004:98). Although similar in their common understanding of language and learning, three constructivist approaches may be distinguished, *viz.* radical, moderate, and social constructivism.

Firstly, *radical constructivism* is related to the work of Von Glasersfeld (1984:17-40) who advocates the construction of a subjective reality through interaction between conscious intelligence and the environment. Radical constructivism supports a naïve ontology; reality is independent and out there. Consequently, its epistemology suggests that knowledge is true only if it corresponds with external reality. Therefore, knowledge is independent of the learner (Constantinou 2005:618).

Secondly, *moderate constructivism* is associated with Piaget (1980) who based his cognitive, developmental theory of learning on empiricist and rationalist accounts. Through active engagement, external information is arranged by cognitive constructions to become intelligible to the individual, a process called *accommodation* (Winch & Gingell 2008:39; Wellington 2006:46; Young & Collin 2004:376). Piaget’s theory has also been described as practical education because he supported practical engagement with materials that would elucidate psychic constructions. Followers of Piaget contend “that the mind’s constructs go through a process of development from birth to adolescence so that they come to be more accurate representations of reality at each stage” (Winch & Gingell 2008:29). Both generative grammar and moderate constructivism propose that an inner mental life precedes discursive mental acts (Winch & Gingell 2008:107).

Thirdly, *social constructivism* as articulated through Vygotskian (1978) developmental theory, proposes that social relationships are responsible for individual constructions of knowledge (*cf.* Bruner 1991:2). “In radical constructivism, the focus is cognition and the individual; in social constructivism, the focus is language and the group” (Staver 1998:505). Social constructivism is concerned with knowledge as a general, public discipline (Phillips 1995:7) that integrates cognitive, social, and linguistic features in its theory of learning (Hawkins 2001:372).

According to Vygotsky, learning occurs in two domains: first in the social and then the individual. In the social domain, learning occurs between people or interpsychologically. In the individual domain, learning occurs inside the individual or intrapsychologically. For knowledge to be internalized from the social to the individual domain, a series of developmental events is necessary (Hawkins 2001:374). These events are scaffolded (Wood, Bruner, & Ross 1976:90) within the conceptual zone of proximal development (ZPD) (Vygotsky 1978:86). The ZPD hypothesizes the intellectual distance between a learner's current developmental state and her/his potential development (Brown 2007a:13; Wellington 2006:163). Scaffolding within the ZPD means that teachers should provide imbricated learning activities of new and increased complexity that sequentially extend the learner's ZPD. The learning process is socially mediated and contextually situated (*cf.* Hawkins 2001:374).<sup>9</sup>

Social constructivism is often criticized for its social stance and the ZPD. As a learning theory it is being accused of failing to explain internalized knowledge that was not acquired through social interaction. This claim, however, equates learning with copying. Internalization is not mere copying; it requires “an active, [...] creative, and reasoning process” (Lantolf & Thorne 2007:213). Another point of critique is that the ZPD and Krashen's comprehensible input hypothesis ( $i + 1$ ) are similar. The ZPD focuses on the character of the dialogic rapport between teacher and learner with the objective of more self-regulation by the learner (Lantolf & Thorne 2007:214). Krashen's input hypothesis focuses on a paradox of indeterminate yet comprehensible input (*cf.* Brown 2007a:297; Lantolf & Thorne 2007:214).

*Social constructivism* is often equated with *social constructionism*. These traditions may be distinguished on the grounds of epistemology and research focus. First, in contrast to the social construction of meaning proposed by social constructionism, constructivist scholarship considers the making of meaning as a mental activity (Gergen & Gergen 2008:816). Social constructivism acknowledges a dualist

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<sup>9</sup> Vygotsky's ZPD has been embraced by pedagogies such as the whole language approach and content-based instruction. In both cases a top-down method is proposed where students attempt to grasp the meaning of the whole text before analyzing its component parts (Larsen-Freeman & Anderson 2011:141). These forms of instruction are revisited in Chapter 5.

separation between individual and society. In contrast, “[f]or the [social] constructionist, all claims to knowledge, truth, objectivity or insight are founded within communities of meaning making – including the claims of constructionists themselves” (Gergen 2001:2). Second, both traditions originated in psychology: constructivism in developmental psychology and social constructionism in social psychology. For the purposes of this study, constructivism provides fertile theories of language and learning; social constructionism offers critical descriptions of the relations among language, ontology, and epistemology. Table 3.4 summarizes the key ontological and epistemological differences among constructivist approaches.

Table 3.4: Primary differences among constructivist approaches

	<b>Radical constructivism</b>	<b>Moderate constructivism</b>	<b>Social constructivism</b>
<b>Proponent</b>	Von Glasersfeld	Piaget	Vygotsky
<b>Ontology</b>	Reality is subjective, independent, and out there.	Reality is external and internalized through cognitive constructions.	Reality is social.
<b>Epistemology</b>	Knowledge is true if it corresponds with external reality.	Knowledge originates in action.	Knowledge is social and becomes individual cognition.
<b>Language</b>	Representational-referential	Representational-referential	Pragmatic-instrumental

Social constructionism is included as a linguistic approach because of its micro- and macrolinguistic foci through which it articulates a comprehensive, critical philosophy of the social construction of meaning. It provides a productive linguistic philosophy within theoretical linguistics that translates effectively to the context of EALP and corresponds with the worldview described in Chapter 2.

### 3.4.3 Social constructionism

Social constructionist scholars are prolific in theorizing language as a result of theorizing ontology and epistemology across conventional disciplinary boundaries. Social constructionist contributions to the understanding of language and meaning in the context of psychological therapy have been developed by Gergen (1991) and Parry and Doan (1994); though, its application is not limited to psychology. Cunliffe (2008) eloquently articulates a relational social constructionism for legal pedagogy. Ajayi (2011), for example, uses social constructionism to explain teachers’

perceptions of pedagogy, and George (2010) investigates the politics of social construction and writing instruction.

A compendious approach that transcends disciplines and subject matter evades reification. Yet, Gergen, credited as the main proponent of social constructionism, provides a fitting description. Social constructionism is an approach:

[...] principally concerned with explicating the processes by which people come to describe, explain, or otherwise account for the world (including themselves) in which they live. [...] [Social constructionism] views discourse about the world not as a reflection or map of the world but as an artifact of communal interchange” (Gergen 1985:266-273).

Language as a community-generated idea juxtaposes with the cognitive understanding and the logico-empirical productions of knowledge. Cognitive and empirical approaches relegate language as a conduit to the periphery of knowledge (*cf.* Gergen 2011:281). This does not mean that social constructionism denies cognition. Bruffee (1986:777) considers thinking as an internalized form of communication. Ideas in the individual mind are in “conversation” with the world to which they refer. Because language is central to social activity, it becomes the axis of a social constructionist worldview (Gergen 2001:810). If language performed such a vital, existential role in knowledge-production, then should language instruction not be at the center of the educational process (Bruffee 1986:778).

The subsequent discussion is structured as follows. First, social constructionism is considered as a linguistic perspective. To this end, the ontological and epistemological assumptions underlying social constructionist linguistics are considered. Second, a critical evaluation of legal language justifies a social constructionist linguistic epistemology for EALP. Finally, critique against a social constructionist linguistic theory is addressed.

#### 3.4.3.1 Social constructionism as linguistic theory

Social constructionism and constructivism differ substantially in their views on the nature of language. Radical and moderate constructivism support a *representational-referential* conception of language. Language is regarded as a neutral tool to report

observations and provides a window into the speaker's mind. Social constructivism views language as *pragmatic-instrumental*; that is, within society, language functions as a practical instrument through which knowledge is created, organized, and shared (cf. Table 3.4). This perspective is comparable with functional linguistics where language is functionally used to produce meaning in context. In the tradition of postmodern linguistic approaches, social constructionism views language as *rhetorical-responsive* (Talja *et al.* 2005:93). Language is heteroglossic; there is always more than one voice or perspective present in all (con)texts (Cunliffe 2008:130).<sup>10</sup>

Anderson (1997:204) vividly describes a holistic social constructionist understanding of language that reverberates in social, diachronic, functional, phenomenological, and epistemological dimensions.

We are born into language and inherit all that comes with it: history, culture, tradition, and so on. Language is the vehicle through which we exist and share with each other and with ourselves. It is the primary way in which we construct our realities, our worlds, our observations, and our understandings, through action with others. It is the vehicle through which we ascribe meaning, make sense of our lives, give order to our world, and relate our stories. We act and react through language, using it to relate, to influence, and to change.

In contrast with a Cartesian and radical constructivist belief in an endogenic (mind-centered) (Audi 2002:20) epistemology and a positivist belief in an exogenic (reality-centered) epistemology, social constructionism presents a radically different approach. Gergen (1995:24) contends that knowledge begins with language and that the processes of social interchange determine the use of language. Different from a modernist conception that language corresponds on a one-on-one basis; social constructionists view language as social action (Anderson 1997:201; Gergen 1997:724).

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<sup>10</sup> The principle of language being heteroglossic is similar to the natural law principle *audi alteram partem*, which posits that due process could be achieved by allowing all parties to a dispute to voice their cases.

A social constructionist epistemology is created through intersubjective, social relationships (Anderson & Goolishian 1988:390). Cunliffe (2008:129) draws on Merleau-Ponty's understanding of intersubjectivity by describing it as an awareness of "the presence of others in myself [and/] or of myself in others" as opposed to a Cartesian epistemology of "I think therefore I am" (*cf.* Audi 2002:20). This notion of intersubjectivity is eloquently described with reference to Atticus Finch in *To Kill a Mockingbird*: "Atticus was right. One time he said you never really know a [wo]man until you stand in his [her] shoes and walk around in them" (Lee 1993:279). Meaning is situated in living conversations "in dialogue and utterances where everything that is said is in relationship to others: other people, other ideas, other conversations (past, present and anticipated)" (Cunliffe 2008:130).

Meaning in language depends on different contexts, such as linguistic, cultural, and/or legal (Musson, Cohen, & Tietze 2007:48). Similarly, the meaning of legal language is determined by the contexts in which it is used, such as the circles of world English, EALP classrooms, and textbooks (*cf.* Young & Collin 2004:378). This notion corresponds with SFL and pragmatics that meaning is - use in context. According to Gergen: "language gains its meaning not from its cognitive or subjective underpinnings but from its use in action" (2001:806).<sup>11</sup> Similarly, from an applied linguistic, rhetorical perspective, Miller (1984:151-156) proposes "genre as social action" and as representative of "recurring [...] typified rhetorical action." This topic is revisited in Chapter 5.

With meaning constructed intersubjectively and contextually, Gergen poses an ontological question: "how [do] words map reality when the major constraints over word usage are furnished by linguistic context?" (Gergen 1985:267; *cf.* Gergen 2001:806; Von Glasersfeld 1984:17-40). This question could be answered by considering grammar in both micro- and macrolinguistic domains. Such consideration relates social constructionism to semiotics and universal grammar. Chomsky introduced the idea of the mind as a map, partially filled with grammatical features at

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<sup>11</sup> Gergen draws on Wittgenstein to illustrate the relatedness of language by asserting: "language gains its meaning within ongoing forms of interaction – within language games as Wittgenstein called them" (Gergen 2001:806; *cf.* Gergen 2011:282).



birth. On a semiotic level and in contrast to universal grammar, Gergen argues that language does not map reality because it is socially negotiated and fluctuates within infinite contexts.

Language is incapable of mapping or mirroring reality because “the relationship between word and world is effectively indeterminate” (Gergen & Zielke 2006:300). A specific arrangement of language (mapping) is not necessarily the result of (visual) observation or vice versa. However, certain communities (disciplines) mandate certain usage of language and discourse, eventually constructing a world of particulars. “The extent to which observation [mapping] can confirm, correct or discredit a given theory depends on the set of conventions shared by participants within the community” (Gergen & Zielke 2006:301); consequently, the discourse community is verbalized or “languaged” into being.

On a macrolinguistic level, different languages construct elements of reality in distinctive ways. This assumption corresponds with the American structuralist Sapir-Whorf hypothesis, also known as the linguistic relativity hypothesis (Trask 2007:154). This hypothesis holds that a language determines the views and perspectives of the language users (Hyland 2010:160; Skerret 2010:331); therefore, cultural, social, and political change could be studied in language (Mertz 2007a:17). The reciprocal relationship among language, ontology, and epistemology motivates an investigation of legal language as constitutive of an epistemology for EALP.

#### 3.4.3.2 Legal language as epistemology for EALP

With legal language, quite literally, determining social reality, why then are EALP students not instructed on the ethical and moral use of such a powerful artifact? Therefore, establishing a legal linguistic epistemology for EALP is essential because the legal discourse community determines important binding segments of our social realities. A linguistic epistemology is revisited in Chapter 10 as one of several EALP-type textbook categories that authors have neglected.

A pivotal source in applied legal linguistics and the nature of legal language that addresses a linguistic-based legal epistemology is Mertz’s *The Language of Law School: Learning to “Think Like a Lawyer”* (2007a). The title denotes the connection



between language used in law schools and how legal language influences students' reasoning. Mertz (2007a:3) argues that the distinctive "legal ways of approaching knowledge" (legal epistemology) affect the ways in which legal discourse communities use language, and the use of language in turn affects "law's democratic aspirations." Therefore, moral, linguistic, or intellectual challenges posed by legal knowledge, legal language, and/or legal content are inseparable. It would therefore be productive to identify and remedy the symptoms of such challenges. Through a close analysis of classroom language at eight law schools in the United States, Mertz identifies seven problems that occur in legal language as a result of the dominant legal epistemology. These problems indicate the connections between legal language and a legal epistemology.<sup>12</sup>

- "There is a core approach to the world and to human conflict that is perpetuated through U.S. legal language. This core legal vision of the world and of human conflict tends to focus on form, authority, and legal-linguistic contexts rather than on content, morality, and social contexts" (Mertz 2007a:4). Law students are exposed to this language in law schools through texts and classroom discussions and learn to reproduce such language. Argumentative reasoning and textual interpretation substitute fundamental, socially justified ethical thinking.
- Mertz describes the expression of a legal epistemology in all the sample classrooms of her study as socially unjustified and unethical. Students are guided to reorient their approach to written legal texts through "subtle shift[s] in linguistic ideology" (Mertz 2007a:5). "An important part of this shift involves learning to read the 'conflict stories' contained in legal cases in a new, more dispassionate way – guided by the new ideology about language" (Mertz 2007a:5).
- A linguistic ideology arises from legal hermeneutic approaches imparted in law school classrooms. The neutrality of legal language is questioned because

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<sup>12</sup> The United States legal epistemology is taken as primary example for two reasons. Firstly, similar to and together with the proliferation of the legal pedagogy of the United States, the legal epistemology of the United States is proliferating across the circles of world English (*cf.* Chapters 7 and 8). Secondly, the connection between legal language and legal pedagogy in South Africa and South Korea is underdeveloped and warrants further research beyond this project.

students are encouraged to interpret legal texts according to abstract categories and legal contexts, which provide a specific cultural and political model of justice. Inclusive contemplation of social background and specificity is not necessarily encouraged. Justice will prevail through a linguistic duel where arguments oscillate between two sides (Mertz 2007a:5).

- The linguistic ideology reveals benefits and disadvantages to legal language. There are at least two benefits. First, it appears as if all people are treated equally, regardless of particular situations. Second, legal language “generates an enormously creative system for processing human conflict” (Mertz 2007a:5), which provides flexibility to accommodate social change, whilst it also provides stability and predictability. However, disregard for the particularities of a situation could lead to unjust decisions. The apparent neutrality of legal language creates the impression that law does not enact social inequality and injustice. Thus, legal language *per se* does not encourage students to consider morality.
- Law school is characterized by cultural, racial, gender, and social invisibility and dominance. Although not isolated to law schools, the legal language that legal practitioners write and speak could have stratifying effects in different circumstances (Mertz 2007a:6).
- Although there is a shared legal epistemology in different law schools, differences among schools and teachers also exist.
- “Both in content and form, legal education and the language it inculcates mirror a ‘double edge’ arguably found in capitalist epistemology more generally” (Mertz 2007a:6). Legal epistemology could therefore endorse both the elements that cause social injustice and those that support social inequalities.

The linguistic-based epistemology of legal education should therefore be addressed for at least two reasons. First, legal language could lead to unethical and immoral legal decisions. It is in the language of the law that the apartheid regime of South Africa trained lawyers and found justification for the enactment and enforcement of State mandated inequality and segregation (Maisel 2007:379). Second, the differences between the law school curriculum and legal practice provide further justification for

a legal epistemology of EALP. While law schools push for greater emphasis on theory, many law firms pursue profit (Edwards 1992:38). “While the schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground – ethical practice – has been deserted by both. This disjunction calls into question our status as an honorable profession” (Edwards 1992:34). This disjunction provides a critical justification for a linguistic-based epistemology for EALP.

#### 3.4.3.3 Critique on linguistic social constructionism

Critique on social constructionism may be directed to its ontology and description of language. From an information sciences (positivist) perspective, Talja *et al.* (2005:90) critique social constructionism for its “convincing” focus on the use of language and discursive practices. They argue that such rigorous focus relegates the definition, production, and resolution of “real-world” problems to “institutionalized discourses.” The construction of reality through language and discourse may be criticized as an anti-realist (Nightingale & Cromby 2002:701) or solipsist position (Staver 1998:506). Accordingly, social constructionism contributes only to the development of metatheoretical and philosophical debates. It does not generate empirical research programs and methodologies. Bruffee, however, disagrees by arguing that social constructionist thought provides generative conceptual recourses. “Our scholarship and research and our role as classroom instructors are all themselves, and directly, social affairs” (Bruffee 1986:775). One such example where social constructionist theory permeates teaching practice is Cunliffe’s (2008) account of a relationally responsive social constructionism for learning. Such a change in ideology could motivate departure from Cartesian epistemology and Socratic teaching methods to incorporate discourses associated with the rise of critical, postmodern approaches (*cf.* Kumaravadivelu 1996; 2001).

### 3.5 Critical linguistic approaches

Although their origins could be traced to the tumultuous transitional period between modernity and postmodernity, social constructionism and critical linguistic approaches manifest diachronically and philosophically as contemporary approaches situated well within postmodernity. This final part of Chapter 3 consists of two sections. Firstly, critical discourse analysis (CDA) is described on the basis of the principles that

constitute its critical and analytical (methodological) dimensions. The second section draws on the discussion of CDA to explicate critical pedagogy, language awareness, and critical language awareness (CLA). The critical linguistic approaches conclude the theoretical framework of this chapter as it transitions into the “real world” problems of applied linguistics or L2 pedagogy in Chapter 4.

### 3.5.1 Critical discourse analysis

Critical discourse analysis is rooted in a long history of language philosophy, ethnomethodology, and American, Australian, and British functional linguistics (Rogers, Malancharuvil-Berkes, Mosley, Hui, & Joseph 2005:367). Initially, discourse analysis was used by education researchers to determine meaning-making processes in educational settings. In sociolinguistics (Gumperz 1982; Labov 1972), linguistic anthropology (Silverstein & Urban 1996), and the ethnography of communication (Gumperz & Hymes 1986) researchers described microinteractions in educational settings. Macrostructures became more pronounced as soon as scholars in sociology and cultural studies investigated the reproduction of social structures through educational institutions. Critical discourse analysis originated because of a desire to dovetail educational microinteractions with societal macrostructures (Rogers *et al.* 2005:366). In theoretical linguistics, CDA drew on the SFL of Halliday as he considered language as interaction that is textual, interpersonal, and situated.<sup>13</sup> During the late 1990s, CDA became popular among linguists in Europe (notably Fairclough, Wodak, and Van Dijk) and America (Gee) in reaction to the formal, asocial, and uncritical paradigms of the 1960s and 1970s (Van Dijk 2001:352; Weninger 2008:145; Wooffitt 2005:137).

In a meticulous review of CDA in education, Rogers *et al.* (2005:397-416) summarize no fewer than 44 definitions of CDA. As it escapes reification, CDA may be described as a philosophy with critical views on worldviews and methodologies concerning language.

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<sup>13</sup> Systemic functional linguistics and CDA share at least three features. First, language is considered as social construction. Second, language is dialectical as it influences the context of its use and vice versa. Thirdly, the cultural and historical practices of meaning making are accentuated (Fairclough 1993:134; Rogers *et al.* 2005:369).

In general, descriptions of CDA accentuate the constructive and destructive (re)productions of economic, political, social, and cultural power relations associated with the use of language in societies (*cf.* Fairclough, Mulderrig, & Wodak 2011:357; Kress 1990:84; Van Dijk 2001:352). Fairclough's (1993:134) description accentuates CDA as a social theoretical approach, which relies on SFL resources and considers language use that is constitutive of social identities, social relations, and worldviews.

From the descriptions it becomes clear that CDA is both a methodological approach and a substantive orientation (Wooffitt 2005:137). Critical discourse analysis is not limited to linguistic research endeavors as it transcends disciplines and has recently become known as critical discourse studies as is evident in the academic journal with the same title and the influential book *Discourse Studies: A Multidisciplinary Introduction*, edited by Van Dijk (2011). Because this chapter is dedicated to explicate CDA as theoretical linguistic paradigm, the focus here is on its three constitutive parts, *viz. critical, discourse, and analysis*.

### 3.5.1.1 The critical element of CDA

Discourse analysis and CDA have the common goal of understanding texts socially and contextually. These forms of analyses achieve this goal by accounting for the “production, internal structure, and overall organization of texts” (Kress 1990:84). However, CDA moves “beyond description[s] and interpretation[s] of the role[s] of language in the social world, toward explaining why and how language does the work that it does” (Rogers *et al.* 2005:369). Therefore, the conditions conducive to the (re)production of imbalance and prejudice are exposed so that they can be interpreted, understood, and transformed.

To this end, CDA relies on pervasive theoretical underpinnings that may be summarized as its main principles (Fairclough *et al.* 2011:366-373; Kress 1990:85-86; Van Dijk 2001:353). These principles may appear to be eclectic, but they provide coherence for an otherwise diverse approach (Blommaert 2005:14). An examination of the principles underlying CDA provides insight into its ontology, epistemology, and conceptualization of language and meaning.

### *Social inequalities*

Whether analysts embrace Fairclough's "dialectical theory of discourse and a transdisciplinary approach to social change" or Wodak's discourse-historical approach that combines methodically all obtainable contextual information in the analysis and understanding of the abundant layers of texts (Fairclough *et al.* 2011:362-364), CDA is intimately concerned with social inequalities. For example, in a pivotal analysis of *The Sociolinguistics of Globalization*, Blommaert (2010) investigates how the heterogeneity of English and the authorities that prescribe normative standards constitute global socio-economic inequalities. Similarly, for ethical reasons one should ponder whether the principles of a curricular framework for EALP that is applicable across the circles of world English advances the heterogeneity of English and contributes to Western academic imperialism.

### *Discursive power relations*

These power relations manifest in the unequal distribution of repertoires and registers. Blommaert (2005:15) suggests a sociolinguistic discourse analysis "because what people actually produce as discourse will be conditioned by their sociolinguistic background." The discursive negotiation of power is particularly pronounced in the use of legal language. Mellinkoff illustrates the power of legal language by stating: "What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue" (in Tiersma 2013:n.p.).

#### 3.5.1.2 The discursal element of CDA

The discursal element of CDA consists of four premises, *viz.* discourse constitutes society and culture, discourse performs ideological work, discourse is historical, and discourse is a form of social action.

### *Discourse constitutes society and culture*

By arguing that discourse constitutes society and culture, CDA assumes a social constructionist worldview. Yet, the association between CDA and constructionism is relatively unexplored (*cf.* McKenna 2004:12). In the context of the legal discourse community, Kuhn maintains that language is "the common property of a group or else nothing at all" (in Bruffee 1986:774). Together with the worldview, language, grammar, and register are "constructs generated by communities of like-minded

peers.” Similar to social constructionism, CDA “understands reality, knowledge, thought, facts, texts, selves, and so on as community-generated and community-maintained linguistic entities [...]” (Bruffee 1986:774).

### *Discourse performs ideological work*

Fairclough *et al.* (2011:371) describe ideologies as “particular ways of representing and constructing society, which reproduce unequal relations of power, relations of domination and exploitation.” Text analysis alone does not determine discursive ideology. Text interpretation and its social effects need to be considered as well. Li (2011:218), for example, illustrates how the *China Daily* and *The New York Times* report differently on a United States spy plane that was clipped by a Chinese jet over Chinese territory. Both publications attempt to impart a national, political ideology to its readership. The social effects may be exacerbated antagonism between the Americans and the Chinese. Li’s (2011) research subsumes another tenet of CDA, *viz.* that discourse analysis is interpretive and explanatory.

### *Discourse is historical*

Discourses are always historically situated (Fairclough 1993:134) and cannot be understood without considering the discourses to which they are connected (Fairclough *et al.* 2011:372). Legal discourse provides an appropriate example of discourse historicity. Through legal precedent, contemporary courts pronounce judgments based on historic decisions. “Because the courts use the reasoning of the prior courts in their decisions, they also sometimes use their language. Thus, the use of precedent involves the use of prior language” (Macleod 1997:249), which creates cohesion of the legal discourse community (Wagner 2010:79).

### *Discourse is a form of social action*

Discourse as a form of social action transcends disciplines and paradigms. Genre is recognized as social action from a socio-cultural approach to genre theory (Miller 1984:151-156), and language is considered as social action as it constructs meaning from a social constructionist perspective (Gergen 2001:806). Similarly, CDA considers discourse as a form of social action (Fairclough *et al.* 2011:373; Kress 1990:85). Discourse as social action transcends disciplinary boundaries because discourse (repertoires and registers for example) is affected by a world system called



globalization. Therefore, *critical* discourse analysis cannot be limited to individual societies because they are always in relation to other societies (Blommaert 2005:15).

Within the tradition of CDA, discourse is described as “language use as social practice” (Rogers *et al.* 2005:369). Discourse oscillates between “reflecting” and constructing social worlds. However, one may argue that discourse does not reflect society; instead, what is deemed a reflection is in fact already a reconstruction. Therefore, discourse or language constructs *and* reconstructs society and its constituent parts, which may include politically, economically, and culturally mediated worldviews. Because discourse (re)constructs societies, discourse is value-laden (Fairclough 1993:134; Rogers *et al.* 2005:369).

### 3.5.1.3 The analytic element of CDA

The *critical* principles and understanding of *discourse* described above constitute the philosophical/theoretical footing of CDA. The *analytical* dimension accounts for its methodological underpinnings. Critical discourse analysis has been applied in the French discourse analysis of Foucault, the social semiotics of Kress, the sociocognitive studies of Van Dijk, the discourse historical method of Wodak, and Fairclough’s three-tiered analytical framework (Rogers *et al.* 2005:370). All these forms of CDA attempt to describe, interpret, and explain how discourse and society (re)create each other. Because of their diversity, the different forms of CDA do not share a method, yet their worldviews are comparable.

As a methodological approach to discourse analysis, Fairclough (1993:136) suggests a three-dimensional model that consists of textual analysis, discursive practices, and texts as social practice (*cf.* Figure 3.4). First, *textual analysis* refers to the language structures of spoken and written texts. Textual analysis subsumes linguistic analysis (including phonology, morphology, lexicology, and syntax) and intertextual analysis (including the orders of discourse such as genre and narrative) (Fairclough 1993:164). It is at the textual level that Halliday’s three domains of ideational, interpersonal, and textual analyses apply. Second, *discursive practice* refers to the production, distribution, interpretation, and consumption of texts. Finally, the level of *social, cultural practice* is concerned with the inequality produced through the interdiscursivity and hegemony of power relations (*cf.* Blommaert 2005:29; Rogers *et*



al. 2005:371). Discourse as sociocultural practice may be contextualized within local, institutional, and societal realms (Fairclough 1993:137). These three realms overlap in context of situation and context of culture as explicated by SFL.

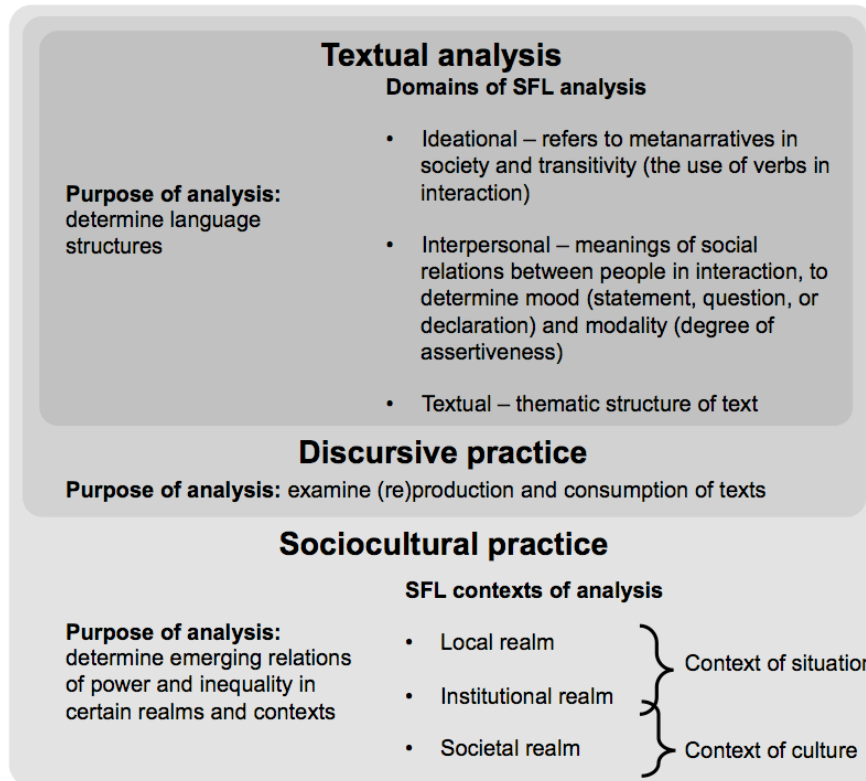


Figure 3.4: Fairclough’s analytic framework

Fairclough’s analytic framework is indeed useful and could be applied to a specific genre such as the résumé. Textual analysis may reveal on the ideational level that verbs positioned at the beginning of phrases accentuate the applicant’s skills. On the interpersonal level, the syntax (a subject followed by a verb) may determine the tenor as declarative. Textually, a particular format of the résumé may reveal that the candidate adheres to the North American convention that omits personal details. An impressive résumé as discursive practice establishes a relationship with the prospective employer as consumer of the document. As sociocultural practice, the résumé reveals in the context of situation that the candidate has advanced command over the legal lexicon, which gives her/him an advantage (power) over another applicant. In the context of culture it becomes evident that the applicant’s family has a long history of jurists on the bench, which could be interpreted as an unfair advantage over other members of the legal discourse community. Fairclough’s framework could

instill critical hermeneutical skills among students of legal English. However, it is not immune to criticism.

#### 3.5.1.4 Critique on CDA

The methodology, hermeneutics, and objectives of CDA may be criticized. First, considering its broad trans-disciplinary interests (Forchtner 2011:1; McKenna 2004:10), CDA displays a methodological problem regarding linguistic bias toward linguistic-textual analysis. This bias favors analysis according to Fairclough's analytic framework. It is further infused with Hallidayan SFL that presumably enhances the critical character of CDA. Critical discourse analysis is therefore not a theory of language, but it is a "*linguistic* theory of language" (Blommaert 2005:34; cf. Kress 1990:93). Described as such, CDA is similar to discourse analysis that focuses on real-life language use, problems, and solutions of language and communication (McKenna 2004:10).

It is argued, however, that such an analytic framework may lead to the standardization of CDA method. A standard method could eliminate, for instance, the manipulation of examples to support research data or *a priori* political stances (Rogers *et al.* 2005:379-340; Weninger 2008:147). However, standardization contradicts the ontology of CDA because that would apply a "one size fits all" method that embodies a hegemonic metanarrative. "It is difficult to imagine what might constitute adequate formal analysis in advance of actually carrying it out: must all analysis attend to phonetic detail? To syntactic structure?" (Bucholtz 2001:176). Instead, the considered borrowing of analytic tools from applicable disciplines that are integrated coherently with the principles of a CDA worldview associate with the CDA research agenda more productively. This does not mean that critical theory and methodology are separated, but it does mean that trans-disciplinarity is favored over rigor (Chouliaraki & Fairclough 2010:1218).<sup>14</sup>

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<sup>14</sup> Although Chouliaraki and Fairclough (2010:1218) favor trans-disciplinary research over rigor, scholarship encourages rigor and authenticity of CDA research through more reflexivity on the role of the researcher (Rogers *et al.* 2005:381). Bucholtz (2001:166) suggests an enhanced self-awareness that reports on analysts' decisions throughout the research process.

Second, the hermeneutical element of CDA is also susceptible to critique. Wallace (1999:99) criticizes CDA because it leads to “expert exegesis [...] in the hands of the single interpreter, the lone armchair critic.” In particular, she criticizes analyses conducted by Fairclough and Kress for not capturing the “conflicts and uncertainties which surround socially shared interpretive processes” (Wallace 1999:99). Wallace (1999:99) suggests that CDA should be applied within “actual interpretative settings” and interpretations should “move out of the hands of experts to become an activity in which social groups can profitably engage [...].”

Wallace’s critique is problematic because she considers CDA from a contracted perspective. This shortcoming may be resolved when compared with legal and academic practices. Courts interpret cases in actual settings in which expert interpretations (that provided by legal counsel and expert witnesses) are counter balanced by the *audi alteram partem* rule and in some jurisdictions by a social group called the jury (*cf.* Footnote 10). In general, the possibility of an appeal allows disgruntled parties to request a higher court to reinterpret the decision of a lower court. Similarly, the academic writing process is subject to (re)interpretations by peer reviewers, co-authors, teachers, colleagues, and editors. Implausible interpretations in legal practice and academia are sure to invoke reinterpretations and (critical) feedback. Although CDA method appears to be an isolated subjective activity, within a broad context it evokes intellectual, empirical, and hermeneutical validation or refutation.<sup>15</sup>

A third problem concerns the main objective of CDA, *viz.* to identify and react to (re)productions of inequality that are geographically restricted. Blommaert (2005:36) argues that CDA conceptually promotes the voices of the Third World or subaltern; however, research conventions favor the dominant voices of the First World (the United States, the United Kingdom, and Europe) as primary sources. In an era of globalization, First World voices cannot assume universal validity.

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<sup>15</sup> Discourse analysis has permeated legal hermeneutic scholarship through forensic linguistics (*cf.* Shuy 2001; Tiersma & Solan 2002). However, legal hermeneutics may potentially benefit from the theories and methods of CDA and vice versa, yet scholarship has not explored this interface that merits future research.

### 3.5.2 Critical language awareness

*Critical language awareness* may be described as an awareness of language variation in different social contexts and the power relations (re)produced through language use (Bolitho, Carter, Hughes, Ivanič, Masuhara, & Tomlinson 2003:252; Razfar & Rumennapp 2012:352). It is a pedagogic procedure that emanated from a confluence of critical pedagogy, CDA, and language awareness. Critical pedagogy is rooted in the work of Paulo Freire (2005) who proposed the term *praxis*: the convergence of theory and practice that may initiate social and political change in education (Hawkins & Norton 2009:31; *cf.* Chapter 6). Critical discourse analysis contributed ideologically with the notion that discourses are (re)productions of power relations. Language awareness occurs when learners discover the properties of language and language use (Clark, Fairclough, Ivanič, & Martin-Jones 1990:249; Wallace 1999:98) particularly in school settings (Razfar & Rumennapp 2012:352). Table 3.5 compares language awareness and CLA. With respect to the nature of language, language awareness suggests that sociolinguistic practices are part of a natural given order. In contrast, CLA suggests that sociolinguistic practices are naturalized, acculturated, and espoused.

Table 3.5: Differences between language awareness and critical language awareness (Clark *et al.* 1990:250).

	Objectives	Motivation	Schooling	Language	Learning
<b>Language awareness</b>	Social integration	Legitimation of social & sociolinguistic order	Fitting children into social order	Natural order	Knowledge isolated from practice
<b>Critical language awareness</b>	Social emancipation	Critique & change of social & sociolinguistic order	Fitting children to work in & change social order	Naturalized order	Knowledge integrated with practice

The main objective of CLA is to empower students to discover (for themselves) the complex socio-political relations (re)produced through discourse and to perceive the linguistic and social systems as a whole (*cf.* Bolitho *et al.* 2003:251-252; Gee & Lankshear 1995:10). Secondary objectives include emancipation, orientation toward difference, and opposition (Wallace 1999:103-104). This means that students are assisted to “develop such cognitive skills as connecting, generalizing, and hypothesizing, [...] to become independent with positive attitudes towards the language, and to learning the language beyond the classroom” (Bolitho *et al.*

2003:252). These cognitive skills stimulated by CLA are endorsed by EALP-type textbooks that promote thinking skills (*cf.* Chapter 10).

The following principles may be taken into account when CLA informs curriculum development: (1) social mindfulness of discourse; (2) critical understanding of diversity; and (3) consciousness of, and practice for, change (Clark *et al.* 1991:48-49). At this junction, Freire's *praxis* comes into play. The focus on the curriculum draws attention to the applied linguistic (pedagogic) domain, where CLA aligns conceptually with new literacies studies to interrogate the "interconnectedness of identities, ideologies, histories/herstories, and the hierarchical nature of power relations between groups" (Alim 2005:28). The applied linguistic contributions of CLA are pursued in more detail in relation to the *new rhetoric* movement in genre pedagogy (*cf.* Chapter 5) and *new literacies studies* in postmodern pedagogy (*cf.* Chapter 6).

### 3.6 Summative notes

Throughout this chapter different theoretical linguistic approaches are reviewed without creating adversarial relations. The diachronic sequencing reveals that all the theoretical linguistic approaches considered here are ontologically and epistemologically interrelated and indebted to one another. Their conceptualizations of language and linguistic theory are reactions in relation to or (re)constructions based on the underpinning of their precursors.

To this end, the summative notes comprise an extensive table in which the main characteristics of the relevant theories are compared. Table 3.6 provides a holistic view from which trends and patterns may be observed, and it is instrumental in formulating the curricular framework for EALP in Chapter 11. For example, by reading the second column on proponents and definitions one may notice that semiotics is related to pragmatics through the work of Peirce. Similarly, the description of the nature of language of interactional, constructionist approaches indicates a clear progression of thought from language as transactional, to referential and instrumental, and eventually rhetorical-responsive. These trends anticipate the development of future worldviews as they become increasingly critical, social, and political.

Table 3.6: Summary of the features of theoretical linguistic approaches and their implications for EALP

Traditional, formal linguistic approaches	Proponents & definitions	Ontology, epistemology, & nature of language	Critique & contribution	Implications for EALP
<b>Structuralism</b>	<ul style="list-style-type: none"> <li>De Saussure</li> <li>Structuralism is a modern linguistic approach that considers language as a structured system.</li> </ul>	<ul style="list-style-type: none"> <li>Knowledge resides in structural relations between lexical units.</li> <li>Language is a holistic, structured system that signifies individual thought.</li> </ul>	<ul style="list-style-type: none"> <li>Structuralism explains learning in terms of a one-dimensional transmission model of communication.</li> <li>Structuralism recognizes the holistic, social dimensions of language, a breakthrough of its time.</li> </ul>	<ul style="list-style-type: none"> <li>A curricular framework for EALP embraces a holistic pedagogy for the instruction of legal English. To consider legal English holistically, the EALP syllabus should provide instruction on the use of the micro-, meso-, and macrolinguistic features of legal English.</li> </ul>
<b>Semiotics</b>	<ul style="list-style-type: none"> <li>De Saussure, Peirce, &amp; Wagner</li> <li>Semiotics is the linguistic study of sign systems that produce meaning in social contexts.</li> </ul>	<ul style="list-style-type: none"> <li>Reality is meaningful because it is structured according to certain codes that humans learn and inhabit.</li> <li>Language is representational of the relations between signs, objects, and interpreters.</li> </ul>	<ul style="list-style-type: none"> <li>Semiotics considers language learning as external output of linguistic units.</li> <li>Semiotics supports a relational worldview that supports a two-dimensional model of communication.</li> </ul>	<ul style="list-style-type: none"> <li>The relationship between the presentational nature of language and icons, symbols, and indexes could be used for legal language instruction. Semiotics encourages different intelligences and modes of learning such as the special intelligence of visual learners.</li> </ul>
<b>Universal grammar</b>	<ul style="list-style-type: none"> <li>Chomsky</li> <li>Universal grammar is a cognitive linguistic theory, which postulates that fundamental grammatical structures of languages are universally similar and innate from birth.</li> </ul>	<ul style="list-style-type: none"> <li>An endogenic (mind-centered) worldview explains reality and knowledge.</li> <li>Innate linguistic competence enables humans to conduct linguistic performance.</li> </ul>	<ul style="list-style-type: none"> <li>Universal grammar considers language learning in terms of L1 internal output of innate grammatical abilities.</li> <li>Universal grammar supports a shift away from empiricist structuralism toward a rationalist orientation.</li> </ul>	<ul style="list-style-type: none"> <li>Across the circles of world English, legal English exhibits a universal grammar that is not innate to law students, and law students need to gain linguistic competence of legal English to conduct legal linguistic performance.</li> </ul>



Functional, contextual linguistic approaches	Proponents & definitions	Ontology, epistemology, & nature of language	Critique & contribution	Implications for EALP
<b>Pragmatics</b>	<ul style="list-style-type: none"> <li>• Peirce</li> <li>• Pragmatics is a functional linguistic approach that considers linguistic meaning in the broad context of use. How is meaning used?</li> </ul>	<ul style="list-style-type: none"> <li>• Realities and knowledge originate in linguistic, discursive, social, and physical contexts of interaction.</li> <li>• Language is non-referential and performs a social function.</li> </ul>	<ul style="list-style-type: none"> <li>• Pragmatics is not critical enough of how meaning is used in social interactions to produce unequal relations.</li> <li>• Because pragmatics is functional, it attempts to empower learners regardless of communicative competence.</li> </ul>	<ul style="list-style-type: none"> <li>• Pragmatics underscores the hermeneutic value of legal English and iterates that the legal linguistic realities of EALP students originate in discursive, social, and physical contexts. The EALP syllabus could advance the contexts of learning through communicative, genre-based, and socioliterate approaches that foster discursive, social, and experiential learning, for example.</li> </ul>
<b>Systemic functional linguistics</b>	<ul style="list-style-type: none"> <li>• Firth, Halliday, &amp; Martin</li> <li>• Systemic functional linguistics is a functional, genre-based linguistic approach that combines structural information with social factors to derive meaning.</li> </ul>	<ul style="list-style-type: none"> <li>• It is inferred that reality and knowledge are indeterminate, social, and functional.</li> <li>• Language is a semiogenetic resource (system) that is governed by choices, contexts, and functions.</li> </ul>	<ul style="list-style-type: none"> <li>• The ontological and epistemological foundation is not explicitly formulated.</li> <li>• Systemic functional linguistics provides an analytic framework to determine the metafunctions of language.</li> </ul>	<ul style="list-style-type: none"> <li>• Systemic functional linguistics provides an apt description of the dimensions of legal genres: written and spoken legal genres derive meaning and achieve social purposes through the structuring of subject matter and the recognition of the relationships between the participants in the communication event.</li> </ul>

<b>Interactional, constructive approaches</b>	<b>Proponents &amp; definitions</b>	<b>Ontology, epistemology, &amp; nature of language</b>	<b>Critique &amp; contribution</b>	<b>Implications for EALP</b>
<b>Interactionism</b>	<ul style="list-style-type: none"> <li>Blumer, Krashen, &amp; Long</li> <li>Interactionism is an approach that describes social processes, including language, as a result of human interaction.</li> </ul>	<ul style="list-style-type: none"> <li>Reality and knowledge result from the interaction of individual (private) experiences in a shared world.</li> <li>Language is a transactional medium that enables humans to comprehend and negotiate social interactions.</li> </ul>	<ul style="list-style-type: none"> <li>From a positivist perspective, interactionist interpretations are untestable.</li> <li>Interactionism accounts for linguistic input and output in its theory of learning.</li> </ul>	<ul style="list-style-type: none"> <li>Legal language enables law students to interact with the legal community. Students should comprehend legal linguistic input so as to produce comprehensible output.</li> </ul>
<b>Constructivism</b>	<ul style="list-style-type: none"> <li>Von Glasersfeld, Piaget, Vygotsky, &amp; Bruner</li> <li>Constructivism is an antipositivist movement with its roots in cognitive and developmental psychology and posits that meaning is created through reflection on experiences.</li> </ul>	<ul style="list-style-type: none"> <li>Constructivism rejects an objective reality. Individuals construct different realities and knowledge in social interactions.</li> <li>Language is representational-referential and pragmatic-instrumental.</li> </ul>	<ul style="list-style-type: none"> <li>It neglects to explain internalized knowledge that was not acquired through social interaction and supports a dualist separation between individual and society.</li> <li>Social constructivism contributed the zone of proximal development and scaffolding to theorize learning.</li> </ul>	<ul style="list-style-type: none"> <li>The zone of proximal development between law students' existing linguistic abilities and the legal linguistic objectives of EALP should be scaffolded appropriately to provide sufficient intellectual challenges that do not over or under estimate law students' intellectual abilities. Hence, the zone of proximal development should be tailored to meet local requirements of the circles of legal English within the circles of world English.</li> </ul>
<b>Social constructionism</b>	<ul style="list-style-type: none"> <li>Gergen, Anderson, Cunliffe, &amp; Mertz</li> <li>Social constructionism is a postmodern, social psychological approach that explicates the processes that humans use to describe, elucidate, or report on the world and themselves.</li> </ul>	<ul style="list-style-type: none"> <li>Realities and knowledge are created through intersubjective, social relationships.</li> <li>Language is a community-generated social artifact that is rhetorical-responsive and heteroglossic (originates in multiple voices). Language is social action.</li> </ul>	<ul style="list-style-type: none"> <li>Positivist-based critique considers the social construction of reality and knowledge as anti-realist and solipsist (the self can know only the self).</li> <li>Social constructionism formulates an explicit critical legal linguistic epistemology for EALP.</li> </ul>	<ul style="list-style-type: none"> <li>The rhetorical-responsive and heteroglossic nature of language inculcates a critical legal linguistic epistemology among law students to recognize the presence of others in the self. It recognizes the constructive and destructive power of legal language and its repercussions throughout society.</li> </ul>



Critical linguistic approaches	Proponents & definition	Ontology, epistemology, & nature of language	Critique & contribution	Implications for EALP
<p><b>Critical discourse analysis (CDA)</b></p>	<ul style="list-style-type: none"> <li>• Fairclough, Wodak, &amp; Van Dijk</li> <li>• Critical discourse analysis is a postmodern linguistic approach interested in the deconstructive and constructive (re)productions of economic, political, social, and cultural power relations associated with the use of language in societies.</li> </ul>	<ul style="list-style-type: none"> <li>• Language (discourse) performs a constructive function as its discourses create realities and knowledge of (un)equal power relations.</li> <li>• Language (discourse) is an ideological, historical form of social action.</li> </ul>	<ul style="list-style-type: none"> <li>• Methodologically, critical discourse analysis lacks rigor and displays a linguistic bias toward textual analysis.</li> <li>• Fairclough's analytic framework for linguistic analysis and critical focus on unequal power relations addresses the methodological critique.</li> </ul>	<ul style="list-style-type: none"> <li>• Critical discourse analysis provides an alternative hermeneutical platform for the analysis of written and spoken legal texts or discourses: (1) textual analysis probes text features; (2) text as discursive practice investigates the production, distribution, interpretation, and consumption of texts; and (3) text as sociocultural practice is concerned with the inequality produced through the interdiscursivity and hegemony of power relations.</li> </ul>
<p><b>Critical language awareness (CLA)</b></p>	<ul style="list-style-type: none"> <li>• Fairclough &amp; Gee</li> <li>• With its roots in critical discourse analysis, language awareness, and critical pedagogy, critical language awareness constitutes a postmodern, critical awareness of language variation in different social contexts and the power relations (re)produced through language use.</li> </ul>	<ul style="list-style-type: none"> <li>• Because CLA relied on CDA during its development, their ontological and epistemological assumptions are similar.</li> </ul>	<ul style="list-style-type: none"> <li>• The level of critical awareness may depend on the linguistic abilities of the learners since language barriers may hamper L2 critical linguistic involvement.</li> <li>• Its focus on social emancipation instigates critique and change of hegemonic social order.</li> </ul>	<ul style="list-style-type: none"> <li>• As law students gain legal linguistic independence, they become socially emancipated to engage critically with the inequalities of hegemonic structures and, in turn, assist in the emancipation of members of society.</li> </ul>

Chapter 3 provided the first of three tributary disciplinary perspectives, *viz.* the theoretical linguistic underpinnings. However, the curricular framework for EALP necessitates the investigation of L2 pedagogy and legal perspectives on education. The second tributary discipline (applied linguistics or L2 pedagogy) is reviewed in the following chapters.

## Chapter 4: Traditional L2 pedagogy

### 4.1 Introduction

Where the previous chapter provides an analysis of theoretical linguistics to illuminate the confluence of linguistic underpinnings for EALP, Chapters 4 through 6 provide an analysis of applied linguistic approaches to elucidate L2 pedagogy. Where theoretical linguistics focuses on the worldviews and descriptions of language, applied linguistics, in this study, focuses on descriptions of language for educational purposes. The primary goal of Chapter 4 is to analyze the macropedagogic parameters of traditional L2 pedagogic methods and approaches. In support and as a consequence of the primary goal, the secondary goal is to probe and synthesize the mesopedagogic domain for relevant influences from L2 methods for EALP pedagogy. Because of these stated goals, an embedded consequence ensues: parallels are drawn between theoretical linguistics, L2 pedagogy, legal education, and legal skills. This convergence of parallels explains the significance and circumference of Chapters 4 through 6 as they serve as linchpins between theoretical linguistics and legal education.

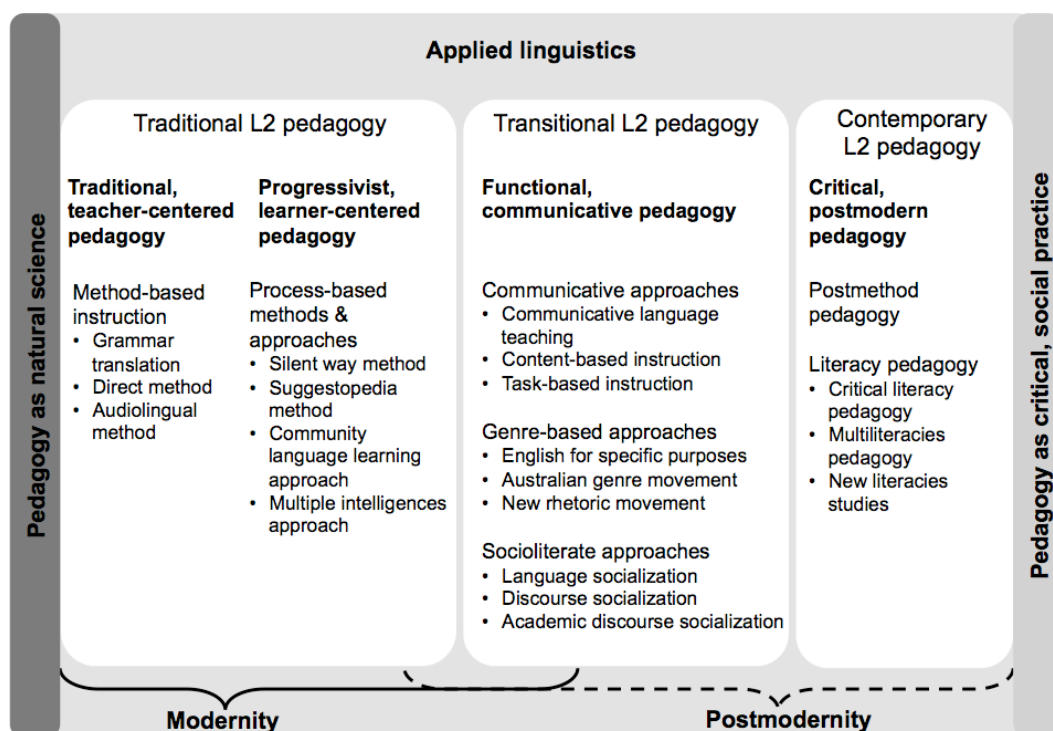


Figure 4.1: Continuum of pedagogic approaches and methods

Figure 4.1 illustrates the diachronic progression of Chapters 4 through 6. It positions the main methods and approaches along a continuum where pedagogy is regarded as a natural science based on positivism and behaviorism, on the one end, and as a critical, social practice, on the other (*cf.* Pennycook 1989:611). In order to enhance cohesion across these chapters, a generic and relatively rigid substructure is adopted. Therefore, each method and approach is addressed by providing (1) a definition and theoretical underpinning (Hartree 1984:208-209); (2) a discussion of the nature of language and learning; and (3) the roles of teachers and learners in the pedagogic process. This substructure is based on the constituent parts of a theory of learning (Johns 1997:4-5; New London Group 1996:82; Richards & Rodgers 2001:22-24).

### *Chapter preview*

As illustrated in Figure 4.1, Chapter 4 is concerned primarily with traditional L2 pedagogy. Consequently, it is diachronically and thematically sequenced as three main parts. Part one examines L2 pedagogy that may be described as traditional, teacher-centered pedagogy and consists of method-based instruction. Part two examines progressivist, learner-centered pedagogy that consists of process-based methods and approaches. Part three concludes with summative notes on traditional L2 pedagogy.

## **4.2 Traditional, teacher-centered pedagogy**

In applied linguistics, the pedagogy that burgeoned until the 1960s is generally recognized as traditional pedagogy. Traditional approaches have been influenced significantly by the scientific turn, its positivist epistemology, behaviorist theories of learning (Liu 2004:138; Pennycook 1989:601), and structuralism (Richards & Rogers 2001:54). Because of their relatively rigid classroom procedures, traditional methods are also referred to as method-based pedagogy, not to be confused with method in relation to approach and technique (*cf.* Chapter 1).

It is important to recognize that method may be described from at least three perspectives that contextualize it within different domains of L2 pedagogy. These contexts create interpretations of practical, curricular, and ideological value.

- To interpret method *practically*, means to consider it as an assortment of classroom practices (techniques) that include anything from time management and classroom interaction to materials design (Bell 2003:326; Kumaravadivelu 2006:162-163).
- The second definition of method is broad in meaning and denotes its *curricular function*. In this case it is used as collective noun to include “approach, design, and procedure” (Bell 2003:327). As such, method encompasses the macro-, meso-, and micro-levels of curricularization (*cf.* Chapter 1). A method’s approach denotes its language theoretical perspective (the macro-level of curricularization). The design of a method explains how the language theories decide the objectives and activities of teaching material. Procedure refers to the practical techniques of applying approach and design (the micro-level of curricularization) (Brown 2007b:16-17). This definition of method adheres to the constituting parts of a theory of learning as described by Johns (1997:4-5) and Richards and Rodgers (2001:22-24).
- In addition to the practical and curricular function of method, it may be viewed from an *ideological or philosophical perspective*. From a critical linguistic perspective Pennycook (1989:589) describes method as “[...] a prescriptive concept that articulates a positivist, progressivist, and patriarchal understanding of teaching and plays an important role in maintaining inequities between, on the one hand, predominantly male academics and, on the other, female teachers and language classrooms on the international power periphery.”

Method has been rejected ideologically in the judgments and classifications of pedagogy. But, on the emic level of lay people and teachers, method remains in practice (Block in Bell 2003:325). The main goal of traditional, method-based techniques is to *teach* learners language. Considering its practical application as technique in the classroom and curricular function as culmination of approach, design, and procedure, method is inevitable regardless language theoretical choices. Therefore, it would be prudent to analyze the main traditional, teacher-centered pedagogies, *viz.* the grammar translation, direct, and audiolingual methods.

### 4.2.1 Grammar translation method

The grammar translation method may be described as a classical method since it was used for the teaching of classical languages (Latin and Greek). It is argued that the translation of (literary) texts from the target language to the native language assists both language learning and intellectual growth (Brown 2007b:18; Larsen-Freeman & Anderson 2011:13).

Language is considered: “[...] in terms of ‘facts,’ rules and regularities epitomized in tables to conjugate verbs or decline nouns. Language, it seems, is something that can be meaningfully visualized into tables arranged across the two-dimensional space of the textbook page” (Cope & Kalantzis 1993:3). Because context and content are relinquished, the unit of formal analysis is limited to lexicon and syntactical chunks. Rule-governed and structural, the classical view of language heralds the taxonomic methods of structuralism (Matthews 2001:3) and the limited unit of analysis of universal grammar. Language is taught through the deductive application of grammar translation that accentuates the accurate reproduction (*performance*) of grammar rules (*parole*) and vocabulary (*langue*). Language *competence* is therefore limited to reading and writing skills.

As a result of the focus on reproduction and memorization of vocabulary, instructional interaction is limited. Interaction is unidirectional, from the teacher as authoritative figure to learners as subordinates.

### 4.2.2 Direct method

In stark contrast to the translation procedures of the grammar translation method, the direct method does not allow translation because meaning is conveyed exclusively in the target language (Larsen-Freeman & Anderson 2011:26). The direct method attempts to emulate L1 learning as a natural process with no explicit analysis of grammatical rules (Brown 2007b:21).

Learning of grammar occurs inductively as multiple examples eventually illuminate the general rule. Examples for learning are given through modeling and demonstration by the teacher. The units of acquisition are everyday sentences and vocabulary that focus on listening and speaking skills (Brown 2007b:21). These skills

are acquired through participation and interaction among learners and the teacher; however, student-teacher interaction is mostly teacher-directed.

Although the direct method thrived from the 1900s to 1950s, its effects are still felt in private language institutes across the globe through the popularized Berlitz program (Brown 2007b:22). In the 1950s, however, a program implemented by the United States military that accentuated oral activity burgeoned, *viz.* the audiolingual method.

### 4.2.3 Audiolingual method

The audiolingual method is grounded in structural linguistic theory and behaviorist psychology. The structuralist analysis of language informed the teaching of linguistic patterns, and behavioral psychology suggested that language learning was similar to habit-formation through operant conditioning. The formation of good habits is rewarded through the “anticipation of reinforcement” (Brown 2007b:85; *cf.* Richards & Rogers 2001:56-57). By combining these theories, the audiolingual method helps learners to acquire the phonological system and grammatical patterns needed to use language communicatively (Brown 2007b:23; Johns 1997:7). The audiolingual method may require student-student interaction through chain drills, but the procedure remains teacher-directed (Larsen-Freeman & Anderson 2011:30-31).

Although the audiolingual method has been discredited (Savignon 2007:208), some learners, especially novices, may prefer learning language through repetition. For example, through the repetition of the Miranda warning through film and on television, viewers around the world are familiar with the citation: “You have the right to remain silent [...]” The method may not be entertaining, but it may be effective.

### 4.2.4 Discussion

Traditional pedagogy is predominantly teacher-centered because learners are viewed as passive receivers of expert knowledge (*cf.* Table 4.1). As a result, method-based pedagogy “[...] impedes success in the classroom, the principal flaw being that it focuses on how teachers teach without taking into account how learners learn” (Lasso 2002:18). Learners have to adjust to the teacher’s instructional style, and only some learners may benefit if their learning styles associate with the teaching style.

“Therefore, learners may not be failing due to lack of ability or effort but because linear teaching is often incomprehensible to many of today’s more technologically interactive law learners” (Lasso 2002:18), hence the endorsement of multiple intelligences (*cf.* Chapter 4 below) and literacy pedagogy (*cf.* Chapter 6).

Table 4.1: Features of method-based pedagogies

	<b>Grammar translation method</b>	<b>Direct method</b>	<b>Audiolingual method</b>
<b>Theoretical foundation</b>	<ul style="list-style-type: none"> <li>Formal grammar</li> </ul>	<ul style="list-style-type: none"> <li>Structuralism &amp; semiotics</li> </ul>	<ul style="list-style-type: none"> <li>Structuralism &amp; semiotics</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>Direct translation from target language to native language (deductive method)</li> </ul>	<ul style="list-style-type: none"> <li>Target language is used exclusively (inductive method) L2 learning should be like L1 learning</li> </ul>	<ul style="list-style-type: none"> <li>Behaviorist habit formation</li> <li>Inductive process</li> </ul>
<b>Goal</b>	<ul style="list-style-type: none"> <li>Reading of literary texts and vocabulary memorization</li> </ul>	<ul style="list-style-type: none"> <li>Form-focused communicative fluency with emphasis on correct pronunciation and grammar</li> </ul>	<ul style="list-style-type: none"> <li>Communicative fluency based on mastery of symbols</li> </ul>
<b>Learner role</b>	<ul style="list-style-type: none"> <li>Follow direction and work individually</li> </ul>	<ul style="list-style-type: none"> <li>Student partners with teacher</li> </ul>	<ul style="list-style-type: none"> <li>Learners imitate teacher</li> </ul>
<b>Teacher role</b>	<ul style="list-style-type: none"> <li>Authoritative figure</li> </ul>	<ul style="list-style-type: none"> <li>Teacher-directed</li> </ul>	<ul style="list-style-type: none"> <li>Teacher-directed</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>Memorization of vocabulary could lay the foundation for initial language production and interaction</li> <li>May contribute to the instruction of microlinguistic features</li> <li>May influence classroom procedures in micropedagogic domain</li> </ul>	<ul style="list-style-type: none"> <li>Fosters linguistic accuracy</li> <li>Promotes student-teacher relationship</li> <li>May contribute to the instruction of microlinguistic features</li> <li>May influence classroom procedures in micropedagogic domain</li> </ul>	<ul style="list-style-type: none"> <li>Accurate linguistic habits could facilitate the learning of legal English. However, the method may frustrate adult EALP students.</li> <li>May contribute to the instruction of microlinguistic features</li> <li>May influence classroom procedures in micropedagogic domain</li> </ul>

Traditional pedagogies have been used for SLA because of their concentration on the production of correct texts (Johns 1997:8). Within EALP, these methods are useful because of the significance of linguistic accuracy in legal English. However, traditional instruction omits recognizing the sociopolitical functions and contexts of use (Pennycook 1989:590). Text features are accepted without questioning the social, cultural, or political factors that motivate such linguistic choices. Pennycook’s critical stance toward method is supported by Sampson’s (1984:20-21) empirical research on the transmission of Canadian teaching methods to China. Sampson’s criticism of method is based on three premises. Firstly, the “fallacy of the unidimensionality of



development” refers to the erroneous assumption that methods and knowledge exported from developed countries (the inner circle for world English) are more advanced than that of developing countries (the outer and expanding circles for world English). Secondly, Western thought obscures the differences between “scientific and educational theories”, which results in a positivist pedagogy. Finally, “technocratic imperialism” means that intellectual goods that are apparently value-free are exported to other countries.

### 4.3 Progressivist, learner-centered methods and approaches

Where traditional methods are based in theoretical linguistics, the shift toward progressivist pedagogy signifies the use of pedagogic principles for language teaching (Richards & Rodgers 2001:71). Rabinow and Sullivan coined the term *interpretive turn* in 1979 to describe the reaction of the social sciences against positivist claims of an objectively knowable reality associated with traditional pedagogies (in Howe 1998:13). Appropriately, pedagogy that developed during the 1970s became known as progressivist, learner-centered approaches (Pennycook 1996:164). Pedagogic scholarship from the 1970s and 1980s is predominantly grounded in psycholinguistic and cognitive linguistic theories and herald the communicative turn of the 1980s.

Psycholinguistic-cognitive views do not emphasize personal expression, but they accentuate how texts are *processed* through individual cognitive processes (Johns 1997:11). As a result, progressivist, learner-centered pedagogies are also known as *process-based methods* and *approaches*. An important element of psycholinguistic-cognitive education is the recognition of schemata, that is, pre-existing internalized textual experiences (reminiscent of *competence* in universal grammar) that are invoked to interpret or create other texts; otherwise also known, in Vygotskian terms, as “conceptual categories” (Kramsch 2004:242). Hence, process-based pedagogy is progressivist because of the intellectual reaction against scientific positivism, and it is learner-centered because of the focus on individual cognitive processes. The four most relevant progressivist, learner-centered methods include the silent way, suggestopedia, community language learning, and multiple intelligences (Larsen-Freeman & Anderson 2011:51; Richards & Rodgers 2001:74).

### 4.3.1 Silent way method

The silent way developed during the mid-1970s and was founded on promoting the silence (vocal inactivity) of teachers and encouraging learners to use language productively. To achieve this goal, the silent way relies on three principles of learning. Firstly, in contrast to the memorization techniques of the grammar translation and direct methods, learning occurs through discovery and creation (Richards & Rodgers 2001:81). Secondly, physical objects mediate and facilitate learning. Thirdly, instead of passively receiving information, learners are encouraged to learn through problem-solving (Brown 2007b:29; Richards & Rodgers 2001:81).

Learning through discovery is based on Bruner's constructivist theory of learning that is based on cognitive psychology and cognitive learning theory in which scaffolding imbricates learning activities (Wood, Bruner, & Ross 1976:90; *cf.* Chapter 3). Bruner argues that discovery learning increases intellectual potency, shifts reward on successful learning from extrinsic to intrinsic, increases problem-solving abilities, and supports memory (in Richards & Rodgers 2001:81).

Although its learning theory relies on constructivist insight, the silent way explains language from a structuralist approach. The unit of analysis is the sentence, where propositional meaning is valued over communicative meaning. "Learners are presented with the structural patterns [phonological units] of the target language and learn the grammar rules [...] through [...] inductive processes" (Richards & Rodgers 2001:82). This is accompanied by a functional vocabulary that is learned through creative and colorful paper cards and charts (Larsen-Freeman & Anderson 2011:62).

The silent way accentuates learner autonomy through the teacher's non-verbal participation. The teacher's silence requires learners to interact. However, the teacher is not inactive, as s/he is responsible for the progression of procedures (Larsen-Freeman & Anderson 2011:62).

### 4.3.2 Suggestopedia method

Suggestopedia (or desuggestopedia) developed during the late 1970s as an attempt to accelerate L2 learning. Lazanov, the Bulgarian psychologist, proposed that learning could be accelerated by removing psychological obstacles, such as fear of failure or

inability to produce language (Larsen-Freeman & Anderson 2011:71). Drawing on extrasensory perception and yoga, suggestopedia postulates that music, particularly baroque music, could induce a state of relaxation that would suggest that learners could overcome psychological obstacles. The positive effects of alpha brainwaves induced by baroque music are researched extensively in the field of language learning (Quast 1999; Selman, Selman, Selman, & Selman 2011; Wagner & Tilney 1983).

Although suggestopedia does not rely on or formulate an explicit language theory, its process of learning suggests an initial lexical view. In contrast to traditional methods, suggestopedia does not endorse behaviorist habit formation or memorization. Instead, language is seen as “acts of communication” (Richards & Rodgers 2001:101). Communication takes place on two levels: the linguistic level of language and a level that comprises factors that influence the linguistic message, such as sensory perceived information. Fine arts on the second level of communication, for example, may elucidate the culture of the target language (Larsen-Freeman & Anderson 2011:80).

Suggestopedia requires teachers to act like therapists, and to have advanced knowledge of music to enable them to foster relations, increase self-esteem, energy, and order (Richards & Rodgers 2001:100). Teachers initiate individual and group interaction, while learners’ interaction increases as the classroom technique progresses (Larsen-Freeman & Anderson 2011:79).

### **4.3.3 Community language learning approach**

Similar to suggestopedia, the influence of psychology on learning continues through community language learning that developed during the late 1970s. Curran draws on the humanistic psychology of Rogers to address the stressors that adult, L2 learners experience. Curran observes that learners feel threatened by failure and fearful of new learning situations (Larsen-Freeman & Anderson 2011:85).

In response to these psychological challenges, the roles of teachers and learners may be expressed with a counseling metaphor. Teachers are described as “counselors” who support and advise learners to cope with the challenges of learning. Learners are considered as whole persons whose intellect, feelings, physical conditions, and needs should be recognized and understood. Community language learning requires teachers

to be experts in the teaching of L1 and L2, yet they should avoid interventionist traditional teaching based on the silent way. Initially, learners are dependent on teacher support; however, throughout the learning process learners develop a sense of security and confidence to become independent. The learner is recognized as part of a language learning community. It would be more apt to consider community language learning as a teacher-student centered approach (rather than method) since both teachers and learners perform decision-making roles in the learning process (Larsen-Freeman & Anderson 2011:94-95; Richards & Rodgers 2001:90).

Community language learning incorporates La Forge's theory of language as social process (Richards & Rogers 2001:91). La Forge supports a structural analysis of language that begins with apprehending the phonology of the target language, allocation of fundamental meanings, and construction of a basic grammar. Yet his philosophy of language goes beyond structuralism to embrace a social constructionist view. La Forge describes communication as "[...] more than just a message being transmitted from a speaker to a listener. The speaker is at the same time both subject and object of his [her] own message. [C]ommunication involves not just the unidirectional transfer of information to the other, but the very constitution of the speaking subject to its other" (in Richards & Rodgers 2001:91). Similar to social constructionism, community language learning embraces language as community-generated, rhetorical-responsive, and heteroglossic (Cunliffe 2008:130).

#### 4.3.4 Multiple intelligences approach

The section on multiple intelligences is comprehensive and eclectic because it provides a wide-angle perspective on pedagogy that is related to traditional, transitional, and contemporary L2 pedagogy. To facilitate the discussion, this part is divided into four sections. In section one, the concept multiple intelligences is defined and the seven kinds of intelligence introduced. The recognition of *cognition as mind* is a fundamental concept in multiple intelligences pedagogy and is described in section two. Because cognition is recognized as mind, sections three and four elaborate on situated cognition and distributed cognition, respectively. Chapter 4 concludes with a summative discussion of progressivist, learner-centered methods and approaches.

#### 4.3.4.1 Definition and kinds of intelligence

The influence of psychology over suggestopedia and community language learning during the late 1970s extended to multiple intelligences pedagogy during the 1980s. Multiple intelligences developed under the auspices of developmental psychologist Gardner (1987; 1995; 2003). Gardner and Hatch (1989) explore the educational implications of multiple intelligences, and Veenema and Gardner (1996) explore the connections between multimedia and multiple intelligences as it anticipates the digital and virtual turn in pedagogy associated with multiliteracies pedagogy (*cf.* Chapter 6).

The concept *multiple intelligences* may be defined as a learner-centered, socioliterate, and sociocognitive approach that advocates the recognition of multiple dimensions of intelligence that result in different individual learning modes (Richards & Rodgers 2001:115). The multiple intelligences approach is a cognitive science that developed in reaction to behaviorism and early cognitivism. The reaction against early cognitivism is aimed at traditional IQ and scholastic aptitude tests that recognize and concentrate on linguistic intelligence and logical reasoning skills. Although the legal discipline relies heavily on linguistic (communicative) and logical thinking, the analysis of EALP-type textbooks suggests that legal linguistic intelligence depends on additional clusters of skills (intelligences) that include research and pedagogic skills (*cf.* Chapter 10).

In addition to intelligence based on language and logic, multiple intelligences scholarship introduces five other kinds of intelligence (Veenema & Gardner 1996:69-70). In each person “[e]ach intelligence exhibits its own developmental trajectory” (Gardner 1995:16). Table 4.2 summarizes the different kinds of intelligence and corresponding language learning procedures (Gardner & Hatch 1989:6; Richards & Rodgers 2001:116).

The traditional roles of teachers as authoritative and learners as subordinate are challenged because multiple (different) intelligences are recognized. In certain respects, learners may display higher intelligence than their teachers. Therefore, learners may be considered the designers of their own lives, learning experiences, or futures (Richards & Rodgers 2001:118). As designers, learners are more empowered

and may experience a higher level of self-actualization, which could lead to higher intrinsic motivation (*cf.* Brown 2007b:94).

Table 4.2: Taxonomy of multiple intelligences and learning procedures (adapted from Richards & Rodgers 2001:121).<sup>1</sup>

Kind of intelligence	Description	Example procedures	
<b>Linguistic</b>	This is the unique and original way of using language associated with professions, such as law, editing, and interpreting.	Worksheets Word games Publishing Word processing	Speeches Storytelling Debates Lectures
<b>Logical /mathematical</b>	Logical intelligence refers to rational thinking often required of scientists, doctors, or engineers.	Logic problems Scientific presentations	Story problems Calculations
<b>Spatial</b>	The ability to generate mental models such as architectural floor plans is called spatial intelligence.	Graphic organizers Diagrams & maps	Visual awareness
<b>Musical</b>	Musical intelligence involves an appreciation for music and an ability to perform or compose.	Music appreciation Composition	Singing
<b>Kinesthetic</b>	Kinesthetic intelligence is the ability to move the body with skill such as dancers or athletes.	Creative movement Hands-on activities	Role plays
<b>Interpersonal</b>	Interpersonal intelligence enables social interaction with other people, often required of teachers.	Pair and group work Peer teaching Group brainstorming	Conflict mediation Board games
<b>Intrapersonal</b>	Intrapersonal intelligence refers to how well one understands oneself.	Independent work Individual projects Journal keeping Self-teaching	Reflective learning Inventories Goal setting

In terms of its language theoretical and pedagogic perspectives, multiple intelligences pedagogy considers the linguistic intelligence of an individual in relation to all other kinds of intelligence of the whole person (Richards & Rodgers 2001:117). This view should not be confused with community language learning that also considers the whole person but with a profound focus on resolving stressors in the learning situation. To serve communicative needs, multiple intelligences pedagogy provides a model of alternative views to be applied in the pedagogic setting (Richards & Rodgers 2001:119). Teachers may consider the following suggestions:

- Playing to the strengths of individual learners or groups may advance language learning.

<sup>1</sup> Richards and Rogers (2001) distinguish logical from mathematical intelligence. However, their descriptions and example procedures are strikingly similar and therefore integrated in Table 4.2.

- Classroom procedures may draw on all seven intelligences to promote more effective learning.
- The functions, registers, and dimensions of language are better served through multiple intelligence procedures.
- Learning that is grounded in the seven forms of intelligence address the whole person better than approaches that emphasize traditional notions of intelligence.
- Current IQ tests value Western forms of intelligence, *viz.* linguistics and logics. However, other cultures may value and utilize different forms of intelligence as is affirmed by current cognition theories that challenge the mind-body dualism in Western philosophy by turning to Asian philosophy that has embraced the unity of heart-mind since before 221 B.C.E. (Slingerland & Chudek 2011:997).

#### 4.3.4.2 Cognition as mind

Collaboration between cognitive science-based theories of language and sociocultural theories of SLA led to the “recognition that cognition originates in social interaction and is shaped by cultural and sociopolitical processes” (Watson-Gegeo 2004:332). In the context of multiple intelligences in education, social cognition is also articulated as “society of mind” where schools obscure rather than challenge “layers of power” (Veenema & Gardner 1996:70-71). An important shift occurred in the conceptualization of the nature of learning with the understanding of *cognition as mind*. According to Watson-Gegeo (2004:332-333), six premises motivated this metacognitive shift:

- The *somatic body-mind dualism* in Western philosophy is questioned because, as Dewey argued, intelligence is embodied in and an integral part of the senses and the lived body. However, Dewey’s “spectator theory of knowledge” neglects multisensory learning and multiple intelligences (in Dahlin 2001:456).
- Approximately 95% of human *thought is unconscious or subconscious*. The subconscious contains implicit knowledge gathered through socialization, for example.
- Instead of using the term *cognition*, *mind* is used since it has a more comprehensive meaning. Traditional theories of cognition and language



acquisition accept that cognitive skills are autonomous of other mental processes. However, neuroscientific research on patients who lost emotional competence because of aphasia also indicates a loss of rational and moral judgment. Emotional or intrapersonal intelligence is therefore connected to literacies and academic discourse through cognition or mind. Tariq, Qualter, Roberts, Appleby, and Barnes (2013:1) discovered through empirical research that higher mathematical literacy correlates with higher emotional intelligence and emotional self-efficacy. Mertz (2007b:505) refers to the nature of legal education that desensitizes law students to the brutalities that the law regulates. A critical awareness of cognition as mind rekindles an emotive dimension in legal education.

- The increased notion of cognition as mind includes references to the self, will, and belief that affect the nature of learning.
- Language and thought are metaphorical because the neural categorizations are constructed and conceptualized as patterns. Some patterns are universal because of our common human physiology, but the majority is sociocultural in origin.
- Traditional cognitive models use simile to equate the brain to a container of knowledge, language, and skills. However, research in educational psychology by Cole and Engeström began to conceptualize thinking (cognition) as both “distributed among individuals as they are packed within them”: a concept known as *distributed cognition* (in Watson-Gegeo 2004:333). Multiple intelligences pedagogy overlaps with social constructionism by postulating that “people think in conjunction with others [because] cognition is socially constructed through collaboration” (Watson-Gegeo 2004:333).

Two forms of cognition emerged from socio-cognitive theories that are essential to a socioliterate description of the nature of learning, *viz. situated cognition* and *distributed cognition* (Choi & Hannafin 1995:53-69).

#### 4.3.4.3 Situated cognition

Traditional views of cognition may be understood in relation to the shortcomings of traditional education. Brown, Collins, and Duguid (1989:32) argue that traditional



education embodies a “separation between knowing and doing, treating knowledge as an integral, self-sufficient substance, theoretically independent of the situations in which it is learned and used.” Formal education operationalizes skills and knowledge in decontextualized ways that render tertiary education relatively meaningless for practice. “Thus, learners may pass exams [with fixed knowledge] but be unable to apply the same knowledge in everyday circumstances” (Choi & Hannafin 1995:53) because traditional education does not utilize multiple intelligences that could alter fixed (re)presentations of the world (Veenema & Gardner 1996:71). Similarly, proponents of clinical legal education also express concern with decontextualized formal learning experiences (*cf.* Chapter 8). In contrast, they maintain that clinical programs focus on the learning of skills through performance and through the use of multiple intelligences, hence the description of clinical legal education as methodology and method (Spiegel 1987:591,603; Milstein 2001:375; Tarr 1993:35). Because knowledge is developed through situated performances such as participation in the law school clinic, cognition and learning are also essentially situated.

A multiple intelligences theory of cognition provides a model that considers learning as characteristically integrated, contextual, and social (Wilson 1993:72). Situated cognition could be described as “in part a product of the activity, context, and culture in which it is developed and used” (Brown *et al.* 1989:32). Situated cognition, therefore, “recognizes the inextricability of thinking and the contexts in which it occurs, and exploits the inherent significance of real-life contexts in learning” (Choi & Hannafin 1995:53). Lave (1988) identified three principles that are at the heart of a situated proposition. Accordingly, learning and thinking (1) include social activities; (2) are influenced by situationally afforded tools (such as genres); and (3) constitute (con)textual interaction (*cf.* Wilson 1993:72; Anderson, Reder, & Simon 1996:5). These principles are confirmed by Lave’s (1988:43) research that illustrates that participants performed better mathematics skills in an actual grocery store setting (utilizing situated cognition) than in decontextualized settings. The situated context is refined in the context of web-based, e-learning when Hung and Chen (2001:10) suggest that situatedness, commonality, interdependence, and infrastructure are necessary dimensions to facilitate a vibrant learning community. The influences of e-learning are pursued in more detail in the context of new literacies studies and Web 2.0 pedagogy (*cf.* Chapter 6).

When situated cognition is discounted, education repudiates its purpose of imparting functional, dynamic knowledge. It is important to address the *context* for and *content* of situated cognition in order to understand how situated cognition refines the purposes of learning.

### *Context*

At the heart of a situated perspective is the principle that learning activities cannot be described and understood if sequestered from situation or context (Anderson *et al.* 1996:6). “[T]o understand the central place of context in thinking and learning, we have to recognize that cognition is a social activity that incorporates the mind, the body, the activity, and the ingredients of the setting in a complex interactive and recursive manner” (*cf.* Brown *et al.* 1989; Lave 1988; 1991; Wilson 1993:72). In psychology, the power of context is affirmed by various approaches including self-determination theory. Hence, Ryan and Deci (2000:76) found that social context dramatically influences the integration and assimilation of “ambient social values and responsibilities.”

Situated cognition means that every cognitive act is always in reaction to particular circumstances and environments. However, no environment (including a sterile laboratory) is neutral, *desituated*, or decontextualized. Therefore, “[e]verything occurs in and is shaped by situated context” (Watson-Gegeo 2004:338). Similarly, *situated learning* means that all knowledge and learning are relational and negotiated within meaningful contexts of learning. Thus, context has a profound effect on cognition and learning and could be further explained by contrasting traditional formal education with the needs of practice, which include practical problem-solving, authentic knowledge, and the enculturation of legal linguistic skills.

Traditional formal education accentuates “abstract and systematic problem-solving strategies [and] knowledge that is context-free and symbolic” (Choi & Hannafin 1995:54). Similarly, laboratory research into problem solving is decontextualized and cannot confirm the transferability of knowledge between different contexts (Lave 1988:43; Wilson 1993:73). In contrast to the decontextualized settings of formal education and laboratories, practice requires practical application of knowledge

within specific contexts. To solve these problems, authentic knowledge is created rather than recycled or reproduced. These problems are solved through discourse, performance, and creation. “The context itself provides guidance for the activity by helping learners to develop a sense of *situational intent*” (Choi & Hannafin 1995:56); therefore, learners learn through first-hand experience similar to that provided by law school clinics.

Can the knowledge acquired through participation in a law school clinic be transferred to practice? Can situated cognition be transferred across contexts? One argument is that the practical problem-solving through authentic knowledge and the ability to transfer skills depend on and are influenced by situated cognition and contexts of use, thus rendering knowledge “fundamentally situated” (Brown *et al.* 1989:32). As such, “knowledge and learning do not easily transfer across contexts” (Wilson 1993:73). Another argument is that because specific skills are acquired in specific contexts, their adaptation and transfer could occur more productively. Contrary to the notion that general knowledge enables the transfer of skills to different contexts, research suggests that large amounts of domain-specific knowledge advance transferability (Choi & Hannafin 1995:57; Resnick 1987:18). Therefore, knowledge acquired through *desituated* (decontextualized) traditional legal education may not be easily transferred. However, because of the contextual similarities between the law school clinic and legal practice, knowledge transfer may occur more readily. In addition to context, the content of situated cognition determines transferability.

Table 4.3 illustrates that although the general public and learners may share the objective to become practitioners, the activities that learners perform in school are distinctly different from those that the general public performs. Based on Lave’s ethnographic research, Brown *et al.* (1989:35) argue that when one (a layperson) wants to acquire a skill, one could either enculturate through apprenticeship or formal study. In contrast to formal schooling, apprenticeship does not involve a qualitative change in what one does. This is because “[a]bstract instruction can be ineffective if what is taught in the classroom is not what is required on the job” (Anderson *et al.* 1996:8). However, abstract instruction could also be more beneficial than apprenticeship, as Biederman and Shiffrar (1987:640) found with the sexing of day-

old chicks. However, learning inside and outside school “advances through collaborative social interaction and the social construction of knowledge” (Brown *et al.* 1989:40).

Table 4.3: Differences among general public, student, and practitioner learning activities (adapted from Brown *et al.* 1989:35).

Activities	General public	Learners	Practitioners
<b>Learning through</b>	enculturation & authentic activities	formal schooling & simulated activities	enculturation & authentic activities
<b>Reasoning with</b>	causal stories	laws	causal models
<b>Acting on</b>	situations	symbols	conceptual situations
<b>Resolving</b>	emergent problems and dilemmas	well-defined problems	ill-defined problems
<b>Producing</b>	negotiable meaning & socially constructed understanding	fixed meaning & immutable concepts	negotiable meaning & socially constructed understandings

“If knowledge is wholly tied to the context of its acquisition, it will not transfer to other contexts [...] there is relatively little transfer beyond nearly identical tasks to different physical contexts” (Anderson *et al.* 1996:6; *cf.* Lave 1988:19).<sup>2</sup> This statement is accurate only if knowledge and context are considered to be static. But contexts cannot be replicated and knowledge is eternally malleable. Although learning is situated, it occurs through multisensory plasticity (Shams & Seitz 2008:411). If knowledge is acquired through multisensory plasticity, then knowledge could also be applied flexibly.

### *Content*

Where context provides the framework for learning, “content determines the authenticity and veracity” of learning (Choi & Hannafin 1995:57). However, abstract knowledge of content does not necessarily enable the use of knowledge as tool. In the ESP context, knowledge transfer is debated vigorously.

<sup>2</sup> In addition to providing extensive evidence that debunks a theory of transfer, Anderson *et al.* (1996:7) list ample evidence that supports the transfer of knowledge.

Knowledge transfer is vital because, together with knowledge cultivation, education is concerned primarily with the transfer and enculturation of knowledge. Knowledge transfer is not isolated to education. In the corporate world, knowledge transfer is essential for innovation and creativity; ingredients necessary for the increase in a competitive market place and space (Tortoriello, Reagans, & McEvily 2012:1035). In the field of international mergers and acquisitions, knowledge transfer provides access to foreign markets with “new ideas and stimuli” that could be applied internationally (Bresman, Birkinshaw, & Nobel 2010:5). Thus, knowledge transfer leads to value creation. The principles of knowledge transfer are particularly important to a curricular framework for EALP as it attempts to create L2 pedagogic value across the circles of world English and the cultures they embed.

A low level of *general knowledge* between the source and the recipient reduces the transferability of knowledge (Tortoriello *et al.* 2012:1035). Bresman *et al.* (2010:5) argue that geographical and cultural distance impedes knowledge transfer. The nature of knowledge (the complexity or simplicity of the content) as well as the modality (written, spoken, interactive e-format) and manner of communication (clear or ambiguous) affect knowledge transfer. Knowledge transfer depends on the shared cognitive elements of a task (Anderson *et al.* 1996:7). Bresman *et al.* (2010:9) suggest facilitative factors that could improve the transfer of knowledge:

- effective reciprocal communication in the transfer process,
- the use of various modalities of interaction,
- allowance for time to elapse to shed stress associated with acquisition, and
- in the corporate context, a larger more powerful firm or university may transfer and acquire knowledge more easily.

*Expert knowledge* is not compulsory to transcend the ZDP (Lantolf & Pavlenko 1995:116). Instead, Tortoriello *et al.* (2012:1036) argue that a “boundary spanner” (a more knowledgeable person than the novice) is needed to scaffold the transfer of knowledge. This begs the question whether teachers should possess advanced subject knowledge to teach EALP. Ferguson (1997:85) argues that knowledge of the values, epistemology, and preferred genres would suffice. Dudley-Evans (1997) suggests that deep content knowledge is unnecessary because a learner-centered approach that

respects learner knowledge, intellectual curiosity, and spontaneous problem solving is more important. The lack of content knowledge also motivates collaborative team-teaching, which faces the obstacles of institutional constraints and unwillingness among instructors to collaborate. Dual professionalism, where law school teacher also practice law, addresses the problem of content knowledge adequately, but it is a rarity (Belcher 2006:140). Within the corporate environment, Tortoriello *et al.* (2012:1036) propose that strong ties among the people involved in knowledge transfer, network cohesion, and network range may facilitate the transfer of knowledge where there is a lack of knowledge. These principles echo the principles formulated as best practices for legal education addressed in Chapter 9.

Content knowledge has to be contextually anchored to derive meaning and function. Such anchoring occurs through cognitive apprenticeship and anchored instruction. *Cognitive apprenticeship* is a concept coined by Brown *et al.* (1989:32-40) and refers to socially and physically embedded active learning that fosters learning at the nexus of activity, resources, and culture. The concept is reminiscent of Dewey's argument that "[a]ll genuine education comes about through experience" (in Wilson 1993:74). "Cognitive apprenticeships emphasize relationships between the content knowledge and thought processes experts employ to perform complex tasks" (Choi & Hannafin 1995:59). Typically, cognitive apprenticeship involves an apprentice (novice) who develops cognitive and metacognitive strategies through experiential learning under the supervision and tutelage of an expert (Dennen & Burner 2008:426).

*Experiential learning* is often associated with Kolb's experiential learning cycle, which he developed in 1984. Kolb's learning cycle consists of four modes of reciprocity. The following modes are proposed: concrete experience, observation and reflection, abstract conceptualization, and active experimentation. As illustrated in Figure 4.2, experiential learning could begin at any stage in the cycle.

Kolb's model has been criticized for its lack of a social dimension and the unidirectionality of the original cycle. The model neglects the social and contextual dimensions to learning (Wilson 1993:75). These dimensions are neglected because the model does not explain how learning occurs socially, nor does it acknowledge the varied contexts in which learning occurs. However, in light of experiential learning

that is situated in context and content, Kolb's model could assume these dimensions by imbricating it with situated and distributed cognition. The unidirectionality of the original model may be resolved, but not merely through bi- or multidirectionality. Instead, in my opinion, the modes of learning occur simultaneously and overlap without preordained sequence. In addition, the four modes of learning could be seen as submerged in the contexts and contents of situated and distributed cognition. "In the situated view, experience becomes activity and takes on a much more dynamic relation to learning. Adults no longer learn *from* experience, they learn *in* it, as they act *in* situations and are acted *upon* by situations" (Wilson 1993:75).<sup>3</sup>

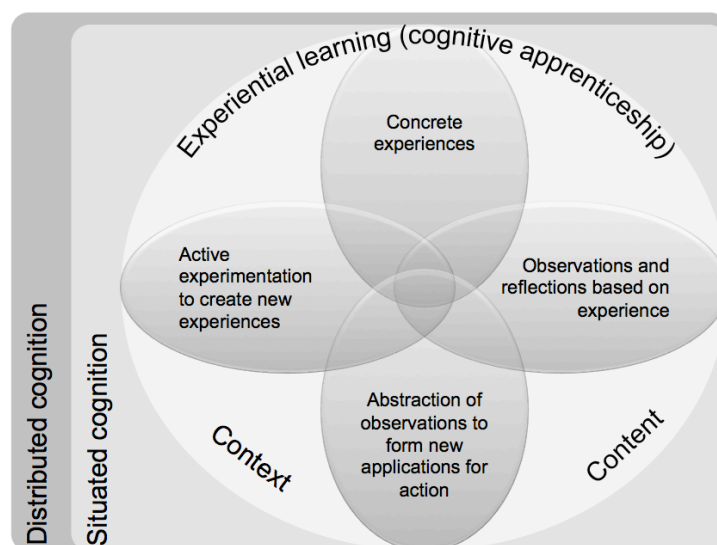


Figure 4.2: Kolb's experiential learning cycle in the context of situated and distributed cognition (adapted from Kolb, Boyatzis, & Mainemelis 2001).

Where cognitive apprenticeship refers to an actual internship or externship with a practicing lawyer, firm, or within a law school clinic, *anchored instruction* refers to a simulation course, such as moot court. Moot court simulations impart a deep understanding and appreciation of the density of the judicial process (Smith 2010:17). Credible settings are created where knowledge and skills are entrenched in reliable contexts. Choi and Hannafin (1995:60) summarize the benefits of anchored instruction by stating that (1) teachers should emphasize authentic activities and goals; (2) lessons should include vast amounts of embedded data; and (3) complex issues should be explored safely from various perspectives. Smith (2010)

<sup>3</sup> Emphasis added



contextualizes the benefits of anchored instruction for legal pedagogy. The pedagogic value of moot court as anchored instruction lies in facilitating textual analysis, creative interpretation, critical thinking, and an understanding of political values and legal personality (Smith 2010:17).

#### 4.3.4.4 Distributed cognition

A process is not cognitive by virtue of occurring in the brain, and neither is it noncognitive just because it is situated among many brains (Hollan, Hutchins, & Kirsh 2000:174). *Distributed cognition* may be defined as knowledge and activities that are disseminated among individuals, the material environment, and the devices people use, *viz.* languages, genres, and computer hardware and software (Hollan *et al.* 2000:175). The cognitive processes of thinking, such as reading, writing, listening, speaking “are circulated through individuals’ interactions with each other and with a variety of tools” (Gomez, Schieble, Curwood, & Hassett 2010:22). Snow (2011:2) defines distributed cognition as “inputs from several individuals who have complementary domains for knowledge and skill.” Distributed cognition relies on three tenets: socially distributed cognition, embodied cognition, and culture and cognition.

#### *Socially distributed cognition*

Socially distributed cognition means that cognitive processes engage “trajectories of information (transmission and transformation)” (Hollan *et al.* 2000:177). The movement and construction of information or meaning in a group is determined by a combination of social organization and the structure of the context of the activity. For example, the hearings of the South African Truth and Reconciliation Commission absorbed the collective memory of a nation through local narratives to perform a public didactic function based on the premise of a socially distributed cognition (*cf.* Krog 2007). Thus, the trajectories of information begin to emulate the architecture of the combinations between social organizations and the structures of the contexts of activities (Hollan *et al.* 2000:177). However, socially distributed cognition is more than a cognitive process disseminated across members of a group; it materializes in social interactions “between people and structures in their environments” (Hollan *et al.* 2000:177).



### *Embodied cognition*

Distributed cognition includes embodied cognition. “Minds are not passive representational engines, whose primary function is to create internal models of the external world” (Hollan *et al.* 2000:177). The relationship between internal and external resources involves the delicate coordination of temporal and situational factors. Distributed cognition emerges at the nexus of internal and external interaction. Therefore, tools are not disembodied stimuli because they are indivisibly part of the cognitive system. In addition to being a shared activity, distributed cognition “also includes the thinking that people accomplish in conjunction with material resources such as calculators, calendars, computers, to-do lists, or document templates [genres]” (Winsor 2001:6). Distributed cognition is therefore embodied in these tools.

### *Culture and cognition*

The third tenet of distributed cognition provides essential insight into educational systems, such as South Korea's, in the expanding circle of world English based on Confucian pedagogic principles. This involves the relationship between culture and cognition. A reciprocal relationship causes culture to emerge from human activity and human activity to be shaped by culture. Culture becomes a metaphor for the “residue of previous activity” (Hollan *et al.* 2000:178). Thus, like genre, culture is both empowering and disempowering. Because culture provides intellectual tools, it enables continued development. However, reliance on culture could obscure other ways of thinking or doing (Hollan *et al.* 2000:178).

Within traditional pedagogy and conventional conceptions of intelligence, learning is situated inside the individual brain and the learning process and testing are based on this notion; however, a distributed perspective recognizes cognition as a constituent in a multidimensional cultural system (Hollan *et al.* 2000:175; Smith & Jones 1993:182). Because learning is viewed as a task that a learner must perform, many learners are marginalized from classroom and research collaboration. However, distributed cognition challenges the traditional notions of Western individual intelligence, authorship, and ownership. Distributed cognition relates to Confucianism in East Asian societies (China, Japan, and both Koreas) and African philosophy. Both philosophies are founded in/on collectivist notions of the individual and learning, and they are aptly expressed with the translation of *ubuntu* as “a person is a person

through other persons” (Nafukho 2006:409). Alternatively, in East Asia the “individual seems to obey a [...] self-interlocking ideological reproduction system” (Han 2013:2).

Han (2013:69) postulates that learning in Confucian societies has always gone “beyond the spectrum of a cognitive process within a person.” Learning in East Asia should be understood in terms of social relations and a reconfiguration of structures of meaning within societies. “In Confucian states, learning by nature was a process with which to become part of the Confucian system, incarnating the spirit of the texts, not only in a passive manner but more by active reflection of the ‘Learnings’, or by ‘learning and questioning’ them” (Han 2013:69).

As such, Western phenomenological ideology and gestalt theory resonate with education in Confucian societies. Dahlin (2001:469) approaches education from a phenomenological-aesthetic perspective and argues that education should “contribute to an all-rounded human development of the growing generation” which is facilitated through the interpretation of facts of experience. The notion of “facts of experience” supports Dewey’s argument that learning occurs through lived experiences (Dahlin 2001:455). In addition, Dahlin’s reference to “all-rounded human development” is reminiscent of gestalt theoretical approaches that consider the (un)conscious interconnectedness among cognition, emotion, motivation, and behavior of learning events (Korthagen 2010:101; Dunn 2002:1). All-rounded human development manifests in L2 pedagogy through progressivist, community language learning that recognizes learners as whole persons as well as through multiple intelligences pedagogy that attempts to recognize all the human faculties. However, all-roundedness is addressed differently in Western and Eastern societies.

Han (2013:58-59) contrasts Western and Confucian systems of learning by suggesting that in Western societies the (educational) system “is the sum of individuals” subject to analysis, deconstruction, and innovation. In contrast, Confucian societies consider the (educational) system as a “mysterious complexity” that is more than the sum of its constituent parts to form a “complex social learning system.” Hence, when education is considered as a tool to modify or conquer the world with, then a modernist interpretation of the word is embraced (Rømer 2011:756). Apart from supporting

societal hierarchies, Confucianism upholds a postmodern interpretation of education that fosters understanding and learning for the sake of understanding and learning.

Accordingly, one could extend the concept of *distributed cognition*, as developed by recent Western thought, to encompass Confucian and African philosophical and didactic ideas. Mind, therefore, may be understood as a *conduit of cognition*. Since minds are not containers, skills *flow* through minds, which connect them to other minds, intelligences, people, situations, and tools to achieve social purposes in complex systems of interaction (*cf.* Turner, Oakes, Haslam, & McGarty 1994:462), such as the communities created through discourse socialization.

#### 4.3.4 Discussion

Regardless of their epistemological difference, learner-centered views emphasize functionalism in the sense that they promote education that is relevant to learners and their lives (Johns 1997:8). Progressivist methods may be grouped together for their concentration on psychological aspects of learning. In contrast to traditional methods that focus more on formal grammar and cognitive processes, progressivist methods consider the nature (psychological processes) of the L2 learner and learning (Dubin & Olshtain 2000:64). The progressivist, learner-centered pedagogies are summarized in Table 4.4.

In contrast to teacher-centered methods, learner-centered methods do not assume that groups of learners are homogenous and they do not over-emphasize accurate language use. “Instead, there are acceptable variations in language, form, and topic many of which are brought to the classroom by linguistically and culturally diverse learners” (Johns 1997:9). The diversification of the student population should be seen in conjunction with the massification and corporatization of higher education that ensued in the United States since the 1970s (Holder, Jones, Robinson, & Krass 1999:19) and in the late 1970s in South Korea because of its financial successes (Sorensen 1994:16). The trend followed in South Africa in the 1990s particularly after the abolition of apartheid. The psychological grounding of learner-centered methods provides an intellectual support system for teachers to identify and meet the needs of members of a diverse community. It recognizes the student as a whole person in a

diverse and stressful network of cultural, educational, developmental, and communicative processes (Brown 2007b:36).

Table 4.4: Features of learner-centered methods and approaches

	Silent way method	Suggestopedia method	Community language learning approach	Multiple intelligences approach
<b>Theoretical foundation</b>	<ul style="list-style-type: none"> <li>Structuralism</li> <li>Languages share some features, but have different realities.</li> </ul>	<ul style="list-style-type: none"> <li>Lexical translation</li> <li>Meaning is determined by linguistic and non-linguistic variables.</li> </ul>	<ul style="list-style-type: none"> <li>Counseling-learning theory</li> <li>Language is more than a structural system; it includes humans and cultures.</li> </ul>	<ul style="list-style-type: none"> <li>Cognitive sciences</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>The psychological aspects of language learning are emphasized.</li> <li>L1 and L2 learning processes are different; L2 is more a cognitive process than L1.</li> <li>Learning occurs through discovery.</li> </ul>	<ul style="list-style-type: none"> <li>The psychological aspects of language learning are emphasized.</li> <li>Enhancing aptitude through positive suggestion and the use of music fosters learning.</li> </ul>	<ul style="list-style-type: none"> <li>Language learning is a social process.</li> </ul>	<ul style="list-style-type: none"> <li>Education is regarded as a support system.</li> </ul>
<b>Goals</b>	<ul style="list-style-type: none"> <li>The goal is to achieve propositional meaning rather than communicative value.</li> </ul>	<ul style="list-style-type: none"> <li>The goal is to accelerate the language learning process for everyday communication.</li> </ul>	<ul style="list-style-type: none"> <li>Communication is the primary goal.</li> </ul>	<ul style="list-style-type: none"> <li>The goal is to utilize all kinds of intelligence in the learning process, not only linguistic intelligence.</li> </ul>
<b>Learner role</b>	<ul style="list-style-type: none"> <li>Active and autonomous learner</li> </ul>	<ul style="list-style-type: none"> <li>Passive but responsible for own learning</li> </ul>	<ul style="list-style-type: none"> <li>Member of a group with initial dependence and eventual independence</li> </ul>	<ul style="list-style-type: none"> <li>Designer of own learning experience</li> </ul>
<b>Teacher role</b>	<ul style="list-style-type: none"> <li>Minimal intervention</li> </ul>	<ul style="list-style-type: none"> <li>Teacher-directed</li> </ul>	<ul style="list-style-type: none"> <li>Counselor</li> </ul>	<ul style="list-style-type: none"> <li>Plan procedures that can develop different intelligences</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>Focus on formation of cognitive legal linguistic schemata through discovery</li> <li>May contribute to the instruction of microlinguistic features</li> <li>May influence classroom procedures and methods in micro- and mesopedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Music may have a limited application as classroom practice, perhaps only in the expanding circle of world English for vocabulary acquisition.</li> <li>May contribute to the instruction of microlinguistic features</li> <li>May influence classroom procedures and methods in micro- and mesopedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Variants of legal English are recognized within the cultures of the circles of world English.</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Multiple intelligences recognizes and promotes individual learning modes in accordance with the thinking skills cluster (cf. Chapter 10).</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>

Cope and Kalantzis are not convinced that the claim to the democratic, natural, and authentic basis of learner-centered pedagogies is true since its inherent cultural prejudice favors certain learners (in Pennycook 1996:164). Similar to traditional legal education, it favors the white, middle-class, male student. When the social and culture backgrounds of the school and learners are different, the process approach that encourages self-expression might not enable learners to acquire the important languages, discourses, and genres (Pennycook 1996:164; Hyland 2003:19). To overcome the inherent bias of learner-centered approaches, “literacy needs to deal explicitly with genres, particularly those genres that matter socially” (Pennycook 1996:165).

In terms of the teachers’ roles, learner-centered pedagogy has been accused of relegating teachers to well-meaning observers. Learner-centeredness is based on the principles of individual motivation, personal freedom, self-expression, and learner responsibility. Excessive teacher intervention could compromise these principles. Since learner-centered pedagogy relies on learners’ intuitive understandings of language, teachers only assist in developing learners’ metacognitive awareness of the writing process. As a result of the neglect of language and rhetorical organization, learners are unaware of how similar texts are organized differently according to their purpose, audience, and message. Therefore, the actual process of language use is neglected (Hyland 2003:19).

In contrast to traditional, teacher-centered methods that draw primarily on formal grammar to formulate pedagogic theories, progressivist methods turn to behaviorist and humanistic psychology for insight. In response to the exaggerated emphasis on behaviorist learning models supported by previous pedagogic models, multiple intelligences pedagogy developed to recognize that learning depends on more than just logical and linguistic intelligence.

#### **4.4 Summative notes**

The decline of method-based pedagogy could be attributed to the following reasons: (1) a lack of the awareness of the essential roles of teachers and learners; (2) the desire for appropriate language pedagogy, which is contextually positioned; (3) the

quasi-political stance of method-based pedagogy; (4) the non-transferability of methods across the circles of world English; (5) the detachment of methods from historical developments; and (6) the inability of methods to showcase classroom practices as intended by the creators of methods (*cf.* Adamson 2004:611; Liu 2004:150; Pennycook 1989:589-608). Yet, method-based pedagogy accentuates accurate language use and serves the interests of legal English as a language that values linguistic lucidity.

Communicative language teaching contributes two principles to a curricular framework for EALP. Firstly, in contrast to methods that accentuate grammatical accuracy, community language learning aims at L2 learning through communicative use (Larsen-Freeman & Anderson 2011:94). Secondly, the stressors that adult, L2 learners experience because of the fear of failure and new learning situations are addressed by considering language learning as a social process. This notion agrees with *collaboration* as social communicative skill and study skills identified in the EALP-type textbooks and is revisited later (*cf.* Chapter 10).

The central flaw in method-based pedagogy, *viz.* the enthusiastic focuses on how teachers teach instead of how learners learn, is addressed by multiple intelligences pedagogy that attempts to match individual intellectual strengths with individual learning modes. Because law school education requires the development of communicative, thinking, and research skills that utilize different kinds of intelligence, the principles of situated and distributed cognition of multiple intelligences pedagogy may advance the agenda of a curricular framework for EALP (*cf.* Chapter 10).

The recognition of language learning as social process by communicative language learning and the promotion of the use of different kinds of intelligence by multiple intelligences pedagogy could be seen as harbingers of the functional, communicative, and socioliterate approaches of transitional L2 pedagogic approaches addressed in Chapter 5.

## Chapter 5: Transitional L2 pedagogy

### 5.1 Introduction

Shortly after progressivist, learner-centered pedagogy emerged during the interpretive turn in the 1970s, the communicative turn in the 1980s ushered SLA toward functional, communicative pedagogy. The functionality of language in use signaled by traditional, community language learning may be seen as a precursor to transitional, communicative approaches. The introduction of situated and distributed cognition by multiple intelligences heralded the sociocultural pedagogy proposed by the Australian genre movement and socioliteracies associated with language socialization, the discourse community, and academic discourse socialization. In an attempt to tie the pedagogic strings together with theoretical linguistics and legal education, the goal of Chapter 5 is to analyze the macropedagogic parameters of transitional L2 pedagogic approaches.

#### *Chapter preview*

Chapter 5 comprises three main parts. Following this introduction, part two reviews the communicative approaches, which include communicative language teaching, content-based instruction, and task-based instruction. Part three focuses on the three genre-based approaches, *viz.* English for specific purposes, the Australian genre movement, and the new rhetoric movement. The socioliterate approach reviewed in part four, academic discourse socialization, harkens back to ESP theory, community language learning, and multiple intelligences. The thematic and diachronic development of academic discourse socialization signal the dawn of contemporary L2 pedagogy in Chapter 6.

### 5.2 Communicative approaches

In the 1980s, communicative approaches entered L2 pedagogy. This turn was initiated by scholarship in the early 1970s, such as Hymes' (1972) *On Communicative Competence*, in which he criticizes the Chomskyan definition of linguistic theory. Chomsky argues that linguistic theory is concerned with ideal speakers and listeners in a homogenous speech community. Hymes argues that this definition ignores the



challenges faced by students and teachers. Widdowson (1972:15) criticizes Chomskyan linguistics for focusing on sentence composition only when communication depends on a variety of social variables. The problem Widdowson (1972:15) identified still reverberates throughout L2 scholarship: “The problem is that students, and especially students in developing countries, who have received several years of formal English teaching, frequently remain deficient in the ability to actually use the language, and to understand its use, in normal communication, whether in the spoken or the written mode.” Communicative pedagogy emerged against this background. The classical view of communicative approaches is associated with communicative language teaching and content- and task-based instruction.

### 5.2.1 Communicative language teaching

Candlin and Widdowson drew on the functional linguistics of Firth and Halliday, the sociolinguistics of Hymes and Labov, and the philosophy of Austin and Searle to develop a communicative pedagogy (Richards & Rodgers 2001:153). With its goal to increase communicative competence through procedures that “acknowledge the interdependence of language and communication” (Richards & Rodgers 2001:155), communicative language teaching relies on functional linguistics to accentuate the social and functional purposes of language (Christie 1999:759; Larsen-Freeman & Anderson 2011:115).

Communicative language teaching may be described as an applied linguistic approach to the teaching and learning of L2 that considers “*all* the components (grammatical, discourse, functional, sociolinguistic, and strategic) of communicative competence” (Brown 2007b:46; Li 1998:678). In theory, it suggests that the organizational aspects of language, *viz.* grammar and discourse, should intertwine with the pragmatic aspects, *viz.* functional, sociolinguistic, and strategic. The pragmatic aspects of language receive more attention than organizational language forms. Yet, both are in service of the functional use of language to create meaningful purposes (Brown 2007b:46).

Approaches that identify as communicative language instruction share several characteristics, most important of which is the main goal of instruction, *viz.* communicative competence. To promote communicative competence, meaning becomes paramount because language is learned through communication, and



communication is the production of meaning (Richards & Rodgers 2001:153). Not surprisingly, communicative theories of learning value fluency and accuracy to varying degrees depending on the circumstances of use. In order to encourage meaningful engagement in language use, fluency may be promoted. Yet, at other times, accuracy may be required (Brown 2007b:46). Tarone (2012:160) points out that an important developmental relationship exists between linguistic fluency, accuracy, and complexity. Language learning depends on the improvement of all three dimensions. Communicative language teaching accentuates the productive use of language outside the classroom in realistic situations (Li 1998:679). In order to achieve this goal, classroom procedures should use authentic materials to impart the skills necessary for students to engage in real-world, communicative contexts (Brown 2007b:46). Although communicative language teaching may be identified by these features, it is important to realize that it has “no monolithic identity” because different practitioners may utilize different features, differently (Li 1998:678).

In contrast to the authoritarian, teacher-directed role encouraged by traditional pedagogies, communicative approaches suggest that teachers relinquish authority. Teachers motivate students to create meaning through language use and through trial and error. Because communicative language teaching focuses on communication, students are expected to be active and to interact with other people. Although certain procedures may be teacher-driven, it does not inhibit learner-centeredness and cooperative and collaborative learning (Brown 2007b:47; Richards & Rodgers 2001:156-157). The notions of cooperative and collaborative learning ameliorate the initiative for legal education (*cf.* Chapter 9).

### 5.2.2 Content-based instruction

An important distinction is made between the weak and strong versions of communicative language teaching (Larsen-Freeman & Anderson 2011:131; Richards & Rodgers 2001:155). The weak version suggests that English is learned for communicative purposes, that is, *to learn to use English*. The strong version suggests that language is learned/acquired through communication; *English is used to learn content*, for example through EAP and EPP. Because legal English is described as a foreign language even to native English speakers (Bhatia 1989:233), a combination of the weak and strong versions of communicative language teaching may apply.

Students in EALP classes have to *learn to use English*, while *English is used to impart legal content*.

The combination of the weak and strong versions of communicative language teaching lead to the recognition of *content-based instruction*, which is “[...] an approach to second language teaching [to learn to use English] in which teaching is organized around the content or information that students will acquire [where English is used to learn content], rather than around a linguistic or other type of syllabus” (Richards & Rodgers 2001:204). Content-based instruction originated in the 1970s and accentuates the acquisition of content through language instead of learning language for its own sake. Several important educational initiatives accompany the development of content-based instruction: language across the curriculum,<sup>1</sup> immersion education, immigrant on-arrival programs, programs for students with limited proficiency, and language for specific purposes (Richards & Rodgers 2001:205). An overview of a selection of these initiatives is warranted because the problems identified in the 1970s are still rampant today and connected to contemporary applied linguistic problems.

*Immersion education* entails the teaching of the entire school curriculum in a foreign language; that is, a strong version of communicative language instruction is applied throughout the curriculum. The goals of immersion education include

- (1) developing a high level of proficiency in the foreign language;
- (2) developing positive attitudes toward those who speak the foreign language and toward their culture(s);
- (3) developing English language skills commensurate with expectations for a student’s age and abilities;
- (4) gaining designated skills and knowledge in the content areas of the curriculum (Richards & Rodgers 2001:206).

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<sup>1</sup> *Language across the curriculum* requires an intense focus on reading and writing in all subjects across the curriculum. This entails that all teachers engage in language teaching. “[C]ollaboration between subject-matter teachers and language teachers was [is] emphasized” (Richards & Rodgers 2001:205) because subject matter texts require linguistic illumination which is knowledge that subject teachers may not possess. *Immigrant on-arrival programs* and *programs for students with limited English proficiency* are examples of content-based instruction, tailored for adult immigrants and their children.

If realized, these goals serve as the positive outcomes of immersion education. However, the second goal should be considered in light of the political dimension of critical discourse analysis (*cf.* Chapter 3). To advocate the study of English simply to develop “positive attitudes” toward the countries, people, and cultures in the inner circle of world English without a critical perspective, may (re)produce discourses of imbalance and prejudice reminiscent of their colonial histories. In addition to the categorical adoption of immersion education that may lead to the exacerbated hegemonic relations between the inner circle and the outer and expanding circles of world English, a more dire consequence may ensue because of the proliferation of English as international academic language. For example, in 2011, South Korea’s most elite institute, Korea Advanced Institute of Science and Technology (KAIST), adopted an English immersion policy. Together with the re-curriculumization of KAIST, English immersion amplified performance-pressure on students to such an extent that suicide rates rose (McDonald 2011:n.p.). Together with the “compulsory enforcement” of English medium instruction, this unfortunate occurrence led to a critical evaluation of the detrimental effects of English medium instruction in South Korea. Byun, Chu, Kim, Park, Kim, and Jung (2011:431) recommend that English medium instruction policies should take into consideration students’ proficiency, career plans, and disciplinary requirements, and thorough (psychological) preparation before the implementation of such policies is required.<sup>2</sup> These examples illustrate that, although well intentioned, immersion programs or compulsory English medium instruction ought to be considered epistemologically as well as in the broad sociocultural and political contexts of the curriculum.<sup>3</sup>

The theory of language and learning that supports content-based instruction is founded on two pivotal principles (Richards & Rodgers 2001:207):

- The strong version of communicative language teaching that focuses on acquiring information (content) is conducive to more successful language

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<sup>2</sup> The connection between law students’ distress, academic failure, and success is revisited in Chapter 9 in relation to law school academic support programs.

<sup>3</sup> In applied linguistics, this concept is addressed by Kumaravadivelu (2001: 537) as the postmethod principle *viz.* particularity (*cf.* Chapter 6).

learning than the weak version that focuses on English language as the means and ends of learning.

- Content-based instruction meets the needs of learners productively since it focuses on high content input and output and the teaching and learning processes that fulfill these needs.

The two main principles of content-based instruction rely on a theory of language that may be summarized as follows: language is based on text and discourse, integrated skills facilitate the use of language, and language is purposeful (Richards & Rodgers 2001:208). Because language is a medium for content, it communicates information through texts and discourses. As such, the interest in meaning is not located in morphemes, lexicon, or syntax. Instead, content-based instruction relies on pragmatist, genre, and systemic functional notions of language that “study the textual and discourse structure of texts” (Richards & Rodgers 2001:208).

The main goal of content-based instruction articulates the role of learners, *viz.* learners should become autonomous language users who understand their individual learning processes and take responsibility for their learning (Richards & Rodgers 2001:213). Similar to the objectives of clinical legal education, content-based instruction does not rely on vicarious learning; instead, it promotes experiential learning that facilitates collaborative learning (Chickering & Gamson 1989:140-141; Davis & Steinglass 1997:250). Therefore, learners are required to participate actively while they interpret input and endure uncertainty as they explore alternative interpretations of texts and learning styles (Richards & Rodgers 2001:213).

The roles of the teacher may be distinguished as curricular and psychological. Curricular roles include (re)configuring classroom instruction, utilizing group work procedures, organizing jigsaw reading activities, defining and scaffolding content and language knowledge, structuring writing procedures according to process principles, and using error correction techniques. The psychological roles justify the sixth principle of law school academic support programs that promote the psychological wellbeing of law students. Psychological roles performed by teachers include assisting students to cultivate coping strategies, and instilling and reinforcing student esteem (Richards & Rodgers 2001:214).

A content-based pedagogy is important to EALP because both rely on a strong version of communicative language learning. However, EALP is also concerned with the acquisition of the legal register to gain access to content. In this respect, the EALP curriculum should also consider approaches that emphasize language acquisition, such as task-based instruction.

### 5.2.3 Task-based instruction

Similar to content-based instruction, task-based instruction developed as part of the communicative language instruction movement during the 1980s. It draws on the following communicative principles that are delivered in the classroom through tasks (Richards & Rodgers 2001:223):

- Language learning depends on procedures that comprise real (useful) communication.
- Learning is stimulated when it requires meaningful tasks.
- Because the tasks are meaningful, the value of the language used for the task is recognized and the learning process is reinforced.

Like content-based instruction, tasks immerse students in content. However, Richards and Rodgers (2001:224) argue that tasks require students to “negotiate meaning and engage in naturalistic and meaningful communication.” The definition of *task* is contentious and may include real world activities, thought processes, and holistic activities where linguistic challenges deliver non-linguistic outcomes (Butler 2011:38). Depending on the teacher, task-based instruction may include methods and techniques that negotiate meaning and facilitate naturalistic communication.

Although not explicit, task-based instruction is contingent on functional and interactionist theories of language. Language is regarded as a means of producing meaning (Richards & Rodgers 2001:226). It is functional because linguistic choices determine the functionality of tasks and value of the learning process. It is interactionist because the tasks, as linguistic texts or discourses, negotiate social interaction. Not surprisingly then, task-based instruction considers conversation as the cornerstone of SLA.

A task-based theory of learning considers the task as both input and output of language acquisition. However, comprehensible input and productive output alone do not constitute language learning. It is argued that negotiation of meaning is the incentive of acquisition and that transactionally focused conversation contributes equally to acquisition (Richards & Rodgers 2001:228-229). In terms of its focus on language that enables conversation, task-based instruction accentuates vocabulary acquisition. A task-based vocabulary extends beyond a structuralist notion of words and their related meanings to include morphology and syntax (Richards & Rodgers 2001:228).

Learner roles in task-based instruction are similar to communicative language teaching, yet claims are made to specific roles, which include group participant, monitor, risk-taker, and inventor (Richards & Rodgers 2001:235). Teacher roles include selector and sequencer of tasks, preparing learners for tasks, and raising consciousness of learners.

#### **5.2.4 Discussion**

The discussion section begins with a summary of the functional, communicative approaches presented in Table 5.1. This is followed by an evaluation of each individual approach and its applicability to a curricular framework for EALP.

Li (1998) conducted empirical research on the difficulties of introducing communicative language teaching in South Korea. Li's research is based on the experiences of native Korean speaking teachers' English communication classes. Li distinguishes challenges caused by teachers, students, and the approach itself. Teachers experience three main challenges. Firstly, they are not proficient enough in English to converse fluently in the communicative setting. Secondly, although teachers possess advanced knowledge of grammar, such knowledge does not explain sociolinguistic phenomena that students question. Lastly, teachers may have completed courses and workshops on communicative language teaching, yet actual communicative language teaching experience remained insufficient.

Table 5.1: Features of functional, communicative approaches

	<b>Communicative language teaching</b>	<b>Content-based instruction</b>	<b>Task-based instruction</b>
<b>Theoretical foundation</b>	<ul style="list-style-type: none"> <li>• Universal grammar</li> <li>• SFL</li> <li>• Based on a theory of language as communication</li> </ul>	<ul style="list-style-type: none"> <li>• Pragmatics and SFL</li> <li>• Social constructivist notion of language as pragmatic-instrumental</li> </ul>	<ul style="list-style-type: none"> <li>• Communicative language learning</li> <li>• Structural, functional, and SFL theories of language</li> <li>• Interactionist theory of language</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>• Based on SFL principles to engage students in pragmatic, authentic, functional use for meaningful purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Strong version of communicative language learning</li> <li>• Content is the point of departure</li> <li>• Experiential learning</li> </ul>	<ul style="list-style-type: none"> <li>• Use in real-world contexts is more important than organizational elements of language</li> </ul>
<b>Goal</b>	<ul style="list-style-type: none"> <li>• Communicative competence</li> </ul>	<ul style="list-style-type: none"> <li>• To make learners autonomous</li> </ul>	<ul style="list-style-type: none"> <li>• To accomplish linguistic tasks</li> </ul>
<b>Learner role</b>	<ul style="list-style-type: none"> <li>• Active, cooperative, and collaborative</li> </ul>	<ul style="list-style-type: none"> <li>• Active</li> </ul>	<ul style="list-style-type: none"> <li>• Participant, monitor, risk-taker, and inventor</li> </ul>
<b>Teacher role</b>	<ul style="list-style-type: none"> <li>• Facilitator</li> </ul>	<ul style="list-style-type: none"> <li>• Include curricular and psychological roles</li> </ul>	<ul style="list-style-type: none"> <li>• Sequence, prepare, and raise awareness among students</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>• Legal language should be learned to enable students to communicate</li> <li>• May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>• May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>• Content-based instruction serves as apt theory of learning for the experiential nature of clinical legal education.</li> <li>• May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>• May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>• Task-based instruction connects academia with legal practice, but could neglect linguistic accuracy.</li> <li>• May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>• May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>

Students face at least four challenges. Firstly, since communicative language teaching is premised on the assumption that communication fosters language learning, students who lack proficiency in English become frustrated. Therefore, the purpose of communicative language teaching serves more advanced learners. Secondly, students have little motivation to communicate in English. Motivation increases when students realize that English provides access to international education. Thirdly, the implementation of communicative language teaching relies on active class



participation. Because students are accustomed to the passivity of the direct and audiolingual methods, participation is received with resistance. Finally, evaluation procedures are not coordinated with communicative language teaching practice. If testing remains grammar-based, then the performative function of communicative language teaching is foregone.

Communicative language teaching poses a major challenge that emanates from the teacher and student challenges. Communicative language teaching is oblivious to the differences between EFL and ESL. English as a foreign language is taught in countries where English is not used officially (Brown 2007a:381), such as countries in the expanding circle of world English including China, Japan, and South Korea. English as a second language is taught in English-speaking countries (the inner and outer circles of world English), often to foreign students; for example, South Korean students who study in America often enroll in ESL courses (Brown 2007a:381). Communicative language teaching is less effective in foreign language situations than second language situations.

Li's (1998) research accentuates issues that should be considered because communicative language teaching as a meaning-based approach has gained popularity in Asian EFL contexts (Butler 2011:36; Savignon & Wang 2003:238). Savignon and Wang (2003:239) report that students prefer communicative instruction to grammar-based and form-focused approaches. The versatility of communicative language teaching may be (re)theorized and applied differently to the circles of world English. However, communicative teaching practices should be scaffolded to minimize student frustration and maximize the ZDP (*cf.* Chapter 3).

Critique of content-based instruction includes feelings of frustration and uncertainty among students who are accustomed to structured, traditional methods. Feelings of uncertainty originate as a result of active participation that requires information interpretation during knowledge input and the perpetual quest for alternative interpretations of texts and learning styles. Therefore, institutions need to prepare students psychologically and cognitively for the demands of content-based instruction (Richards & Rodgers 2001:213). English for academic legal purposes requires special preparation from students since it is not only a content-based course but also a quasi-



foreign language course that poses additional challenges (*cf.* Bhatia 1989:233; Danet 1980:470). The critique of content-based instruction as stressor requires the use of law school textbooks that address skills that law students need prior to law school, such as classroom etiquette and LSAT (law school admissions test) skills (*cf.* Chapter 10).

Because of its focus on vocabulary acquisition for communication, task-based instruction is useful to EALP. The acquisition of legal terminology is essential to all law students regardless of jurisdiction and recognized as communication skills (*cf.* Chapter 10). Knowledge of the terminology of the law provides some access to the content of substantial law. From a cognitive linguistic perspective, legal terminology serves as “prompts that activate background knowledge structures” (Biel 2008:22). The importance of these background knowledge structures (terminology) is confirmed by the myriad specialized textbooks and legal dictionaries published (Brown & Kauffman 2012; Nolfi 2008). Traditionally, these publications are etymological and hermeneutical; however, the publication of *How to Learn & Memorize Legal Terminology* by Metivier and Briton (2013) addresses pedagogic principles that utilize multiple intelligences to improve the memorization and activation of legal terminology. As such, task-based instruction may be considered for EALP pedagogy.

The three functional, communicative approaches should not be interpreted and applied in isolation at any of the three levels of L2 curricularization. That is, a confluence of these approaches may better serve the pedagogic needs of students and educational purposes of the curriculum, syllabus, and lesson.

### **5.3 Functional, genre-based approaches**

Genre pedagogy consists of three approaches that developed approximately during the same period in the 1980s and onward. The three genre approaches include the (1) ESP that is subsumed by content-based instruction; (2) the Australian genre movement or the Sydney School (closely associated with the theoretical SFL of Halliday), and the North American, new rhetoric (Hyon 1996:696; Paltridge 2007:931).

#### **5.3.1 English for specific purposes**

English for specific purposes originated in communicative pedagogy. Together, communicative pedagogy and genre pedagogy may be classified as functional,

communicative approaches. The goal of ESP is to provide learners with subject content and with “real-world skills” through English as medium (Richards & Rodgers 2001:207). Although Swales is often credited as the main proponent of the ESP movement, credit should be given to the new rhetorician, Miller (1984) who promoted the movement with her notion of “genre as social action” (in Paltridge 2007:932). From Miller’s observations that the names of genres inform discourses, Swales applied the idea within the ESP context. Therefore, at its inception, the ESP approach was largely influenced by Swales’ genre analysis (1986; 1990). Research on discourse structure and linguistic features of scientific research articles set the tone for the emphasis on the social purpose and structure of spoken and written language (Flowerdew 2005:135; Paltridge 2007:931-932).

In addition to genre being social action, the most-cited definition of genre within ESP scholarship is Swales' (1990:58). He describes genres as *communicative events* (social actions). Similar events share similar *communicative purposes*. Within a given *discourse community*, members are able to recognize these communicative purposes. Because the discourse community can recognize the communicative purposes, genres become justified and reified. The justification and reification determine *schematic structure* and *content*. Therefore, a document (communicative event) performs a communicative purpose when it creates a relationship between two parties. Because the communicative purpose is for one party to deliver a product and the other party to pay a specified amount for it, the legal discourse community may identify this communicative event (genre) as an agreement of sale. Although some genres are exchangeable across discourse communities, legal genres are exceedingly discipline-specific. The social action caused by legal genres, their formal, schematic structures and content set them apart from genres in other discourse communities, which explains the relative inaccessibility of the legal discourse community. However, Swales and Bhatia promote a sociorhetorical view of genre that goes beyond genre as prefabricated container (Belcher 2006:141).

The definition of genre illuminates its purpose, *viz.* social action. Genre as social action, however, is as broad in meaning as a social constructionist description of language as social action (*cf.* Chapter 3). In an attempt to specify the goals of genre, Bhatia (2002:5) demarcates the following aims:

- Genre accounts for the apparent tumultuous realities of the world.
- Genre comprehends and accounts for the private objectives of the author as well as the socially recognized communicative purposes.
- Genre apprehends how language is used in and shaped by socio-critical environments.
- Genre proposes solutions to educational and other applied linguistic problems.<sup>4</sup>

In the ESP tradition, the refined goals of genre attempt to provide non-native students (non-members of the English discourse community) with the communicative competence to participate in English-speaking academic and professional discourse communities. Swales (1990:9) maintains that genre provides such access because it is the property of certain discourse communities. Perhaps it would be more apt to reason that appropriate education about legal genres (for example, though EALP) provides such access because the convoluted grammar of statutes and case law does not necessarily provide access to the legal discourse community.

English for specific purposes demonstrates a vested interest in non-native speaker education (Cho 2009:230; Li & Flowerdew 2007:100; Long & Uscinski 2012:173). Text form is particularly important to ESP teachers because ESL and EFL are traditionally primarily concerned with surface-level, lexico-grammatical patterns (Paltridge 2007:932). The characteristics of genres rely on the contexts of their creation and use; hence, teachers and students should be aware of the genre discrepancies across disciplines (Johns 2008:249). English for specific purposes is particularly useful within L2 settings because it accentuates the functionality of genres as staged events and as communicative tools (Hyland 2003:22; 2007:151).

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<sup>4</sup> Swales (2004:61) has amended his definition of genre in terms of four metaphors, which highlight the multiple purposes of genres (*cf.* Paltridge 2007:932). First, Swales considers genres as frames of action or directive principles that enable users to achieve certain purposes through language. Second, genres are language standards that express conventions of text structure and language use. Third, genres are prototypes that vary from the original example. Finally, genres are speech acts or social action.

In terms of the nature of language and texts, ESP does not draw explicitly on any particular linguistic theory of language. Instead, it could be argued that ESP maintains an eclectic linguistic approach as it draws on SFL (Hyland 2007:154), constructivism, and social constructionism. The significance of social function and form is generally expressed among ESP scholars (Hyon 1996:695). Johns (2002:3), for example, describes genre as a collection of oral or written responses that meet certain social contextual requirements, and Hyland (2003:21; 2007:149) defines genre as the act of using language in socially acknowledged ways. Because of its reliance of SFL, ESP embraces a social semiotic perspective (Martin 2009:10). The social and functional dimensions attributed to genre relate ESP to functional, contextual linguistic approaches that recognize language as a semiogenic resource governed by linguistic choices, contexts, and functions. It also relates genre to interactional, constructionist linguistic approaches that consider language as pragmatic-instrumental and constructive of social relationships (*cf.* Chapter 3).

In terms of the roles that learners and teachers fulfill, Hyon (1996:698) points out that Swales considered himself a “prescriptive teacher” because students had to demonstrate their communicative efficiency within the constraints of his genre model. However, Hyland (2007:152) argues that “there is nothing inherently prescriptive about a genre approach.” Teachers as well as L1 and L2 learners should select genres and make linguistic choices that facilitate expression (Hyland 2007:152). However, within law, genres are dictated, and legal language conventions limit the linguistic choices of users.

Genre is seen as a tool for learning and teaching written and spoken language in academic and professional settings (Hyon 1996:695). The process of learning consists of at least two stages. *Before production*, genre is deconstructed to identify text features. *During production*, text features are contextually interpreted to serve the functions of a discourse community. During the learning and teaching of language, genre analysis is important because it offers “pedagogically useful information for helping students control the organizational and stylistic features of [...] texts” (Hyon 1996:698). Li and Flowerdew (2007) extend the participants in genre education beyond learner and teacher to encompass supervisors, peers, and language professionals in the context of journal publication. By increasing the number of

stakeholders and their contexts in the process of genre acquisition, Li and Flowerdew bring genre into the domain of multiliteracies (Duff 2010:175).

The teaching methodology for ESP could also focus on application where learners perform active roles. This occurs when genre analysis leads to the composition of curricular or instructional material. For example, Swales and Feak's (2004) *Academic Writing for Graduate Students: Essential Tasks and Skills*, provides models on how graduate students could master discourse conventions. Brostoff and Sinsheimer (2003), provide examples in the field of EALP. In addition to written genres such as appellate briefs, Brostoff and Sinsheimer (2003:147-157) provide detailed instructions on the preparation and delivery of oral legal genres, such as arguments in court, and they provide sets of facts for mock sessions in class. The analysis of such genres seeks to unravel obscurities about the text as social artifact (Bhatia 1997:313), and it produces pedagogic materials for L1 and L2 learners of English (Flowerdew & Wan 2010:79).

### 5.3.2 Australian genre movement

Where ESP straddles L1 and L2 teaching, the Australian genre movement developed as the need for ESL instruction increased with an influx of adult migrants in Australia (Paltridge 2007:933). This influx culminated in *immigrant on-arrival programs* for adults and *programs for students with limited proficiency* for children (Martin 2012:48; Richards & Rodgers 2001:205). Although the Australian genre movement is concerned with genres of power as they provide literacy to disenfranchised communities, this political concern should not be confused with critical pedagogy (Belcher 2006:141; 143; cf. Chapter 6).

Scholars living in Sydney started to develop L2 programs based on the SFL theory of Halliday. As linguistic theory and as applied linguist perspective, SFL and the Australian genre approach are complementary of each other because both embrace language and learning as social phenomena entrenched in “cultural, historical, and institutional contexts” (Hyland 2007:153). Other influential scholars of this tradition include Hasan (Halliday & Hasan 1989), Martin (1998; 2002; 2009; 2012), and Christie (1999). Contemporary research in the tradition of the Australian genre movement follows two important research strands, viz. multiliteracies and

multimodality (Anderson 2013:1-24; Constantinou 2005:602-618; Knox 2013:n.p.; Martin 2012:48), which are pursued in the fourth part of this chapter on socioliterate approaches.

Within the Australian genre movement, genre is defined as “a staged, goal-oriented, purposeful activity in which speakers engage as members of our culture” (Martin 1984:25). Genre is a “recurrent configuration of meanings [...]” (Martin 2009:13). Genre is *staged* because it requires a hermeneutical process to determine its meaning. Genre is *goal-oriented* because the interpretive phases are meant to achieve meaning. Finally, genre is *social* because it occurs in interaction with others (Martin 2009:13).

The Australian view relies on SFL for an understanding of language. Instead of sets of grammar rules, language is seen as a “resource for making meaning” (Paltridge 2007:933). As such, language involves phonology/graphology, lexicogrammar, and discourse semantics (Martin 2009:11). Genre-based literacy, therefore, focuses on grammar as meaning-making resource and text as semantic choices within social contexts. Language is social semiotic because it designates meaning in cultural and social contexts (Martin 2009:11).

The Australian genre movement draws on the notions of context of culture and context of situation proposed by SFL to emphasize the importance of the interpretation of the meaning of texts (Paltridge 2007:933). Genre corresponds with the notion of *context of culture*, which determines the rhetorical structure of the text. *Context of situation* determines the language features of the text. From the perspective of the Australian genre movement, genre may be defined as culture-specific, functional, staged, and linguistic. Therefore, in order to understand genres, they should be interpreted in their cultural and social contexts (Hyon 1996: 697; Paltridge 2007:933). These linguistic and pedagogic contexts are illuminated by an approach that influenced SFL substantially, *viz.* social constructivism.

Early theoretical conceptualizations of SFL as sociocultural approach have been profoundly influenced by the scholarship of Vygotsky (Kramsch 2004:239; *cf.* Chapter 3). Vygotsky’s constructivist activity theory influenced sociocultural approaches to consider L2 learning as the dialectic creation of meaning; that is,

meaning is created intrapersonally (within the self) and interpersonally (among individuals) (Lantolf & Pavlenko 1995:112; Mills 2010:247).

Constructivist theorists contend that meaning is created in dialogue or utterances (with others and/or the self); therefore, the sentence as the Chomskyan unit of analysis forfeits its privileged status (Lantolf & Pavlenko 1995:110). Constructivism expands the unit of analysis as it incorporates individual cognitive self-organization and the processes individuals use to constitute social development (Cobb 1994:15). In contrast, sociocultural theories postulate that sociocultural and cognitive behavior are “bound together in a dependent, symbolically mediated, relationship” (Lantolf & Pavlenko 1995:109). The unit of analysis is therefore substantially amplified to include situated cognition where cognition is always in relation to context, and distributed cognition where cognition is always in relation to other minds and resources.

In terms of language pedagogy “theories developed from the constructivist perspective [to] focus on what students learn and the processes by which they do so” (Cobb 1994:13). The Australian view developed to increase the range of text types students were taught in progressive, process writing classrooms (Martin 2009:10). Hyon (1996:700) reports that the Australian genre approach has also combined the genre-based curriculum with a competency-based curriculum, which provides occupational training, such as EPP. In this respect the Australian genre movement is similar to the ESP and clinical legal movement that aim to bridge the divide between academic and professional groups, formal education and occupational training. Therefore, while the Australian view associates genres with specific groups, it also accentuates the “wider context of the activities that surround the use of texts” (Hyland 2007:154).

The process of teaching and learning should be seen in the context of the origins of the Sydney School. Cope and Kalantzis’ teaching-learning cycle stems from the Literacy and Education Research Network (LERN) project implemented in Sydney’s deprived schools program (Cope & Kalantzis 1993:10-11; Martin 1993:157). The main advantage of the teaching-learning cycle is that it conceptualizes writing not as linear, terminal process but as cyclical, recursive process. The teaching-learning cycle



may be described as a three-phase process that consists of modeling, negotiation, and construction of genres (Figure 5.1). Phase one begins with a teacher-led introduction to the text where students receive genre-input. This includes identifying the social functions (purposes), schematic structure (information in the text), and lexicogrammatical features of the text. Phase two is more interactive than phase one because teachers and students negotiate a new text within the same genre identified (approximated) in phase one. As a result of the input and negotiation of meaning in the preceding phases, the quasi-final phase requires students to create their own texts relatively independently. This is only a quasi-final phase since the writing process is cyclical. The arrows in the outer ring of Figure 5.1 suggest the fluidity of the cycle; phases overlap and teachers may increase or decrease their participation depending on students' needs (Hyon 1996:704-705).

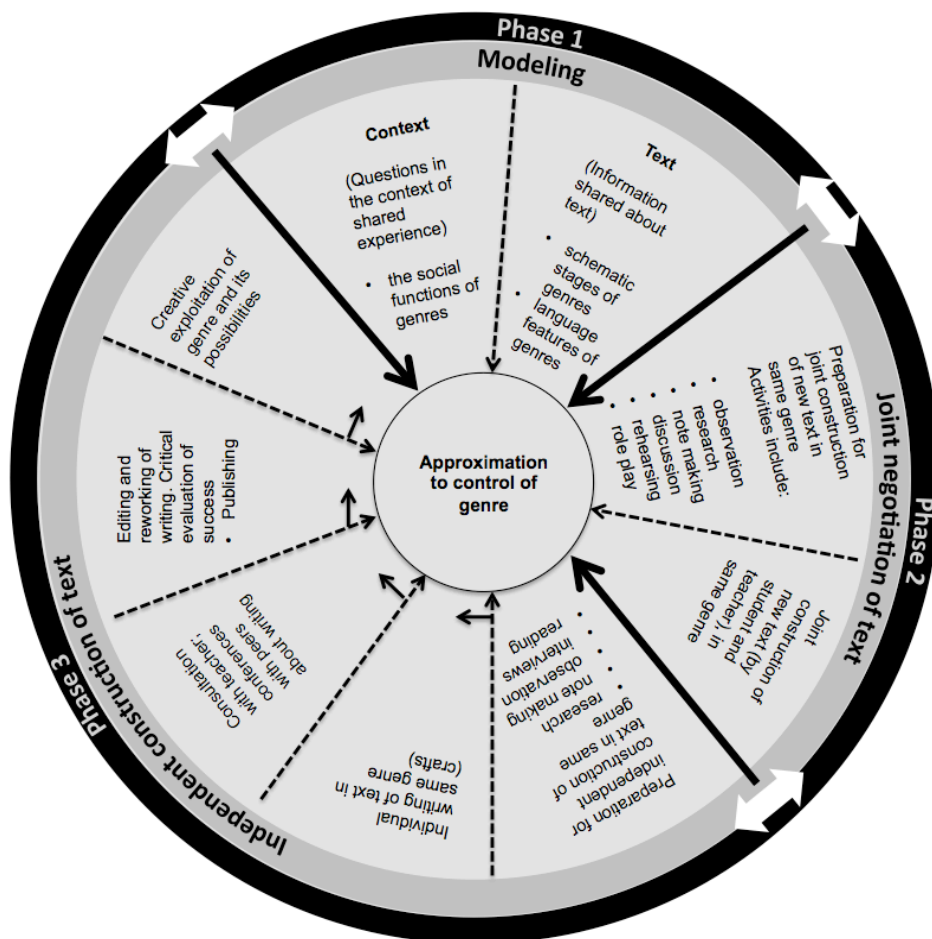


Figure 5.1: The teaching-learning cycle (adapted from Cope & Kalantzis 1993:11; Hyon 1996:705).



A newer version of the cycle adds an initial phase called “building knowledge of the field” that precedes the modeling that occurs in phase one. However, this later version is reminiscent of the four-phase model envisioned by Derewianka (1990) that includes the following steps: context exploration during which knowledge of the field is collected, text exploration, joint construction, and individual application. Prior to modeling, it is important to acquire knowledge of the social contexts and content topics of the target genre (Hammond, Burns, Joyce, Brosnan, & Gerot 1992:17). The pre-modeling phase is particularly important to EALP, since the functions of legal genres are determined by social contexts, and genre content is based on legal doctrine and facts.

The negotiation of text prompts the question how EALP teachers could negotiate the instruction of relatively static legal genres. The answer may be in the framing and classification of genres in the teaching and learning cycle. Ellis (2001) draws on Bernstein to explicate the flexibility (framing) of genres. Framing is the “extent of control [that teachers and students exert] over the selection, organisation, and pacing of knowledge that is to be part of the learning process” (Ellis 2001:n.p.). Framing may be conceptualized on a continuum. On the one end, weak framing implies greater student control and increased student learning; and on the other end, strong framing implies greater teacher control over genre flexibility and the learning cycle. Therefore, together with other pedagogic and personal factors, framing co-determines the roles of students and teachers. These roles are expressed in Figure 5.2.

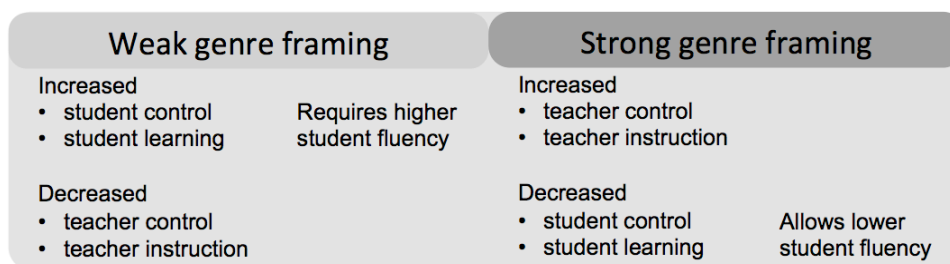


Figure 5.2: Genre framing as determinant of teacher and learner roles

Where framing determines control over genre features in the learning cycle, classification is the “degree of boundary maintenance between contents” (Ellis 2001:n.p.), or what Hammond *et al.* (1992:17) refer to as “knowledge of the field.”

Strong classification insulates content and weak classification allows boundaries between content to blur.

At approximately the same time when the Australian genre movement developed in Sydney, the new rhetoric emerged in the United States.

### 5.3.3 New rhetoric movement

As mentioned in the introduction to the ESP approach, Miller (1984) is a prominent figure in the development of genre pedagogy. Her notion of “genre as social action” set the tone for the North American new rhetoric (*cf.* Paltridge 2007:932). Other prominent new rhetorians include Berkenkotter and Huckin with their sociocognitive (1993) and social constructionist (1995) views of genre, and Freedman and Medway’s influential *Genre and the New Rhetoric* (1994). More recently, the new rhetoric has been characterized by a deeper critical linguistic perspective as exemplified by the work of Dias and Paré (2000) *Transitions: Writing in Academic and Workplace Settings* and Paré’s (2004) *Texts and Power: Toward a Critical Theory of Language*.

“[A] rhetorically sound definition of genre must be centered not on the substances or the form of discourse but on the action it is used to accomplish” (Miller 1984:151). Consequently, the *primary focus* is on the situated and social features of genres (Johns 2008:241). The new rhetoric is therefore rooted in a sociocontextual theory of language (Hyon 1996:698). However, the new rhetoric is critical of a fixed linguistic approach to genre because it may be excessively deterministic and context bound (Flowerdew & Wan 2010:80). As a sociocontextual theory of genre, the new rhetoric stresses genre awareness. This concept implies that discussions about genre should consider contexts of genre production and the roles and ideologies of authors, users, and communities (Johns 2008:243).

The new rhetoric draws on activity theory that postulates the inseparability of the cognitive and the social. That is, context influences thought and vice versa (Johns 2008:241). In this respect the new rhetoric is influenced by theories of cognition and cognitive apprenticeship (Belcher 2006:141). “Genres, in this view, both respond and contribute to the constitution of social contexts, as well as contribute to the socialization of individuals” (Paltridge 2007:934). Therefore, like the Australian

genre movement, *genre knowledge*, the “repertoire of situationally appropriate responses to recurrent situations” (Berkenkotter & Huckin 1995:ix), gives individuals access to community participation (Paltridge 2007:934).

Because it relies more on rhetorical theories than linguistic theory, the new rhetoric is less concerned with textual features than the ESP and the Australian genre movement (Paltridge 2007:934). Such attention to textual features turns the writing class into a productive art of matching genres to formal requirements. The effect of genre as social action on language instruction is that writing instruction is a practical art that enables students to achieve certain social goals (Miller 1984:67).

Instead of focusing on the process of composition, the contexts of texts, or the abstract prescriptions of disembodied grammars, genre pedagogies enable teachers to ground their courses in the texts that students will have to write in their target contexts, thereby supporting learners to participate effectively in the world outside the ESL classroom (Hyland 2007:148).<sup>5</sup>

The new rhetoric, and genre pedagogy in general, may be applied productively to EALP instruction. Russell (1997:545-546) argues that the contexts of instruction are temporarily reifying, yet evolving because students’ situated cognition (to borrow the term from multiple intelligences pedagogy) is affected by prior accumulated knowledge and the immediate situation. Therefore, genres do not determine the nature of the text; instead, genres predict the nature. Because genres only predict the nature of the text, students need to “instantiate their schemas for comparable situations, acquired during previous experiences with the genre” (Johns 2008:242). Teachers cannot assume that L2 learners possess schemas of familiarity with certain genres as may be expected of L1 learning within authentic contexts.

The benefits of the new rhetoric transcend individual syllabi because it performs an epistemological function within the curriculum and among various disciplines. “This genre theory [new rhetoric] is useful not only because it establishes a direct connection between writing and doing, and thus knowing, but also because it points to certain patterns in ways of doing across the disciplines” (Carter 2007:388). To

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<sup>5</sup> Such participation in the practicing legal discourse community is central to the goals of clinical legal education as explored in Chapter 8.

illustrate, disciplines are traditionally conceived of as means of delivery of corpora of content or repositories of knowledge (similar to traditional doctrinal or substantive legal education) as opposed to contemporary conceptualizations of “disciplines as active ways of knowing” and doing, similar to clinical legal education (*cf.* Carter 2007:387). Therefore, Miller’s (1984) canonized dictum, “genre as social action” reaffirms the role that the new rhetoric plays in genre pedagogy across the curriculum by associating content instruction with experiential learning through genre function; a role that fits the objectives of a curricular framework for EALP.

New rhetoricians argue that language cannot be learned outside authentic contexts. However, Hyland (2007:151) contends “L2 writers are often at a considerable disadvantage in such unfamiliar naturalistic settings and that genre-based writing teaching can short-cut the long processes of situated acquisition.” Therefore, where clinical legal education cannot accommodate situated learning of legal writing, the ESP and the Australian genre movement provide suitable alternatives that focus on genre form and genre specificity in the legal discourse community.

#### 5.3.4 Discussion

Although the three genre approaches have genre in common, their theoretical linguistic underpinnings and diachronic background distinguish them. Where the ESP draws on an eclectic assortment of theories from different disciplines, the Australian genre movement relies profoundly on SFL, and the new rhetoric on activity theory. The scientific research article provides the diachronic background for ESP in Britain, immigrant instruction contextualizes the origins of the Australian genre movement, and L1 composition studies provides the background for the North American new rhetoric. The Australian genre movement exercised a pronounced influence over ESP and EAP (Johns 2011:57), whereas the new rhetoric influenced EPP in professional sites (Belcher 2006:141). Despite these differences, the common denominator remains the social and contextual functionality of genres. Today, genre scholarship transcends these differences to embrace genre as more “contextual than simply textual, dynamic than static, varied than monolithic [...]” (Belcher 2006:142). The features of the three genre approaches are summarized in Table 5.2.

Table 5.2: Features of genre-based approaches

	English for specific purposes	Australian genre movement	New rhetoric movement
<b>Theoretical foundation</b>	<ul style="list-style-type: none"> <li>Eclectic theoretical approach from various disciplines</li> </ul>	<ul style="list-style-type: none"> <li>Systemic functional linguistics</li> <li>Sociocultural pedagogy</li> </ul>	<ul style="list-style-type: none"> <li>Activity theory</li> <li>Poststructuralism</li> <li>L1 composition studies</li> </ul>
<b>Description of genre</b>	<ul style="list-style-type: none"> <li>Genre is a class of structured communicative events used by discourse communities whose members share similar social purposes.</li> </ul>	<ul style="list-style-type: none"> <li>Genre is a staged, goal-oriented, purposeful activity in which speakers engage as member of a culture.</li> <li>Genres enable action through language</li> </ul>	<ul style="list-style-type: none"> <li>Genre as social action</li> <li>Genres are responses to social situations that are part of socially constructed realities.</li> </ul>
<b>Emphasizes</b>	<ul style="list-style-type: none"> <li>Genre form as multiple communicative purposes</li> <li>Genres evolve</li> </ul>	<ul style="list-style-type: none"> <li>Culture-specificity of genres</li> <li>Connections between form and function</li> </ul>	<ul style="list-style-type: none"> <li>Relationship between text and rhetorical context</li> <li>Social functions of genre</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>Scaffolding of increasingly more complex genres</li> </ul>	<ul style="list-style-type: none"> <li>Teaching follows a learning cycle and language acquisition is interventionist</li> </ul>	<ul style="list-style-type: none"> <li>In authentic contexts through experiential learning</li> </ul>
<b>Target group</b>	<ul style="list-style-type: none"> <li>Adult L2 learners</li> <li>Graduate writing for ESL students</li> </ul>	<ul style="list-style-type: none"> <li>School children</li> <li>Adult migrants</li> </ul>	<ul style="list-style-type: none"> <li>L1 university students</li> <li>Novice professionals</li> </ul>
<b>Roles of teachers and learners</b>	<ul style="list-style-type: none"> <li>Teacher roles vary from prescriptive to non-prescriptive and participatory.</li> <li>Students are mostly actively involved.</li> </ul>	<ul style="list-style-type: none"> <li>Weak and strong framing and classification determine teacher and student roles.</li> </ul>	<ul style="list-style-type: none"> <li>Teachers facilitate learning.</li> <li>Students perform exploratory roles.</li> </ul>
<b>Genre analysis</b>	<ul style="list-style-type: none"> <li>Linguistic identification of moves and steps that serve communicative purpose</li> </ul>	<ul style="list-style-type: none"> <li>Broadly defined registers of discourse and linguistic structures</li> </ul>	<ul style="list-style-type: none"> <li>Ethnographic rather than linguistic</li> <li>Culture of discourse community</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>Emphasis on evolution of genre may be in conflict with relative stability of legal genres</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>ESP is a comprehensive and appropriate theory for EALP and may influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Not critical enough toward the political agenda for the proliferation of English</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Emphasis on social dimensions of legal genre may neglect microlinguistic language instruction</li> <li>May be more appropriate for advanced students of EALP rather than entry-level students</li> <li>May contribute to the instruction of meso- and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>

Pennycook (1996:165) cautions against a static interpretation of genre and literacy because that could turn genre-based approaches into transmission pedagogy (lecture-based instruction). However, the solution is not in choosing between genre and traditional pedagogies; rather, the “space for any other possibilities” should not be closed (Pennycook 1996:166). In this open space alternative pedagogic approaches developed, such as socioliterate approaches.

#### **5.4 Socioliterate approaches**

Socioliterate approaches have been influenced by scholars such as Hymes, Bernstein, Cook-Gumperz, Schieffelin and Ochs, and Halliday. Hymes’ (1967) notion of communicative competence is based on the sociolinguistic idea that culture and language are intimately related. Bernstein (1975), for example, asserts that indigenous notions of social identity and roles relate to the style and form of local communication. Bernstein (1975) demonstrates that middle-class language users assume less former knowledge of their listeners than working-class users. Cook-Gumperz (1973) supports Bernstein’s theory by arguing that home and school language socialization differ because school language-use requires explicit specificity while home language-use relies more on shared meaning.

Socioliterate approaches provide a critical platform from which discourse socialization could be articulated in terms of sociocultural and anthropological perspectives (Duff 2010:170). Approaches that are explicitly socioliterate (also described as sociocultural theories *cf.* Duff 2010:170; Mills 2010:246; Ochs & Schieffelin 2011:1) are copious, and only minor distinctions are made among terms that appear to be synonymous. Duff (2010:172), for example, uses academic discourse socialization, academic literacies, and academic enculturation synonymously. Mertz’s (2007a; 2007b) use of enculturation into the legal discourse community is synonymous with academic discourse socialization. Approaches that may be classified as socioliterate or sociocultural include language socialization, discourse socialization, and academic discourse socialization.

##### **5.4.1 Language socialization**

Where foundational scholarship on language socialization focuses on young learners in the school setting and socialization through oral practices, contemporary



scholarship focuses more on adult learners in a variety of settings (*cf.* Berkenkotter, Huckin, Ackerman 1994) and “socialization into academic literacy practices” (Duff 2010:174). Language socialization it is often discarded as a model by which to understand language learning among adults. However, scholarship indicates that verbal repertoires keep developing in adulthood, such as when law students are required to master “discursive and performative genres” for legal practice (Garrett & Baquedano-Lopez 2002:349). These discursive genres are recognized as speaking skills that include legal, academic, and professional genres as explicated by the EALP-type textbook analysis (*cf.* Chapter 10).

Language socialization may be understood as both a research field and process of language learning. As an *area of study* it refers to interdisciplinary (anthropological, sociological, linguistic, and educational) endeavors that explain “language and literacy development” in certain communities (Duff 2010:172). Similar to the proposition of situated and distributed cognition by multiple intelligences, the act of language socialization is socially, culturally, and politically situated and mediated; it is saturated with “propositional or ideational meanings carried or *indexed* by various linguistic, textual, and paralinguistic forms” (Duff 2010:172). As a *process of language* learning, language socialization may be understood as the acquisition of language through interaction with people with various levels of language proficiency where mentoring occurs in the normative use of the language and ontological and epistemological values of the community.

Schieffelin and Ochs (1986:163) maintain that language socialization occurs through the *use of language* but also with the purpose *to use language*. *Socialization to use language* may be understood in terms of EFL where socialization contributes to language acquisition. *Socialization through the use of language* is similar to content-based instruction, such as EAP, where language is used to socialize academically. In this respect, language functions as a tool for acquiring social, academic competence. In practice, however, these distinctions are blurred. Schieffelin and Ochs (1987) propose a cross-cultural approach to language socialization. Similarly, Halliday’s (1993) recognition of register as a variety of *language in use* agrees with socialization into a discourse community (Mills 2010:247).

Similar to a linguistic epistemology for EALP based on social constructionist thought developed in Chapter 3, Watson-Gegeo (2004:339-341) describes the language socialization epistemology as community-generated. Accordingly, language socialization is grounded on the following principles:

- Cultural and linguistic knowledge are reciprocally constructive.
- All activities that learners engage in are socially, culturally, and politically rooted and contextualized.
- Contexts are multidimensional to the point where they recognize thick explanation and data saturation.
- Language is learned through linguistically marked procedures.
- Cognition is constructed through social interaction; therefore, language socialization occurs in communities of practice.

Socialization may be understood as the process through which the novice language learner “acquires the knowledge, orientations, and practices that enable him or her to participate effectively and appropriately in the social life of a particular community” (Garrett & Baquedano-Lopez 2002:339). Language socialization is important to EALP because most law students enter university as novice legal language learners with the goal of joining the academic and professional legal discourse community.

#### **5.4.2 Discourse socialization**

In the field of applied linguistics, the discourse community is distinguished from the speech community. The speech community is often described from an ethnographic, anthropological, or sociolinguistic perspective with a focus on spoken language (Swales 2007:23). The speech community could be described as follows:

The study of the speech community is central to the understanding of human language and meaning-making because it is the product of prolonged interaction among those who operate within shared belief and value systems regarding their own culture, society, and history as well as their communication with others” (Morgan 2004:3)

Swales (2007:24) identifies three elements that characterize the speech community: “shared linguistic forms, shared regulative rules and shared cultural concepts.” Unlike the speech community, which is identified primarily by its use of spoken language,



the discourse community is identified by its multimodality. This distinction raises more questions about the nature of the discourse community.

Theoretically, is discourse community a robust social construct, a defensible categorization of a particular and important kind of group? Or is it just a convenient covering metaphor, or worse, a deluding vision allowing us the dubious facility of making tempting generalization about the world and its words? Or is it essentially a heuristic device for understanding the dynamic processes of qualification, entry, apprenticeship, full membership and lapse into old-fartage in specialized groups? (Swales 1993:694).

Swales (2007:25-27) answers these questions by defining the discourse community in an epistemologically sensitive manner. He identifies six characteristics based on the functionality and goal-oriented grouping of the community. According to Swales, a discourse community exhibits the following characteristics:

- a set of agreed-upon common public goals;
- mechanisms for communication among members;<sup>6</sup>
- participatory mechanisms that provide information and feedback through mutual exchange;
- use and ownership of at least one genre to further the community aims;
- interactions that are based on a specialized lexis (e.g. legal terminology); and
- a threshold number of community members with a fitting degree of relevant content and discursal expertise (Swales 2007:25-27).

Ramanathan and Kaplan (2000:176) point out that Swales' set of criteria sets a baseline from which to approach genre, and it conceptualizes the discourse community as a sub-culture that is guided by "implicit rules and social practices." These rules and practices support the relative stability of the discourse community. Yet the discourse community is malleable because the ideology, genres, membership, and language that provide community coherence are subject to constant change (Morgan 2004:5).

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<sup>6</sup> Morgan describes these mechanisms as a mutually intelligible symbolic and ideological communicative system (2004:3).

Duff (2010:170) considers academic discourse not as an object but as a dynamic “social, cognitive, and rhetorical process” through which the community accomplishes, acculturates, and positions. Academic discourse includes oral and written communication, such as genres, registers, and interactional patterns. These forms of communication are “privileged, expected, cultivated, conventionalized, or ritualized, and therefore, usually evaluated by instructors, institutions, editors, and others in educational and professional contexts” (Duff 2010:175). Fluency in academic discourse is essential to gain access to the academic discourse community (Hyland 2004:ix).

Ample scholarship elaborates on the idea of a discourse community but with more emphasis on processes and contextualization. Hence, the idea of the discourse community is enhanced by concepts, such as academic literacies and academic discourse socialization (Duff 2010:171; Young & Collin 2004:377).

### 5.4.3 Academic discourse socialization

Research in academic discourse socialization is prolific and investigates a wide range of topics including race (Bucholtz 2011), gender (Kyratzis & Cook-Gumperz 2008), and culture (Morita 2009). Scholarship on academic discourse socialization “represents an orientation to language and literacy development in particular communities and settings” (Duff 2010:172). Initially, academic discourse socialization may have drawn more on L1 composition instruction, but recent scholarship is equally applicable to SLA (Morita & Kobayashi 2008:243). In particular, it draws on input from anthropology, sociolinguistics, and pedagogy (Garrett & Baquedano-Lopez 2002:341) to answer certain questions. For example, how can novices to the academic culture of law participate effectively in the legal discourse community? (Duff 2010:169). How does interaction with members of the legal discourse community facilitate enculturation? (*cf.* Mertz 2007a; 2007b; Morita & Kobayashi 2008:243).

Duff (2010) advocates a critical understanding of the discursive practices and the positions of students, teachers, and scholars within academic discourse socialization. This critical understanding begins by evaluating the developmental process of intersubjectivity. Duff (2010:186) envisions such intersubjectivity as a forum to

develop “new knowledge, competencies, and textual identities.” Intersubjectivity depends on socialization that accentuates shared responsibility among discourse participants. Interdiscursivity is promoted by law school academic support programs in academia and bar associations in legal practice (*cf.* Chapter 9).

The role as a novice member to the legal discourse community is accompanied by power dynamics that are imposed by academic discourse. Across the cultures of world Englishes the affective tensions and power relations created by academic discourse may vary but remain intense. It has even been argued that experts use academic discourse to perpetuate the disjuncture between novices and experts (Duff 2010:171). Support for this argument is found in the teacher-student relationships of traditional teacher-centered pedagogies. In addition, discomfort with the discourse community could also be the result of sociopolitical differences. Leibowitz (2005:676) argues that isiXhosa-speaking South African learners contend not only with mastering a second or additional language but also with social, racial, and power disparities.

Academic discourse socialization creates causal links between language socialization, the discourse community, and communities of practice. There are at least three advantages associated with the concept of communities of practice. Firstly, it explicitly confronts the tension between the group and the individual caused by binary pairings such as “structure and agency, collectivity and subjectivity, power and meaning” (Garrett & Baquedano-Lopez 2002:347). In addition, it describes community in terms of reciprocal social and collaborative engagement. Community is not described in terms of geography or social categories such as race and ethnicity. Community is not just about membership or practice, but it is understood in “relational terms that link the two” (Garrett & Baquedano-Lopez 2002:347). Finally, “the community of practice model presumes the existence of diversity in any group and admits the possibility of dynamic, shifting patterns of participation in multiple (often overlapping) communities” (Garrett & Baquedano-Lopez 2002:348).

#### **5.4.4 Discussion**

As considered in this chapter, language socialization and the notion of the discourse community contribute to academic discourse socialization. Because socioliterate

approaches are closely imbricated, they display minor differences as shown in Table 5.3.

Table 5.3: Features of socioliterate approaches

	Language socialization	Discourse socialization	Academic discourse socialization
<b>Theoretical foundation</b>	<ul style="list-style-type: none"> <li>EFL &amp; EAP</li> </ul>	<ul style="list-style-type: none"> <li>ESP</li> </ul>	<ul style="list-style-type: none"> <li>ESP &amp; EAP</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>Interactionism</li> </ul>	<ul style="list-style-type: none"> <li>SFL</li> </ul>	<ul style="list-style-type: none"> <li>Social constructivist and constructionist</li> </ul>
<b>Goals</b>	<ul style="list-style-type: none"> <li>Socialization to use language (EFL)</li> <li>Socialization through the use of language (EAP)</li> </ul>	<ul style="list-style-type: none"> <li>Membership of various discourse communities</li> </ul>	<ul style="list-style-type: none"> <li>Membership of the academic discourse community</li> </ul>
<b>Learner role</b>	<ul style="list-style-type: none"> <li>Active</li> </ul>	<ul style="list-style-type: none"> <li>Active</li> </ul>	<ul style="list-style-type: none"> <li>Active</li> </ul>
<b>Teacher role</b>	<ul style="list-style-type: none"> <li>Agent of socialization</li> </ul>	<ul style="list-style-type: none"> <li>Agent of socialization</li> </ul>	<ul style="list-style-type: none"> <li>Agent of socialization</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>Formulates a theory of learning appropriate to entry-level EALP and facilitates learning toward discourse socialization</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Formulates a theory of learning appropriate to entry-level EALP and facilitates learning toward academic socialization</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>	<ul style="list-style-type: none"> <li>Formulates a theory of learning appropriate to academic socialization</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>

Interaction within the discourse community poses three major pedagogic quandaries related to power relations, value judgments, and membership. First, in terms of power relations: when the conventions of the legal discourse community are accentuated, students are also encouraged to talk and think like lawyers. Students, therefore, yield their own language and thought. “If we acknowledge that participating in a discourse community entails some assimilation of its world view, then it becomes difficult to maintain the position that discourse conventions can be employed in a detached, instrumental way” (Bizzell in Swales 2007:30). The language, ontology, and epistemology of the discourse community are determined through power relations (Luke 2012:7; Raimes 1991:416). Bizzell (in Raimes 1991:416) suggests that students

should not be forced to assimilate these conventions. Instead, instructors should nurture a critical distance on academic cultural literacy.

Harris (1989:13) argues that the notion of a discourse community conveys an inherent paradox of being dynamic yet fixed, and it creates binaries of us and them, and insiders and outsiders. In support of his argument he quotes Bartholomae on the invention of the university as a discourse community:

Every time a student sits down to write for us, he [she] has to invent the university for the occasion – invent the university, that is, or a branch of it, like history or anthropology or economics or English. The student has to learn to speak our language, to speak as we do, to try on the peculiar ways of knowing, selecting, evaluating, reporting, concluding, and arguing that define the discourse of our community (in Harris 1989:13).

Second, the academic discourse community invokes a value judgment as to whether academic writing is good writing (Raimes 1991:417). In this respect, Lindsey (1990:2) lambasts legal writing by describing it as “the largest body of poorly written literature ever created by the human race.” Friedman (1993:5) continues the critique: “The fact is that legal writing, as it pours out of thousands of word-processors, is overblown yet timid, homogeneous, and swaddled in obscurity.” However, Posner recognizes the lack of distinction in legal writing, yet contends that “[l]egal writing by federal judges and the lawyers who appear before them is today generally serviceable, in the sense of being pretty clearly written, pretty careful, businesslike, grammatical” (2002:35).

The third problem is related to power struggles that determine membership to discourse communities. Giroux states that “discourse communities are often more concerned with ways of excluding new members than with ways of admitting them” (in Faigley 1986:537). Morgan (2004:4) argues that membership depends on “local knowledge of the way language choice, variation, and discourse represents generation, occupation, politics, social relationships, identity, and more.” Swales (1993:696), however, argues that communities are rhetorical and that they endure because of engagement and exemplification and not because of membership and collectivity.

Macleod (1997) demonstrates the association between legal language, legal education, and the academic legal discourse community. “A legal education focuses on language. It involves studying arguments, examining the meanings of words and finding arguments persuasive or non-persuasive. What the members of the legal community learn, and how they study it, also affects the language that they use” (Macleod 1997:244). In a similar vein, Hyland notes that the voice (language) of a discipline is adopted by the members of the discourse community to associate them with the “knowledge-making practices” of the discipline. The tendency is that the voice of an “autonomous, asocial, and impersonal observer” is adopted (Hyland 2010:161).

Despite the geo-political differences among law schools and the sociolinguistic and ethnic diversity of law students, the law school curriculum is internationally becoming more unified; that is, similar voices are echoed. “The background of people entering the legal profession is more varied now than it was prior to the middle of [the previous] century; however, the similarities in their education and in the texts they read, may produce a similarity in their language” (Macleod 1997:246). This may lead to more cohesion within the academic legal discourse community.

### 5.5 Summative notes

Transitional L2 pedagogy may be characterized as a pedagogic period during which the functionality of language use determined epistemological concerns, whether language functions in social, academic, or professional contexts.

Communicative approaches rely mainly on SFL as theory of language; therefore, they accentuate the active role of the language learner to facilitate communicative competence, autonomy, and conversation. Because of their sharp focus on communication, communicative approaches may suffice as instructional methods for legal speaking skills, which comprise of three genres, *viz.* legal, academic, and professional (*cf.* Chapter 10).

Although genre approaches are not limited to writing instruction, they may be particularly useful for legal writing instruction. In particular, ESP may be useful within the three circles of world English because it targets adult L2 learners. As law

students gain linguistic autonomy, a new rhetorical approach may be implemented so as to enlarge the ZPD.

Genre approaches “are united by a [relatively] common attempt to describe and explain regularities of purpose, form, and situated social action [...]” (Hyland 2003:22). The similarities that unify genre approaches are summarized in Table 5.4 as key features and advantages of genre pedagogy (Hyland 2003:23-25; 2007:150).

Table 5.4: Features and advantages of genre pedagogy (Hyland 2003:23-25; 2007:150).

Feature	Advantage
<b>Explicit</b>	Genre pedagogy clearly states learning objectives to expedite the learning of writing skills.
<b>Systematic</b>	Genre pedagogy offers a coherent schema for focusing on language and contexts.
<b>Needs-based</b>	Genre pedagogy is needs-based because course objectives and content are justified by the needs of students.
<b>Supportive</b>	The roles of teachers involve scaffolding students' learning and creativity.
<b>Empowering</b>	Knowledge of genre structures and possibilities provide access to various other genres.
<b>Critical</b>	Genre pedagogy affords the means so that students can comprehend and challenge valued discourses.
<b>Consciousness-raising</b>	Genre pedagogy increases teachers' mindfulness of texts so that they can inform students more confidently.
<b>Sociocontextual</b>	Genre pedagogy is concerned with intertextuality and interdiscursivity because it considers writing as a dialogic process, a social practice.
<b>Discourse community</b>	The concept binds together writers, texts, and readers in particular discursive spaces.

Through language socialization a common register is acquired that provides initial access to the discourse community. When the discourse community exhibits the social, cognitive, and rhetorical processes associated with academia it becomes known as the *academic discourse community* in and through which language socialization may occur. Learners may gain access to the legal discourse community through effective legal language socialization. However, the critique of academic English discourse socialization that it marginalizes certain groups, especially communities in the outer and expanding circles of world English, led to the rise of critical literacies pedagogy and new literacies studies as contemporary, postmodern approaches addressed in Chapter 6. The diachronic socioliterate period is by default

emblematic of the confluence and imbrication of approaches associated with postmodernism.



## Chapter 6: Contemporary L2 pedagogy

### 6.1 Introduction

Traditional L2 pedagogy is based on a modern worldview that recognizes a universal truth that is scientifically and objectively verifiable (*cf.* Chapter 3). Toward the diachronic end of traditional approaches, community language learning and multiple intelligences pedagogy questioned universal teaching methods and approaches (metanarratives) as they signaled the psychological interest in learners as humans. Transitional L2 pedagogy developed to recognize individual truths and realities (local narratives) that have common functions and features to constitute genres and communities. The fragmentation and reassembly of multiple clusters of concurring truths and realities as genres and academic/professional discourse communities led to critical, postmodern pedagogy. In addition to functionality propagated by communicative approaches, contemporary L2 pedagogy fosters intense political scrutiny, the development of multiliteracies, and theorizes the digitization of contemporary education. Contemporary L2 pedagogy may be described as critical, postmodern pedagogy because it embraces a postmodern worldview of multiple realities and truths of which knowledge is dispersed, fragmented, and theoretically varied (*cf.* Chapter 3).

#### *Chapter preview*

Chapter 6 consists of four parts. Part one reviews the postmethod pedagogy of Kumaravadivelu. Although postmethod fits diachronically among the literacy pedagogies, it is discussed prior to literacy pedagogies so as to enhance the cohesion of the discussion. Part two focuses on literacy pedagogy as a collective term for critical literacy pedagogy, multiliteracies pedagogy, and new literacies studies. Critical literacy pedagogy originated in 1970 with the publication of Paulo Freire's *Pedagogy of the Oppressed*. Freirean critical literacy pedagogy is decidedly political, social, and critical; it is both the harbinger of critical postmodern pedagogy and its embodiment. This critical perspective is sustained by Kumaravadivelu's (1994) postmethod pedagogy. Together, the postmodern condition and technological innovations at the turn of the 21<sup>st</sup> century announced the digital turn (*cf.* Mills

2010:247) and the dawn of new literacies studies. In part three the critical, postmodern approaches that constitute contemporary L2 pedagogy are discussed and analyzed. Part four, the summative notes, summarizes the pedagogic trends in SLA from the early 1900s to the present.

## 6.2 Postmethod pedagogy<sup>1</sup>

When Kumaravadivelu (1994) titled his article “The Postmethod Condition: Emerging Strategies for Second/Foreign Language Teaching,” he inevitably made an intertextual reference to Lyotard’s (1984) *The Postmodern Condition: A Report on Knowledge* that appeared a decade earlier. Lyotard provides a postmodern report on the scientism of modernity. Similarly, Kumaravadivelu’s postmethod condition came as a response to the scientism of method-based pedagogy that falls diachronically within modernity.

In order to contextualize the postmethod condition, one has to take account of the postmethod meaning of pedagogy. Kumaravadivelu (2001:538) defines pedagogy in the broadest sense of the word to include approach, design, and procedures in the layers of L2 pedagogy (*cf.* Chapter 1). He then extends the meaning by adding the historical, political, and sociocultural dimensions that influence SLA (Kumaravadivelu 2001:538). This description determines the parameters of the criticism against method-based pedagogy. The critique is expressed as five myths about or shortcomings of method-based pedagogy.

### 6.2.1 Postmethod critique on method-based pedagogy

The first myth is directed at modernist (positivist) pedagogy that advocates single methods as most appropriate instructional tools. The partiality of such a view was addressed by the multiple intelligences approach that recognizes different modes of learning for different types of intelligence (*cf.* Chapter 4).

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<sup>1</sup> Although postmethod pedagogy originated in direct reaction to method-based pedagogy, postmethod should be seen as a condition, a state of affairs, that developed after method-based approaches. This means that all pedagogies following traditional, teacher-centered approaches (*cf.* Chapter 4) may be considered, diachronically, as postmethod approaches.

The second myth of method-based pedagogy is the assumption that one method could be pervasive enough to explicate the entire language teaching and learning operation. The over-emphasis on method led to the neglect of other factors including “teacher cognition, learner perception, societal needs, cultural contexts, political exigencies, economic imperatives, and institutional constraints [...]” (Kumaravadivelu 2006:165). Since the dawn of functional, communicative and socioliterate approaches, contexts have grown in importance.

The third myth concerns the universality and timelessness of a method. Because methods are ideologically conceived their universal application is limited. This search for a universal method involved a top-down (Richards & Rodgers 2001:247), one-size-fits-all approach that ignores the differences between learners and their contexts in the different circles of world English. As such, this method justifies Lyotard’s (1984; *cf.* Chapter 2) critique of modernity that shuns local narratives.

The fourth myth maintains the artificial divide between theory and practice where “[t]heorists conceive knowledge, and teachers consume knowledge” (Kumaravadivelu 2006:166). Theorists produce favored metanarratives, while the local narratives of teachers are often neglected. The divide between theorists and teachers is associated with a gender imbalance where mature, heterosexual, white men theorize L2 pedagogy and female teachers assume teaching responsibilities (Pennycook 1989:610-611). A similar trend dominates traditional legal education (*cf.* Chapter 7). The divide is also responsible for creating a privileged class of tenure track theorists who publish research papers and a neglected class of non-tenure track teachers who teach L2. Often the divide leads to antagonism and isolation of non-tenure track teachers, which undermines their teaching (Kezar 2012:7). Levine and Shaker (2011) found that teachers teach a profession and occupy a job. “Their identity is dualistic because as teachers, they express satisfaction, whereas as members of the professoriate, they articulate restricted self-determination and self-esteem” (Levin & Shaker 2011:1461).

The fifth myth is also related to the tension between local narratives and metanarratives and the apparent ideological neutrality of method-based pedagogy and the four dimensions in which it manifests (Kumaravadivelu 2006:167). Method (the

ideology of traditional pedagogy in general) marginalizes certain groups. The marginalization could be conceptualized in terms of scholastic, linguistic, cultural, and economic dimensions. The favored Western metanarrative dominates the scholastic dimension; for example, British and American substantive law dominates EALP textbook content (*cf.* Chapter 10). The linguistic dimension of method prevents L2 teachers and learners from relying on their L1 linguistic resources thus favoring native English speaking teachers. The cultural dimension equates ELT to English acculturation. The linguistic and cultural dimensions ensure the economic sustainability of native English speakers, “sometimes at the expense of qualified local candidates” (Kumaravadivelu 2006:168). Through a semi-structured group interview with secondary school students in Hong Kong, Ma and Ping (2012:295-299) found that English teachers from the outer circle of world English (local English teachers) were preferred because of their knowledge of students’ L1, understanding of students’ learning difficulties, and ease of communication with students. However, teachers from the inner circle (native English teachers) were preferred because of their fluency in English and facilitation of learning.

### 6.2.2 Parameters of postmethod pedagogy

As a result of the systematic critique against method, Kumaravadivelu conceptualizes postmethod pedagogy in terms of three interrelated parameters, *viz.* particularity, practicality, and possibility.

#### 6.2.2.1 Particularity

*Particularity* attempts to rectify the problem of the fifth myth, *viz.* the neutrality of method causes tension between the particularities and generalities of pedagogy. Particularity is sensitivity toward the context of language education, which should be “based on a true understanding of local linguistic, sociocultural, and political particularities” (Kumaravadivelu 2001:537; 2006:171). Particularity is the recognition of local narratives in all their subtleties; in other words, the whole is more than the sum of its parts.

This means that the particularities of EALP include the intricacies of legal language and legal genres, the exigencies of sociopolitical contexts of local legal jurisdictions, substantive law, law schools, and the lived experiences of teachers and students.

Because of all the differences that particularity subsumes across the circles of world English, one universal set of pedagogic aims and objectives may not suffice (Kumaravadivelu 2001:538). However, legal English is the common denominator across the circles of world English; hence, the circles inevitably share sets of particularities, such as the lexico-grammatical features of legal English and the pervasiveness of traditional legal education. In addition to the similarities, EALP curricula in the different circles of world English could account for local particularities by using legal English in the contexts of references to local culture, politics, legal jurisdiction, and substantive law. The recognition of particularity is not novel in the law schools. Law school academic support programs were devised precisely to address the special needs of socially and culturally diverse students (*cf.* Chapter 9).

The emphasis on particularity could lead postmethod pedagogy to adhere to the first myth of method. Because postmethod succeeds method diachronically scholars should not assume that it necessarily rectifies the wrongs of method. A critical self-awareness remains essential.

#### 6.2.2.2 Practicality

The second parameter is *practicality*, which relates to the fourth myth that explicates the artificial divide between theory and practice. The reversal of teacher-student roles is promoted by learner-centered pedagogy; however, postmethod pedagogy expands the role-definition to account for larger power relations in pedagogy. Practicality is the recasting of roles where teachers construct their own theories of practice. A distinction is made between professional and personal theories. Specialists at institutions of higher learning formulate professional theories, and personal theories refer to the practical application of professional theories (Kumaravadivelu 2001:540; 2006:172).

The distinction also influences the notions of reflective teaching and action research. Kumaravadivelu (2001:540) considers Elliott's description of action research a method "to improve practice rather than to produce knowledge." Clinical legal education is a prime example of the philosophy of practicality as method in action.

However, it would be incorrect to assume that just because clinical education improves practice, it does not contribute substantially to practical knowledge.

Kumaravadivelu (1994:27) argues that the postmethod condition could “refigure the relationship between theorizers and teachers by empowering teachers with knowledge, skill, and autonomy.” Where method authorized theorizers to create knowledge-based pedagogic theories, postmethod empowers instructors to create classroom-oriented theories (Kumaravadivelu 1994:29). Like the social constructionist and critical literacy approaches, postmethod redefines the relationship between center and periphery; therefore, teachers theorize pedagogy.

### 6.2.2.3 Possibility

Finally, *possibility* involves the creation of identity through the sociopolitical consciousness of participants. Identity is based on relations of class, race, gender, and ethnicity. Together with theory, knowledge, and social practice, individual experiences should inform the pedagogic setting. Because individual experiences are subjectively perceived, experience as “possibility” is similar to particularity. “These experiences have the potential to alter pedagogic practices in ways unintended and unexpected by policy planners, curriculum designers, or textbook producers” (Kumaravadivelu 2001:543). As such, postmethod possibility imbricates research in academic discourse socialization that considers race (Bucholtz 2011), gender (Kyratzis & Cook-Gumperz 2008), and culture (Morita 2009).

Together particularity, practicality, and possibility have reconfigured teacher-student roles in postmethod pedagogy. Teachers assume more autonomy as practicality recognizes the important role of teachers in theorizing pedagogy. Where method-based pedagogy neglects the wealth of knowledge accumulated by practicing teachers, postmethod recognizes prior and potential knowledge to act autonomously (Kumaravadivelu 2001:574; 2006:178). Although experienced teachers may exercise principled and pragmatic autonomy, inexperienced teachers may initially need more guidance. Therefore, postmethod pedagogy relies on self-reflection that subsumes the sociopolitical dimensions of pedagogy to enhance teachers’ personal knowledge.

### 6.3 Literacy pedagogy

A definition of *literacy pedagogy* necessitates a description of *skills*, *literacies*, and *literacy skills*. These delineations are vital because of the analysis of legal skills in Chapter 10.

*Skills* may be understood from a traditional perspective where language teaching focuses on four linguistic skills, *viz.* reading, writing, listening, and speaking (Hinkel 2010:n.p.). These skills could be deconstructed to identify their constituent parts, such as text previewing or reading for main ideas and details (Santamaria 2011:xiv). The acquisition of skills is associated with an emphasis on practice and output of language by students instead of mere input by teachers (Crookes & Chaudron 2001:30).

Critical literacy pedagogy evolved to transcend disenfranchised communities and influence mainstream academia where *literacy* became *literacies*. Johns (1997:2-3) offers a systematic analysis of the term across socioliterate pedagogy. In its plural form, *literacies* are the process of becoming literate or knowledgeable. Literacies are inclusive and extend beyond individual skills such as reading or writing. Literacies evoke the influence that different skills have on each other, such as the influence of critical thinking on reading comprehension. To become literate means to become knowledgeable about subject content, languages, and practices. Literacies connect skills and knowledge with the social contexts of discourses and the participants or communities involved. Therefore, literacies include the learning process, literacy products, and participants. Because literacies are not isolated, they recall previous experiences and situated and distributed cognition.

The compound term *literacy skills* is often used to refer to a broader linguistic context related to certain skills. Simultaneously *literacies* broadens the scope and a *skill* provides specificity. That is, young and adult L2 learners approach language learning neither as *tabula rasa* nor necessarily with an innate universal grammar. Literacy skills of young learners may include reading, phonological awareness, vocabulary development, and fluency in letter naming (Good, Gruba, & Kaminski 2002:699; Kaminski & Good 1996:215). In adult tertiary education, academic literacy skills for writing may refer to structure and progression of the text, the use of sources or references, control of academic writing style, and grammatical accuracy (Holder *et al.*



1999:22). The literature therefore demonstrates that skills are associated with the four traditional language skills and literacy provides a broader intellectual context (Brown 2007b:142; Johns 1997:2; Kalantzis, Cope, & Harvey 2003:18; Scribner 1984:7). Across literacy traditions, *literacy* may therefore be described as a “set of socially and culturally constituted practices” (Giampapa 2010:410). However, in the context of legal education, the term *literacies* is avoided as it refers to educating the public about legal issues; instead, the term *skills* is used throughout (*cf.* Chapter 10).

Literacy pedagogy is quintessentially learner-centered and participatory. The principal underpinning of literacy pedagogy is knowledge about learners “their resources, their needs, and their goals for learning English” (Weinstein 2001:172). Literacy pedagogy (at least in the context of adult language learning) may be seen as an extension of content-based instruction in the form of immigrant on-arrival programs (*cf.* Richards & Rodgers 2001:205; Weinstein 2001:171). The Australian genre movement initially addressed immigrant education with the aim of assimilating immigrants into Australian society. Therefore, it is being criticized for maintaining “genres of power” (Kratz 1989:636). In the systemic functional linguistic paradigm, Kalantzis and Cope argue for direct instruction on “genres of power”; however, such instruction is subject to ideological critique (Luke 2012:8).

Literacy pedagogy is used as a collective term to refer to three interconnected literacy approaches, *viz.* critical literacy pedagogy, multiliteracies pedagogy, and new literacies studies. Although *critical literacy pedagogy* originated in the 1970s, its profound critical evaluations of the political fluxes in education are conceivably more relevant now than ever before. The sociopolitical character of critical literacy pedagogy together with communicative changes brought about by global cultural and linguistic diversity and the recognition of the circles of world English stimulated a *multiliteracies* perspective (Kalantzis *et al.* 2003:17-18). Globalization and digitization brought about the digital turn and a shift in focus from print-based reading and writing practices to include *new* textual practices that are mediated by digital technologies (Mills 2010:247). *New literacies studies* articulate the omnipotence of digital media through the Internet and the nature of contemporary teaching and learning after the digital turn.



### 6.3.1 Critical literacy pedagogy

Critical literacy pedagogy is considered from a postmodern, Freirean perspective with particular contributions articulated by Giroux. In this section, the sociopolitical epistemological underpinnings of critical literacy pedagogy introduce a description of the three main attributes of critical literacy. This is followed by a description of the roles of teachers and learners and concluded with a critical evaluation of critical literacy as a social practice and functional grammar.

Drawing on neo-Marxism, Freire argues that the school epistemology (curriculum) is determined by the ruling class ideology, which then exacerbates the passive reproduction of a complacent epistemology (Cho 2010:311; Luke 2012:7). Freire ponders: “if literacy is such an obvious benefit, why are there those in literate cultures who cannot read and write? Are they not simply the dispossessed?” (Meek 2013:vi). In response, Giroux (2013:7) affirms: “[t]o be literate is *not* to be free, it is to be present and active in the struggle for reclaiming one’s voice, history, and future. [L]iteracy neither automatically reveals nor guarantees social, political, and economic freedom.”

*Critical literacy* may therefore be described as the different associations and experiences created through discursive and cultural abilities that subsist among learners and the worlds they inhabit (Giroux 2013:7). Literacy in the Freirean view, as articulated by Giroux (1992:2-3)

- is a stance that illuminates the “historically and socially constructed strengths and limitations of those places and borders we inherit and that frame our discourses and social relations;”
- is an ethical endeavor, which influences ontological constructions; and
- is critical of intellectual habits that proliferate specific forms of doing.

Consequently, as an ideology “individual literacy [becomes] relative to social literacy” (Scribner 1984:8). Literacy becomes “cultural currency” or a marker of cultural deprivation or saturation (Giroux 1988:61). As such, literacy becomes critical because it is overtly political (Luke 1996:308-309; 2012:5).

Giroux (2013:8) argues that critical literacy as a social construction includes experiences from the privileged, hegemonic center as well as a contrasting notion of illiteracy as the “experience[s] of the other” subaltern. To characterize the experiences of “the other” as illiteracy highlights the political dimensions of critical literacy; however, it also reiterates the prevailing narrative of dominant societies. One needs to recognize that even in the subaltern, forms of literacies exist that ensure its survival. These literacies may not be related to research skills or computer literacies, but they remain literacies nevertheless as they require different intelligences. In the South African context, examples are provided of literacies needed by urban taxi drivers (Breier, Taetsane, & Sait 1996:213) and rural workers (Gibson 1996:49).

In a similar vein, Giroux (1992:8) affirms that students need more than just information on job applications or test procedures. *Student roles* include being “able to assess dominant and subordinate traditions so as to engage their strengths and weaknesses.” In order to access such traditions, students may have to utilize externally derived literacies (Street 2004:329). Or as Rooney in conversation with Spivak contends: “The position that only the subaltern can know the subaltern [...] cannot be held as a theoretical presupposition [...] for it predicates the possibility of knowledge on identity” (Spivak 2012:9).

The roles of teachers and learners include conventional pedagogic roles and ideological roles that explicate the political and situational character of critical literacy pedagogy. In the context of conventional pedagogy, teachers and researchers explore the community that learners inhabit and identify generative words familiar to learners. These words are then used as a functional grammar in classroom procedures to assist learners to process the syllabus and deconstruct their communities (Weinstein 2001:180). Teachers facilitate learning by encouraging students to find solutions for the problems in their communities. Critical literacy is political because it attempts to liberate learners from oppressive circumstances, and situational because it is situated in the lived realities of the learners (Giroux 1992:2).

Because literacy is recognized as a social practice and functional grammar, it creates tension between “literacy as teaching the ‘cultures of power’ and literacy as a practice [of] acknowledging and fostering diversity” (Pennycook 1996:164). It is therefore not

surprising that critical literacy should be understood in terms of contexts of use (circles of world English), ideological influences (jurisdictional substantive law), and social power (geopolitics) (Pennycook 1996:163; Scribner 1984:12). As an outcome of sociocultural transmission that transcends legal jurisdictions and the circles of world English, literacy cannot remain static and is only relatively “universal” (Scribner 1984:7-8). To address Pennycook’s (1996) concern over the power relations and the uniformity that literacy invokes, literacy could be understood on a continuum to reveal its evolving character over time and space (Scribner 1984:10-11). Multiliteracies pedagogy developed because literacy has evolved.

### 6.3.2 Multiliteracies pedagogy

The discussion of multiliteracies begins with a brief description of multiliteracies pedagogy and its theoretical underpinnings. These underpinnings include four points of discussion: multiliteracies ontology, multiple meaning-making modes, teacher and student identities, and the relationship between local and global pedagogy. Because genre and discourse display multiple eclectic worldviews, multiliteracies pedagogy and discourse communities are considered malleable. The keen interest of multiliteracies in the new literacies associated with new technologies leads to the discussion of new literacies studies.

*Multiliteracies* is a term that was introduced at the first meeting of the New London Group in 1994 to express their approach to literacies pedagogy as influenced by rapid globalization, technological improvements, and increased social and cultural diversity (New London Group 1996:63).<sup>2</sup> Gee (2009:196) describes *literacies* (in the multiliteracies context) as “embedded in multiple socially and culturally constructed practices, not seen as a uniform set of mental abilities or processes.” These social and cultural processes are complex as they involve values, behaviors, and interaction with various technologies, objects, spaces, and temporal relations (Gee 2009:197).

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<sup>2</sup> Although the “manifesto” (*A Pedagogy of Multiliteracies: Designing Social Futures*) of the New London Group (1996) was written by its members, reference is made to them collectively as the New London Group. The original members were Courtney Cazden, Bill Cope, Norman Fairclough, James (Jim) Gee, Mary Kalantzis, Gunther Kress, Allan Luke, Carmen Luke, Sarah Michaels, and Martin Nakata.

The description of multiliteracies may be illuminated through an analysis of its three philosophical underpinnings. These underpinnings include the following:

- the construction of an epistemology through multiple meaning-making modes;
- the dynamic relationship between local and global; and
- identity as the “designer” and product of a multiliteracies ontology.

First, in contrast to traditional psychology that considered the brain as a container of mental representations, multiliteracies pedagogy and new literacies studies have grounded their epistemology on knowledge as socially constructed cultural practices (Gee 2009:198). Such epistemology is inculcated with the interconnectedness of visual, aural, spatial, and behavioral modes of contemporary communication.

The multiplicity of meaning-making modes is especially significant for technology-mediated language learning programs (Brown 2007b:200). Because multiliteracies pedagogy accentuates the multimodality for language learning in the digital discourse community, its epistemology for learning is based on a notion of situated cognition. Thinking and learning are connected to and are changed in reaction to various situations, and the process is not generalizable, definable, or bound to rules (Gee 2009:198). Hence, a multiliteracies epistemology for learning evolves in relation to sociocultural practices. Because of the digitization of society, multiliteracies pedagogy is profoundly interested in the interface between technology and learning, thus intersecting with new literacies studies.

Multiliteracies ontology is not based on generality or abstraction, but on the notion that knowledge is entrenched in “social, cultural, and material contexts” (New London Group 1996:82; *cf.* Gee 2009:198). Similar to postmethod pedagogy, multiliteracies pedagogy considers knowledge as the result of mutual collaborations with people of different aptitudes, backgrounds, and persuasions. They collaborate in an “epistemic community [...] centered around a specific (historically and socially constituted) domain of knowledge” (New London Group 1996:82).

The second underpinning relates multiliteracies identity-creation to its pedagogic ontology and epistemology as they inform teacher and student roles or identities. Identity roles are mediated through socially recognized discourses that belong to communities of interest (Mills 2010:249). Literacies as social discourses mediate community identities. These identities express the ontological and epistemological underpinnings of multiliteracies.

At the center of the relationship between learners and teachers is the notion that learned knowledge is indeed functional and of personal and community interest. As such, learning as situated practice and as immersed pedagogy should consider the “affective and sociocultural needs and identities of all learners” (New London Group 1996:85). This relationship and its identities are constructed in a learning environment that supports multiple literacy practices based on an epistemology of plurality (Giampapa 2010:410-411). For example, when teachers assess student work, it should not be done to pass judgment, but to serve as a developmental learning curve that recognizes plurality of meaning. Where learners initially draw on guidance and assistance, their increased multiliteracies enable them eventually to contribute to the discourse community as members with identity fragments sculpted in the literacies of that community (New London Group 1996:86).

The third underpinning contextualizes multiliteracies as they are globally connected yet locally diverse (New London Group 1996:64). The dynamic effects of globalization necessitate effective interaction across the circles of world English, recognizing and using multiple English and multimodalities. However, Pennycook argues “[t]here is much talk of hybridity [...] of various multi’s, of global diversity, and so on. What, for example, do they mean by ‘increasing local diversity and global connectedness’. For whom? Where?” (Pennycook 1996:169). Instead of emphasizing the shift of cultural relations, Pennycook claims that the New London Group is concerned with providing access to power. In the context of legal English, it is insightful to turn to Williams (2008) who argues that the legal cultures of the countries in the English-speaking world are distinctly different. Therefore, a “plurality of legal English” exists (Williams 2008:10). Multiliteracies pedagogy simultaneously recognizes English as an international legal lingua franca and local variants of legal English.

Global connectedness does not necessarily entail hegemonic enforcement of discourses of power. For example, while the text features of genres used by the global legal discourse community are assimilated and reproduced, multiliteracies pedagogy does not endorse a blatant acceptance of the status quo. Teachers bear the responsibility to cultivate a critical stance with their students to question and evolve existing genres and language use (Johns 1997:17-18). Technological developments have encouraged the use of creative legal language. For example, a *shrinkwrap license* is an agreement between a software user and developer merely by opening a context (pop-up) menu. Similarly, a *clickwrap license* is the acceptance of an agreement by clicking on a semiotic icon (Williams 2004:112-113; Davis 2007:577). Such an application provides an available local design. By *designing*, the conventions of this application are simultaneously reproduced (globalized) and transformed (localized) to create *the redesigned*.

Multiliteracies metalanguage uses the terms *genre* and *discourse* to illuminate design. “Genre is an intertextual aspect of a text” (New London Group 1996:78), and it may be understood in terms of cultural and social contexts, institutional location, relations among texts, and social practices. Genre illuminates intertextuality and should also be understood in relation to discourse. Discourse is a construction of reality where language is used as a social practice that is designed by other discourses, cultures, and grammars. The diversity of discourses accentuates the multiplicity of speeches, perspectives, and interests.

Discourses and genres “are not homogenous, singular, pure, or static forms [of communication]; they often contain hybrid and multimodal features and change over time and across contexts and are exacted within the constraints and contingencies of each local setting” (Duff 2010:176). As such, multiliteracies pedagogy agrees with Miller’s new rhetorical understanding of genres as changeable “responses to social situations that are part of a socially constructed reality” (Paltridge 2007:934). It is also associated with Morgan’s (2004:5) understanding of malleable discourse communities.

Where Swales’ (1990) description of the discourse community focuses more on the relative stability of genres as a result of the implicit rules and social practices of the

community, multiliteracies emphasizes changes, differences, and conflicts among discourses and the effects on students. For example, Leibowitz (2005:676) reports within the South African context how social class, race, and power encroach on discourse, literacy, and language use at university level. Leibowitz provides a critical pedagogic view on the academic discourse community to accentuate relations of power and knowledge (*cf.* Cho 2010:311). A lack of access to the dominant language and discourses is associated with compromised writing performance.

Because multiliteracies are interconnected with evolving cultures and contexts, the notion of appropriate literacies pedagogy should change accordingly. Rowsell, Kosnik, and Beck (2008:110) argue that a larger diversity of language forms should be included simultaneously in one teaching assignment. The challenge is that literacies and topics included in the curriculum may become excessively elaborate and overwhelm students and teachers. Kalantzis and Cope (2000:147) caution that the diversity of multiculturalism could become trivialized, resulting in a “shopping mall curriculum.” However, curricular or pedagogic eclecticism does not necessarily equate mediocre education. Legal English-type textbooks are characteristically eclectic in the variety of content that they address; such eclecticism is a functional and situated response to the eclectic realities of the legal discourse community (*cf.* Chapter 10).

Figure 6.1 summarizes the philosophical underpinnings of multiliteracies pedagogy. The intersection between global and local that produces multicultural and the eclectic character of multiliteracies may contribute to an expansive and blurred “shopping mall curriculum.” However, as the Venn diagram illustrates, the nexus between worldview, identity, and global and local tapers multiliteracies pedagogy. The connection between global and local illustrates that discourse and genres may be shared, belong to either side, or fall outside the purview of both to belong to another local community. The same principle may apply to the formation of the worldview and identity.

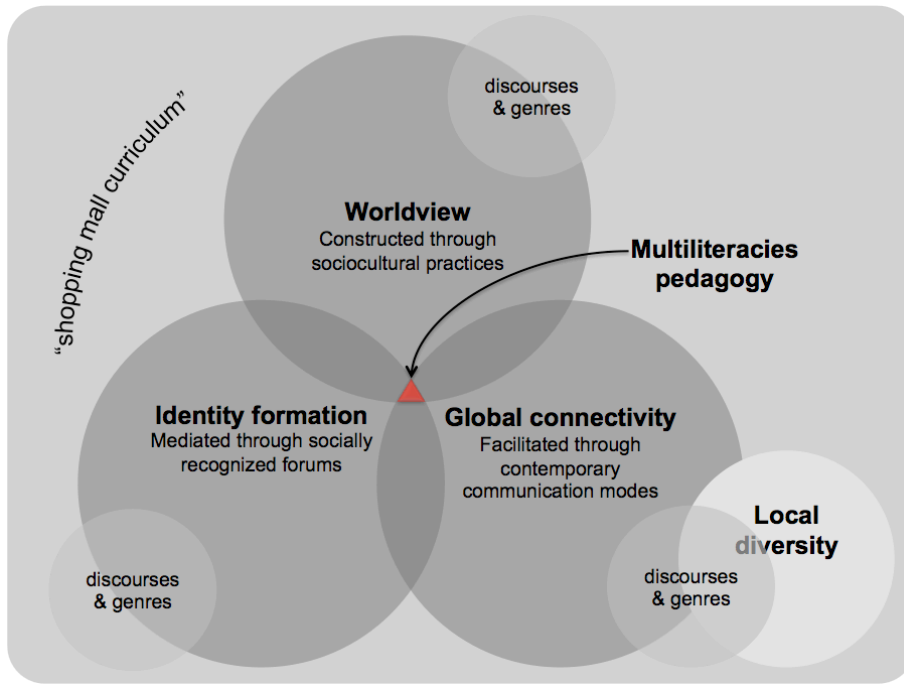


Figure 6.1: Philosophical underpinnings of multiliteracies pedagogy

The keen interest that multiliteracies researchers display in the use of new technologies in education strengthens the collaboration between multiliteracies pedagogy and new literacies studies.

### 6.3.3 New literacies studies

In this third part on literacy pedagogy, a brief introduction contextualizes new literacies studies within L2 pedagogy. The contextualization facilitates a more informed definition of new literacies. In contrast to traditional and transitional L2 pedagogic methods and approaches, new literacies studies display an explicit interest in digital L2 pedagogy, which enables this chapter to conclude at the frontier of 21<sup>st</sup> century education. Web 2.0 pedagogy epitomizes the digital turn in education. In order to comprehend the avant-garde, digital discourse community, it is essential to understand the domains in which digital natives exist, *viz.* hypertext, augmented reality, and virtual reality.

The relationship between new literacies studies and previous approaches may be explicated in terms of applied linguistic theory, a theory of learning, and critical literacy. Multiliteracies attempt to formulate an applied linguistic theory that is of use in pedagogic settings. As a sociocultural approach, new literacies studies did not



express an initial, explicit interest in formulating pedagogic theory (Rowse et al. 2008:111). However, contemporary new literacies studies are productive in their formulation and application of pedagogic theory. For example, in *A Multiliteracies Perspective on the New Literacies*, Kalantzis, Cope, and Cloonan (2010) propose that multiliteracies scholarship provides a sound pedagogic framework for new literacies studies. In addition, where traditional pedagogy is based on a cognitive theory of learning, new literacies studies display a distinct ethnographic approach to communication in various social and cultural contexts inside and outside of education (Street 2012:28). Hull's (2003:232) *Youth Culture and Digital Media: New Literacies for New Times* serves as apt example in which digital storytelling facilitates trauma management through the multimodality of digital genres. Finally, similar to multiliteracies, the critical dimension of new literacies is also expressly political. For example, Kellner (2000:245-246) suggests that immigration patterns, racial, ethnic, and multicultural variables should be considered in the reconstruction of contemporary education in the United States. Kellner (2000:245; 2002:90-104) maintains a critical literacy perspective on the inclusion of marginalized groups that gain new literacies through new technologies.

### 6.3.3.1 Definition of new literacies

The *new* in *new literacies studies* refers to the new forms of technology (Lankshear & Knobel 2007b:224) as well as the *new* studies (Street 2003:77-91). The manner in which literacy is conceptualized and researched is new or different from previous approaches (Street 2012:28). New literacies studies describe literacy as “a repertoire of changing practices for communicating purposefully in multiple social and cultural contexts” (Mills 2010:247). Similar to multiliteracies pedagogy, new literacies studies consider literacy as “constructions of particular social groups, rather than attributed to individual cognition alone” (Mills 2010:247). Thus, new literacies support situated (Gee 2009:198) and distributed theories of cognition (Watson-Gegeo 2004:333). Lankshear and Knobel (2007a:1) propose that “[t]he more a literacy practice privileges participation over publishing, distributed expertise over centralized expertise, collective intelligence over individual possessive intelligence, collaboration over individuated authorship, dispersion over scarcity, sharing over ownership [...] the more we should regard it as a ‘new’ literacy.” Figure 6.2 presents these

differences on a continuum as they could maintain their evolution into the future of pedagogy.

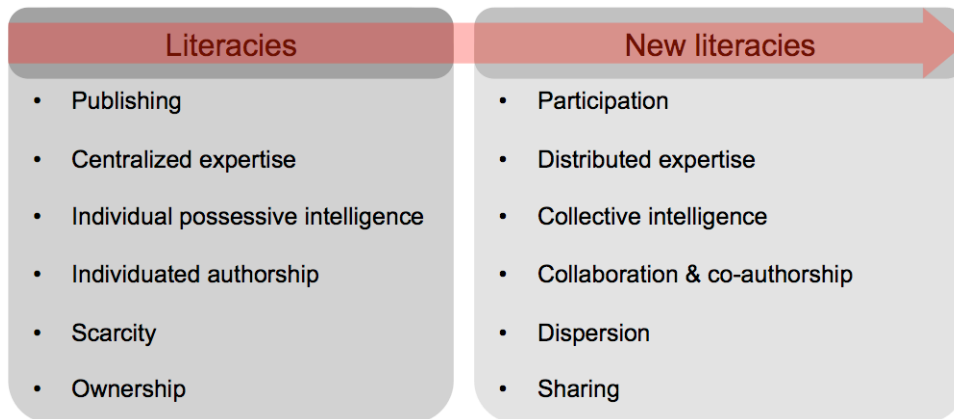


Figure 6.2: Differences between literacies and new literacies

This description is vulnerable to critique because of the opaque parameters it creates for literacy (Mills 2010:249). However, in the context of traditional literacy, Scribner (1984:6-7) argues that the ambiguity of an open definition prompts more encompassing descriptions that increase the scope of literacy problems, stimulate the reevaluation of program objectives, and change perceptions about community identity.

The open definition of new literacies has stimulated creative research. Cope and Kalantzis (2009:165-166) argue that a broader interpretation of multilingualism and discourse variances within a language have not been addressed adequately in the past. Traditional curricula were formulated around singular scientific standards, but everyday experiences prove that standards became the exceptions. Because of its broad description of literacy, new literacies studies fill this void by addressing literacy practices in different geographic research sites (Janks 2000; Mukama & Anderson 2008), and within bilingual, multilingual, and L2 socioeconomic communities (Ajayi 2011; Leibowitz 2005). New literacies also address online literacy practices that rely on various platforms (Levy 2009; Yi 2008), and digital media production (Albers & Harste 2007). These latest research strands related to digital education are particularly important to EALP since legal practice requires digital literacies from young lawyers (*cf.* Chapter 9). One possible response to these demands is Web 2.0 pedagogy.

### 6.3.3.2 Web 2.0 pedagogy<sup>3</sup>

A brief retrospective look is warranted to contextualize Web 2.0 pedagogy. Its predecessor, Web 1.0, could be described in terms of traditional pedagogy. Like lecturers, web developers provided information for consumption and storage. Developers were “experts” with authority over content. The content was bound to a single webpage, while novice consumers passively bought bytes of data (Lankshear & Knobel 2007b). The emergence of Web 2.0 caused a pole shift in web-relations and the protocols of digital interaction.

The term *Web 2.0* was coined by DiNucci, and popularized by O’Reilly at the *O’Reilly Media Web 2.0* conference in 2004. Lankshear and Knobel (2007b) describe Web 2.0 as focused on services and enabling rather than on production and consumption. Construction relies on collaborative and collective participation and “distributed expertise and intelligence” (Lankshear & Knobel 2007b:227). The term is most appropriately described on Wikipedia, which is itself a prime example of Web 2.0.

A Web 2.0 site may allow users to interact and collaborate with each other in a social media dialogue as creators of user-generated content in a virtual community, in contrast to websites where people are limited to the passive viewing of content. Examples of Web 2.0 include social networking sites, blogs, wikis, folksonomies, video sharing sites, hosted services, web applications, and mashups”  
([http://en.wikipedia.org/wiki/Web\\_2.0](http://en.wikipedia.org/wiki/Web_2.0)).

The expert is subverted, and the novice is empowered. Dominant metanarratives share space with the voices of the subaltern. The increase in web traffic necessitated a data measurement change from tens of bytes to terabytes. Web 2.0 “exploits the participatory potential” of the Internet to provide a collaboration-oriented and community-based learning environment (Wang & Vásquez 2012:412-413).

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<sup>3</sup> Although Web 3.0 is being conceptualized and theorized, the discussion is limited to Web 2.0. However, it is worth pointing out that initial descriptions of Web 3.0 refer to an Internet managed by experts and authorities for profit. If Web 3.0 develops as a business model managed by the powerful, then the political agenda of critical literacy pedagogy is equally applicable in cyberspace.

Toward the end of the first decade of the 2000s, scholarship proliferated on Web 2.0 pedagogy specifically related to L2 learning. Wang and Vásquez (2012:418) wrote a comprehensive review and identified three broad categories of research on Web 2.0 pedagogy. These categories include linguistic issues, technological issues, and issues related to language learning. For the purposes of this study, these three issues are conceptualized and theorized as follows. Firstly, a principal linguistic issue that affects language learning is text, more specifically hypertext. Hypertext is multimodal and offers specific challenges and advantages for L2 learning. Secondly, technological issues are concerned with the tools used for language learning.<sup>4</sup> In this section augmented and virtual reality are explored as facilitative language learning tools. The nature of augmented and virtual reality inevitably illuminates the ontology of Web 2.0 pedagogy. Thirdly, because Web 2.0 ontology is community-generated and heteroglossic, its language learning theory is based on the notion of social learning in the digital discourse community (*cf.* Ullrich, Borau, Luo, Tan, Shen, & Shen 2008:713).

### 6.3.3.3 Hypertext as digital language

New literacies scholars theorize that “all writing is situated and indicative of broader social practices” (Hyland 2003:22). In the context of the digital age, EALP could turn to new literacies scholarship to conceptualize the changing nature of SLA as it is mediated by technology (Mills 2010:247; Rowsell *et al.* 2008:111). The rapid spread of technology and the emergence of “hybrid digital forms” (Mills 2010:248) or “non-linear, multi-modal, web-mediated documents” (Askehave & Nielsen 2005:120) urgently demands a re-evaluation of conventional static text.

Mills (2010:247) traces the digital turn to the early 1990s with the increased mediation of textual practices through digital technologies. Lasso mentions Theodor Nelson who, as early as the 1960s, coined the term *hypertext*. Nelson described

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<sup>4</sup> In their comprehensive review of L2 learning in the digital age, Wang and Vásquez (2012:424) found that the most significant benefit of Web 2.0 pedagogy is the creation of a “favorable language-learning environment.” One has to question then, why physical learning environments are not necessarily favorable. The effects of physical environments on learning are researched extensively but fall outside the purview of this study (*cf.* Flutter 2006; Gaines & Curry 2011; Walberg 1976).

hypertext (also known as digitized or digital text) as “non-sequential writing – text that branches and allows choices to the reader, best read at an interactive screen” (in Lasso 2002:7).

Hypertext may be seen in the context of conventional static text and the alphabets used for communication. Since the invention of paper more than two millennia ago and the printing press more than half a millennium ago, paper-based books facilitated textual (re)presentations and the manner of learning and teaching. Static English medium texts display words in linear, two-dimensional format based on an arrangement of letters from the Latin alphabet to form words. Logographic alphabets are slightly more versatile. English texts are printed exclusively in horizontal lines, meant to be read from left to right, top to bottom, and front to back. Thus, the reader must follow the writer’s encoded route that contains internal genre logic of progression. The manner in which learners interact with static, linear texts foster a linear way of thinking. The manner in which learners interact (read and write) with paper-based and digital texts affect thought patterns, reasoning, remembering, and communicating with others (Hull 2003:230; Mayes, Sims, & Koonce 2001:367). “As print transformed the ability of humans to learn and think, humans, in turn, transformed the world” (Lasso 2002:5). With the advent of the digital turn, logic, genre structures, and text modalities are being challenged by hypertext.

The linear reading of traditional texts does not apply to hypertext: “hypertext allows different readers to end or begin in different places by choosing different links on a screen” (Lasso 2002:8). Hypertext is therefore fluid, multidirectional, and multimodal. Lasso (2002:9) argues that the limits of the physical monitor are the limits of hypertext. However, one could argue that hypertext is limitless because of the infinite interconnectivity between hypertexts in the matrix of ones and zeros called the Internet. Because of the infinite possibility of connections between hypertexts, readers most often do not read digital texts in a linear manner. Table 6.1 summarizes the differences between traditional paper-based texts and hypertexts.

Table 6.1: Differences between traditional paper-based text and hypertext

Criteria	Traditional paper-based text	Hypertext
<b>Nature of text</b>	<ul style="list-style-type: none"> <li>• Static, two-dimensional</li> </ul>	<ul style="list-style-type: none"> <li>• Fluid, digitized tree-dimensional</li> </ul>
<b>Text structure</b>	<ul style="list-style-type: none"> <li>• Genre logic</li> </ul>	<ul style="list-style-type: none"> <li>• Free from traditional genre logic</li> </ul>
<b>Process of reading</b>	<ul style="list-style-type: none"> <li>• Linear, unidirectional</li> </ul>	<ul style="list-style-type: none"> <li>• Non-linear, multidirectional</li> </ul>
<b>Reader involvement</b>	<ul style="list-style-type: none"> <li>• Unimodal</li> </ul>	<ul style="list-style-type: none"> <li>• Multimodal</li> </ul>
<b>Reader role</b>	<ul style="list-style-type: none"> <li>• Message receiver</li> </ul>	<ul style="list-style-type: none"> <li>• Participant, interactor, and creator</li> </ul>

Today, most texts on the Internet are multimodal. Multimodal texts use more than one modality (e.g. seeing, hearing, and touching) to convey meaning. Because meaning is expressed through different modalities, modalities become “socially and culturally shaped resources” (Bezemer & Kress 2008:171). Modality is therefore a means of comprehension. Through the multimodality of digital texts, conventional readers, writers, listeners, and speakers become participants, interactors, and co-creators of realities. New literacies studies consider digital literacies as “*new* socially recognized ways of pursuing familiar and novel tasks by means of exchanging and negotiating meaning via encoded artifacts” (Lankshear & Knobel 2007b:224). The collaborative construction of reality resonances a social constructionist worldview of language as a community-generated artifact that is rhetorical-responsive and heteroglossic. Web 2.0 pedagogy seems to be embedded in social constructionist linguistics.

#### 6.3.3.4 Augmented and virtual reality as ontology

The importance of training of EALP students in the professional use of augmented and virtual reality is evident from developments in legal practice. Individual lawyers and law firms are increasing their digital presence. Initially, an online profile was necessary to establish public visibility. However, the global financial downturn of 2008 required legal practitioners to “think like lawyers.” That is, despite cuts in public legal funding, a fundamental lawyering skill requires law firms to remain profitable (*cf.* Chapter 10; Joy 2014:177-178). The stimulus to provide legal services digitally has opened a legal universe of online legal documents, virtual courts, online dispute resolution, and web-based simulated practice (*cf.* Kimbro 2011; Susskind 2013). Two leading sources on the digitization of legal practice are Kimbro’s (2011) *Virtual Legal Practice: How to Deliver Legal Services Online*, and more recently Susskind’s (2013) *Tomorrow’s Lawyer: An Instruction to Your Future*. Two platforms that assist in presenting a law firm digitally include augmented and virtual reality.

Research on the use of augmented and virtual reality in education and learning suggests that cognitive activity, motor functions, and memory retention are advanced through interaction with digitized interventions. *Augmented reality* is created when a physical realm is seamlessly overlaid with digital information and enables interaction through computerized devices such as smartphones, tablet computers, or most recently Google Glass (Billinghurst & Duenser 2012:56; Google.com 2014). In contrast to augmented reality, *virtual reality* does not facilitate interaction with physical realms since an entirely digital environment is created. Virtual reality is a computer-generated artificial environment in which participants interact with the digitized environment through sensory stimuli that elicit a response from the environment. Both augmented and virtual reality depend on multisensory perception and interaction to facilitate learning.

Augmented and virtual realities resonate with traditional sensory stimulation theory and multiple intelligences theory, both of which postulate that effective learning occurs when different senses and intelligences are engaged (Dunn 2002:1). Sensory stimulation theory has advanced considerably since the mid-1960s (*cf.* Flom & Bahrick 2007:238) to include dual coding (Clark & Paivio 1991:149); bimodality theory (Björn, Kakkuri, Karvonen, Leppänen 2012:438); the intersensory redundancy hypothesis (Bahrick & Lickliter 2000:190); cross-modal plasticity (Shimojo & Shams 2001:505); and multisensory plasticity (Shams & Seitz 2008:411). These approaches share the proposition that child and adult learning (Flom & Bahrick 2007:238) advance when multisensory perceptions, thus multiple intelligences, are used to process and internalize information.

Research into the application and advantages of augmented and virtual reality in applied linguistics is relatively sparse, but examples from other disciplines may illuminate the possible advantages. The use of augmented reality to train veterinary students in the practice of intravenous injections, suggests that the tangibility of the equipment and multimodality of the interaction promote learning (Lee, Kim, Seo, Jun, Lee, Kim, & Lee 2012:31). In terms of cognitive stimulation, Mirelman, Maidan, Herman, Deutsch, Giladi, and Hausdorff (2011:239) found that treadmill training combined with virtual reality “enhanced the ability to learn new strategies and at least



partially circumvent impaired basal ganglia loops.” Research on video gaming suggests a “strong relationship between gaming experience and other cognitive abilities” (Boot, Blakely & Simons 2011:1). Eaves, Breslin, Van Schaik, Robinson, and Spears (2011:62) found that virtual reality is an apt platform to teach “real-world motor skills.” In the field of applied linguistics, Björn *et al.* (2012:449) suggest that a multisensory approach to language learning is advantageous because it accelerates language development. The effectiveness of multisensory learning has therefore been verified across disciplines and across applications of augmented and virtual reality technologies.

The condition for multisensory learning to occur is authentic activity. Resnick (1987:13) defines *authentic activity* as an “actual cognitive process.” Because augmented and virtual reality elicit actual cognitive processes, they qualify as multisensory learning events (*cf.* Dunn 2002:1). As such, augmented and virtual reality function as cognitive apprenticeship because they activate learning experiences that foster learning at the nexus of activity, resources, and culture (Brown *et al.* 1989:32-40; *cf.* Chapter 4). Although these technologies could not replace learning in a physical realm, they have the potential to enculturate or socialize learners into the discourse community.

The consideration of augmented and virtual reality is more pronounced now than ever before because educational institutions are under pressure to produce and incorporate multimodal, hypertext, or interrelated texts in their curricula. Political pressure comes from environmentalist groups that lobby on behalf of green technology, students demand more control over the tools of education, and health groups focus on the detrimental effects of students carrying heavy books (*cf.* Heider, Laverick, & Bennett 2009:104). In 2007, the South Korean government announced that paper-based textbooks would be phased out in all primary and secondary schools to be replaced by digital textbooks (Harlan 2012:n.p). A similar announcement by the Florida Board of Education (in the United States) came in 2011 (Sokol & Solochek 2011:n.p).

These announcements, however, face justified opposition. Because of the high incidence of Internet and online gaming addiction in South Korea, socio-psychological concerns have been raised. “Education leaders [...] worry that that



digital devices are too pervasive and that this young generation of tablet-carrying, smartphone-obsessed students might benefit from less exposure to gadgets, not more” (Harlan 2012:n.p). There is also concern that the exaggerated trust in digital education does not mean an enhanced quality of education (Harlan 2012:n.p). To solve the problem, the South Korean government is issuing digital textbooks with paper versions. In Florida, socio-economic concerns have been raised about low-income and rural communities that may not have access to digital technologies. In response to these socio-economic concerns, Florida's state government is distributing Kindles free of charge to public school students to curb its \$220 million annual budget for paper books (Sokol & Solochek 2011:n.p).

The use of digital textbooks at tertiary institutions has been met with a mixed reception. Quantitative research conducted at the Louisiana State University, School of Dentistry indicates that 57.3% of 82 dentistry students preferred printed to digital textbooks. In addition to owning a collection of printed books, students complained about the discomfort of reading on a computer monitor (Strother, Brunet, Bates, & Gallo 2009:1365). At Suffolk University's Department of Strategy and International Business (Boston, the United States), a longitudinal quantitative study found that 83% of students used a tablet as digital textbook and 91% preferred an e-reader. Over the course of two years, the study found an “increase in, and acceleration of the students’ willingness” to use digital textbooks (Weisberg 2011:196). The three main reasons for the embrace of digital textbooks are the lower cost of e-textbooks, an unconfirmed perception among students that devices improve learning, and recommendations by teachers. The favorable consideration in the Suffolk University study could be attributed to the rapid improvement of technology. As devices become user-friendlier their popularity might increase. In addition, as students are exposed to hypertext at younger ages, their cognitive plasticity may facilitate learning in the digital age.

The interdiscursivity and communal/collective construction of cyberspace through the multimodality of hypertexts facilitate the socio-digital construction of the realities and knowledge embraced by new literacies.

### 6.3.3.5 Digital discourse communities

Although not officially recognized in scholarship, a strong case could be made for digital discourse socialization and digital discourse communities. Digital discourse communities are connected through a common use of technology. Perhaps the most conspicuous examples of discourse communities are Facebook and Twitter with their hundreds of millions of users and members. Within the academic setting, the digital discourse community describes chat rooms, bulletin boards, and blogs for specific classes where students and teachers interact digitally with a common goal pertaining to a common subject.

Students affected most by the digital turn are Generations X and Y. *Generation X* students were born approximately between 1965 and 1982; *Generation Y* students were born roughly between 1977 and 2003 and are also known as the *millennial generation* or *millennials*. Millennials grew up believing that information is readily available through the Internet for “virtually their whole lives” (Bohl 2008:779). Millennials are highly proficient with digital technologies and are “radically influenced and altered by their experiential immersion in ubiquitous computing” (Prensky in Salajan, Schönwetter, & Cleghorn 2010:1393). In contrast to millennials, digital immigrants (people not born into the digital world) prefer printed text and face-to-face interaction (Salajan, Schönwetter, & Cleghorn 2010:1393).<sup>5</sup> According to Salajan, Schönwetter, and Cleghorn (2010:1402) the generation gap and the associated digital divide between digital immigrant and millennial students pose significant pedagogic challenges.

Educators are now facing *Generation Z* students: the first digital natives. Digital natives are the highly connected “tweens” (born between 2001-2005) of the developed world and pockets of developing countries that were born into the use of

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<sup>5</sup> The contrast between Generations X and Y is challenged because informal conversations with Generation Y students, enrolled in an advanced EAP course at Seoul National University, confirms that millennials prefer printed text for study purposes and face-to-face interaction with peers and teachers in the pedagogic setting. The initial assumptions drawn from this conversation have been confirmed by Thompson’s (2013:12) empirical research that suggests a “less deterministic relationship between technology and learning than what the popular press writers claim.”

instant messaging, social networking sites, and smart phones. They are perhaps the first true native speakers of SMS language or “textese” (*cf.* Vodanovich, Sundaram, & Myers 2010:711). Digital natives were born into a shared networked world of ubiquitous digital technologies over which they have sophisticated control (Palfrey, Gasser, Simun, & Barnes 2009:79-81; Vodanovich *et al.* 2010:712). Digital natives value “interactivity, usability, flexibility and connectivity” (Vodanovich *et al.* 2010:713). Digital natives may prefer multimodal pedagogic styles or different “semiotic domains” (Thomas 2011:5). They rely on the multiplicity of meaning-making modes to establish their ontologies and epistemologies. Figure 6.3 presents the imbricated sequence of generations around the digital turn.

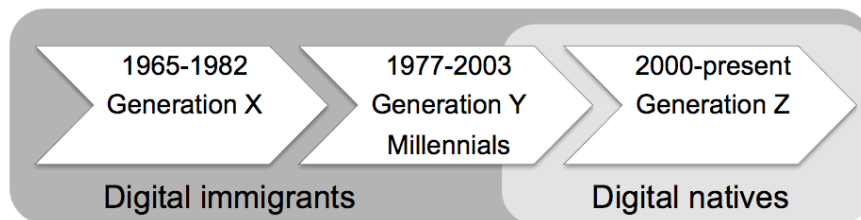


Figure 6.3: Generations of the digital turn

Although digital immigrants may be proficient in the new technologies and associate with millennials, their preferred use of technology is different from that of digital natives. The manner of application and use of e-platforms distinguish these generations (*cf.* Table 6.2). Digital immigrants use digital platforms similar to traditional printed genres. For example, e-mail is used in a similar manner as traditional letters where physical distance and asynchronicity are valued. Blogs, defined as opinion-sharing websites (New Oxford American Dictionary) are used to share experiences in a similar manner as paper-based journaling. Information systems, such as websites, are used as sources of information. In contrast, digital natives share their experiences on social networking sites and apply the blog as intellectual tool to communicate ideas. Instead of being consumers of information systems, digital natives are often the inventors of information systems (Vodanovich *et al.* 2010:712).

The manner in which digital natives use and apply communicative electronic platforms is more communal, discursive, and multidirectional than the use and application by digital immigrants. Instant messaging and speed texting is often conducted in chat rooms, and blogs are used for discussions. As such, digital natives

create, constitute, and inhabit a more cohesive, prolific, and rapidly evolving digital discourse community than digital immigrants do.

Table 6.2: Communicative characteristics of digital immigrants and digital natives (Vodanovich *et al.* 2010:712).

	Digital immigrants	Digital natives
<b>Preferred electronic communication</b>	<ul style="list-style-type: none"> <li>Asynchronous e-mail</li> </ul>	<ul style="list-style-type: none"> <li>Synchronous instant messaging</li> </ul>
<b>Phone used for</b>	<ul style="list-style-type: none"> <li>Speaking</li> </ul>	<ul style="list-style-type: none"> <li>Speed texting</li> </ul>
<b>Blogs used for</b>	<ul style="list-style-type: none"> <li>Share personal experiences and online journaling</li> </ul>	<ul style="list-style-type: none"> <li>Intellectual tool to share and discuss ideas</li> </ul>
<b>Role in information systems</b>	<ul style="list-style-type: none"> <li>Users of content</li> </ul>	<ul style="list-style-type: none"> <li>Creators of content and active participants</li> </ul>
<b>Criteria for use of digital platforms</b>	<ul style="list-style-type: none"> <li>Functionality</li> </ul>	<ul style="list-style-type: none"> <li>Functionality, interactivity, usability, flexibility, and connectivity</li> </ul>
<b>Constitutes</b>	<ul style="list-style-type: none"> <li>Academic discourse community</li> </ul>	<ul style="list-style-type: none"> <li>Digital discourse community</li> </ul>

Because the academic discourse community depends on institutionalized communication styles, relatively reified genres, and information systems or structures created and maintained by digital immigrants, it seems inevitable that millennials and digital natives may experience navigational inertia in systems or structures that have remained relatively static for centuries.

As a result of the generational differences at least four pedagogic challenges emerge regarding copyright, personality, teaching and learning, and cognition.

Firstly, digital natives are aware of peer-to-peer sharing of files before they learn about copyright issues (Palfrey *et al.* 2009:80), which contests traditional views on intellectual property and citation styles addressed as ethical issues by EALP-type textbooks (*cf.* Chapter 10). The intersection between conventional patents, copyrights, and intellectual property rights, on the one hand, and their manifestations in virtual domains, on the other, summons a prolific debate that is beyond the scope of this study (Balkin 2004; Koepsell 2003; Maloney 1997; Rangnekar 2011). However, Andrade (2009:3-4) argues that personality formation in/by the psyche through a virtual avatar is an extension of the personality and constitutes property rights of an individual. If the digital (virtual) domain is entitled to the same rights and privileges as the physical domain, then the digital discourse community should also be

recognized as an equal among academic discourse communities and communities of practice.

Moreover, Andrade (2009) argues that digital natives evolve multiple personas as they form actual personalities as well as online identities (or alter-egos) (*cf.* Greenhow, Robelia, & Hughes 2009:255). As the digital discourse community comprises of and embraces a collage of “pastiche personalities” in a technologically and “socially saturated world” (Gergen 1991:170), the multiple and collective selves experience a temporary separation of Cartesian mind and body duality (Talamo & Ligorio 2001:120). This separation occurs so as to empower the distributed cognition of digital natives to (re)connect with the Confucianist or *ubuntu* collectives (*cf.* Chapter 4).

The third implication of the differences in communication illuminates language teaching and learning. The implications for language teaching are sweeping as teachers have to decide if and how they may participate in didactic cyberspace (Lemke 1993:n1). “[O]ne can justifiably ask whether the education system is to an increasing degree cultivating the observer role [among teachers] by not taking a position on the new conditions for education?” (Buehl 2008:n.p). If teachers perform inactive, observer roles and students more active, constructive roles, then the differences in communicative characteristics of digital immigrants and digital natives (*cf.* Table 4.7) validate Beuhl’s argument. Arnó–Macià (2012) provides an astute analysis of the role of technology in the teaching of language for specific purposes. This analysis leads Arnó–Macià (2012:100-101) to propose three suggestions: knowledge sharing occurs more easily with the aid of technology; discipline-specific input is obtained more readily; and social, learning, and professional practices are integrated more effortlessly. This means that language teaching that embraces the digital discourse community nurtures learner autonomy and is student-centered. Yet it does not imply that teachers relinquish their teaching responsibilities and students to the vicissitudes of the digital discourse community.

The fourth challenge to the digital discourse community concerns cognition. Social psychological scholarship about culture and personality (Triandis 2001:907; Triandis & Suh 2002:133; Yamaguchi, Kuhlman, & Sugimori 1995:660) and sociolinguistic

scholarship about linguistic relativity (Kay & Kempton 1984:77; Perlovsky 2009a:247; 2009b:518) demonstrates that people who grow up in different cultures and speak different languages think differently. Similarly, the environment and culture of the digital discourse community affects the thought processes of discourse members. Neurological research suggests that the neural circuitry of digital natives that are emerged in a ubiquitous computing environment is profoundly different from millennials and digital immigrants (Vodanovich *et al.* 2010:3). Thompson (2013:12-23) corroborates that learner characteristics are affected by technology, but contends that it does not always increase productive learning habits. However, Thompson argues that technology has less of a deterministic effect on digital natives than has been commonly argued.

The importance of the recognition of the digital discourse community is intricately connected to critical, postmodern pedagogy and the multimodality of texts that affect learning as explicated by multiliteracies pedagogy and the new literacies studies.

### 6.3.4 Discussion

The recognition of the importance of language in the humanities signaled the linguistic turn associated with structuralism, poststructuralism, postmodernism, and social constructionism (Denzin & Lincoln 2008:26; Talja *et al.* 2005:89). With the linguistic turn meaning became more contested than before (Musson *et al.* 2007:46) resulting in the renegotiation of pedagogic worldviews. In *Toward a Postmodern Pedagogy*, Kilgore (2004:48) explains that postmodern pedagogic worldviews have become multifaceted because singular, modernist, truth cannot explain the complexities of the pluralistic, multidirectional postmodern world (*cf.* Giroux 1992:2; Luke 2012:8). Subverting modernism implies that power relations are reconfigured (Kilgore 2004:47). Thus, the authority of the traditional teacher is questioned. Postmodernists contend that authority exists only by virtue of the social granting and recognition of power (Kilgore 2004:48). Similarly, pedagogies and genres have power only through the social recognition of their power. The four approaches considered in this chapter share ontological and epistemological underpinning and could therefore be characterized as critical, postmodern approaches. Table 6.3 summarizes the characteristics of each approach.

Table 6.3: Features of critical, postmodern approaches

	Postmethod pedagogy	Critical literacy pedagogy	Multiliteracies pedagogy	New literacies studies
<b>Theoretical underpinnings</b>	<ul style="list-style-type: none"> <li>Anti-theoretical</li> </ul>	<ul style="list-style-type: none"> <li>Neo-Marxist theory</li> <li>Literacy is overtly political, is an ethical endeavor, and critical of intellectual habits.</li> </ul>	<ul style="list-style-type: none"> <li>Relational social constructionism</li> <li>Literacies are not mental abilities but socially constructed practices.</li> </ul>	<ul style="list-style-type: none"> <li>Social constructionism</li> <li>Literacies are the range of evolving practices necessary for communicating purposefully.</li> </ul>
<b>Theory of learning</b>	<ul style="list-style-type: none"> <li>Sensitivity toward local particularities</li> <li>Teachers formulate individual theories of learning.</li> <li>Individual sociopolitical consciousness should inform learning</li> </ul>	<ul style="list-style-type: none"> <li>Social theory of learning</li> <li>Learning is the social construction of privileged and underprivileged notions of knowledge.</li> <li>Embraces multiple intelligences</li> </ul>	<ul style="list-style-type: none"> <li>Learner-centered and participatory</li> <li>Learning depends on situated cognition.</li> <li>Learning evolves in relation to sociocultural practices.</li> </ul>	<ul style="list-style-type: none"> <li>Sociocultural theory of learning</li> <li>Learning depends on situated and distributed cognition.</li> <li>Knowledge sharing is paramount.</li> </ul>
<b>Goals</b>	<ul style="list-style-type: none"> <li>Challenge the status quo</li> <li>Empowerment</li> </ul>	<ul style="list-style-type: none"> <li>Liberation and empowerment</li> </ul>	<ul style="list-style-type: none"> <li>Liberation and empowerment</li> </ul>	<ul style="list-style-type: none"> <li>Interactivity, usability, flexibility and connectivity</li> </ul>
<b>Learner roles</b>	<ul style="list-style-type: none"> <li>Actively shape own learning</li> </ul>	<ul style="list-style-type: none"> <li>Active</li> </ul>	<ul style="list-style-type: none"> <li>Literacy as social discourse mediates community identities</li> <li>Active discovery role</li> </ul>	<ul style="list-style-type: none"> <li>Autonomous yet a member of the digital collective</li> <li>Diverse roles</li> </ul>
<b>Teacher roles</b>	<ul style="list-style-type: none"> <li>Teachers theorize pedagogy</li> </ul>	<ul style="list-style-type: none"> <li>Activist</li> </ul>	<ul style="list-style-type: none"> <li>Facilitative role</li> </ul>	<ul style="list-style-type: none"> <li>Plan activities usable through technology</li> <li>Diverse roles</li> </ul>
<b>Implications for EALP</b>	<ul style="list-style-type: none"> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features that are sensitive to specific circles or world English</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains sensitive to specific circles or world English</li> </ul>	<ul style="list-style-type: none"> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features that empower EALP students through multiple intelligences</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains with an empowerment agenda</li> </ul>	<ul style="list-style-type: none"> <li>Conceptualizes EALP curricularization among diverse worldviews, identities, and global and local discourses and genres</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features through community collaboration</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains that are globally connected yet locally diverse</li> </ul>	<ul style="list-style-type: none"> <li>Conceptualizes EALP curricularization as an evolving collective social construction.</li> <li>May contribute to the instruction of micro-, meso-, and macrolinguistic features through digital technology</li> <li>May influence classroom procedures, methods, and approaches in micro, meso-, and macropedagogic domains</li> </ul>



In review of Chapter 6, two issues need to be resolved, *viz.* the tension between particular and universal and the center and process of learning.

First, the postmethod approach identifies the tension between particular and universal. In terms of the particularity of Kumaravadivelu's postmethod approach, legal content is particular and specific to a national jurisdiction; however, EALP-type textbooks do not necessarily embrace jurisdictional particularity (*cf.* Chapter 10).<sup>6</sup> Legal jurisdictions do not function in isolation because the globalization of markets stimulates the ubiquity of "global contract and commercial law" (Shapiro 1993:38) and the sociology of law (Halliday & Osinsky 2006:447). The curricular framework for EALP should therefore caution against an overemphasis on particularity that does not distinguish the trees (the particular) from the forest (the global). Particularity may be practical if the local is contextualized in the global and vice versa.

Cho (2010:321) criticizes critical literacy pedagogy for embracing the popular mantra "think globally, act locally"; however, it is "weak in global thinking." Cho relies on Wallerstein and Habermas, suggesting that critical literacy pedagogy should go beyond a Eurocentric universalism to embrace a "universal universalism." In a similar vein, Pennycook (1996:169) scrutinizes multiliteracies pedagogy for theorizing hybridity and increasing local diversity and global connectedness. Cho and Pennycook's criticism overlooks the politics of the relations of power in pedagogy. As postmodern approaches, critical literacy pedagogy and multiliteracies studies cannot assume universality or act as agents of global change. They may absorb global curricular issues for local analyses and possible application. Postmodern approaches are inherently incredulous toward universal metanarratives (Lyotard 1984); therefore,

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<sup>6</sup> *Cf.* Guo (2004) 法律英语 (*Legal English*); Liu & Qu (2003) 法律英语 (*Legal English*); Brown & Rice (2007) *Professional English in Use: Law*. These examples are decidedly favorable toward the American and British legal systems despite being written for L2 learners in the outer and expanding circles of world English. The first two examples are Chinese publications for Chinese students. Brown and Rice claim that their book assists students in their preparations for the new Cambridge International Legal English Certificate (ILEC). However, the content of their book is not international since it focuses on the British legal system.



multiliteracies pedagogy and critical literacy pedagogy should not attempt to become modernist, universal metanarratives.

The second issue that needs to be addressed is the effect of digital technology on the center and process of learning (Lasso 2002:9). First, the center of learning is the entity that controls information. In oratory societies, for example, listening and speaking determined learning. Subsequently, paper text and the printing press led to libraries becoming the repositories of learning. Today, the locus of learning is situated within and distributed among individuals or networks of individuals who navigate and create the Internet. Although learning seems to have become more isolated, through the Internet and social networking sites, learning has become more connected and global than ever before.

The process of learning is facilitated through sensory modalities that perceive the physical world directly or vicariously. The interaction between traditional texts and learners is based primarily on visual perception. “But electronic technology allows us to perceive information simultaneously with [more of] our senses: visually, aurally, and even haptically” (Lasso 2002:11). Augmented reality enables physical reality to be overlaid with digital reality, thereby merging physical experience and vicarious learning.

The process of learning is also influenced by the relation of sources on the Internet, which affects the method of reading as well as learning. The first transformation of learning occurred with the printing press that enabled scholars to read and integrate multiple sources (mostly printed texts). However, the Internet provides access to an overwhelming number of multimodal sources at the click of a mouse. The sheer number of sources necessitates a different method of reading and integration. In addition, the Internet enables users of information to interact with other users to exchange and refine ideas (Lasso 2002:11). Thus, through the Internet a more sociocultural learning environment could be facilitated.

Based on traditional texts “literacy skills often continue to be measured by the [coding,] decoding, comprehension and production of print-based materials” (Gomez *et al.* 2010:21). However, technological developments altered the conceptualizations

of both texts and literacies. As textual presentations became more multifarious, multimodal, and multilayered, literacies evolved into distinct forms of engagement. Consequently, technology, digital texts, and the predominant English nature of the Internet require new literacies: new ways to read, write, and learn. It requires new social skills to interact appropriately with the global discourse community. New research skills are required to enable students to navigate the vast and sometimes overwhelming matrix of knowledge (*cf.* Armond & Nevers 2011). These skills need to be fostered by contemporary EALP textbooks.

#### 6.4 Summative notes

A summary of the diachronic and thematic development of L2 pedagogy reifies uncomfortably, yet it is possible to identify general characteristics. The characteristics of L2 pedagogies reviewed in Chapters 4 through 6 are summarized in Table 6.4. The columns do not resemble impenetrable boundaries; the methods and approaches should be seen as imbricated, often as complementary, and forming a continuum. Certain pedagogies are more functional than other in specific circumstances and arguments for and against any pedagogy could be devised. For example, with the rise of the postmethod condition (Kumaravadivelu 1994) method-based pedagogy came under fierce scrutiny by postmethodologists. On an etic level, method has been rejected in the judgments and classifications of scholars. However, on the emic level of lay people and teachers, method remains in practice (Block, in Bell 2003:325).

Chapters 4 through 6 provide reviews and analyses of applied linguistic approaches from their conceptualization as natural scientific endeavor at the dawn of the 20<sup>th</sup> century to their present critical, social character. This extended review attests to the tumultuous paradigm shifts that L2 pedagogy has undergone. Figure 6.4 depicts a reductionist view of the main transitions that occurred. Pedagogy shifted “from a cognitive orientation to a social orientation” to a digital orientation, “from classroom contexts to naturalistic settings” to digital communities, “from an acquisition metaphor to a participation metaphor” to a critical metaphor, and “from L2 learning to L2 use” to L2 empowerment (*cf.* Wang & Vásquez 2012:413).

Table 6.4: Summary of the main features of L2 pedagogies

Relative timeline	Traditional L2 pedagogy		Transitional L2 pedagogy		Contemporary L2 pedagogy	
	1960s	1970s	1980s	1990s	2000s - present	
<b>Pedagogies</b>	Scientific turn Traditional teacher-centered methods	Interpretive turn Progressivist teacher-centered methods & approaches	Communicative turn Functional, communicative approaches	Social and linguistic turn Socioliterate approaches	Digital and virtual turn	Critical, postmodern approaches
<b>Theory of language</b>	Formal grammar and structuralism The rules of language and structure of texts lead to perfect texts	Structuralism and cognitive science No universal language rules Language includes humans and cultures	Systemic functional linguistics Social constructivist and constructionist Interactionism		Anti-theoretical, neo-Marxist theory, relational social constructionism	
<b>Theory of learning</b>	Directed practice, habit formation	Text processing as learners seek meaning	Real-world communicative language learning Exposure to discourses and genres in social contexts		Social theory of learning Physical and computer-mediated experiences	
<b>Goal</b>	Reading and communication	Meaning production and communication	Communicative autonomy, functional use of genres, socialization into discourse communities, and membership of discourse communities		Liberation and empowerment Interactivity, usability, flexibility and connectivity	
<b>Learner role(s)</b>	Passive recipient	Active and student-centered	Active collaborators Social beings		Active autonomous Students inform pedagogic theory	
<b>Teacher role(s)</b>	Authoritative expert Director	Non-authoritative Facilitator	Curriculum designer, counselor, prescriptive and participatory, and agent of socialization		Activist, facilitator, and teachers are practitioners and theorizers of pedagogy	
<b>Methods and approaches</b>	Grammar translation method Direct method Audiolingual method	Silent way method Suggestopedia method Community language learning approach Multiple intelligences approach	Communicative language teaching Content-based instruction Task-based instruction English for specific purposes Australian genre movement New rhetoric movement	Language socialization Discourse socialization Academic discourse socialization	Postmethod pedagogy Critical literacy pedagogy Multiliteracies approach New literacies studies	

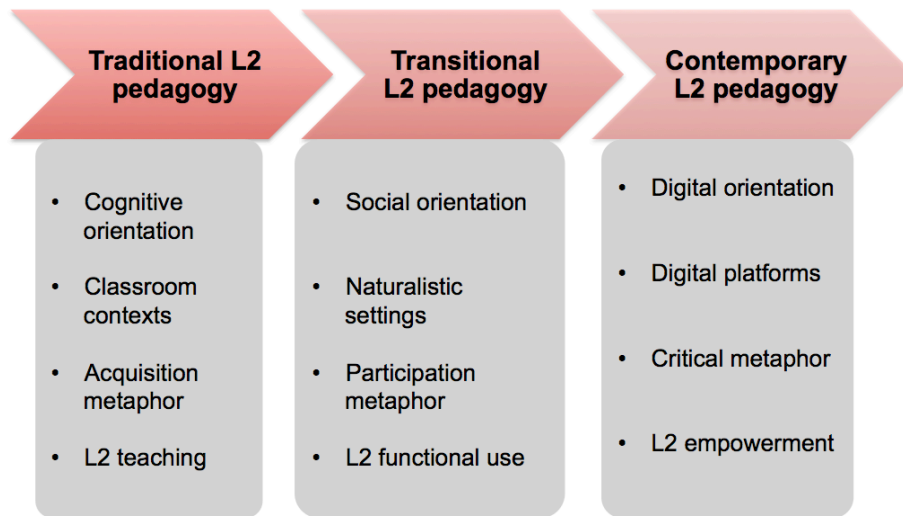


Figure 6.4: Main paradigmatic shifts in L2 pedagogy

The paradigm shifts in L2 pedagogy did not occur in isolation; similar trends occurred in legal education. However, as Chapters 7 through 9 illustrate, legal education has a history of its own.

## Chapter 7: Traditional legal education

### 7.1 Introduction

The rationale of Chapter 7 hinges on two observations. Firstly, the perceived decline of the requisite skills of law students across the three circles of world English is connected to the shortcomings of legal education and the limitations of EALP-type courses (*cf.* Deutch 2003:125; Edelman 2010:112; Larcombe & Malkin 2008:319). Secondly, personal experience as a student and a teacher of law and language revealed certain shortcomings at the giving and receiving ends of legal education and legal language instruction. Personal experiences resonate with those of scholars in the field. In this introduction, a brief narrative, compiled from fragments of law school students' experiences, serves three purposes: (1) it introduces the goals of this chapter; (2) it provides an emic perspective on legal education; and (3) it prefigures important pedagogic issues that resurface throughout the subsequent chapters.

So you have arrived at your first class, toting a back-braking load of the heavy casebooks frequently used in the teaching of these core doctrinal courses. [...] If you were alert and fortunate, you noticed that there were already assignments to be read for the first day of class [...]. (Mertz 2007a:7).

As you leaf through the overpriced casebook, you quickly realize that the twelve monotonous years in public school reading recycled and graphically illustrated geography and biology textbooks did not prepare you in the least for the reading and comprehension challenges at hand. Words swerve over the page as you struggle to pronounce: *ratio decidendi*, *actus reus*, *doli incapax*, *mala grammatical non vitiat chartam*. Paragraph-long sentences literally take your breath away.

Experience has taught many a law student that only two teaching styles prevail: the relentless, nerve-racking Q&A sessions known as the Socratic method or the method aptly referred to as the “lecture method”, in which the professor impresses students with her/his verbatim citation of the prescribed textbook, usually a book written by the professor.

When handed a case to read, you now automatically check to see which court wrote the opinion in the case, what happened previously in the case, and what the court did in reaching its decision. Poignant, glaring, pitiful stories of human drama and misery begin to sail easily past you, as you take them expertly in hand and dissect them for the “relevant” facts [...].

Your criminal law exam involves a hypothetical in which a woman is “beaten, raped, and killed in descriptions pornographically detailed.” If you have yourself been beaten or raped, you may find this question a bit difficult to answer. But your performance will depend on your ability to dispassionately analyze the details provided to you for traces of “facts” needed to satisfy one or another legal test (Mertz 2007a:9-10).

You become detached from human suffering and wonder what happened to the trusting first-year law student. As you begin to “think like a lawyer”, you enter the legal discourse community and realize that you have not only acquired a new set of values; you have gained a legal persona (Elkins 1978:735; Mertz 2007a:214; White 2003:1).

After graduating successfully, you enter internship at a prestigious law firm, but you soon realize that the legal secretary (without \$250,000 in law school debt) has a considerable advantage over you: s/he knows how to get things done. You ask her/him where to find *The Encyclopedia of Forms and Precedents* (pre-drafted legal genres), where to file motions and petitions, and how to consult with clients. As s/he responds professionally to your questions, you wonder: “Why didn't I learn this in law school?” Alternatively, in the critical pedagogic paradigm of Ellsworth (1989) *Why Doesn't This Feel Empowering?* More recently, Joy (2014:178) articulates it as a “mismatch between what legal employers, law students, and clients need from law schools and what too many legal educators want to give.”

Fragments of the puzzle of my personal experiences and the experiences portrayed by Elkins (1978), Mertz (2007a), and White (2003), confirm the rationale of this study (*cf.* Chapter 1) and the ideological points of departure for this chapter. The primary goal of this chapter is to analyze traditional legal education in the macropedagogic domain (*cf.* Chapter 1). To this end, the characteristic features of traditional legal

educational methods, their advantages, and the critique that motivated reform need to be determined.

### Chapter preview

The diachronic parameters of traditional legal education are set to cover a corresponding period of methods and approaches addressed in the review of theoretical linguistics (*cf.* Chapter 3) and applied linguistics (*cf.* Chapters 4 through 6). The diachronic period bestrides modernity and postmodernity (*cf.* Figure 7.1). Part one provides a brief introduction and conceptual definitions of the doctrinal and jurisprudential course. To understand the rationale of legal education, part two provides a summary of its objectives. Detailed analyses of traditional legal educational methods follow in part three that include the lecture, Socratic, and Langdellian methods (*cf.* Figure 7.1). Part four identifies the advantages of and part five summarizes the critique on traditional legal education. Part six illustrates how traditional legal education is operationalized. In part seven, summative notes provide a conclusion before the discussion of contemporary, clinical legal education and law school academic support programs commence in Chapter 8 (*cf.* Figure 7.1).

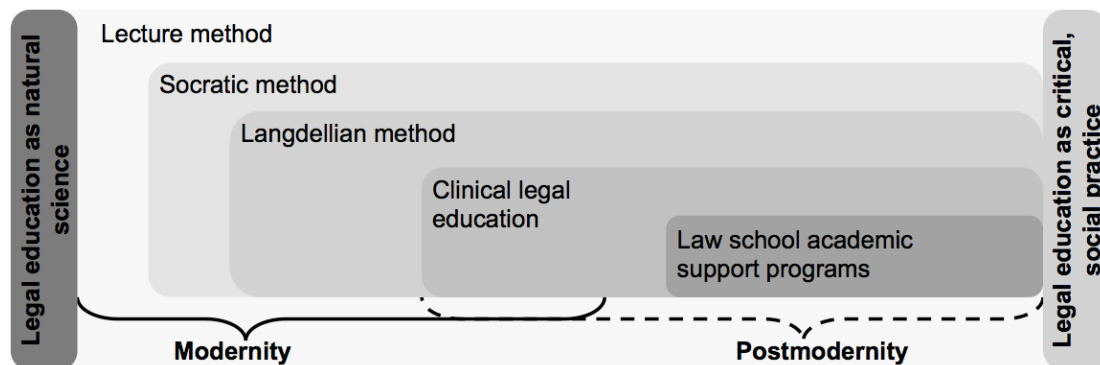


Figure 7.1: Continuum and development of legal education from natural science to social practice

### Conceptual definitions

The goal of a curricular framework for EALP is not to propose a new legal educational model for law schools. One educational model cannot be applied to all law school courses. A “one-size-fits-all” or generic approach, such as the application of the traditional Socratic teaching method to all law school subjects, has proven unsuccessful (Grossman 2008:23; Johnson 1978:xvii; Sheldon & Krieger 2007:883;



Sturm & Guinier 2007:516). Such failure may be attributed to the blanket application of one method to different kinds of courses. At least four distinctions need to be recognized, *viz.* courses based on substantive law, procedural law, legal doctrine, and jurisprudence.

Legal subject matter could be based on substantive and/or procedural law. *Substantive law* is also known as positive law. It “defines and regulates the rights and duties of parties [...] and may give rise to a cause of action” (Gifis 1998:479). *Procedural law*, also known as adjective law, contains the “rules of legal practice and procedure that make substantive law effective” (Gifis 1998:10). Both substantive law and procedural law contain codified statutes that lay the foundations of their syllabi in law schools.

Substantive and procedural law courses are often considered to be the core of the law curriculum and are also known as *doctrinal* courses. The ideological foundation for doctrinal courses is based on positivist legal philosophy that propagates the neutrality of the law. Just as dominant legal study was based on the apparent “neutral, expository, descriptive science of law” (Twining 1994:155), the teaching of law became technocentric. Doctrinal courses are therefore associated with “technical legal rules, with their appearance of neutrality and rationality, effectively mask[ing] the partiality and the power of law” (Thornton 1998:370). Doctrinal courses rely primarily on *deductive instruction*, in which a technical rule is provided and applied to different abstractions. Doctrinal courses may be partially more teacher-centered if legal rules are introduced in class through lectures. Rules are internalized through repeated application (Seliger 1975:1). Doctrinal courses include procedural law courses, such as civil and criminal procedure, and substantive law courses, such as the law of contracts or tort law.

In comparison to legal doctrine, *jurisprudence* should be understood as “knowledge [of] or skill in law” (*Merriam-Webster’s Dictionary of Law* 1996:273). In general, jurisprudence-based courses depend more on theory and opinion for course content than on substantive and procedural law. Jurisprudence-based courses rely more on a deductive pedagogy, in which students “examine doctrine-neutral legal analysis, research and writing principles [...] to create cogent analysis of typically narrow legal precepts” (Romantz 2003:107). Because the discovery method of instruction may



require more student involvement, jurisprudence-based courses may be relatively more student-centered than doctrinal courses (Seliger 1975:1). Examples of jurisprudence-based courses include legal skills and comparative law.

Figure 7.2 illustrates that inductive instruction may be more student-centered and deductive instruction more teacher-centered. Classroom procedures in doctrinal and jurisprudence-based courses may be facilitated through either inductive or deductive methods. However, because the division between doctrine and jurisprudence is recognized, the *Best Practices for Legal Education Report* (Stuckey 2007) recommends different teaching practices for different courses.

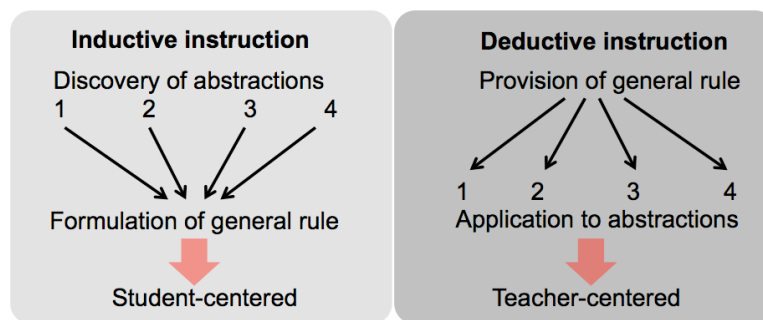


Figure 7.2: Inductive and deductive instruction

Table 7.1 summarizes the differences between doctrinal courses and jurisprudence-based courses. Traditionally, doctrinal courses were taught by means of the three traditional legal teaching methods that constitute the main topic of Chapter 7. In contrast, jurisprudence-based courses are more receptive to contemporary legal educational practices. This receptivity coincides with the momentum that the clinical legal education movement gained in the 1960s and is the main topic of Chapter 8. The differences between doctrinal courses and jurisprudence-based courses should also be considered in the context of the progression of scientific thought from modernity to postmodernity (*cf.* Chapter 3; Table 3.1). However, the general objectives of legal education cross the divide between legal doctrine and jurisprudence.

Table 7.1: Differences between doctrinal courses and jurisprudence-based courses

Characteristics	Doctrinal courses	Jurisprudence-based courses
<b>Ideological underpinnings</b>	<ul style="list-style-type: none"> <li>• Positivist legal philosophy</li> </ul>	<ul style="list-style-type: none"> <li>• Clinical legal principles</li> </ul>
<b>Sources of law</b>	<ul style="list-style-type: none"> <li>• Procedural law</li> <li>• Substantive law</li> <li>• Marginalization of legal theory and opinion</li> </ul>	<ul style="list-style-type: none"> <li>• Legal theory</li> <li>• Opinion</li> <li>• Procedural law</li> <li>• Substantive law</li> </ul>
<b>Pedagogy and learning method</b>	<ul style="list-style-type: none"> <li>• Relatively more deductive</li> <li>• Vicarious learning</li> </ul>	<ul style="list-style-type: none"> <li>• Relatively more inductive</li> <li>• Experiential learning</li> </ul>
<b>Relevant legal education</b>	<ul style="list-style-type: none"> <li>• Traditional legal education</li> </ul>	<ul style="list-style-type: none"> <li>• Contemporary legal education</li> </ul>
<b>Example courses</b>	<ul style="list-style-type: none"> <li>• Civil and criminal procedure</li> <li>• Law of contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Legal skills</li> <li>• Comparative law</li> </ul>

## 7.2 Objectives of legal education

The objectives of legal education vary in the different circles of legal English (to adapt Kachru's term), from law school to law school and among legal scholars. However, three broadly defined objectives transcend these contexts and seem to display ecumenical application. These objectives include: (1) truth-seeking and political objectives; (2) moral and ethical objectives; (3) and the fundamental skill of "thinking like a lawyer."

### 7.2.1 Truth-seeking, political objectives

The truth-seeking, political objectives of law school are closely associated to the worldview of critical literacy pedagogy that seeks the liberation and empowerment of disenfranchised groups (*cf.* Chapter 6).

Fish argues that universities should have one goal only; that is, they should teach students how to discern the truth (2008:134). This should be done without imposing moral views on students because they are not members of the legal discourse community (Fish 2008:103). To illustrate that students are not (yet) members of the legal discourse community, Fish argues that university education should include two secondary objectives: (1) to introduce students to the corpora of knowledge and traditions of inquiry; and (2) to provide students with the analytical skills to engage with these corpora and to conduct independent research (Fish 2008:12-13).

Fish recognizes that a university education functions within larger socio-political systems. He reiterates discipline-based truth seeking in his idea that the “network mistake” propagates education that is politically neutral (2008:100). Any subjective political inclinations or network mistakes should not be allowed in the classroom (2008:29). Fish concedes that politics could enter the classroom through course content; however, engagement with the material should be apolitical (2008:22-23). He argues that universities should not be concerned with the instruction of morals “except when the morality in question is the morality that penalizes cheating [...]” (Fish 2002:n.p.).

In contrast to Fish’s separation of politics and education, Raimes embraces the politics of pedagogy in the context of “interested knowledge” in the academic discourse community and culturally diverse student bodies (1991:422). Raimes suggests that pedagogy should be probed by asking: “Who learns to do what? Why? [and] Who benefits?” (1991:422). Quoting Simon, Raimes argues that “to propose a pedagogy is to propose a political vision” (1991:423). Fish’s vision for education is therefore inherently political.

Mark Spiegel (1987) agrees with Raimes’ argument. He investigated the development of clinical legal education and concluded that, during the developing years (1960s through 1970s) of clinical programs in the United States, clinical education found political support from outsiders, such as judges and the practicing bar. Similarly, segregationist and post-apartheid clinical legal education in South Africa is distinctly political (Maisel 2007:379-387). Segregationist legal education, for example, is “colored” by racist and ethnocentric ideologies (Iya 2001:357). Global contemporary legal education, however, is influenced by a different kind of politics that is rooted in the demands of the market for legal services and a “global market for legal information” (Ribstein 2010:1649).

### 7.2.2 Moral and ethical objectives

The moral and ethical objectives of legal education are closely related to the truth-seeking, political objectives, as truth and/or politics may be immoral and unethical. In a broad sense, legal education attempts to train students to become legal academics, ethical practitioners, and discerning moral citizens (Bennett 2010:88; Edwards 1992:34; Jakab 2007:253). More specifically, law schools aim to train students to become practitioners who are capable and responsible to clients and the public (Montgomery 2008:323). These objectives are broadly formulated and focus on practitioners as socially active human beings with moral and political responsibilities.

Edwards provides a justified motivation for moral and ethical educational objectives from an interview with an anonymous legal practitioner, who revealed:

[t]he single most prevalent kind of unethical conduct I see in practice is the mis-citation of legal authority or misstatement of the facts. I think that the cause of this behavior is a 'win-at-all-cost' mentality of a great many legal practitioners. I have found to a disturbing degree that many lawyers will simply say anything (true or untrue) to advance their case (1992:69).

Truth is therefore embroiled in the moral and ethical objectives of legal education. The inclusion of moral values in legal education is pronounced by the emergence of scholarship in critical legal and socio-legal traditions that critique doctrinal and positivist notions of legal neutrality. On the other hand, support of extreme moral relativism discards the recognition of alternatives beyond arbitrary, temperamental, and subjective opinions (Cownie 2011:np). Mendus (1998:58) argues that moral relativism fails education and proposes that education should impart (1) mindfulness of the obdurate character of moral discord in modernity and postmodernity and (2) the recognition that the challenges of moral discord do not eradicate the moral responsibility of an individual.

In Chapter 3, a language-based social constructionist epistemology for EALP is proposed to inculcate moral and ethical awareness among law students. In addition, moral and ethical issues are neglected by EALP-type textbook authors, as the qualitative content analysis reveals that only 20.45% of the textbooks address issues such as plagiarism and the ethical practice of law (*cf.* Chapter 10).

### 7.2.3 “Thinking like a lawyer”

A third objective of law school education is to impart the fundamental lawyering skill to “think like a lawyer” (*cf.* Chapter 9). According to Garth and Martin (1993:469), lawyers from different law schools who practice law in different geographical areas of the United States agree that the ability to “think like a lawyer” is the most important skill acquired during law school (*cf.* Mertz 2007a:28; Sturm & Guinier 2007:516). Unfortunately, in some jurisdictions, such lawyerly thinking turns students into “functional bureaucrats” instead of legal professionals, as Jeong cautions within the Korean context (2010:176).

Reformers of legal education agree that the dominant traditional law school model and curricula developed during the 19<sup>th</sup> and 20<sup>th</sup> centuries fail to prepare students adequately to become efficient 21<sup>st</sup> century lawyers (Edwards 1992:34; Rakoff & Minow 2007:597; Rubin 2007:611; Sturm & Guinier 2007:515). As a result, a mounting incoherence exists between the outcomes of legal education and the needs of legal practice (Edwards 1992:34). Legal practice requires skills that allow prospective practitioners to know how to get things done. Once in practice, young lawyers wonder “why didn't I learn this in law school?”

To circumvent unethical conduct, create awareness of political agendas, and to “think like lawyers”, Davis and Steinglass (1997:252) emphasize contextual learning and argue that the goals of legal education should be to “[...] develop contexts in which students can learn fundamental legal concepts, develop intellectual versatility, learn to use the range of their intellectual capacities across the range of lawyering tasks, and develop a critical consciousness about their professional role.” A “critical consciousness of professional roles” summons ethical and political awareness. Therefore, the three main objectives of legal education cannot be separated, for legal practice and bar associations in general require lawyers to meet these objectives (Joy 2014; Wilson 2010).

Yet, these objectives are not being met entirely as ethical misconduct persists (Chambliss 2012; Losey 2008), legal writing remains incomprehensible, and

consultations with international clients remain uncomfortable (Hayes 2007). Hence, what are the possible reasons for such disjuncture and educational dissatisfaction? The answer to this question requires an analysis of traditional legal educational methods.

### 7.3 Traditional legal educational methods

Traditional legal education includes the lecture, Socratic, and Langdellian methods. Traditional legal education corresponds to a certain extent diachronically and ideologically with traditional and transitional L2 pedagogy, influential during the 1960s through 1980s.

Although one could generalize by describing American legal education as emblematic of the Socratic method, and the legal education of South Africa and South Korea as a combination of the lecture, Socratic, and Langdellian methods, it would be imprudent to do so. Although mostly accurate for the previous century, such a sweeping generalization is oblivious to the multitude of methods and styles employed by different law schools and individual law teachers.

It would thus be more prudent to conceptualize legal education on a scientific continuum. On the one end, law is regarded as a natural science by traditional teaching methods; on the other, law is treated as a social practice by contemporary legal education that includes clinical legal education and law school support programs (*cf.* Rubin 2007:640). Figure 3.1 (*cf.* Chapter 3) illustrates an ideological continuum with modernity and postmodernity on either end and legal educational practices that occupy relatively fluid positions as they overlap historically, philosophically, and in their application. This continuum does not pay heed to the historical foundations of the lecture and Socratic methods in ancient Greece; however, it recognizes their persistent influence and evolution throughout modernity and into postmodernity.

The discussion of each traditional legal educational method is arranged thematically according to its methodology, advantages, and disadvantages.

### 7.3.1 Lecture method

Although prevalent in South Africa (Fedler 1993:1003) and South Korea, the lecture method is also widely used in American law schools. The lecture method is a teaching style that is ideologically situated between the traditional methods and clinical legal education.

If one considers classical oratory and rhetoric as the foundations of the lecture as public speaking, then the roots of the lecture method could be traced to Homer's *Iliad* (ca. 800 BC), as it exhibits examples of oratorical skills (Enos, James, Barrett, Agnew, & Corbett 1997:13). These oratorical skills, or the art of discourse, could also be traced to the Greek philosopher Empedocles (ca. 444 BC), whose epistemology infused rhetoricians. In particular, Corax and Tisias published works that developed out of the courts of law (Fritz 1922:28). Tisias, for example, wrote legal speeches that orators presented in court (Enos *et al.* 1997:13). Instruction in oratory became popular in the 5<sup>th</sup> century B.C., when the Sophists lectured in public spaces on the power and functions of discourse (Enos *et al.* 1997:13; *cf.* Bennett 2010:130).

Today, similar to *circa* 2800 years ago, the lecture method makes use of minimal dialogue between teacher and student, because the teacher occupies between 91%-95% of the class time - verbally (Mertz 2007a:164). However, an attempt is made at imparting skills vicariously. The teacher dictates course content to a large group of students, while students take extensive notes and memorize the textbook (*cf.* Chapter 10). Hence, the lecture method is also known as the textbook method (Boyle & Dunn 1998:217). In this vertical, authoritarian relationship, there is almost no prospect for interaction between teacher and student. Students who experience difficulty with the course are relegated to tutorials or academic support programs in which some level of interaction is achieved through writing and problem-solving exercises (Fedler 1993:1003).

The general lecture method is most effective in understaffed law schools often associated with developing countries. As Fedler points out, it is challenging to entice lawyers away from the lucrative legal profession into teaching positions in law schools (1993:1003). Most of my own legal training was conducted through formal

lectures with no interaction. Since many lecturers recited their own textbooks, students experienced very low motivation to attend classes. On the other hand, some lecturers attempted to entice students with anecdotes from practice, which sharpened student attention.

The lecture method's vertical and unidirectional flow of information accentuates its "sage-on-the-stage" character. Students typically perform inactive parts, as they are expected to absorb legal content without necessarily engaging with the lecturer. Although preparation in advance would benefit students, it is not essential, since active participation is not expected.

### 7.3.2 Socratic method

According to both the *Best Practices for Legal Education Report* (Stuckey 2007) and the *Carnegie Report* (Sullivan, Colby, Wegner, Bond, & Shulman 2007), the main method of teaching legal doctrine and analytical skills in the United States is still the Socratic dialogue and case method. While students read case law prior to class, in class they are "guided" through the cases by the professor, who asks a stream of questions to unveil legal principles and question assumptions. As such, the Socratic method associates with the process-based pedagogy in which the teacher facilitates learning with individual students in a bi-directional way.

The method hails after Socrates and the rhetorical style that he developed. Davis and Steinglass provide a fitting description of Socrates' method: "After eliciting his interlocutor's position, Socrates asks a series of leading questions designed to elicit agreement with a series of related propositions. Socrates then reveals what he knew all along – that the statements to which his interlocutor has agreed contradict the interlocutor's original position" (Davis & Steinglass 1997:249). If this questioning method seems familiar, it is because of its proliferation in courtroom dramas on television and its actual use during cross-examination.

On the surface, a dialogical exchange occurs based on a "new" reading of the legal text or examination. Law school pedagogy links this dialogical process to the core analytical ability characteristic of legal reasoning. Both Mertz (2007b) and the *Carnegie Report* (Sullivan *et al.* 2007) suggest that the main purpose of the Socratic



method is to translate effectively the “‘human world’ using legal categories” that dehumanize law (Mertz 2007b:505).

The appeal of the Socratic method is its logical rationale that renders it academically and scientifically reputable. Firstly, it inculcates a notion of elenchus (a logical refutation: realizing that one does not know what one thinks one knows). Secondly, through elenchus, a student can acknowledge ignorance and aporia (a logical impasse or contradiction), which induces learning (Davis & Steinglass 1997:249). In large classrooms, the Socratic method proves valuable, since it teaches sharp analytical skills which extend beyond memorization and recitation (Sturm & Guinier 2007:516; *cf.* Wilson 2010).

### 7.3.3 Langdellian method

The third traditional teaching method, which is modeled on the Socratic method and depends on case law content, is the Langdellian method. The development of Langdell’s method is directly related to the unfolding of American political and social history. The end of the American Civil War (1861-1865) marked the beginning of the transformation of American legal education. American lawyers felt that the heterogeneity of post-Civil War, American society and an unregulated corporate world threatened the standing and influence of the legal profession. As a result, bar leadership (under the control of a white, male, Protestant, native-born hegemony) elevated the status of the legal profession (Appleman 2005:252).

The legal profession became more exclusive through the introduction of an arduous legal education that served as a gatekeeper that prevented unfavorable social and ethnic groups from entering the legal discourse community. Exclusivity was ensured through the introduction of “new teaching methods, pre-legal educational requirements, entrance and exit exams, a phased curriculum, full-time faculty, and a lengthened course of study [...]” (Appleman 2005:252).

German and British pedagogy contributed to a reformed law school. German scholastic methods were introduced after 1850, and British case law set the scene for the development of the Langdellian method (Appleman 2005:252-253). Langdell

(Dean of Harvard Law School, 1870) introduced the Langdellian method to legal education (Bennett 2010:91).

Langdell's method developed out of three circumstances: Firstly, Langdell developed a method that mirrors the main feature of the widely practiced Socratic method, which is a process based on questions and answers that provoke critical thinking. This is also the main difference between the Socratic and Langdellian methods. The latter facilitates questions among a few students in the class, whereas the Socratic method facilitates dialogue between the teacher and one student. Another difference is that Socrates disparaged prior textual analysis, whereas Langdell's method relies entirely on pre-class textual analysis (Davis & Steinglass 1997:262-263). The second circumstance from which the Langdellian method developed is Langdell's own experience as a learner. Thirdly, as a teacher, Langdell knew that law is based on certain legal principles and doctrines, which are illustrated appropriately by certain cases.

The third circumstance is contested on methodological grounds, since teachers must justify the inclusion and exclusion of certain case law. However, as students identify principles and apply them to general scenarios or as they recognize factual trends in case law and deduce general principles, they acquire both deductive and inductive reasoning skills (Rakoff & Minow 2007:598). The influence of the Socratic method and Langdell's experiences as a student and a teacher lay the foundation for his method.

As a result of the circumstances under which the method developed, three general features characterize the Langdellian method. Firstly, in contrast to the lecture method used by his contemporaries, Langdell employed pragmatist principles to teach law through a dialectical process in which information could be communicated reciprocally or multidirectionally instead of unidirectionally (Rakoff & Minow 2007:598). Secondly, "[i]n other classrooms, students passively received the thinking of others, but in Langdell's classes students were expected to think through the cases for themselves as students are expected to prepare in advance (Davis & Steinglass 1997:262). Therefore, the Langdellian method encourages a process of reasoning and questioning that is pedagogically reputable (Rakoff & Minow 2007:598). Finally, the

method successfully engages large audiences with relatively little expenditure on materials.

These three characteristics also illustrate the strengths of the Langdellian method. In addition to its multidirectional flow of information, active learning strategy, and ability to engage large audiences, Langdell's method is able to answer a series of pedagogic and methodological questions. Rakoff and Minow (2007:599) articulate these questions and their answers eloquently:

What is there to know? The law consists of a limited number of principles or doctrines. How are we to know them? From systematic organization of the way they are embodied in cases. How will we teach them? By discussing the cases to see what they embody, and by applying the principles to hypothetical sets of facts. What materials will we use? Reports of the cases. Will this be practical? The reports are in the public domain; we can provide all the students copies of the cases, collected into casebooks. Of what use is knowledge of this sort? The application in this way of principles of this sort, to new cases, is what lawyers do.

Langdellian teaching persists, because different parts of the pedagogic method can be challenged without necessarily affecting the other parts. For example, the multidirectional flow of information can be directed at will within audiences of varying sizes. As far as legal content is concerned, even if law did not contain principles or doctrine, cases could still be used to teach such content especially in common law systems in which general rules are deduced from case law. The Langdellian method can also be integrated successfully with the lecture method or combined with other classroom activities.

Table 7.2 compares and summarizes the characteristic features of the traditional legal teaching methods. These features provide a static characterization of the traditional methods at their approximate origins. As traditional legal methods developed, their features evolved to include and model other pedagogic influences. The features summarized in Table 7.2 cannot account for individual variations, as they are combined with individualized classroom practices.

Table 7.2: Features of traditional legal educational methods

Features	Traditional legal teaching methods		
	Lecture method	Socratic method	Langdellian method
Origin	Empedocles and the Sophists	Socrates	Langdell
Methodology	Oratory and rhetoric	Elenchus reasoning Negative hypothesis elimination	Pragmatist reasoning
Method	Presentation/speech delivery	Dialectical question and answer	Dialectical question and answer
Information flow	Unidirectional	Dialogical	Multidirectional
Pedagogy	Primarily inductive	Primarily inductive	Primarily inductive
Course type	Doctrinal	Doctrinal	Doctrinal
Interaction	Not significant	Individual participation	Group participation
Foundation of course content	Substantive and procedural law	Case law	Case law

#### 7.4 Advantages of traditional legal education

Despite minor differences, traditional legal methods share similar advantages. Traditional methods are credited for the following (Mertz 2007a:27):

- They impart and maintain the *culture of the profession*: the style of reasoning required by lawyers. With the exclusion of the lecture method, they simulate the adversarial debates that practicing lawyers conduct during courtroom proceedings (*cf.* Mertz 2007b:506).
- In a classroom with a large audience, the *discursivity* is effective, because it stimulates active involvement, although this is not true for the lecture method.
- Traditional methods are not necessarily more *teacher-centered or intimidating* than other pedagogies. The lecture method, however, could be criticized for its vertical, authoritarian communication style. As such, it is not student-centered.
- Traditional approaches reveal the guiding principles and *indeterminacy* of the law.
- Through a series of questions, traditional methods may successfully illustrate the *condicio sine qua non*: they can link together the answers to many

questions (Rakoff & Minow 2007:599). During a lecture, these questions are answered without student-teacher interaction.

- If traditional legal education is regarded as method-based pedagogy that prescribe “approach, design [method], and procedure” (Bell 2003:327), then such structure elucidates what teachers actually do in the classroom (*cf.* Chapter 1). Legal method should be viewed in terms of their relative position to the curriculum. According to Richards and Schmidt (2002), a curriculum is an educational program that includes: (1) the *instructive rationale* of the program (the ends); (2) the *educational procedures* and learning practices (the means); and (3) an *evaluation* of these educational ends. Traditional legal methods seem to be positioned mainly within the means of the curriculum. A method-based pedagogy is therefore limited in scope by virtue of its function within the curriculum, but at the emic level it explains actual teaching practices.

Viewed in isolation, the advantages of applying both the Socratic and Langdellian methods seem justified and useful. However, pedagogy cannot function in isolation. In general, traditional legal educational methods are more suitable to non-experiential or doctrinal courses.

## 7.5 Critique on traditional legal education

The critique on traditional legal education may be grouped as six themes concerning the following issues: (1) unfit moral values; (2) increase of student anxiety; (3) preservation of white male hegemony; (4) functional inadequacy; (5) process-based pedagogies without well-defined learning objectives; and (6) detachment from legal practice. It would behoove the discussion to explain each point of critique briefly.

### 7.5.1 Unfit moral values

Traditional legal teaching methods are unsuccessful in conveying moral values, or they are conveying values that are not synchronized with the contemporary socio-political and economic climate (Joy 2014:194). Johnson (1978:xvii) points out that the Socratic method is responsible for a shift from moral decision-making in law to law as a technical field of proficiency. This point of criticism cautions against an

over-emphasis on skills and highlights the importance of balancing technical and theoretical knowledge with a moral legal epistemology (*cf.* Mertz 2007b:505).

As traditional methods are relatively unsuccessful in conveying moral values, they also inspire the design of textbooks with similar limitations. Similar to the Socratic method, Langdellian scientism neglects moral considerations (Zemans & Rosenblum 1981:204), and it motivates the design of legal English textbooks with modernist approaches that are based on the acquisition of lexical and grammatical structures (*cf.* Chapter 10). These textbooks may be typified as lexico-grammar based books, such as *Plain English for Lawyers* (Wydick 1998) and *English Legal Terminology: Legal Concepts in Language* (Gubby 2011). In general, books in this category neglect any discussions on the power of language or legal epistemology as embodied in legal language.

### 7.5.2 Increase of student anxiety

The second point of critique against traditional legal teaching methods is the increase of students' anxiety. Law students are already under immense socio-psychological pressure to reproduce the legal system (Davis & Steinglass 1997:263; Kennedy 2004:1). This stress is exacerbated by the teaching methods used in law schools. Stone (1972:392-395) argues that the Socratic method has negative effects on interpersonal relations and self-esteem among law students, because it encourages and endorses exaggerated competitiveness.

From a psychological viewpoint, Dammeyer and Nunez (1999:55) describe law school as a demanding time that intensifies the psychological distress of law students well beyond the stress that medical students experience. The stressors that exemplify the law school experience include the following:

- high student-teacher ratios;
  - the use of an outdated Socratic teaching method;
  - because of uncontrollable stressors, students experience learned helplessness;
  - students have idealistic self-expectations and misconstrued views of the world;
- and

- an unmanageable workload (Dammeyer & Nunez 1999:55; *cf.* Dolin 2007:219-220; Hess 2002:77; Field & Duffy 2012:133).

From a legal perspective, Hess (the director of the Institute for Law School Teaching at Gonzaga University, Spokane, Washington) provides an emic view on the causes of stress among law students. These causes include the “overwhelming workload, intimidating classroom dynamics, excessive competition, astronomical debt, personal isolation, lack of feedback, and the nearly exclusive emphasis on linear, logical, doctrinal analysis” (Hess 2002:76).

From a personal perspective, the traditional teaching methods fractured classes into smaller cohesive units in which students provided academic and psychological support among themselves. However advantageous, traditional teaching methods foster an intellectual and psychological distance known as an authoritarian lecturer-student relation associated with modernist pedagogy.

### **7.5.3 Preservation of a white male hegemony**

Traditional law school education maintains a white male hegemony (Anderson 2009:1011; Dowd, Nunn, & Pendergast 2003:12). For example, Banks (1988:138-139) and Sander (2011:682) argue that the agenda of law school is set and run by white middle-class men who marginalize women and students from racial, gender, and cultural minorities. Traditional methods are relatively unsuccessful because they do not necessarily contribute to resolve marginalization of certain groups.

Although law school education has been transformed dramatically over the years, scholarship indicates that advances in one domain obscure the vestiges of coercion in other domains of law. Women might be better represented statistically, but gender bias is still exercised in the classroom through socialization, class structure, and language use (Banks 1988:146; Dowd *et al.* 2003:47). As women become seemingly more involved in legal education and the profession, racial and minority group prejudices remain entrenched (Anderson 2009:1011-1019; Dowd *et al.* 2003:11-56; Sander 2011:679-682).

The seventh principle of the *Seven Principles for Good Practice* (Chickering & Gamson 1989:141; *cf.* Chapter 9) advocates the recognition and embrace of the diversity of talents and ways of learning of the law school population. The United States Supreme Court endorsed this view in *Grutter v. Bollinger*, 539 U.S. 306 (2003), when it rejected the University of Michigan Law School's constitutional appeal in favor of race-conscious admissions. In 2013, the United States Supreme Court upheld the decision of *Grutter v. Bollinger* in *Fisher v. University of Texas at Austin*, 133 S.Ct. 2412 (2013), when it ruled that affirmative action or "strict scrutiny" applies to university admissions. Yet, on 22 April 2014 the United States Supreme court decided in *Schuette v. Coalition to Defend Affirmative Action*, 133 S. Ct. 1633 (2013), to ban affirmative action-based college admissions. In contrast to the latest development in practice, the seventh principle challenges the white male hegemony sustained by traditional legal education. Such hegemonic structures are also challenged by postmethod pedagogy and critical literacy pedagogy (*cf.* Chapter 6).

#### 7.5.4 Functional inadequacy

Traditional legal teaching methods are functionally inadequate to impart substantive law, because they accentuate "doctrine in a vacuum" (White 2003:35). The functional inadequacy of traditional legal education manifests in at least three domains: instruction, evaluation, and legal epistemology. With regard to instruction, Sheldon and Krieger (2007:883) argue that traditional legal education overvalues theoretical scholarship, such as the reading of cases, legislation, and scholarly articles, and it undervalues the teaching function; that is, it undermines the role of the teacher (*cf.* Rapoport 2002; Schuwerk 2004). Because traditional methods are based on dialectical procedures, students learn to read, write, and listen through legal filters in which only selected details are relevant. In contrast to the dialectical procedures of the Socratic and Langdellian methods, the lecture method is characterized by the unidirectional flow of information; it accentuates the role of the teacher as orator or lecturer, who imparts a pre-selected narrative.

As far as evaluation is concerned, legal education employs generally inadequate teaching and testing methods (Grossman 2008:23; Rapoport 2002:97; Sheldon & Krieger 2007:883; Sturm & Guinier 2007:516). Law students confirm that evaluations are based on the recitation of facts (Han 2012:4). Law school tests and examinations



do not assess research and writing abilities adequately. Therefore, test scores do not predict students' abilities as lawyers (Rapoport 2002:97).

In terms of substantive law, the restatement of facts is important because common law systems rely on precedent, which is in essence a reiteration of relevant facts, legal questions, and interpretations. In other words, such evaluation is about the application of the common law rule *stare decisis*: “to stand by that which was decided” (Gifis 1998:468). Traditional methods still bear relevance in common law systems, in which law endures through precedent, because these methods trace the evolution of *stare decisis*. However, Rakoff and Minow (2007:600) argue that a retrospective view of legal precedent “does little to orient students to the reality of unfolding problems” (2007:600), because the unlawful act has not yet been enacted and the procedural setting not yet chosen.

The critique against traditional evaluation methods is also subject to scrutiny. White's (2003:35) argument that traditional methods teach “doctrine in a vacuum” and Rakoff and Minow's (2007:600) critique that traditional methods are of little use, because they are unable to facilitate current realities, should be questioned. Legal precedent (*stare decisis*) implies contextualization within the chain of legal decision-making. To a certain degree, precedent provides stability to predict the legal consequences of current and future conduct. However, I agree with Rakoff and Minow (2007:602) that the Langdellian method does not necessarily foster consideration of facts or hypotheticals outside of legal precedent unless expressly specified during the dialectical process.

The third domain of functional inadequacy refers to the absence of the instruction of a legal epistemology and is also connected with White's dictum of “doctrine in a vacuum” (2003:35). Whether legal instruction or interpretation occurs in a vacuum depends on the legal epistemology or philosophy of the members of the legal discourse community that could be influenced by various ideologies. However, such absence in traditional legal methods translates into “[e]motion, morality, and social context[s] [that] are semiotically peripheralized in this process” (Mertz 2007a:95). A

language-based social constructionist epistemology addresses this problem (*cf.* Chapter 3).

The functional inadequacy of traditional legal teaching methods leads to the fifth point of critique: the disparity between the outcomes of legal education and the needs of legal practice.

### **7.5.5 Process-based pedagogies without learning objectives**

The dialogical flow of information of the Socratic method and the dialectical question-and-answer teaching strategy of the Socratic and Langdellian methods correlate with process-based pedagogies in applied linguistics. Process approaches have a particular influence on writing instruction, as their methods are discovery-oriented and ego-centered. Process approaches accentuate the cognitive processes of the writers. Writing is seen as a non-linear, exploratory, generative process, in which the teacher's role is defined as non-directive and facilitating (Bruce 2008).

Although the process approach fosters greater esteem for the individual writer and the writing process itself, especially within L1 contexts, it is unclear whether it is responsible for markedly improved writing in L2 circumstances. "Because process approaches have little to say about the ways meanings are socially constructed, they fail to consider the forces outside the individual which help guide purposes, establish relationships, and ultimately shape writing" (Hyland 2003:18).

Process approaches regard writing as a decontextualized skill by segregating the individual writer who toils to express personal meaning. Although process recognizes the cognitive scope of writing and identifies the learner as an active processor of information, "it neglects the actual process of language use" (Hyland 2003:18). In contrast, genre-based pedagogy provides explanations for the ways in which language functions in social contexts. "People don't just write, they write to accomplish different purposes in different contexts and this involves variation in the ways they use language, not universal rules" (Hyland 2003:19).

Process-based pedagogy also relegates teachers to well-meaning observers. This model is primarily based on individual motivation, personal freedom, self-expression,

and learner responsibility. Excessive teacher intervention could compromise these principles. Since it relies on learners' intuitive understanding of language, teachers assist only in developing learners' metacognitive awareness of the writing process. As a result of the neglect of language and rhetorical organization, learners are unaware of how similar texts are organized differently according to their purpose, audience, and message (Hyland 2003:19).

Because process-based pedagogy is a discovery-based approach, it associates strongly with the Langdellian method that requires students to discover legal principles and doctrine. As such, the learning objectives of process-based pedagogy and the Langdellian method are relatively unclear. Learners are expected to discover appropriate text forms or legal principles by analyzing expert writing and to form their own growing experiences. Although this method can be appropriate for L1 students, who are familiar with key genres and the values of the cultural mainstream, it disadvantages L2 learners, who typically do not have access to specific cultural resources and lack knowledge about the possibility of text variation (Hyland 2003:19).

In Chapter 1, Lewis (in Bhatia 1989:233) is quoted to substantiate the argument that both L1 and L2 students become foreign language learners of legal English upon the assumption of their legal studies. If the study of legal English is considered the acquisition of a new language, then a process-based pedagogy that is more suitable to L1 instruction might not be appropriate for a curricular framework for EALP. This argument is supported when Ann Johns' critique against process pedagogy is considered. Johns (1995:181) identifies the process movement as the greatest culprit disempowering L2 learners.

This movement's emphasis on developing students as authors when they are not yet ready to be second language *writers*, in developing student *voice* while ignoring issues of register and careful argumentation, and in promoting the *author's purposes* while minimizing understanding of role, audience, and community have put our diverse students at a distinct disadvantage as they face academic literacy tasks in college classrooms where reader and writer roles, context, topic, and task must be carefully considered and balanced (original emphasis) (Johns 1995:181).

### 7.5.6 Detached from legal practice

Traditional methods fail to prepare students for the realities of practice because they do not impart the skills needed in legal practice. Skills for legal practice are neglected for several reasons, *viz.* the pedagogic underpinning, the perceived teacher role, the denial of the interdisciplinary nature of law, and the connection with skills-based L2 pedagogy.

Contrary to general assumption, legal practice relies on theoretical knowledge (substantive law) as well as technical expertise (skills). The *pedagogic underpinning* that motivates the failure of law schools to impart skills for legal practice is its reliance on vicarious learning (Caron & Gely 2004:554). Through the isolated dialogues of the Socratic and Langdellian methods, the entire class is assumed to acquire a first-hand learning experience. Therefore, law schools are responsible for accentuating theory rather than imparting practical skills (Amsterdam 1984:612; Montgomery 2008:323; Sheldon & Krieger 2007:883). Law schools flood the market with lawyers, but they fail to teach them how to practice law (Dolin 2007:220). In short, “[l]aw school has too little to do with what lawyers actually do [...]” (Sturm & Guinier 2007:516).

Another reason why law school seems oblivious to legal practice is found in how law school professors view their purpose or their *perceived teacher role*. Edwards (1992:36) provides an apt example of a legal scholar, who declares: “I view my task as a legal academic as similar more to the member of a university department of religion, somewhat detached from practices he/she is studying.” This example is reminiscent of the desk-bound geographer in *The Little Prince*, who does not consider himself to be an explorer, thus relying on the explorer for information needed to produce maps.

In an academic vein, Posner (1981:1113) and Edwards (1992:36) argue in favor of interdisciplinary and social scientific research about law that contributes to the social purposes of legal education. The parochial application of the traditional methods fails to instruct students to “think like lawyers” because “lawyers increasingly need to think in and across more settings [interdisciplinary], with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional

questions arising from them” (Rakoff & Minow 2007:600). Such parochialism negates the interdisciplinary nature of law, thus denying the diverse skills needed to practice as a lawyer.

The movement toward interdisciplinarity and multidirectionality in language teaching is largely due to the American sociolinguist Hymes (1972), who introduced the term “communicative competence” that presents language use in social contexts and “sociolinguistic norms of appropriacy” (Savignon 2001:16). Hymes’ integration of language, communication, and culture is similar to that of his British counterpart, Adrian Halliday, who proposes the notion of meaning potential. Similar to social constructionism, Hymes and Halliday view the learning of language as active social behavior (Savignon 2001).

The criticism that traditional legal education is detached from legal practice hinges on the lack of a skills-based pedagogy for law. In applied linguistics, the teaching of language skills is addressed by skills-based L2 pedagogy. Traditional skills-based theory relies on a Shannon and Weaver-type communication model, epitomized by the lecture method that views meaning as fixed; it is sent, decoded, and received. However, the collaborative nature and reciprocity of meaning is more aptly described by such terms as elucidation and negotiation and the multidirectional flow of information (Savignon 2001:15).

Based on the views of social constructionism and genre theory that consider language and genre as social action, communication skills may be viewed as active, productive skills. Communicators actively participate in the social construction and negotiation of meaning. In addition, a skills approach extends beyond the conventional conception of skills. It includes critical thinking (for example, to seek extra-disciplinary connections), comparing and contrasting (for instance, as conducted in legal hermeneutics and comparative law), as well as ethnographic skills (as explored in legal anthropology or legal pluralism), and research skills (*cf.* Chapter 10).

In relation to the critique against traditional legal pedagogy and its detachment from legal practice, a skills-based approach is not new to EALP, but it is absent from

traditional legal education. Approximately two decades ago, Bhatia (1989:223) already argued for the incorporation of language skills in the law curriculum. In the light of the recent developments in EALP textbook design, which include a substantial focus on legal communication skills (*cf.* Chapter 10), it follows logically that the contemporary view of a skills-based approach that is based on communicative competence and sociolinguistic principles ought to be considered when designing a curricular framework for EALP. The skills-based pedagogy in applied linguistics precedes developments in legal education. Therefore, it is warranted to investigate and scrutinize the possible merits and demerits of a skills-based language pedagogy for EALP.

### 7.6 Operationalization of traditional legal education

In view of the critique on traditional legal teaching methods, it is possible to operationalize EALP within a traditional law curriculum. Edwards (1992:57) proposes doctrinal legal education (a curriculum based on substantive and procedural legal content) that is supported by three pervasive principles: (1) inclusion of the full range of substantive law; (2) legal hermeneutical skills acquisition; (3) and communication skills development.

Firstly, law school should impart knowledge on a full range of concepts in substantive law, such as criminal law, law of contracts, and constitutional law. As prospective practitioners, students should be exposed to a broad scope of regulatory statutes and principles (Edwards 1992:57). This first principle emphasizes knowledge of legal content. However, Garth and Martin (1993:469-492) found that knowledge of neither substantive nor procedural law was considered significant during the hiring process of junior practitioners (*cf.* Chapter 9).

Secondly, legal education should make students skillful at legal hermeneutics, so that they can read and listen to legal texts and interpret and understand them accurately (Edwards 1992:57). Although this second requirement is essential, it needs to encapsulate legal texts in their context. Without proper understanding of context, Edwards' model is not much different from Socratic instruction. However, the acquisition of legal skills, which includes interpretive skills, is imperative not only for

doctrinal instruction but especially for EALP as a jurisprudence-based course (*cf.* Wegner 2009:910).

Thirdly, in conjunction with being able to understand legal texts, law schools should teach students how to communicate their understanding in writing and speaking. Edward's (1992) call for instruction in legal communication skills reverberates throughout legal scholarship. The importance of instruction in legal communication skills is confirmed by major studies, such as the *MacCrate Report* (American Bar Association 1992); the *Carnegie Report* (Sullivan *et al.* 2007); and the *Best Practices for Legal Education Report* (Stuckey 2007). These prominent reports also signal a key difference between doctrinal instruction and jurisprudence-based courses, *viz.* the importance of experiential learning accentuated by contemporary, clinical legal education.

### 7.7 Summative notes

The ideological and pedagogic distinctions between doctrinal and jurisprudence-based law school courses accentuate the intellectual history and measured development of legal education over the past (*circa*) 2,800 years. Although the truth-seeking and political objectives, as well as the moral and ethical objectives, of legal education have changed little over the course of history, the objective to “think like a lawyer” ushered legal education toward contemporary teaching methods that recognize the needs of jurisprudence-based courses. Over the last century, law school pedagogy has embodied a major pedagogic shift from inductive, non-experiential, traditional legal pedagogy to deductive, experiential, contemporary legal pedagogy. In essence, this transition could be reduced to an evolution from traditional legal education to contemporary legal education.

A deep understanding of the critique against traditional methods is imperative, because such understanding influences the conceptualization of a curricular framework for EALP. It would be imprudent for this framework to over-emphasize skills acquisition while ignoring moral legal decision-making and substantive and procedural law. This curricular framework must reduce the anxiety that law students experience, yet it must accentuate the acute responsibility of legal education to train

legal academics, ethical practitioners, and discerning moral citizens (Edwards 1992:34; Jakab 2007:253). The contemporary law school curriculum must embrace the diversity of the cultures in which it operates; thus, it must mimic societal changes and operate conscientiously within academia and practice. A curricular framework for EALP must maintain a logical balance between the theory and practice of substantive law, pedagogy, and language instruction that is situated. It would behoove a curricular framework for EALP to pay heed to individual legal practices because legal language functions in servitude of different situated, legal jurisdictions.

The critique against traditional legal education has surfaced during the evolution of legal instruction. Variations on the lecture, Socratic, and Langdellian methods ushered traditional legal pedagogy toward contemporary legal education. A modified Socratic method might use transitional humor to soften the stereotypical harshness of traditional Socratic teaching (Mertz 2007a:145). However, regardless of modifications, traditional methods still fail to impart skills for legal practice, also known as professional skills or clinical legal skills. Hence, clinical legal education became emblematic of contemporary legal education, which is reviewed in Chapter 8.



## Chapter 8: Contemporary clinical legal education

### 8.1 Introduction

Contemporary legal education refers to a historical period in legal education and the tumultuous changes that it brought about. It signifies a sequential transition from the decline of traditional legal education during the fading decades of modernity when the scientific, objective reality dissociated from the pastiche “real” world with its scarcity of reality (Gedicks 2005:1197). The transition denotes an upsurge of clinical legal education and associated movements, such as legal realism and plain legal language during the tempestuous beginnings of postmodernity and the emergence of the “postmodern condition” (*cf.* Gedicks 2005; Giddens 1993; Lyotard 1984). Within the parameters of legal education, the clinical legal education movement can be credited as the main initiative for educational transformations within law schools around the globe. Therefore, the history and character of contemporary legal education is to a large extent the history and character of clinical legal education.

In contrast to the modern promise that science would control theory objectively, postmodernism embraces the subjectivity of multiple voices. Ontologically and epistemologically, it may be referred to as “incredulity towards metanarratives” (Lyotard 1984:xxiv), and within education it could be described as “pedagogic multidirectionality” (Carstens 2008:95). Contemporary legal education may be described as skepticism or incredulity toward the dominant metanarrative of traditional legal education. Similar to the recognition of multiple voices, contemporary legal education may be characterized as a collage of traditional and clinical legal educational practices. It would therefore be erroneous to assume that the lecture, Socratic, and Langdellian methods vanished as postmodern thought critiqued their existence and utility. In fact, they endured in the law school curriculum particularly through their application in doctrinal courses. However, clinical legal education became more pronounced through jurisprudence-based courses and through scholarly and practical pursuits in law school curricula, at academic conferences, and in publications.

### *Chapter preview*

Chapter 8 is divided into five parts. Part one begins the discussion by providing a conceptual definition of clinical legal education. Because clinical legal education extends across the globe, and this study considers L2 legal education across the circles of world English, the proliferation of clinical legal education through globalization is discussed in part two. Part three introduces and evaluates clinical legal education in the sampling frame, *viz.* the United States as an example of the inner circle, South Africa as an example of the outer circle, and South Korea as an example of the expanding circle. Part four provides a critique on clinical legal education. Part five considers the operationalization of clinical legal education. Part six concludes the chapter with summative notes, as clinical legal education motivates the ameliorating initiatives considered in Chapter 9.

### *Conceptual definition*

Scholarship does not provide a generally agreed-upon definition of clinical legal education. Instead, general characteristics or goals can be deduced from various sources. Additionally, different scholars emphasize different aspects of clinical programs, such as Spiegel's (1987) emphasis on methodology and Wilson's (2004) general focus on social justice. Their descriptions are apt but not sufficiently encompassing; therefore, the section below synthesizes and elaborates on the characteristics of clinical legal education. In general, clinical legal education displays a collection of 10 features:

- Clinical legal education refers to complex models of legal pedagogy (Milstein 2001:375), a recognition and merger of viable elements from traditional and contemporary pedagogic and different worldviews. Therefore, clinical education can be described as more than just pedagogy, it is also a “philosophy about the role of lawyers in our society” (Tarr 1993:33).
- A clinical program focuses on the learning of skills through performance. Hence, clinical legal education can be described as a methodology, and its method focuses on students performing in the legal system (Spiegel 1987:591,603; Milstein 2001:375; Tarr 1993:35). A description of clinical legal education as methodology balances learning issues with the notion that clinical education is inherently practical. Although practical, clinical education

also relies on a well thought-through pedagogy that is based on theory and practice. It would be imprudent to view clinical education as completely separated from substantive legal theory or doctrine, applied linguistic theory, or theory in general (Spiegel 1987:603).

- Emblematic of a clinical program is the incorporation of collaborative and experiential learning models (Davis & Steinglass 1997:250) as opposed to the reliance on vicarious learning by traditional legal education. Clinical programs also inspire lateral thinking, because the formulas learned in class (such as issues, relevant facts, application to facts, and conclusion, better known as the IRAC-method) may not solve the problems of actual clients (*cf.* Chapter 10).
- A clinical program is created through the law school and integrated with the academic program. The practice of the clinical program is accompanied by instruction on the theory of practice (Wilson 2004:423).
- Clinical education emphasizes collaboration among legal practitioners and between practitioners and society (Spiegel 1987:592). In their final years of law school, students provide legal services or advice to real clients. The clinical program brings the realities of the citizens of the country to law school (Chemerinsky 2008:596; Maisel 2007:375; Wilson 2004:423).
- In general, clients who receive counsel through the clinical program cannot afford the costs of private counsel (Wilson 2004:423). Nevertheless, law school clinics should caution against antagonizing the underprivileged as “guinea pigs” (Tarr 1993:35). This attribute of legal clinics imparts legal literacy, such as knowledge of social justice (Maisel 2007:378). Where the Socratic method appears sterile and unable to impart moral instruction, clinical legal education is credited for inculcating a moral compass among students because they provide services to the poor and disenfranchised. “Their involvement in such representation is often their first exposure to persons from a different social and economic class than their own” (Wilson 2004:423; *cf.* Maisel 2007:376). Therefore, clinical legal education needs a legal epistemology that embraces, supports, and explains the realities of prospective clients.
- A lawyer admitted to practice in the specific jurisdiction provides supervision to the students of that legal clinic. Therefore, the clinical program depends on

experiential learning through which students acquire important values and lawyering skills (Chemerinsky 2008:596; Maisel 2007:375). Wilson calls this the instruction on the “theories of the practice of law” (2004:423).

- Students receive academic credit for participating in the clinical program (Wilson 2004:423). This credit serves as incentive to register for clinical courses and recognizes the academic value of clinical education.
- Clinical legal education is also associated with internships and externships, in which students work for academic credit in (un)paid governmental or non-governmental agencies or corporations (Heller 2009:n.p.; Maisel 2007:378). Since the skills imparted through EALP are utilized in both intern- and externships, law schools could consider including EALP components in other clinical courses. For example, a law school clinic involving consultations with clients could require their students to complete the oral component of an EALP course in the law school clinic.
- Clinical legal education is also multifaceted to the degree that clinical courses become interdisciplinary. However, interdisciplinarity is not a new concept to law because “[...] legal realism opened up the possibility of combining the study of law with other disciplines by arguing that law is not self-contained” (Spiegel 1987:586). Legal realism initiated the transfer of social science theory to law schools, thus the emergence of subject fields, such as law and literature and law and psychology (*cf.* Chapter 1).

Clinical legal education and EALP share several similarities. For example, their experiential learning modes, such as supervision, case rounds, and seminars overlap (Milstein 2001:377). The language-based epistemology for EALP envisioned in Chapter 3 is intimately concerned with the roles of lawyers in society that clinical education advances. Similar to clinical education, EALP (as conceptualized in Chapter 11) embraces pragmatically different disciplines and learning techniques that serve the pedagogic objectives of the legal discourse community. Although legal discourse communities function within local jurisdictions, such as the circles of world English, clinical legal education and EALP respect and transcend such parameters to operate globally.

## 8.2 Proliferation of clinical legal education through globalization

Although clinical legal education is closely tied to legal doctrine (substantive and procedural law), it incorporates into a single course issues beyond parochial doctrinal courses. Such issues include legal ethics, legal sociology, operations of government, political science, and the treatment of disenfranchised communities (Aaronson 2002:13; Wilson 2004:431). Similarly, as clinical education meets the ideological, societal, and curricular needs of a community within a circle of legal English, the content of an EALP course should be tailored to meet socially and academically-situated requirements. It would therefore behoove a curricular framework for EALP to consider the features of clinical legal education within the sampling frame of the study. However, the sampling frame is not isolated from the effects of globalization.

The effects of globalization on legal education manifest as three interconnected consequences:

- changes in international legal practice reverberate in legal education;
- the demographic, linguistic, and educational heterogeneity of the law school population affects EALP content; and
- globalization is responsible for an intellectual shift in the field of comparative law.

Firstly, the change in the way that law is practiced necessitates a change in the way it is taught. Changes in the practice of law are the results of global developments in politics, transportation, communication, and the economy. Scholars agree that these changes are motivated by globalization (Chesterman 2009:879; Ginsburg 2003:433; Grossman 2008:29; Jeong 2010:177). Not only are law firms, students, and teachers crossing the globe, but the content and methods of legal education are also becoming more similar at different academic institutions, in different jurisdictions, and in different circles of legal English (Chesterman 2009:879; Mahoney 2010). To equal the pace of global trends, law schools must rethink their pedagogies and curricula, not only to serve the global community, but also to lead and regulate it.

Secondly, EALP (as a jurisprudence-based course that imparts legal language and content) reverberates the realities of globalization and internationalized societies.

Globalization is accompanied by diverse communication styles that could be accommodated by law school curricula through EALP (Baraldi 2006; Kim 2007; East 2008). It is therefore imperative that the principles supporting EALP include language and pedagogic theory that accounts for these fluid contexts. Additionally, globalization compels synergetic and symbiotic relationships among different legal systems, which are often echoed in EALP course content (Bhatia & Candlin 2008:127). In the Chinese legal English textbook entitled *法律英语* (Legal English), for example, the content is based exclusively on the American legal system (Guo 2004).

Globalization contributes to the demographic, linguistic, and educational heterogeneity of both the law school population and EALP content. With the student population and subject matter being more diverse, legal English education becomes more challenging as an intercultural and interdisciplinary endeavor (Jakab 2007:257; Jeong 2010:177-178). Curriculum designers are compelled to ask how and to what extent EALP should address and accommodate the internationalization that law schools require. Such internationalization is suggested in, for example: (1) curricula in mixed legal jurisdictions that mirror the origins of their plurality; (2) law school syllabi concerning the World Trade Organization; or (3) international human rights instruments that signal participation in and engagement with the global community.

The diversity of law school student and teacher populations also urges changes in the curriculum (Chesterman 2009:879; Read 2008:180). Bok reminds that this diversity extends beyond nationality and disciplines and includes diversity in linguistic, educational, and academic backgrounds (2006:18-19).<sup>1</sup> As teaching methods and legal practices disseminated through migration (Moliterno 2008:274), the ideas of clinical legal education were transplanted to law schools around the world. South Africa

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<sup>1</sup> Within the South African context, such diversity is intensified through the disparities caused by apartheid. Segregation expounded diversity in linguistic, cultural, and educational comprehension among South African students (*cf.* Fedler 1993:1002). The diversification of the law school population and the legal curriculum has far-reaching ramifications for legal education. These consequences include, among others: the rationale for this study (*cf.* Chapter 1); the legal epistemology underlying EALP; and law school academic support programs (*cf.* Chapter 9).

(Fedler 1993:1000-1001; Maisel 2007:375; Wilson 2004:428) and South Korea (Ahn 2006:228; Ginsburg 2003:434; Jeong 2010:161) are no exceptions. However, because clinical instruction is not as cost-effective as traditional teaching methods, law schools add new “practical” courses to the curriculum. “But adding new courses taught in traditional ways does not significantly alter legal education” (Chemerinsky 2008:595).

The third consequence of globalization includes an intellectual shift in the field of comparative law that is responsible for a transcendence of traditional jurisdictional analysis that focused on mere comparison (Chesterman 2009:879). Instead, contemporary comparative law endorses legal globalization that elicits the successful transplantation of law (Mattei 1997:6).

Such transplantation of law, however, provokes stern critique from critical legal pedagogy that globalization advances American legal imperialism (Moliterno 2010:769; Whitman 2009:306) on a similar scale as transnational American law firms do.<sup>2</sup> However, Wilson (2004:429) argues that clinical funding programs are not uniquely American. America does not actively promote clinical programs; instead the leadership of law schools and students witness the effective methodology of clinical programs, which motivates them to seek reform in their own countries.

Three schools of thought that consider the implications of globalization on legal education have emerged. The first group of scholars maintains that global changes are unimportant for legal education, because lawyers deal mostly with national concerns. “Proponents of this viewpoint further allege that the modification of legal education is unnecessary, because the global questions are ‘merely a matter of translation’” (Grossman 2008:21). Yet, functioning in an isolated environment does not mean that legal education should negate changes in the world.

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<sup>2</sup> Silver *et al.* (2009) argue that transnational, American law firms apply the law of the United States in international contexts to advance American interests. Their profits are the result of the application of American laws. In contrast to European and British law firms, American firms seem to colonize international jurisdictions in the name of global cooperation. However, this argument by Silver *et al.* needs to be substantiated with more empirical research.



The second perspective deems translation as an inadequate means to negotiate the relationship between lawyer and client. Professional relationships depend on knowledge of the client's cultural principles.

This group believes that legal education needs to be modified by increasing global exposure, achieved by adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centers with global connections, and augmenting the number of formal international linkages (Grossman 2008:21; *cf.* Attanasio 1996:311).

The third perspective proposes a deeper qualitative change in legal education that concerns the goals, objectives, and methods of teaching. In particular, it proposes a profounder focus on skills, advocated by clinical legal education. The second and third perspectives support the curricular framework envisioned in this study, because the language content and legal content of EALP respect the circles of world English and jurisdictional boundaries, yet it recognizes commonalities.

### **8.3 Clinical legal education in the circles of world English**

As explained in the research methodology, the circles of world English determined the sampling frame. Therefore, one country from each circle represents the legal educational needs that a curricular framework for EALP may consider. The following section reviews the development of clinical legal education in the United States, South Africa, and South Korea.

#### **8.3.1 The United States**

The introduction of the Langdellian method in 1870 heralded a turning point in legal education that elevated the academic and social standing of American law schools through a scientific method of inquiry and instruction and English common law principles (Appleman 2005:253). As the legal profession and law schools increased their public standing in post-Civil War America (1861-1865), discontent grew increasingly over the disparity between what Klare calls (1982:336) the “curriculum-in-action” and the “curriculum-in-the-books.” The formal curriculum as formulated in law school catalogs or curriculum committee minutes became detached from what actually happened in law school classrooms and legal practice. In an attempt to bridge



the divide between law school and legal practice, the clinical legal movement developed during the 1960s through 1970s as a response to “students’ desire to learn how to use law as an instrument of social change and to be involved in the legal representation of poor people” (Milstein 2001:375). Milstein’s statement echoes the question at the beginning of Chapter 7: “Why didn’t I learn this in law school.”

The roots of clinical legal education may be traced to Russian professor Lyublinsky, who proposed in 1901 that legal education could be modeled on medical training. References to law clinics at American universities followed 16 years after Lyublinsky’s proposal and experienced a significant interest only in the 1960s (Spiegel 1987:589). As clinical legal education burgeoned in the United States, law schools became operational in Latin America and India in the 1970s (Wilson 2004:421), and clinical legal education transplanted to other jurisdictions.

Today, clinical legal education in America consists of three branches: in-house live-client clinics (law clinics), externship programs, and simulation courses. In-house live-client clinics are emblematic of clinical education. They consist of authentic law offices that are situated in law schools. Students provide legal counseling under the supervision of faculty members. Externship programs place students with governmental or nongovernmental law offices external to the law school. Simulation courses depend on simulations of legal practice within controlled settings (Milstein 2001:376). The underlying pedagogic premise is that students acquire the necessary skills through experiential learning.

Together with American clinical legal education, the gender, race, age, academic, ethnic, and geographical diversity embraced by American law schools became popularized and globalized. The perceived hybridity of clinical programs that fuse traditional theoretical education with the practical training of future practitioners inspired global change (Wilson 2010). The roots and initial successes of clinical legal education in America proliferated through globalization to law schools around the world, regardless of whether countries followed civil, common, customary, or mixed legal systems.

As clinical legal education extended around the globe during the 1970s through 1980s, the structure of American law schools flourished as well. South Korea is not alone in its move to adopt the American-style law school. Similar changes have been implemented in Australia, Hong Kong, Japan, Taiwan, and the Philippines (Chesterman 2009). In general, law students complete an undergraduate degree before enrolling for the three-year, graduate, J.D. (Juris Doctor) degree. In addition to the J.D. program, a one-year Master of Laws degree (LL.M) is offered. The LL.M is particularly popular among foreign students who wish to obtain law degrees abroad. In America, a doctorate degree in law is known as Doctor of Juridical Science (S.J.D.) (*cf.* Brostoff, Sinsheimer, & Ford 2001; University of Pittsburgh).

Although contemporary legal education in the United States, South Africa, and South Korea has been influenced by similar socio-political developments, the structure of legal education in South Africa is different because of its cultural heritage.

### 8.3.2 South Africa

The law of South Africa mirrors the tempestuous Dutch and British colonization of the Cape of Good Hope. Roman-Dutch law arrived in the Cape in 1652 with Jan van Riebeeck. The Dutch introduced South Africa to a Western legal system at a time when native Africans lived according to African customary law or indigenous law. During the early 1800s, British administration took over and implemented English law especially in relation to public law issues. Today, Roman-Dutch law, English law, and African customary law comprise South African law. It is therefore apt to characterize South Africa as a mixed legal jurisdiction (Iya 2001:356; Klerman, Mahoney, Spamann, & Weinstein 2011:381; Mattei 1997:26; Reid 2003:8-9).

Similarly, legal education mirrors the legal pluralism of the land. The 1875 curriculum for the bachelor of laws degree at the University of the Cape of Good Hope (today the University of South Africa, UNISA), reflected a biased diversity by including English, Roman, Dutch, and colonial law (Kaburise 2001:363). It excluded African customary law.

During the 1970s and 1980s, Professor Denis McQuoid-Mason, Dean of the Law Faculty at the University of Natal, Durban, led the clinical legal education movement

in South Africa (Maisel 2007:381). Interestingly, Wilson (2004:422) points out, the advancement of clinical legal education is associated with and anticipated political transitions that occurred in Africa, East and South East Asia, and Latin America. This illustrates the reciprocal influence between legal education and politics (Kaburise 2001:364), which in turn reiterates the importance of a moral legal epistemology.

Prior to 1994, the *Bantu Education Act* of 1953 segregated education unequally according to race and ethnicity (Fedler 1993:1000; cf. Iya 2001:358). During apartheid, law school subjects were taught “within the context of the borrowed Westminster system, [and the application of this system enforced] racist parliamentary sovereignty” (Fedler 1993:1000). After 1994, the African Nationalist Congress (ANC) government reformed the educational system that institutionalized discriminatory education (Maisel 2007:385).

With the promulgation of the *Constitution of the Republic of South Africa* in 1996, South African legal education underwent a metamorphosis. In 1998, a standard four-year undergraduate LL.B. degree was enacted by the *Qualifications of Legal Practitioners Amendment Act 78 of 1997* (Iya 2001:358; Maisel 2007:402). The *Qualifications of Legal Practitioners Amendment Act* revoked apartheid laws that segregated legal education.

Prior to 1997, students could choose between two undergraduate degrees: a three-year bachelor of law degree (B.Juris.) and a four-year *baccalaureus procurationis* degree (B.Proc.). Transitional arrangements enabled students to graduate with pre-existing qualifications and to synchronize South African legal education with other Commonwealth universities (Iya 2001:359). After graduation, law students were still required to complete two years of practical or vocational training called articles or clerkship. However, candidate attorneys could be credited for one year by successfully completing a legal practice course at one of eight schools of legal practice. During this period, candidate attorneys also had to pass bar examinations that officiated entrance to the legal profession.

As the democratic political dispensation brought about changes to the law curriculum,

it also transformed law school demographics. As a result of the abolition by the Constitution of virtually all forms of unfair discrimination, the 21 South African law schools (usually called faculties) steadily transformed their student demographics to reflect the population. By 2001, racial and ethnic ratios were still oblique, disadvantaging the African majority (Kaburise 2001:364-365). However, by 2007, more than a decade after the fall of apartheid, the tables had been turned with African graduates in a vast majority over other races and ethnic groups (Godfrey & Midgley 2008:42).

As South Africa achieved alignment with other Commonwealth universities by adopting a four-year, undergraduate LL.B. curriculum, South Korea moved to adopt the American law school system.

### 8.3.3 South Korea

Two major transformations characterize legal education in South Korea. The first transformation of Korean legal education began in 1894, when the Chosun dynasty transformed traditional Confucianist education into a Western-style system (Han 2012:1).<sup>3</sup> Thereafter, until 2007, Korean legal education was based on the British model, in which students graduated with an undergraduate four-year LL.B. degree, after which they had to pass the Korean bar examinations to practice law. The second major transformation occurred with the promulgation of the *Korean Law School Act* 8544 of 2007. Beginning in March 2009, the *Korean Law School Act* abolished undergraduate legal education and replaced it with graduate-level legal instruction similar to that at American law schools (Ahn 2006:238; Han 2012:1; Jeong 2010:156; *cf.* Wilson 2010).

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<sup>3</sup> *Cf.* Park (2009) and Kim (2009) for discerning descriptions of the differences between Confucianist and Western (Socratic) approaches to legal education. Confucian philosophy regards law as a facilitative tool rather than a punitive tool. Within legal culture, private ritual norms are more important than law; however, constitutionalism elevates constitutional law as supreme. While Confucianist legal culture promotes social unification in a top-down manner, Western legal culture promotes competition on a horizontal playing field (Park 2009:129; Kim 2009:325).

The transformations in 2007 may be justified for three reasons. Firstly, South Korea's participation in international business and politics requires more lawyers for the competitive international arena. Secondly, law school education was also transformed to increase legal research and focused legal expertise. Finally, changes were made to increase the number of lawyers to improve the quality of legal services to the public (Ginsburg 2003:435; Han 2012:2). However, Hayes (2007) quotes research conducted by *LexisNexis* and the *Korean Economic Daily* that expresses discontent among the majority of Korean businesses with Korean lawyers. In addition, Korean lawyers do not adequately satisfy the expectations of American clients (Hayes 2007).

In response to the *Korean Law School Act* of 2007, universities invented new “applied practical courses” or clinical programs to meet regulations. They include, among others, international business contract practice; law and practice of the trans-border flow of goods, technology and capital; and corporate compliance programs. Many of these new courses are not “truly” about clinical training but rather simulation courses and are even described as “academic window-dressing” (Jeong 2010:156-179). This occurrence is not exclusive to South Korea, as Spiegel reminds us that American law schools included clinical courses during the 1970s that were taught through doctrinal case-method teaching (1987:557).

A major consequence for the law curriculum and EALP of the *Korean Law School Act* is the diversification and globalization of legal education. Korean law schools are encouraged “to provide a diverse array of course offerings, including courses taught in both Korean and English involving foreign legal systems and international law” (Wilson 2010:n.p.). To initiate the transition from lecture and Socratic teaching to clinical education, the *Korean Law School Act* requires law school curricula to include the following practical courses: professional responsibility, legal research, legal writing, moot court, and a practical internship (Ahn 2006:239; Jeong 2010:179; cf. Wilson 2010).

#### **8.4 Critique on contemporary legal education**

Similar to the traditional legal education, contemporary legal education is not immune to critique. The following critique is not aimed exclusively at clinical legal education;

it evaluates clinical legal education within the ideological climate of contemporary legal education. Interestingly, the critique on contemporary legal education is similar to the critique on traditional legal education, which justifies the actions of ameliorating initiatives. Five points of critique are raised against contemporary legal education: (1) the pressure on faculty to “publish or perish”; (2) the use of disputed teaching and testing methods; (3) an emphasis on abstract theory; (4) exacerbating competition and conformity; and (5) the persistence of disputed legal educational methods.

#### **8.4.1 “Publish or perish”**

Similar to traditional legal education, contemporary legal education places excessive emphasis on scholarship, resulting in a general neglect of the teaching functions of faculty (Sheldon & Krieger 2007:883). Klare (1982:337) issues a stern critique against contemporary law school education when he reprimands academia by affirming that the law “curriculum is designed to serve the needs, cater to the interests and abilities, and legitimate the power of law teachers, *not* to train law students.” Skills-based courses are notoriously work-intensive for teachers and students. Law schools should therefore maintain a prioritized balance between the needs of students and the development of faculty.

#### **8.4.2 Disputed teaching and testing methods**

Similar to traditional legal education, present-day law schools use generally questionable teaching and testing methods (Sheldon & Krieger 2007:883). Often assessment is limited to merely a mid-term and a final examination with no continuous evaluation or feedback opportunities. “The model of law teaching that bases a course’s grade on a single law exam is one of the single worst pedagogic mistakes that legal education has made” (Rapoport 2002:101).

#### **8.4.3 Emphasis on abstract theory**

Contemporary legal education still foregrounds abstract theory rather than offering applied training (Joy 2014:193-194; Sheldon & Krieger 2007:883). The contemporary law school curriculum accentuates adjudication and omits many of the significant “global, transactional, and facilitative dimensions of legal practice” (Sturm & Guinier 2007:516; *cf.* Joy 2014:193-194). Law schools hardly ever focus on the institutional,

interpersonal, and investigative capacities that good lawyering requires” (Sturm & Guinier 2007:516). It seems as if the theory-practice divide correlates with the stature of law schools. Practicing attorney Ben Turin is of the opinion that elite law schools focus more on theory “‘thinking’ rather than practice ‘doing’. The more brainwork used, the more elite the profession” (in Rapoport 2002:92).

#### 8.4.4 Competition and conformity

Law school culture is still based on competition and conformity, which exacerbate student anxiety. Competition is invigorated through law firms that seek to hire only students within the top niche (Rapoport 2002:98). Since the global financial crisis of 2008, competition has become more pronounced (Joy 2014:177-178). For example, due to competition and regardless of how well a student knows substantive Korean law, “[r]arely in the history of the [bar] exam has the passing rate exceeded 5 percent” (Han 2012:227).

Conformity is still endorsed by a law school pedagogy that seeks to teach students to “think like lawyers.” This analytical skill is maintained through at least two approaches. Firstly, the current application of the Socratic and Langdellian methods (King 2012:n.p.; Sturm & Guinier 2007:516) instill a reductionist, argumentative style, since only the relevant facts are pertinent. The second approach through which conformity is maintained is the written form of the first, *viz.* IRAC-framework of representing legal analysis (Miller & Charles 2009:192-193; Rapoport 2002:99; Rappaport 2008:272). The IRAC-framework teaches students that the best grades depend on an accurate application of the formula. Although useful as an analytical tool, IRAC also persuades students that good legal writing is as easy as “painting by numbers.” Therefore, an EALP curriculum must caution against formula-type legal English instruction, because it does not liberate thinking or improve writing; it merely imposes the accepted genre or organization of ideas.<sup>4</sup>

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<sup>4</sup> To expand students’ thinking beyond the application of IRAC, Rappaport proposes the use of storytelling to initiate a more encompassing thought-process and persuasive writing style. “An IRAC-only approach ignores the power of the narrative” (Rappaport 2008:302). Grose (2010:37), for example, proposes storytelling across the law school curriculum, “from clinic to classroom.” However, personal experience has taught me that deviation from the writing formula complicates the professor’s



### 8.4.5 Persistence of disputed legal education

Since the critique of traditional and contemporary law school education are similar, it should be questioned why law schools persist with questionable pedagogic practices. In favor of a balanced clinical legal education, Spiegel asked a similar question as early as 1987: “If there are other ways to view clinical education, why has not a change occurred over time” (1987:606). Why has legal education remained relatively static in contrast to the dynamic evolution of the legal profession? (Rhee 2011:317). Such resistance could be formulated in terms of several fears or apprehensions of change. Legal education must be released from these apprehensions if clinical legal education and a curricular framework for EALP are to be successful. There are at least three possible reasons why law schools tolerate inadequate curricula: (1) possible decline in prestige; (2) dependence on university rankings; (3) and the profitability of current programs.

Firstly, law schools are under the impression that they would have to surrender their prestige by being associated with trade schools should their curricula become more practice-based (*cf.* Rhee 2011:310). Ironically, many professions require clinical or practical experience prior to licensure, including medicine, engineering, and psychology (Dolin 2007:8; Rhee 2011:310). In addition to being associated with a trade school, Spiegel argues that skills training is by definition marginalized (1987:606), because it is labor intensive and associated with vocational training, such as legal English for paralegals that is typically not taught at the university level.

Secondly, elite law schools set the stage and other schools follow their example out of fear that change may affect their rankings (Rapoport 2002:105-107). Changing the curriculum and teaching methods implies a substantial amount of work for teachers who have to alter their courses (Dolin 2007:10). Courses based on clinical and skills teaching methods are more labor-intensive than courses that are based on the

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evaluation task, ultimately resulting in undesirable grades; therefore - conform. The issue of conformity is inextricably bound with the notion of the discourse community (*cf.* Chapter 5) and the power of the narrative is intimately connected to linguistic social constructionism and a legal linguistic epistemology for EALP (*cf.* Chapter 3).



traditional case-method or lecture style (Maisel 2007:401). Because current methods produce lawyers, law schools may be reluctant to change curricula. More assertively articulated: “Law schools are run primarily for the benefit of law professors - not for the benefit of law students, not for the benefit of the legal community, and most certainly not for the benefit for the public at large” (Schuwerk 2004:761). Including more practical courses may also expose how little law schools actually know about legal practice (Dolin 2007:11; Rapoport 2002:105-107; Maisel 2007:387). These changes threaten faculty members’ sense of tradition (Wilson 2004:430; Maisel 2007:387).

Finally, perhaps one of the most convincing reasons, especially in the current global economic climate, to improve law school curricula is the fact that the current system is highly profitable. Law school fees are exorbitantly high. Dolin (2007:5) points out that, while the cost of living in the United States increased by 28% from 1992-2002, the cost of tuition at public law schools increased 134% for residents and 100% for non-residents. The situation is not much different in South Africa and South Korea (*cf.* Fedler 1993:1004). “Thus, while law schools charge high tuitions and spin off excess profits to their universities, law students sink further into debt, and the poorest segments of society suffer the lack of attorneys to address a range of social ills” (Dolin 2007:6; *cf.* Rhee 2011:310). Therefore, the reluctance to embrace the positive changes that clinical legal education could bring to society, disadvantages already underprivileged students and communities.

How can the reluctance to change be eradicated, and what are the motivations that prompt the reassessment of law school pedagogy? The equanimity with which globalization unfurls provides a platform from which the solutions to the apprehensions to change can depart.

### **8.5 Operationalization of clinical legal education**

The operationalization of a clinical program needs to fit the description of clinical legal education, consider the effects of globalization on legal education, and refute the critique of legal imperialism. In an assessment of clinical programs in Europe, Latin America, and Africa, Wilson (2004) identified four strategic moves that set successful

programs apart from Jeong's (2010) "window-dressing" programs. Successful clinical programs favor the main law curriculum, appoint directors to law clinics, emphasize experiential learning, and implement process-based curricula.

Firstly, within the university system, successful law clinics have garnered favorable acceptance. These clinics are not viewed as appendages to the curriculum; they are part of the main law curriculum (*cf.* Wilson 2004:428). Successful law clinics are therefore part of the "curriculum-in-action" (Klare 1982:336).

Secondly, successful clinics are directed by intellectual leaders, thus gaining respect for the clinical program and alleviating the marginalization of clinical programs and their teachers (*cf.* Tarr 1993:48). Faculty members involved in the clinical program also teach doctrinal courses so that "no arbitrary distinctions are made between the teaching of the theory and practice of law, or between the teaching of law as 'a science' or 'a trade' [...]" (Wilson 2004:428).

Thirdly, successful programs depend on experiential learning. Clinical programs afford students "multiple topical or doctrinal options", such as immigration law, domestic violence, and human rights to attune their clinical skills (Wilson 2004:428). To ensure that experiential learning imparts the necessary skills and that clients are counseled appropriately, clinical teachers employ several learning modes, including: supervision, case rounds, and seminars (Milstein 2001:377).

Fourthly, law school graduates need more than just window-dressing, because the international market with its multidisciplinary needs requires actual facilitation and problem-solving dexterities (Grossman 2008:30; *cf.* Rakoff & Minow 2007:602). As Rapoport (2002:104) phrases it: "[c]lients are already insisting on the efficient practice of law, and they are looking for one-stop shopping. If they can't get high-quality legal services from lawyers, they will lobby to get the same type of advice from other professionals" (*cf.* Dolin 2007:3).

Because of the demands of consumers and competition from other disciplines, Grossman proposes a qualitative process-based law school curriculum that reflects the realities of the interconnected world. Grossman's process correlates with a process-

based pedagogy in its discovery orientation. However, it is different from process pedagogy, because it strives for more contextualization similar to the aspirations of the new rhetoric and ESP (*cf.* Chapter 6). Grossman's program consists of the following parts:

- Connections should be established between the study of domestic and international law (Grossman 2008:30). These connections should extend beyond mere translation and reflect the intellectual shift in contemporary comparative law that sees the transplantation of law without endorsing legal imperialism. Similarly, Rapoport argues that the interrelations between substantive law (codified statutory law) courses should be emphasized (2002:103).
- The curriculum should deliberately refer to different legal systems and not only when the curriculum is situated in a mixed jurisdiction.
- Cultural issues should be included on the academic agenda. Although, cultural issues from other disciplines could be included, such as psychology, anthropology, sociology, and literature, law school culture should be reconsidered. "Even if law schools are not ready to take on problems of culture, it is critical to sustainable reform to acknowledge the importance of background norms, values, and incentive structures" (Sturm & Guinier 2007:551).
- The curriculum should incorporate viewpoints of other academic disciplines into the study of law. The interdisciplinarity of law is illustrated through the so-called "law and" courses referred to in Chapter 1 (Kennedy 1983:5; Rapoport 2002:104).
- The curriculum should promote "social change and international awareness through purpose-oriented programs outside of the law curriculum" (Grossman 2008:30). As such, Grossman's process-based law school curriculum also reflects its social purposes and functions as echoed by descriptions of ESP (*cf.* Hyon 1996:695).

Although Grossman proposes to overcome the educational problems associated with globalization, his approach does not solve the fears of change experienced by law schools. Yet, his five strategic moves could enhance the operationalization of EALP

within the law school curriculum. If Grossman's pedagogic principles were applied to a curricular framework for EALP, then such a framework should entail an emphasis on the role of comparative law, mixed legal systems, (law school) cultural issues, interdisciplinarity, and social change.

### 8.6 Summative notes

Contemporary legal education responds to the detachment of traditional legal education by implementing legal practice through clinical legal education. Clinical legal education attempts to connect academia pragmatically with the plurality of practice and society. Although it recognizes legal pedagogy as a comprehensive philosophy that motivates collaboration between academia and practice through the interdisciplinarity of law, it does not yet promote critically the recognition of the diversity of law school and the fragmented voices that constitute classrooms. Therefore, clinical legal education could be described aptly as the genesis of postmodern legal pedagogy.

Although clinical legal education brought about welcome changes to law school curricula, it is not without limitations. Because of the limitations of contemporary legal education, ameliorating initiatives are explored. These initiatives include the *Best Practices for Legal Education Report* (Stuckey 2007) and the emergence of law school academic support programs (LSASP) discussed in Chapter 9.

## Chapter 9: Ameliorating initiatives for legal education

### 9.1 Introduction

The critique against traditional and contemporary legal education is justified. The unfit moral values, student anxiety, white male hegemony, detachment from legal practice, and opaque learning objectives of traditional legal education gave rise to contemporary clinical legal education. Yet, as contemporary legal education attempts to address the shortcomings of its antecedent, a set of new challenges arises, *viz.* disputed testing and teaching methods, the emphasis on abstract theory, the reinforcement of conformity, and a capitalist compulsion to “publish or perish.” As a result of the prolonged persistence of these shortcomings and challenges, the legal discourse community has been responding with rectifying initiatives. The main purpose of Chapter 9 is to address these ameliorating initiatives. It is vital to grasp the full extent of these initiatives so as not to reinvent the “pedagogic wheel” for EALP curriculum development. In addition, Chapter 9 serves a secondary purpose to inform the coding scheme of the qualitative content analysis of EALP-type textbooks in Chapter 10. A chapter preview illuminates how Chapter 9 meets these purposes.

#### *Chapter preview*

Over the last three decades, ameliorating initiatives have taken on three forms: pedagogic principles, support programs, and skills-based curricula. This chapter is structured according to the development of these initiatives. Following the brief introduction, part two focuses on the scholarly discourse ignited by the publication of the *Seven Principles of Good Practice in Undergraduate Education* by Chickering and Gamson in 1987. Part three provides a review and summary of the features of law school academic support programs that entered mainstream academia in 1989. In the early 1990s, law school education started to embrace skills-based pedagogy following the recommendations of the *MacCrate Report* in 1992 discussed in part four. Skills-based pedagogy for law school motivated prolific research projects with particular emphasis on the fundamental skill to “think like a lawyer.” Part five consists of a critique on ameliorating initiatives, and part six concludes this chapter with summative notes.

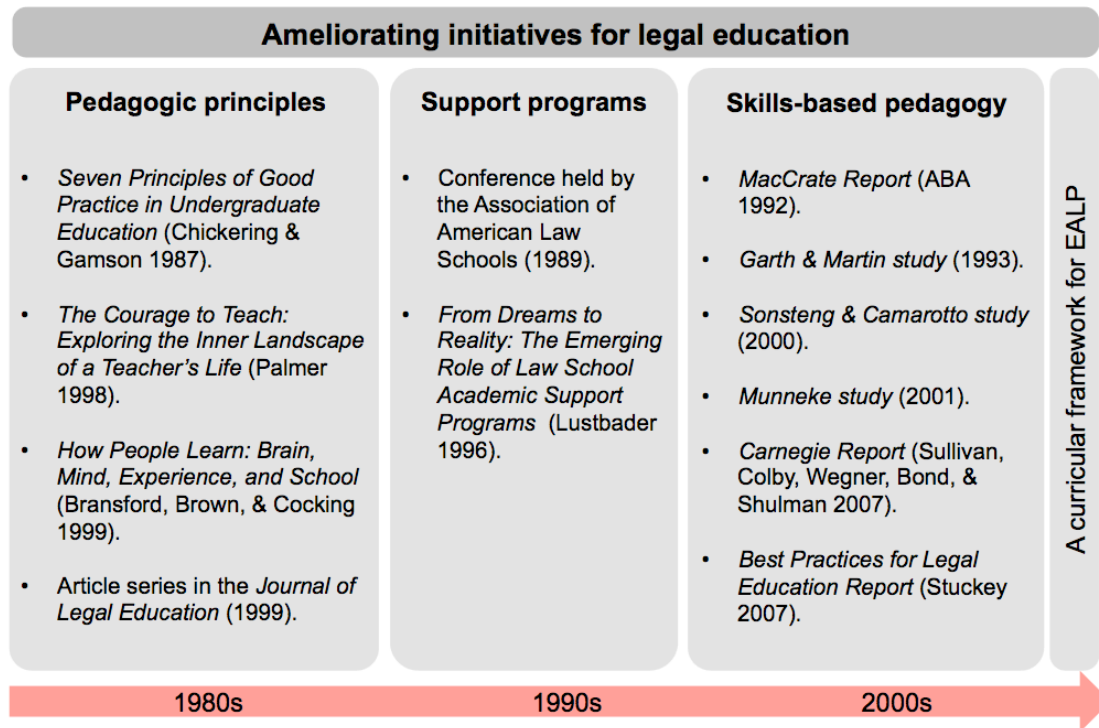


Figure 9.1: Development of ameliorating initiatives for legal education

The progression of the development of ameliorating initiatives is summarized in Figure 9.1, as it recognizes the three forms of ameliorating initiatives and the primary scholarship that contributes to this productive development.

## 9.2 Pedagogic principles for legal education

Statements of best practices, mostly of American origin, for legal education were the result of the need to “evaluate the quality of a law school’s program of instruction and guide efforts to improve it” (Stuckey 2007:8). The quality of instruction needs to be improved because of the failures of traditional and contemporary legal education.

The renowned *Seven Principles of Good Practice in Undergraduate Education* (hereinafter *Seven Principles of Good Practice* (Chickering & Gamson 1987) was first published in the *American Association of Higher Education Bulletin* in 1987. The authors, Chickering and Gamson, identified the seven most important principles that could guide the objectives for quality undergraduate education.<sup>1</sup> These principles

<sup>1</sup> The *Seven Principles of Good Practice in Undergraduate Education* is particularly relevant to the South African context in which law school education begins at undergraduate level (cf. Chapter 8).

were widely (re)published in different sources over an extended period of time (Hess 1999a:367-368; Syverud 2002:16-17).

Approximately a decade after the initial *Seven Principles of Good Practice* (Chickering & Gamson 1987) was introduced to general undergraduate education, three influential research projects were launched, and the movement to provide academic support for law students gained momentum. Firstly, Palmer published *The Courage to Teach: Exploring the Inner Landscape of a Teacher's Life* (1998), in which he formulated six paradoxes that may be considered when designing effective teaching and learning spaces. Palmer's approach is emblematic of a postmodern/social constructionist conceptualization of education, since paradoxes are not rejected but embraced. According to Palmer (1998:76-80), educational spaces should be bound and open, hospitable and changed, invite the voices of individuals and groups, accommodate local and metanarratives, support solitude and the community, and welcome silence and speech.

The second study that integrates well with the *Seven Principles of Good Practice* (Chickering & Gamson 1987) was assigned by the Commission on Behavioral and Social Sciences and Education and published as *How People Learn: Brain, Mind, Experience, and School* (Bransford, Brown, & Cocking 1999). Its purpose was to investigate the increase of reading difficulties in young children. Consequently, it formulated strategies to improve the design of learning environments. These strategies include learning environments that are learner-, knowledge-, assessment-, and community-centered.

Thirdly, the Institute for Law School Teaching (at Gonzaga University and Washburn University School of Law) sponsored research on the relevance and applicability of the original *Seven Principles of Good Practice* (Chickering & Gamson 1987) to legal education. In 1999, the *Journal of Legal Education* published a series of articles based on this research. Below follows an analysis of the original *Seven Principles of Good Practice* (Chickering & Gamson 1987) interspersed and synthesized with Palmer's six

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Because these principles focus on good educational practices, they may be amended and applied to graduate audiences of American and South Korean law schools as well.



paradoxes, the response-articles published in the *Journal of Legal Education*, and the National Research Council's strategies to improve the design of learning environments.

### 9.2.1 Student-faculty contact

The first principle encourages student-faculty contact (in and outside of class), because it stimulates intellectual commitment and encourages students to develop their own values (Chickering & Gamson 1987:3). Increased student-faculty contact is credited for improving the students' educational aspirations, attitudes toward the educational experience, intellectual and personal development, academic achievement, and persistence (Anaya & Cole 2001:11; Apel 1999:373-374).

Anaya and Cole (2001:3) found that informal socialization between faculty and students did not yield support for increased academic performance and may be characterized as discourse socialization (*cf.* Chapter 5). However, socialization that included academic discussions on career plans, feedback on projects, and research were likely to improve academic performance and may be interpreted as an initiation into the academic discourse community (*cf.* Chapter 5). These claims are affirmed by quantitative research that explores the relationship between the behavior of faculty and the cooperation and learning of students (Umbach & Wawrzynski 2005:157). Umbach and Wawrzynski (2005:163) found that, on campuses with "frequent course-related interactions, both first-year and senior students were more challenged and engaged in active and collaborative learning experiences."

Student-faculty contact could be compromised for several reasons (Apel 1999:376-387):

- Scholarship has become the currency of academia, that is, teachers need to "publish or perish."
- Institutions do not provide incentives for student-faculty contact. Contact with students detracts from time spent on academic and personal pursuits.
- The race and gender of students and faculty alike may affect the comfort of interactions.



- Students may experience safety issues when meeting faculty on a one-to-one interchange.
- Students might not be interested in extending contact with faculty, as personal preferences and circumstances should be considered.
- Student/teacher ratios and the absence of an appropriate physical environment may hamper interchange.

However, these hurdles are not insurmountable. Although different strategies could be proposed for each problem, Apel provides a useful platform from which to depart: “[...] faculty need to start with behavior inside the classroom. Learning and using the student’s names, engaging students in active learning, and using a few personal anecdotes can signal accessibility” (1999:384).

### 9.2.2 Cooperation among students

The second principle, cooperation among students, is emphasized instead of learning as a competitive process (Chickering & Gamson 1987:3). This does not mean that students do not compete for high grades and placement in elite firms (*cf.* Chapter 8), but it suggests that teachers should refrain from exacerbating the anxiety often associated with competition. Bryant (1993:462) describes cooperation as shared decision-making that allows individual differences. Differences in opinion require cooperative exchanges, which result in mutual responsibility for final decisions. This process requires law students to reflect on their own work and the work of group members; for example, students cooperate through the clinical learning modes of case rounds and seminars during which multiple voices are heard (Milstein 2001:377).

Palmer suggests that educational spaces should invite the voices of individuals and groups (1998:77-78). Learning occurs when individuals express their ideas, and these ideas are confirmed or challenged by other individuals or groups. Students and teachers should be prepared to invite multiple voices in order to benefit from collective wisdom resulting in a community of learning (Palmer 1998:77-78).

Similar to Chickering and Gamson (1987) and Palmer (1998), Bransford *et al.* (1999) argue that a community-centered learning environment promotes effective learning.

Within this community, shared norms and values indicate that learning is reciprocal among students and teachers, high expectations apply to all, mistakes lead to greater understanding, and cooperative learning and feedback enhance learning (Hess 2002:86).

According to Arendale (2007), cooperative learning is structured and planned. It focuses on the following six principles: (1) “positive interdependence among [...] participants; (2) individual accountability [...]; (3) appropriate rationale and task purpose [...]; (4) structured student interactions with designated activities rather than free-form discussions; (5) instructor or expert peer facilitation; and (6) attention to development of social skills, such as interpersonal communications and leadership development” (2007:16).<sup>2</sup>

Cooperative learning is credited for inspiring academic excellence, because the learning community requires and supports enhanced performance (Cavanagh 2011:23; McGroarty 1989:127). Cooperative strategies applied in the law classroom translate into practice. Practical skills are useful to the successful attorney, who can listen, plan, and collaborate with a diverse group of people. In the age of globalization (*cf.* Chapter 8), negotiation and collaboration skills have become indispensable communicative tools to navigate cross-cultural settings (Bryant 1993:464; *cf.* Chapter 10).

Within the legal writing classroom, Thyfault and Fehrman (2010) emphasize the applicability and success of cooperative and collaborative strategies. These strategies

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<sup>2</sup> In contrast to cooperative learning, collaborative learning is less structured, so that students participate with their own experiences in mind (Arendale 2007:16). Collaboration emphasizes the “discrepancy between the reality of the legal system and the dream of social justice” because different members bring different realities to the group (Dominguez 1999:387). Therefore, students could also learn the value of *pro bono* litigation. For a description on how cooperative learning can facilitate and instruct students on the practice of *pro bono* law, Dominguez (1999:396-397) suggests preventative and strategic lawyering. Preventative lawyering suggests proactive, voluntary legal intervention before a specific legal need arises. Strategic lawyering calls community organizations to participate with lawyers to address past legal issues through mediation as a community-building exercise. *Cf.* Dominguez (1999:398-400) for examples of how these strategies can be applied in the community lawyering seminar.

are successful, because the attention span of adult students peaks at the beginning of lectures, after which it decreases. It is only logical to intersperse a lecture with “group activity breaks” that can retain and elevate attention.<sup>3</sup> Thyfault and Fehrman (2010:164) argue that cooperative and collaborative strategies can “teach law students the skills they will need to be successful attorneys.”

Today, more lawyers are working in large firms, litigate in teams, and plan together in meetings than in the past (Bryant 1993:463; Dilloff 2011:342).<sup>4</sup> However, law school education does not prepare students to work in these “bureaucratized and hierarchically organized law firms” (Bryant 1993:464; *cf.* Dilloff 2011:359-363). By employing clinical education principles and encouraging active learning, law schools can ease the transition for students from the relatively protected lecture halls to the vicissitudes of practice. Although diversity management and collaboration are advocated as essential skills for law students, only three EALP-type textbooks in the total sample of 44 address the issue. Two of these textbooks belong to the category of clinical legal skills books (*cf.* Chapter 10).

### 9.2.3 Active learning

Active learning is the third principle of good practices of undergraduate education. First, a definition of active learning is provided, followed by a brief description of its positive effects and use in legal education. This section concludes with the challenges posed by active learning.

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<sup>3</sup> With reference to Nilson, Thyfault and Fehrman (2010) provide a useful set of strategies that can be integrated to increase the collaboration and productivity of group learning. These strategies include: “(1) positive interdependence; (2) individual accountability; (3) appropriate group composition, size, and duration; (4) face to face interaction; (5) genuine learning and challenge; (6) explicit attention to collaborative social skills” (Thyfault & Fehrman 2010:143). In addition, Thyfault and Fehrman (2010:159-164) provide an elaborate resource of group exercise that can be used in large legal writing classes.

<sup>4</sup> Since the financial crisis of 2008, law firms have been scaling down; therefore, law schools may have to respond with education that prepares students for the financial vicissitudes of legal practice. However, a financial recovery could return legal practice to its former methods (Dilloff 2011:342-343).

In a broad sense, Hess (1999b:401) describes active learning as activities that include “more than just listening.” Arendale (2007:13) elaborates on the idea by adding that active learning encourages reflection on ideas and their uses. The most complete description is provided by Bonwell and Eison (in Hess 1999b:401), who accentuate five principles of active learning: (1) activities that include more than just listening; (2) the acquisition of skills is more important than content knowledge; (3) learning that encourages higher-order thinking (for example: analysis, synthesis, and evaluation); (4) activities that actually engage students (such as reading and discussion); and (5) learning that encourages an exploration of students’ attitudes and values.

Active learning displays several advantages. “Active learning is important for one fundamental reason: active involvement enhances learning” (Hess 1999b:402; *cf.* & Gamson 1987:7; Hatamyar & Sullivan 2010:2). Freshmen and senior students express improvement in their “personal social development, general educational knowledge, and practical competencies” on campuses, where faculty engage with students through active and collaborative exercises (Umbach & Wawrzynski 2005:165). Another advantage of active learning is its long-term effects. In a longitudinal statistical analysis of the grades of law students who attended academic support classes conducted by means of active learning strategies, Hatamyar and Sullivan (2010:31) found that active learning sessions “[...] positively and significantly relate to first-year grades. Moreover, it appears that this positive relationship continues through the third year of law school.”

Contrary to the critique against legal education in general, individual law schools and teachers employ active learning strategies. In theory, Socratic dialogue elicits discussion that requires higher-order thinking and could be effective in large classes. For example, simulations, moot court and client-attorney consultations impart valuable thinking, performative, and emotional skills (*cf.* Aaronson 2002:7; Milstein 2001:377). Law school clinics, intern- and externships, and field trips introduce students to actual experiences through experiential learning (Hess 1999b:402-410). More recently, law teachers and students have turned to technology to promote active involvement that would enhance learning (Caron & Gely 2004:556). Teachers utilize

PowerPoint and Prezi presentations and Web-based course platforms, while students use netbooks and tablet computers in class.

Although the use of technology in law school classrooms is embraced by some (Saxer 1999; Kozma 2003), it is not accepted *prima facie* by others (Broussard 2008; Caron & Gely 2004; Leslie 2000). Broussard (2008) provides a brief overview of the pedagogic shift from traditional methods to technology-infused methods. Saxer (1999), for example, states unequivocally that law teachers “must” use technology, because it is used successfully in other disciplines. She provides an extended and useful list of advantages and disadvantages of certain modes of technology with their applications to law school (Saxer 1999). In contrast, Leslie (2000:1304) cautions that PowerPoint presentations soothe students into pedagogic oblivion, as they become “glued on the Power[P]oint slide like a first-grader focuses on Barney.” Caron and Gely (2004:558) seem to maintain a middle ground, since they suggest a combination of older teaching methods and new technologies. In a similar vein, Bransford *et al.* (1999) caution that the use of technology does not imply improved teaching; success depends on how technology is utilized.

The benefits of active learning may seem enticing; however, some challenges could deter law schools and teachers from implementing active learning strategies. Firstly, active learning strategies may not agree with individual learning styles. Secondly, the planning of active learning activities may be time-consuming. Therefore, in the context of the pressure to “publish or perish”, teachers make a logical choice to invest most of their time in scholarship instead of designing active learning exercises. The features, advantages, and challenges of active learning are summarized in Figure 9.2.

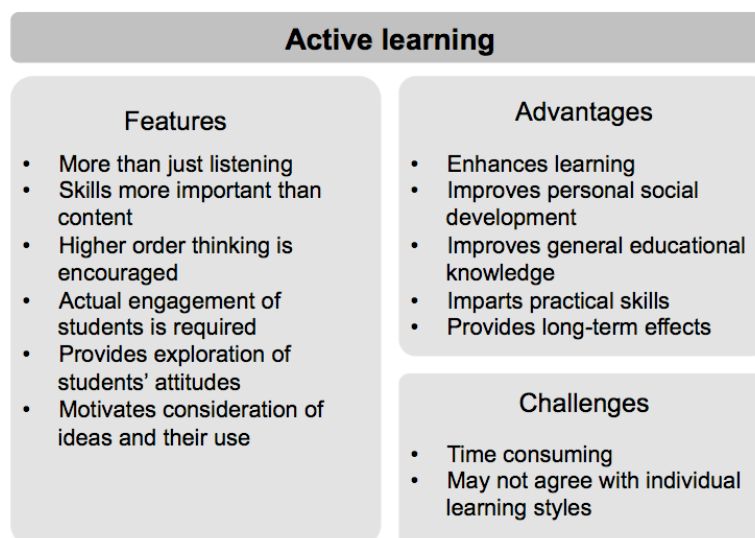


Figure 9.2: Features, advantages, and challenges of active learning

To improve teaching and to benefit students, universities should commit equal priority to scholarship and teaching (Hess 1999b:404; Klare 1982:337). Hess (1999b:404) emphasizes that “[t]eachers, like their students, cannot learn new skills without commitment and effort.” Therefore, Klare (1982:343) suggests that the “[e]ducation of the educators is therefore a necessary precursor of curricular progress.”

#### 9.2.4 Prompt feedback

In this section, a brief description of feedback introduces the topic, which is followed by an analysis of the functions and levels of feedback operation. In the third section, the advantages of teacher and peer feedback are considered. To provide a balanced perspective, the value of feedback is questioned in the conclusion.

In *Seven Principles of Good Practice*, Chickering and Gamson (1987:4) postulate that prompt feedback focuses learning and reflection. It is generally accepted that feedback is essential to learning (Hattie & Timperley 2007:81; Paulus 1999:283; Taras 2003:550). Feedback could be described as a consequence of performance, because a reader or observer provides corrective or clarifying information, alternative strategies, or motivation about the properties of a performance (Hattie & Timperley 2007:81). Feedback is also a process. Zhang (1995) states that outlining, drafting, feedback, and revision feature prominently in process approaches. The functions and

effects of feedback may therefore be seen as part of the learning process on the continuum of instruction.

Feedback displays two general functions and four levels of operation. The two main functions are a statement of performance by the agent that reflects on the strengths and weaknesses of the assignment and advice or suggestions on how to improve the performance (Sadler 2010:538). In addition to the main functions, feedback focuses on four levels. Firstly, feedback focuses on the correctness of a task or product. Secondly, feedback aims at the processing of information, such as understanding the writing process. The third level refers to self-regulation that motivates students to complete the task more efficiently and effortlessly. Finally, feedback focuses on the personal level that is directed to the self, such as “excellent work.” Hattie and Timperley (2007:90) argue that feedback on this personal level is irrelevant because it is “unrelated to performance on the task.”

Revision, teacher, peer, and self-feedback are associated primarily with process approaches in L2 writing instruction (Jacobs, Curtis, Braine, & Huang 1998:307; Paulus 1999:265; Zhang 1999:323). Peer and self-feedback are criticized as intended to eliminate teacher feedback. However, process approaches do not propose to eliminate teacher feedback; in fact, they are part of the process of instruction and should be “judiciously combined” with other forms of feedback (Jacobs *et al.* 1998:314).

In addition to teacher feedback, Sadler (2010) proposes the use of purposeful peer feedback. Peer feedback need not be limited to assessment; its function includes the reiteration of substantive course content, such as substantive law in EALP. Peer feedback is a potentially useful instructional tool because of its social, cognitive, affective, and methodological benefits (Rollinson 2005:23).

- Peer feedback gives students the opportunity to view their own progress and abilities in relation to other class members.
- Peer readers can provide useful feedback from perspectives that the teacher cannot necessarily envision.

- Just as peer feedback could be criticized as not being that of an expert, the unique perspectives of fellow students can be celebrated, as it contributes to a diversity of perspectives.
- Peer feedback can be more understanding and sympathetic than the feedback of a more aloof teacher. Zhang (1995) argues that peer feedback does not provide more affective value than teacher feedback. However, Jacobs *et al.* (1998) contend that peer feedback is important in ESL instruction, because students value it, even though it may not be as effective as teacher feedback.
- In general, students perceive peer feedback positively (Tarus 2003:561; Jacobs *et al.* 1998:311-312).

In contrast to its advantages, the value of feedback may be questioned. Teachers may be concerned about the time dedicated to it and the accuracy and suitability of peer feedback.<sup>5</sup> Students, on the other hand, may question the purposes and advantages of having their work evaluated by non-experts (Jacobs *et al.* 1998:312). Students from different cultures or circles of world English may consider peer feedback as a threat to group harmony because of the negative social interaction that it can elicit (Rollinson 2005:26).<sup>6</sup>

Sadler (2010) points out that students experience three interpretative difficulties with teacher feedback. Firstly, students can focus partly on the original work and partly on what they intended it to be. “The learner’s personal investment in the production then blurs the boundary between the two” (Sadler 2010:540). Secondly, teachers can use

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<sup>5</sup> The consumption of time is one of the major points of critique against teacher and peer feedback (LeClercq 1999:418). LeClercq (1999) provides an extensive list and explanations of less cumbersome feedback methods. Although tailored for legal content classes, these methods (*cf.* Chapter 9) can also be applied within the EALP classroom.

<sup>6</sup> Carson and Nelson (1996) found that Chinese students were reluctant to give peer feedback to maintain group harmony and not to claim authority over (equal) peers. Personal teaching experience at Yonsei University and Seoul National University, South Korea, has taught me that peer evaluation needs to be explained as a tool that provides alternative perspectives, rather than regarding peer feedback as an instrument of authority. Therefore, the purpose and procedure of peer feedback must be explained and justified to students.



terms to express improvement with which students are unfamiliar. Finally, teacher and student logic do not necessarily agree. A teacher may not follow the logical flow of an idea, yet to the student it may be clear.

The main challenge to teacher feedback is not necessarily the quality. The problem is the assumption that it is the “most appropriate route to improvement in complex learning” (Sadler 2010:549). Sadler argues that learning from being told is inherently defective, because the conditions do not allow closeness between teacher and student. The use of grading rubrics or criteria-standard templates, in particular, cannot improve the communicative function of feedback, because rubrics “tend to prioritise specific qualities (criteria) rather than quality as a global property” (Sadler 2010:549).

Feedback is meaningless without context. The quantification of feedback may be challenged, because statistics may not be able to contextualize the relationships between teachers and students. Statistics may be too reductionist to validate or disprove the effectiveness of feedback. The phrase “excellent work” that accompanies a final draft may be just as validating as extended feedback on a first draft. It also emphasizes that “[f]eedback has no effect in a vacuum; to be powerful in its effect, there must be a learning context to which feedback is addressed” (Hattie & Timperley 2007:82). Therefore, feedback without context, subsequent action, and internalization does not necessarily lead to improvement (*cf.* Sadler 2010:536).

Teacher and peer feedback pose undeniable benefits despite challenging opposition (Zhang 1995:219; 1999:324). LeClercq (1999:428) motivates law professors who disregard feedback to consider what tools assisted their own learning and how they learned what their teachers wanted them to learn. Ultimately, it is the responsibility of teachers and students to understand the constructive potential and use of feedback.

### **9.2.5 Time on task**

Time on task is the skill to manage time productively as a law student and legal practitioner. Chickering and Gamson (1987:4) formulate it as “[t]ime plus energy equals learning.” Within the context of legal education, time on task functions in three interconnected domains. Firstly, the domain of learning considers student time on task.

Secondly, the domain of teaching concerns faculty time on task. Thirdly, institutional time on task refers to the interface between teaching and learning (Dessem 1999:430).

As far as student time on task is concerned, law schools could use various strategies to impart the skills for efficient time management. Frequent evaluation opportunities throughout the semester help students to recognize their weaknesses prior to final examinations. Prompt feedback on such evaluations and assignments can indicate to students whether they manage their preparation time effectively (Dessem 1999:433). Faculty time on task varies from minor behavioral patterns, such as arriving at class on time to curricular planning in accordance with the academic calendar and maximizing student time on task (Dessem 1999:434).

Institutional time on task refers to the temporal environment created by law schools in which faculty and students function. Law school curricula are often composed without consideration of the relations among different courses or the pedagogic mission of the school (Dessem 1999:437). To overcome this problem, Harvard Law School instituted “bridge courses”, during which faculty and students meet to discuss topics that are relevant to more than one course. Classes are also synchronized so that they address related legal concepts simultaneously. Another strategy is to combine classes as “team-taught courses” (Dessem 1999:437). These strategies can increase the quality of both teaching and learning, thereby addressing the efficiency of time on task within legal education.

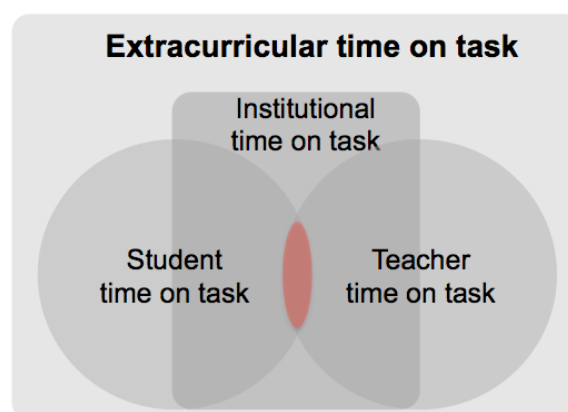


Figure 9.3: Dimensions of time on task

Figure 9.3 illustrates the interaction between the dimensions of time on task. Dessem (1999), however, does not recognize extracurricular time on task, which presents the extended private or professional lives of teachers and students. Within the grand scale of extracurricular time on task, the intersection between teachers and students, facilitated through institutional time on task, appears miniscule. Figure 9.3 iterates the prime value of class-contact time and its productive use.

### 9.2.6 High expectations

Creating high expectations is the sixth principle of good practice for undergraduate education. High expectations should be communicated, because they motivate high performance (Chickering & Gamson 1987:4-5). At least four important issues are related to setting high expectations for law students. Firstly, teachers should articulate their expectations to students. These goals should be attainable and reasonable (Dark 1999:441). Secondly, expectations should be communicated recurrently to all students. High expectations are not important only for high-achievers. Thirdly, barriers that prevent the communication of high expectations should be removed. Finally, high expectations should be communicated throughout law school, since the curriculum is composed of all of the classes together.

In addition to the association between high expectations and high performance, a significant connection exists between high expectations and student-faculty interaction. Students express higher cognitive activities on campuses where faculty members engage with students through active and collaborative learning strategies. However, higher order cognitive activities do not necessarily lead to greater satisfaction or perceptions of support (Umbach & Wawrzynski 2005:167-168).

High expectations function reciprocally. The original principle published in the *Seven Principles of Good Practice* (Chickering & Gamson 1987) focused mainly on students; however, high expectations should also be communicated to law schools and teachers, because “faculty attitudes and beliefs and behaviors can play a role in creating a culture that fosters student learning” (Umbach & Wawrzynski 2005:174).

### 9.2.7 Diverse talents and ways of learning

Diverse talents and ways of learning should be embraced, because individuals learn and operate in different ways. The diversity of the law school classroom has never been more prominent than in the age of globalization (Chickering & Gamson 1987:5). This diversity functions in at least three domains of law school: (1) diversity within the course syllabus; (2) an acceptance of intellectual diversity among students; and (3) an embrace of racial, gender, sexual, and political diversity that extends beyond law school into legal practice.

Where the *Seven Principles of Good Practice* (Chickering & Gamson 1987) suggests an embrace of the diversity of the student body, Palmer (1998) suggests diversity in the educational space (the curriculum) by proposing a teaching environment that is simultaneously bound and open. With this paradox, Palmer (1998:77) invokes a classroom in which teaching and learning are focused by subject material, but it remains open enough to allow alternative paths of discovery similar to the facilitative role of a teacher in process-based pedagogy. These alternative paths of discovery should “honor the little stories [local narratives] of the individual and the big stories [metanarratives] of the discipline” (Palmer 1998:79). Palmer’s paradoxical bound and open learning environment, therefore, recognizes Lyotard’s “incredulity toward metanarratives” and resonates Pennycook’s advice that educators should “strive to validate other, local forms of knowledge about language and teaching” (1989:613).

The second domain of diversity refers to an acceptance of intellectual multiplicity among students. The seventh principle for good practice requires an expanded definition of “excellence to include a more comprehensive range of skills and abilities” (Lustbader 1999:449). Various forms of intelligence need to be acknowledged, because successful professionals use various forms of intelligence in combination. The current model for teaching and evaluating students recognizes only linguistic and logical intelligence. In addition to the acquisition of knowledge, a broad understanding of excellence embraces skills training that appeals to existential and intra- and interpersonal intelligences, for example. As such, the seventh principle endorses a multiple intelligences pedagogy (*cf.* Chapter 5).

The third domain of diversity entails the demographic composition of law school and practice. With the globalization of law school curricula (Blackett 1998:57), the law school student body presenting the global community (Attanasio 1996:311; Lustbader 1996:842), and law firms practicing globally (Silver, Phelan, & Rabinowitz 2009), it has become increasingly important for law schools to embrace the diversity of the proverbial global village.

The criticism against Socratic teaching that it maintains a white male hegemony resurfaces with a discussion of the diversity of law school. Domination within legal education by any one particular group is not conducive to respect for “voices, values and experiences of a diverse society, because it promotes exclusivity over inclusivity, individuality over community, economic efficiency over moral or humanistic efficiency, and rights over care-orientation” (Lustbader 1996:840). Such domination by one group also undermines the objective of legal education to create legal practitioners who value equality and fairness. The legal system will continue to reply ineffectually to the cultural diversity of society until the student population, faculty, and practice resonate this cultural diversity (Lustbader 1996:840).

The diversity promoted by the seventh principle of good practice is endorsed and elaborated on by law school academic support programs (LSASP).

### 9.3 Support programs for legal education

Law school academic support programs developed in isolation until the Association of American Law Schools held a conference in 1989 on the topic of diversified student bodies and the assistance that such students need. Since then, LSASP scholarship has proliferated and developed a pedagogy of its own.

Law school academic support programs address challenges posed by diversity to the law school curriculum in general. These programs aim to provide diverse persons with access to legal education by preparing students for the American LSAT (Lustbader 1996:842).<sup>7</sup>

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<sup>7</sup> The LSAT is subject to a similar critique as law school education. Lustbader (1996) argues that it proliferates the white male hegemony, because the test favors applicants who received the advantages

As law school student populations become more diverse (Bok 2006:18-19; Larcombe & Malkin 2008:321; MacKinnon & Manathunga 2003:133; Read 2008:180), LSASP become more sought after because of their apparent successes. As Lustbader (1996:847) phrases it: “Many faculty think [LSASP] work ‘magic,’ and they want to learn the ‘tricks’.” These programs do not have tricks up their sleeves, as they set out only to assist students to adjust to law school culture, standards, and education. Academic support programs developed a pedagogy that “addresses both the academic and non-academic factors that impact student performance by teaching processes for learning and methods for coping with feelings of alienation and disenfranchisement” (Lustbader 1996:847).

Law school academic support program pedagogy depends on ten principles. It shares the following three principles with the *Seven Principles of Good Practice* (Chickering & Gamson 1987): promoting active learning, setting high expectations, and recognizing diverse talents through a variety of teaching methods. It is beneficial to explore each additional principle briefly as a set of ameliorating principles.

- Teachers should begin instruction and assistance at the student’s level of comprehension. Ideally, the exploration of legal concepts should begin with students’ existing knowledge and experiences (Lustbader 1996:847). Syverud (2002:17) contends that effective learning requires students to develop “deep understandings” of subject matter (a concept that is related to setting high expectations); however, students can achieve such deep understanding only by beginning with an elementary understanding. This principle illustrates that the LSASP is a student-oriented approach and is intricately connected to the facilitation of zones of proximal development.
- Teachers act as facilitators to help students develop substantive and syntactic schemata (Lustbader 1996:850). Students need substantive schemata to

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of a certain economic, academic, and cultural disposition. This disposition enables applicants to perform well on the test and gain admission. This is one plausible reason why minority groups are represented disproportionately in legal practice.

understand the subject matter of doctrinal courses.<sup>8</sup> “Additionally, students need assistance in identifying and internalizing syntactical schemata for the structure of legal discourse and the conventions contained in the legal system” (Lustbader 1996:850).<sup>9</sup>

- Learning is viewed as a developmental progression (Lustbader 1996:851) or a scaffolding of schemata within an appropriate zone of proximal development (*cf.* Chapter 3). Initially, basic legal concepts are brought to understanding before more advanced concepts and their interrelations are attempted. Therefore, it is important that learning incorporates both the student’s experiences and domain-specific understandings. Consequently, teaching serves as the bridge between the substantive and syntactic schemata of the student and that of the legal discourse discipline.
- As teachers focus on the process of learning, they assist students to cultivate and improve their metacognitive processes (Lustbader 1996:852). However, students can develop their metacognitive processes (knowledge about what they know) more effectively with proper feedback (Hyland 1998:255; Wigglesworth & Storch 2012:364). Law school support programs endorse a process pedagogy that requires teachers to “take into account the process of how learners learn a language and how writers produce” written texts (Raimes 1991:422).
- Generally, skills should be taught in the context of a specific subject. The application of these skills is contextualized as teachers indicate the relationship between what students learn and how their knowledge and skills can be applied in tests (Lustbader 1996:854).
- Support programs extend beyond academic assistance; they also tend to the psychological barriers that students experience (Lustbader 1996:857). The psychological distress of law students is widely documented (Dammeyer &

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<sup>8</sup> The term, “[s]ubstantive schemata, refers to subject specific relational links among discrete bits of knowledge. It is this binding of declarative and associational knowledge within a coherent memory structure that turns otherwise disjointed bits of information into meaningful patterns of thought and accounts for systematic efforts in human processing” (Lustbader 1996:850).

<sup>9</sup> Syntactical schemata refer to the patterns and customs of specific discourses according to distinct structures of thought (Lustbader 1996:850).

Nunez 1999:55; Davis & Steinglass 1997:263; Dolin 2007:9; Hess 2002:77; Kennedy 2004:1; Stone 1972:392-395). Despite the demographic diversity of law school (Dolin 2007:12), students who participate in LSASP receive support by recognizing group homogeneity, which can lead to group cohesion and consequent alleviation of psychological barriers. As such, support programs can initiate academic discourse socialization.

- The last principle of support programs encourages students to pursue their personal and professional goals (Lustbader 1996:859), which can be facilitated through student-faculty discourse socialization, and it is recognized through extracurricular time on task.

At this point, the *Seven Principles of Good Practice* (Chickering & Gamson 1987) and the principles of LSASP may be indistinct because of minor overlaps. It is prudent, therefore, to summarize these principles in Table 9.1. These 14 principles were particularly instrumental in the identification of broader content clusters and categories for the qualitative content analysis of EALP-type textbooks. The next part of this chapter on skills for legal education was instrumental in tapering categories and identifying keywords for the qualitative content analysis.

Table 9.1: Summary of principles for good practice and LSASP

<b>Seven Principles of Good Practice</b>	<b>Principles of LSASP</b>
<ul style="list-style-type: none"> <li>• Stimulate student-faculty discourse socialization</li> <li>• Motivate cooperation among students</li> <li>• Teach through active learning strategies</li> <li>• Provide prompt, quality feedback</li> <li>• Inculcate time management skills</li> <li>• Set high expectations</li> <li>• Recognize diverse talents and multiple intelligences through a variety of teaching methods</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize the appropriate level of instruction</li> <li>• Develop substantive and syntactic schemata</li> <li>• Promote learning as developmental progression</li> <li>• Cultivate metacognitive processes</li> <li>• Contextualize skills acquisition</li> <li>• Recognize psychological barriers</li> <li>• Identify students' personal and professional goals</li> </ul>

#### 9.4 Skills for legal education

Since the dawn of the clinical legal movement in the 1960s, the multidirectionality of skills as part of the pedagogic process has been at the center of a skills-based



pedagogy for law, because universities are expected to impart skills that legal practice demands (Star & Hammer 2008:248). Stakeholders in practice and at universities have been criticized for their “pre-occupation with employability” at the cost of educating socially critical citizens (Star & Hammer 2008:237). Traditionalists argue that skills should not be over-emphasized in the law school curriculum, because that could turn law schools into vocational schools in the narrow sense of the word (Aaronson 2002:42), thus tarnishing the professional image of law schools as academic institutions. However, the shortcomings of traditional legal education that are addressed by LSASP and the development of clinical legal programs indicate a movement toward a skills-based pedagogy.

With broad pedagogic principles laid down by the *Seven Principles of Good Practice* and LSASP, this part synthesizes scholarship to identify the specific skills needed for a skills-based law school curriculum. The discussion begins with the promotion of clinical legal education by the renowned *MacCrate Report* (ABA 1992), commissioned by the American Bar Association and published as *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992). Soon thereafter, Garth and Martin (1993) published an extensive empirical study on skills needed across academia and legal practice. Sonsteng and Camarotto (2000) followed with another empirical study to determine the applicability of law school training to legal practice. In 2001, Munneke reevaluated the significance of the skills-based law school curriculum. The discussion culminates in an analysis of the most significant skill that law students could acquire, “thinking like a lawyer” expounded by the influential *Carnegie Report* (Sullivan, Colby, Wegner, Bond, & Shulman 2007) also known by its formal title *Educating Lawyers: Preparing for the Profession of Law*.

#### 9.4.1 MacCrate Report

The *MacCrate Report* (ABA 1992) heralds an era in legal education and legal scholarship that endorses the agenda of the clinical legal education movement; that is, law schools should teach the skills that legal practice requires (*cf.* Chapter 8).<sup>10</sup> The

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<sup>10</sup> Munneke (2001:130) argues that the *MacCrate Report* (ABA 1992) serves as impetus for the clinical movement. However, the origin of the clinical movement predates the recommendations of the *MacCrate Report* (ABA 1992) by approximately 30 years. The *MacCrate Report* (ABA 1992), one

*MacCrate Report* (ABA 1992) serves as a major impetus for the skills movement. Although the *MacCrate Report* (ABA 1992) could be credited for inspiring the development of clinical skills curricula, the *MacCrate Report* (ABA 1992) echoes a “bipartisan effort to address a real need to reform the Langdellian curriculum” (Munneke 2001:130).

The main tenets of the *MacCrate Report* (ABA 1992) include arguments for the following: (1) a legal educational continuum; (2) the significance of a set of fundamental skills; and (3) values and the necessity of a structure for continuing legal education (*cf.* Munneke 2001:131). The *MacCrate Report* (ABA 1992) considers the acquisition and refining of lawyering skills on a continuum that begins before formal legal education and extends into practice, and it is the responsibility of law schools to impart these skills. However, Mertz (2007a:28) argues that the skills imparted at different law schools are not necessarily the same. She indicates that so-called elite schools are less prone to enforce rigid rules; instead, they insist on logical thinking and theory (philosophy, moral, and ethical considerations). Their insistence on theory, however, comes at the cost of applied scholarship and pedagogy (Edwards 1992:34).

For law schools to impart these skills, the *MacCrate Report* (ABA 1992) suggests a series of lawyering skills and fundamental values for the legal profession (*cf.* Menkel-Meadow 1994:593-624; Munneke 2001:105-154; Sonsteng & Camarotto 2000:332-333). Table 9.2 summarizes these skills and values. Traditionally, some skills, such as writing and legal analysis, were included in the “core” curriculum, while negotiation and management were relegated to elective clinical courses. The *MacCrate Report* (ABA 1992) argues that the core curriculum should include all of these skills.

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could argue, reinvigorated interest in clinical legal education. Despite its publication almost two decades prior to the *Carnegie Report* (Sullivan *et al.* 2007) and the report on *Best Practices for Legal Education Report* (Stuckey 2007), the *MacCrate Report* (ABA 1992) still figures prominently in contemporary legal scholarship. Its significance is evident in the following research studies: Thompson (2009); Hammond (2009); and Joy (2012).

Table 9.2: Summary of *MacCrate Report* (ABA 1992) lawyering skills and values of the profession

Fundamental lawyering skills	Fundamental values of the profession
<ul style="list-style-type: none"> <li>• problem solving</li> <li>• legal analysis and reasoning</li> <li>• legal research</li> <li>• factual investigation</li> <li>• communication</li> <li>• counseling</li> <li>• negotiating</li> <li>• litigation</li> <li>• alternative dispute resolution procedures</li> <li>• organization and management of legal work</li> <li>• recognizing and resolving ethical dilemmas</li> </ul>	<ul style="list-style-type: none"> <li>• providing competent representation</li> <li>• striving to promote justice, fairness, and morality</li> <li>• promoting the profession</li> <li>• improving professional self-development</li> </ul>

Menkel-Meadow (1994) provides a stern critique of the *MacCrate Report* (ABA 1992), arguing that it creates a false dualism between theory of law as science and the skills of law. Both theory and skills are “legal science”, and “both are also incomplete and partial statements of what a lawyer needs to know” (Menkel-Meadow 1994:595). Menkel-Meadow (1994:595-596) further argues that the *MacCrate Report* (ABA 1992) pays insufficient attention to the human aspects of lawyering, such as the “empathic, affective, feeling, altruistic, and service aspects of lawyering.” However, one could argue that the fundamental values of “striving to promote justice, fairness, and morality” refer to the human dimensions of practice. The human dimensions of law manifest in the language of the law, and the language of the law co-constructs legal epistemology, which is the underpinning of justice, fairness, and morality.

Since 1992, the *MacCrate Report* (ABA 1992) has influenced the proliferation of law school clinics and skills-based courses. Even bar associations responded with skills-based continuing education and skills components to the bar examinations (Munneke 2001:135-136). Interestingly, the Law Society of South Africa responded to such practical training well before the *MacCrate Report* (ABA 1992), since it established the School for Legal Practice in 1990. Attending the practical courses of the School of Legal Practice for six months reduces the compulsory two-year internship to one year (Law Society of South Africa 2012).

### 9.4.2 Garth & Martin study

A year after the publication of the *MacCrate Report*, Garth and Martin conducted an unparalleled empirical study among senior partners and junior practitioners to determine three objectives. Firstly, they set out to determine the evolution of skills from the 1970s through the 1990s; secondly, they sought to update the list of skills formulated in the *MacCrate Report* (ABA 1992); thirdly, they wanted to test the validity of the lawyering “ability to obtain and keep clients” (Garth & Martin 1993:469-509). They surveyed hiring partners and junior practicing lawyers at large and small firms in various geographic areas. These firms and areas include large firms in Chicago and small firms in rural Missouri.

In this respect, together with the *MacCrate Report* (ABA 1992), the surveys and analyses conducted by Garth and Martin (1993) are invaluable, because they identify which lawyering skills are learned in law school and which are acquired in practice. Moreover, they indicate which skills are considered important by junior practitioners, which skills are important to hiring partners, and which skills are considered for promotional purposes. Table 9.3 accounts for the ranking of skills during a legal career.

The first column of Table 9.3 ranks the skills considered important by junior practitioners. Because of their recent graduation from law school and transition into legal practice, junior practitioners provide invaluable insight into the required lawyering skills needed soon after entering practice. Oral and written communication skills are vital. This is followed by analytical thinking skills in the fourth and sixth positions. Legal drafting, considered a clinical writing skill, is listed as number five. Contrary to the objectives posed by most legal skills textbooks, library and computer legal research seems to be least important according to junior practitioners.

Table 9.3: Ranking of skills at different stages of legal practice (adapted from Garth &amp; Martin 1993:469-492).

1. Ranking of skills by junior practitioners		2. Ranking of skills by hiring partners		3. Ranking of skills by hiring partners for promotion	
1	Oral communication	1	Library legal research	1	Ability to obtain and keep clients
2	Written communication	2	Oral communication	2	Ability to diagnose and plan solutions for legal problems
3	Instilling others' confidence in you	3	Written communication	3	Ability in legal analysis and reasoning
4	Ability in legal analysis and legal reasoning	4	Computer legal research	4	Organization and management of legal work
5	Drafting legal documents	5	Ability in legal analysis and legal reasoning	5	Instilling others' confidence in you
6	Ability to diagnose and plan solutions for legal problems	6	Sensitivity to professional ethical concerns	6	Written communication
7	Knowledge of substantive law	7	Instilling others' confidence in you	7	Oral communication
8	Organization and management of legal work	8	Fact gathering	8	Understanding and conducting litigation
9	Negotiation	9	Ability to diagnose and plan solutions for legal problems	9	Knowledge of substantive law
10	Fact gathering	10	Organization and management of legal work	10	Sensitivity to professional ethical concerns
11	Sensitivity to professional ethical concerns	11	Knowledge of substantive law	11	Drafting legal documents
12	Knowledge of procedural law	12	Knowledge of procedural law	12	Negotiation
13	Counseling	13	Drafting legal documents	13	Fact gathering
14	Understanding and conducting litigation	14	Counseling	14	Counseling
15	Library legal research	15	Ability to obtain and keep clients	15	Knowledge of procedural law
16	Ability to obtain and keep clients	16	Understanding and conducting litigation	16	Library legal research
17	Computer legal research	17	Negotiation	17	Computer legal research

Column two ranks the skills considered important by hiring partners. It contradicts the junior practitioners' perception that library research skills are insignificant. However,

it confirms that oral and written communication skills are essential. Hiring partners expect junior practitioners to join firms with the first eight skills already developed and proficient. Yet, they expect junior practitioners to develop, in reverse order, skills 17 through eight (with an overlap on eight) while in practice (Garth & Martin 1993:490). This means that curricula that focus excessively on negotiation, litigation, counseling, drafting, and knowledge of substantive and procedural law are not necessarily training students for the first year of legal practice. With the aims of the EALP curriculum set to impart language skills to complete university education successfully and to enter legal practice, the opinions of junior practitioners must be balanced with that of hiring partners. “The students we now teach are all raised with media renditions of multiple perspectives, time shifts, and conflicting realities; even if they have not seen *Rashômon* [a Japanese period drama from the 1950s], they live in a world that presumes the influence of perspective on what is known and what is real” (Rakoff & Minow 2007:601).

The third column glances into the future of prospective associates and partners and illustrates how generating income for the firm becomes a priority with the skill to obtain and keep clients. This is followed and supported by indicating that the ability to diagnose and plan solutions for legal problems, legal analysis and legal reasoning are the second and third most important skills when considering promotion. These skills could be clustered together as the analytical and lateral thinking skills (*cf.* Chapter 10). However, similar to junior practitioners and hiring partners, written and oral communication skills remain important skills throughout a legal career.

#### 9.4.3 Sonsteng & Camarotto study

From 1997 through 2000, Sonsteng and Camarotto (2000) undertook a monumental study to determine whether law schools in Minnesota taught students the lawyering skills identified by the *MacCrate Report* (ABA 1992). The study instrument was designed to determine how well lawyers perceived law school to provide training in these skills and how important these skills were for legal practice (Sonsteng & Camarotto 2000:329).

The results of their research indicate that law schools do not fail their students completely. The skills that law schools intend to address - legal analysis and

reasoning, written communication, and library legal research - were valued positively by respondents. However, the other lawyering and management skills were neglected. Table 9.4 compares the most important lawyering skills with the least important lawyering skills and their preparation in law school.

Table 9.4: Preparedness and importance of lawyering skills (adapted from Sonsteng & Camarotto 2000:340).

	Most important lawyering skills		Least important lawyering skills	
<b>Well-prepared</b>	1	Ability in legal analysis and legal reasoning	14	Library legal research
	2	Written communication	15	Knowledge of substantive law
	3	Sensitivity to professional and ethical concerns		
	4	Oral communication		
<b>Not well-prepared</b>	5	Ability to diagnose and plan solutions for legal problems	16	Understanding and conducting litigation
	6	Instilling others' confidence in you	17	Computer legal research
	7	Negotiation		
	8	Fact finding		
	9	Drafting legal documents		
	10	Counseling		
	11	Ability to obtain and keep clients		
	12	Knowledge of procedural law		
	13	Organization and management of legal work		

A comparison between Table 9.3 (column two) and Table 9.4 reveals a significant connection between the ranking of skills considered important by hiring partners and the ability of law schools to impart these skills. Seven years after the Garth and Martin study (1993), the Sonsteng and Camarotto study (2000) seems to indicate a stronger connection between what law schools provide and what hiring partners require of lawyers. For example, with the exception of computer legal research that lawyers deem unimportant, all the “not well-prepared” skills in Table 9.4 were ranked between 7-17 on the hiring partners’ list of important skills (Table 9.3. column two). While hiring partners consider library legal research the most important skill, lawyers in 2000 agree with lawyers in 1993 that library legal skills are less important. The

perception that legal research skills were unimportant may have been valid in 1993 and 2000; however, Armond and Nevers (2011:575) argue for closer collaboration between legal practitioners and law librarians so as to improve legal research instruction in law school that will prepare “students for the legal research assignments awaiting them in legal practice.” The importance of legal research skills is emphasized by Ribstein (2010:1663) who asserts that contemporary practitioners participate in the “legal-information market.”

Communication skills seem to exhibit a universal importance regardless of temporal change or respondents by remaining within the top four important skills. However, lawyers feel that the law school curriculum is more successful at imparting written communication skills than oral skills. This is an important consideration for the design of a multi-skills EALP curriculum, which should maintain a relevant balance between written and spoken language instruction.

Table 9.5 provides a comparison of the importance that lawyers attribute to the 17 skills originally identified by the *MacCrate Report* (ABA 1992). From 1993 through 2000, communication skills lost their prominence to the thinking skills: the ability to diagnose and plan solutions for legal problems and ability in legal analysis and legal reasoning. However, it should be conceded that these thinking skills are obsolete without being able to communicate them effectively.

Another important inference from the data in Table 9.5 is the relative unimportance of procedural and substantive law in relation to other skills. This trend is confirmed by the data in Table 9.3. Opinions of lawyers, hiring partners, and partners, who consider promotion in 1993, correspond with opinions of lawyers in 2000, who rank knowledge of procedural and substantive law thirteenth and fourteenth respectively. With reference to the EALP curriculum that focuses on language acquisition based on content, it may be questioned whether this indicates that content is subordinate to language. Conversely, it may be asked whether content is merely the vehicle or the contextualizing agent for legal English instruction.



Table 9.5: Comparison of rankings of most important lawyering skills in 1993 and 2000

	1993 ranking of skills considered important by junior practitioners (Garth & Martin 1993:469).		2000 ranking of skills considered important by lawyers (Sonsteng & Camarotto 2000:337).
1	Oral communication	1	Ability to diagnose and plan solutions for legal problems
2	Written communication	2	Ability in legal analysis and legal reasoning
3	Instilling others' confidence in you	3	Written communication
4	Ability in legal analysis and legal reasoning	4	Oral communication
5	Drafting legal documents	5	Instilling others' with confidence in you
6	Ability to diagnose and plan solutions for legal problems	6	Negotiation
7	Knowledge of substantive law	7	Sensitivity to professional and ethical concerns
8	Organization and management of legal work	8	Fact gathering
9	Negotiation	9	Drafting legal documents
10	Fact gathering	10	Organization and management of legal work
11	Sensitivity to professional and ethical concerns	11	Counseling
12	Knowledge of procedural law	12	Ability to obtain and keep clients
13	Counseling	13	Knowledge of procedural law
14	Understanding and conducting litigation	14	Knowledge of substantive law
15	Library legal research	15	Computer legal research
16	Ability to obtain and keep clients	16	Library legal research
17	Computer legal research	17	Understanding and conducting litigation

#### 9.4.4 Munneke study

Following the *MacCrate Report* (ABA 1992) and the studies by Garth and Martin (1993) and Sonsteng and Camarotto (2000), Munneke reevaluated the significance of the skills-based law school curriculum. A decade after the publication of the *MacCrate Report* (ABA 1992), Munneke (2001) revised the list of skills to include six categories:

- *Dispute resolution skills* refer to both representational capacity and non-advocacy, for example transactional practice.
- *Organization and management skills* include a host of skills not sufficiently detailed by the *MacCrate Report* (ABA 1992). Munneke (2001:139-145) extends this category of skills to include such organizational and management skills as time management, file keeping, project management, entrepreneurial

and marketing skills, and technology and information management. In response to Mendel-Meadow's (1994) critique that the *MacCrate Report* (ABA 1992) neglects the human aspects of lawyering, Munneke (2001:146-147) adds human relations as a category within organizational and management skills. Human relations include as essential skills team building and collaboration, delegation and supervision, and sensitivity to diverse cultures. These skills reflect and reiterate the interactions of the legal discourse community.

- *System analysis* articulates the skills involved in the legal delivery system. Because law functions within a self-maintained system and society, these include skills such as the sequencing of tasks and communicating responsibilities (Munneke 2001:148).
- In conjunction with sensitivity toward diverse cultures, *economic modeling and forecasting* reflects the participation of lawyers on the global economic stage. For financial reasons, lawyers cannot afford to limit their business focus to microeconomic considerations (Munneke 2001:148).
- *Adaptability and innovation* build on cultural sensitivity and economic modeling. To be adaptable and innovative means to negotiate cultural and economic diversity and to solve problems through innovation (Munneke 2001:149).
- *Career development as a skill* parallels the *MacCrate Report* (ABA 1992) paradigm of a continuum of professional education. This evolution of lawyering skills is confirmed by the Garth and Martin study (1993) that indicates which skills are considered most valuable by junior practitioners, hiring partners, and for promotional purposes within law firms (*cf.* Table 9.3).

According to Munneke (2001:153), “[l]aw schools may need to develop multiple curricula for litigation, transactional and multidisciplinary practice”, because graduating generalists may become an obsolete practice. Law schools should not only impart lawyering skills, they should use these skills in their own conduct to find adaptable and innovative ways to reformulate and (re)create curricula that answer to the demands of academia and practice. Similarly, law schools should take ethical, intellectual, and strategic initiative to meet the future of legal education: “It will not

be enough to sit in the ivory tower and hurl criticism of lawyers, judges and the legal system from the intellectual parapets” (Munneke 2001:153).

#### 9.4.5 Fundamental skill of “thinking like a lawyer”

In 2005, the skills-based pedagogy for law school received substantial endorsement by the ABA. The ABA mandated comprehensive skills training through *Standard 302* (Katz 2008:913) with an acute focus on productive, communicative skills.<sup>11</sup>

According to Garth and Martin (1993:110), lawyers from different law schools who practice law in either rural or metropolitan areas of the United States agree that the ability to “think like a lawyer” is the most important “skill” acquired in law school.<sup>12</sup>

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<sup>11</sup> The House of Delegates of the ABA concurred on the revisions of Standard 302 in February 2005. Standard 302 applies to accredited law schools graduating students from 2009 onward (*cf.* Katz 2008:912; Edelman 2010:113). Standard 302 is entitled “Curriculum” and stipulates:

- (a) A law school shall require that each student receive substantial instruction in:
  - (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
  - (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
  - (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
  - (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
  - (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.
- (b) A law school shall offer substantial opportunities for:
  - (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence;
  - (2) student participation in pro bono activities; and
  - (3) small group work through seminars, directed research, small classes, or collaborative work.

<sup>12</sup> Because of the diversity of modern legal practice, Aaronson argues that it is more apt for lawyers to think like “foxes.” The narrow perspective instilled by traditional legal education does not nourish the variety of intelligences that lawyers need in practice (Aaronson 2002:6-7).

“Thinking like a lawyer” can be described from at least two perspectives: a skills perspective and in terms of a holistic perspective of the legal discourse community.

In the context of skills, to “think like a lawyer” can be described as the gathering of facts, the ability to arrange facts to apply to concepts, and the legal hermeneutic ability to interpret and understand the meanings of legal texts accurately (Garth & Martin 1993:110). Therefore, thinking like a lawyer is a skill associated with excellent analytical thinking (Mertz 2007a:3). However, when considered more holistically, this description focuses on only one of three aspects of thinking like a lawyer, *viz.* the cognitive analytical skill, also referred to as legal reasoning.

Similarly, Miller and Charles (2009) provide an expansive exposition of legal analysis that extends beyond the shortcomings of critical thinking to include the skill of analysis. Miller and Charles base their exposition of legal analysis on the subsidiary skills needed for the IRAC-framework of analysis. Prior to applying the IRAC-framework, law students should first learn to think and communicate their ideas. Table 9.6 outlines the subsidiary skills needed to apply the IRAC-framework successfully.

Table 9.6: Subsidiary skills of the IRAC-framework (Miller & Charles 2009).

Conceptual skills	Legal skills	Evaluating skills
<ul style="list-style-type: none"> <li>• Conceptualizing</li> <li>• Reasoning</li> <li>• Generalizing</li> <li>• Specifying</li> <li>• Hypothesizing</li> </ul>	<ul style="list-style-type: none"> <li>• Deducing</li> <li>• Inducing</li> <li>• Abducing</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluating</li> <li>• Contrasting</li> <li>• Scaling</li> <li>• Satisfying</li> <li>• Weighing</li> <li>• Quantifying</li> </ul>

Figure 9.4 illustrates a holistic description of “thinking like a lawyer” that encompasses the legal discourse community. It includes the following tenets:

- a distinct kind of *thinking* or reasoning that is positioned in legal contexts that expose the needs and purposes of lawyers;
- *content* and dynamics, such as legal precedents, an evolving society, and interventions within the legal system; and
- specific *players* with related parts, obligations, and norms (Wegner 2009:892).

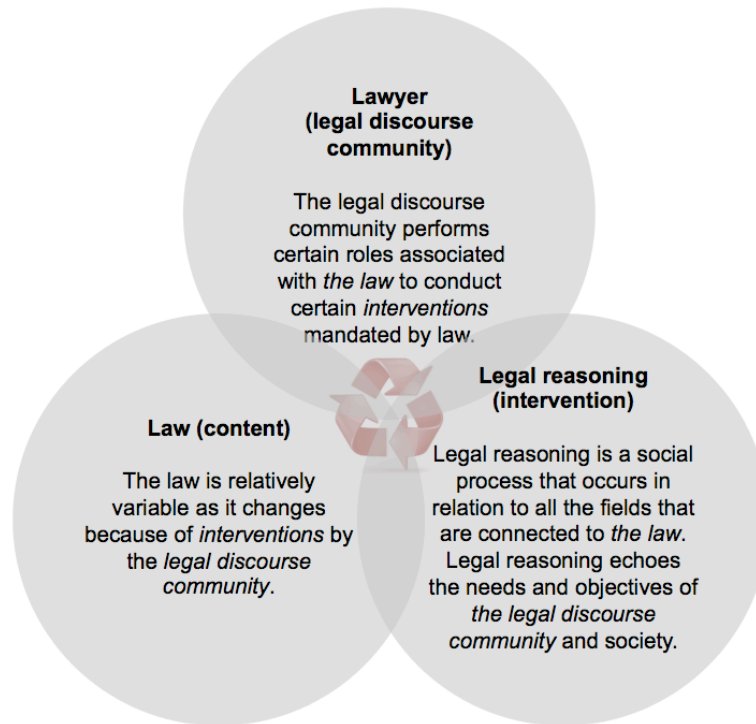


Figure 9.4: Process of “thinking like a lawyer” (adapted from Wegner 2009:892).

Wegner (2009:892-893) argues: “‘thinking like a lawyer’ is a predicate to knowledge about the law, as well as a new way of knowing. It reflects a new theory of knowledge (epistemology), with daunting challenges for students who typically do not even realize that they have a theory of knowledge.” In the broad sense then, “thinking like a lawyer” manifests the legal epistemology. Holistically viewed, the whole comprises constituting parts. The *Carnegie Report* provides an in-depth analysis of these constituting parts of what it means to think like a lawyer.

The *Carnegie Report* (Sullivan *et al.* 2007) synthesized data collected through interviews with first-year law students and law faculty to obtain a deeper understanding of what it means to “think like a lawyer.” The interviews revealed five fundamental themes associated with this compound skill: (1) learning about reasoning and routine; (2) reconstructing knowledge; (3) inhabiting legal territory; (4) developing legal linguistic skills; and (5) learning about lawyers.

#### 9.4.5.1 Learning about reasoning and routine

As illustrated in Figure 9.4, legal reasoning is fundamental to the skill of “thinking like a lawyer.” Legal reasoning depends on the ability to question and to internalize the questioning process. This questioning process is reiterated in legal pedagogy, legal practice, and legal research. Through the Socratic and Langdellian methods of instruction, students are introduced to the dialogic questioning process. In legal practice, cross-examination and direct examination illustrate the application of routinized questioning techniques. In addition to repeatedly constructing questions, legal reasoning also depends on developing a routine. Routinized questioning turns are illustrated by courtroom practices but manifest in legal education as well. The IRAC-method of case analysis illustrates such routine (Wegner 2009:897).

#### 9.4.5.2 Reconstructing knowledge

By acquiring legal reasoning skills students embark on a developmental journey that initiates the reconstruction of knowledge. Reconstructing (legal) knowledge in ways that are different from what students are used to instill epistemological incongruence. Contrary to the notion that law students receive knowledge in a top-down transfer, legal knowledge is dialectically and dialogically constructed, because law is inherently “gray” (Wegner 2009:903), since it is always negotiated. Legal knowledge is shaped through evidence and argumentation. “The developmental trend that is thus apparent [...] suggests that such epistemological phase shifts may be closely related to development of capacities for abstract forms for reasoning, dissatisfaction with existing beliefs, and identification of intelligible and useful alternatives that can be linked to earlier conceptions, motivation and context” (Wegner 2009:903).

#### 9.4.5.3 Inhabiting legal territory

The legal territory that law students learn to inhabit bears little resemblance to the pre-law *John Grisham* plots and the *Ally McBeal* intrigues. “Thinking like a lawyer” means to inhabit a world that is grounded in specificities of facts, problems, players, principles, questions, and routine. In the *Carnegie Report*, a law professor used the following analogy to explain the relation between legal skills and functioning within the legal world: “[law is] like figure skating [...] unless you have the skill, you cannot do freestyle. Unless you understand how the system [legal world] works, you cannot deal with the real issues” (in Wegner 2009:905). One may argue that, unless students

inhabit legal territory, they cannot communicate about and participate in the legal community.

#### 9.4.5.4 Developing legal linguistic skills

The skill to *think like a lawyer* is synonymous with *literacy* in L2 pedagogy; that is, literacy inculcates adequate proficiency in legal language that enables the effective use of legal texts. The *Carnegie Report* (Sullivan *et al.* 2007) quotes a law professor as relating “thinking like a lawyer” to legal linguistic skills in a perceptive manner:

If you want to be successful in persuading judges, or you want to create a document that would be enforced by judges, there is this community of lawyers and that community has a kind of discourse. You have to be part of that discourse to be effective as lawyers. Hence, on the one hand, it’s a kind of analytical ability and, on the other hand, it’s socializing students to the way in which law is done, the way lawyers engage in discourse (in Wegner 2009:908).

This description not only associates legal linguistic skills with analytical thinking, it relates legal linguistic skills to the legal discourse community through discourse socialization. The discourse socialization that enables entry into the legal discourse community depends on acquiring a set of skills for law and, in particular, the set called academic legal linguistic skills. Subsequently, socialization is mainly a by-product of skills and substantive subject instruction (Aaronson 2002:5).

Academic legal linguistic skills include the traditional communicative language skills: reading, writing, listening, and speaking (Wegner 2009:909-910). However, reading in law is different from other disciplines, as one professor responded in the *Carnegie Report*:

I know I want to teach them to “think like lawyers” but for the first years I am teaching them to read cases, to read statutes, just teaching them to read carefully. I don't know how many times I've said, “Did you read the footnote?” [...] They are reading it like they are reading history texts [...] skim for the main points. You can't do that in law (in Wegner 2009:908).

This particular professor’s scaffolded, process teaching method is evident in the manner s/he describes a progression of increasing the difficulty of linguistic skills. I continue to quote his/her eloquent description:

In the beginning, I spend more time having them recite a case, going over the statute in detail. Gradually, as they get better at that, I try and get them to compare cases, applying cases, arguing both sides. I also want to get them to think well, to articulate well. That's why I call on non-volunteers. That's why I interrupt them. They are not used to public speaking or to being precise. I try to teach them both. They are going to have to be precise in their speaking and their writing. Even if they aren't litigators, they are still going to have to learn to speak to clients, to partners, and so on. I view my job much less as teaching substance. I use the substance as a vehicle (in Wegner 2009:908).

As the difficulty of skills increases, this constitutional and procedural law professor socializes the students into the discourse community by requiring them to adhere to the conventions of legal thinking. This description of a teaching method applied in doctrinal courses also confirms that legal content is relatively less important than the linguistic skills confirmed by the skills ranked in Tables 9.3, 9.4, and 9.5. In addition to reading, Wegner (2009:909-910) stresses the importance of acquiring the new language and all its metafunctions (*cf.* Chapter 3). Therefore, “thinking like a lawyer” is intimately connected to acquiring the linguistic skills of the legal discourse community.

Although legal linguistic skills may appear to be juxtaposed with substantive content, it would be more accurate to consider their influence as recurrent. As legal linguistic skills improve, more advanced substantive content can be communicated and vice versa. Legal terminology, for example, is more than merely the lexicalization, institutionalization, and reification of salient legal concepts, which belong to the field metafunction of language. Each instance of language use renegotiates and recreates a particular genre, its context of situation within the discipline, and its participation in the context of general academic culture.

#### 9.4.5.5 Learning about lawyers

The last element, identified by the *Carnegie Report* (Sullivan *et al.* 2007), that describes what it means to “think like a lawyer” is the necessity to learn about lawyers (*cf.* Figure 9.5). As students are socialized into the legal discourse community through the acquisition of legal linguistic skills, they need to assume the different roles of being lawyers. This entails thinking contextually because law is social; the lawyer plays the role of the detail-oriented, well-prepared, all-envisioning character, who



solves the legal and personal problems of others. Taking on the lawyer-role also involves adopting sociological, psychological, and vocational dimensions of being a legal practitioner (Aaronson 2002:13). A lawyer has to be able to think on her/his feet, be impatient to get things done, and accept that “there are no clear answers” (Wegner 2009:916); therefore, intellectual maneuvering comes with the territory.

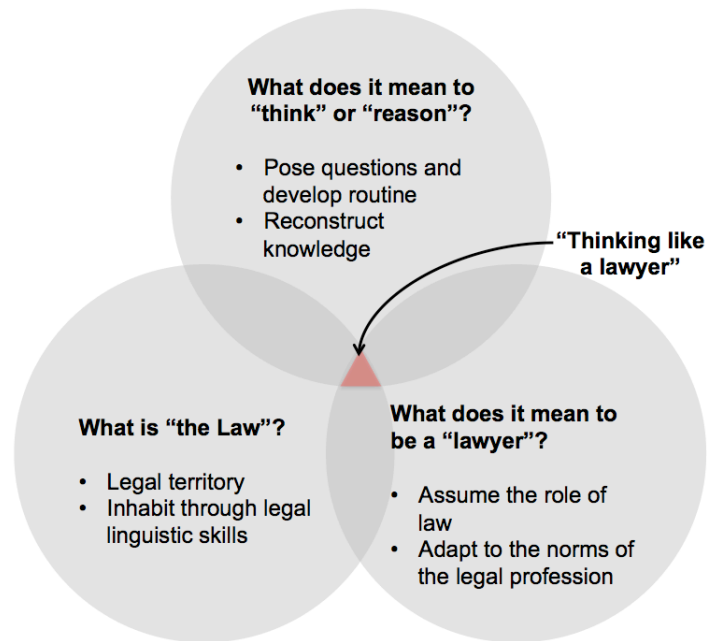


Figure 9.5: Summary of fundamental themes of “thinking like a lawyer” (adapted from Wegner 2009:922).

Such intellectual maneuvering (negotiation, arbitration, and manipulation of truths and realities) is accompanied by inadequate instruction on the norms and principles that should ensure that the ethical and moral application of this “skill” of intellectual maneuvering is just and fair. Principles should be laid down in the legal epistemology of “thinking like a lawyer.” As a first step toward such legal epistemology, students should be instructed on the craft of legal reasoning. In ideal circumstances, “[r]easoning requires and promotes courage, humility, curiosity, independence, stability, order, faith, fair-mindedness, and other attributes of a responsible and wise citizenry” (Miller & Charles 2009:219). The elements of “thinking like a lawyer” should not be reserved for special courses lest “we marginalize its importance as part of the overall education and socialization of lawyers” (Aaronson 2002:13) across the law school curriculum.

### 9.5 Critique on ameliorating initiatives for legal education

In general, the values propagated by the *Seven Principles of Good Practice* (Chickering & Gamson 1987) seem to influence general education positively. Umbach and Wawrzynski (2005:170) found that “[...] first-year and seniors were more challenged [principle 6], interacted with faculty more [principle 1], and participated in active [principle 3] and collaborative learning activities [principle 2] on campuses where faculty emphasized best practices [...].”

Though extremely valuable in identifying the connections between principles for best educational practices, the empirical study conducted by Umbach and Wawrzynski (2005:173) is not without (self-admitted, methodological) limitations. One may argue that although they confirm the effectiveness of some of the best practices, the data sets did not measure the quality of the engagement between faculty and students. A significant amount of interaction between students and faculty does not equate to quality interaction.

The intentions with these principles of good practice are justified, yet they invoke stern critique from within legal scholarship. Fish (2002), the main pundit, criticizes “best practices” and “intervention” as terms that do not “mean anything much more than practices that had worked for some people in some context where some problem had been identified and was addressed successfully by some solution [...].” Fish’s critique is aimed at the frivolous application of the term (good practice) and the negligible consequences it may deliver in practice. After implementation, the intervention should be successful before it can be called a “best practice.”

Fish’s critique is warranted. Despite the application of “best practices” for legal education, law schools still grapple with criticism from students and scholars. “If any of the seven principles are to be fully implemented, the law school as an institution must support that effort” (Dessem 1999:436). That effort should not be reinforced only through academic support programs because of their own limitations.

Despite the implementation of best practices over the past four decades and the decree of *Standard 302* in 2005 by the ABA, which calls for a skills-based pedagogy for law school, by 2007, two major studies reported that law schools were still not meeting

the requirements to teach skills for the “competent and ethical practice of law” (Valentine 2010:173). Both the *Carnegie Report* (Sullivan *et al.* 2007) and the *Best Practice for Legal Education Report* (Stuckey 2007) call for greater focus on the professional identity and purpose of lawyers. Both reports cite an over-reliance on the Socratic teaching style as reason for the failure to integrate cognitive and practical elements of preparation for legal practice (Katz 2008:910-911). Endorsement of a skills-based pedagogy does not promise the operationalization of such pedagogy in the classroom.

However, where successfully theorized and adopted by law schools, the realization of a skills-based pedagogy is also threatened by the impaired language skills of contemporary students. Current empirical research on medical students confirms that poor English language proficiency impedes the acquisition of other skills at the university level (McLean, Murdoch-Eaton, & Shaban 2012:462). Skills that suffer as a consequence of frail linguistic aptitude include the following: information-handling, managing learning, communication and presentation, computer literacy, critical thinking, and problem solving. Because the academic and professional training of medical school associates with law school, the findings by McLean *et al.* (2012:474-477) may be applicable to law school.

## 9.6 Summative notes

The shortcomings of best practices as pedagogic principles and a skills-based pedagogy not only justifies but necessitates the qualitative content analysis discussed in Chapter 10 to determine how EALP-type textbooks attempt to address these shortcomings. The qualitative content analysis of EALP-type textbooks is but one manner to achieve this purpose, since the connections between academic and practice are extremely complex and allow for other methods of investigation, such as interviews. The practices and skills identified in Chapter 9 were instrumental in creating and validating content clusters, categories, and keywords for the coding scheme.

Figure 9.6 synthesizes the best practices as pedagogic principles and the associate skills discovered in this chapter. Figure 9.6 does not account for the final coding

scheme, since the literature reviews in Chapters 3 through 8 co-determined the final coding scheme provided in Chapter 10.

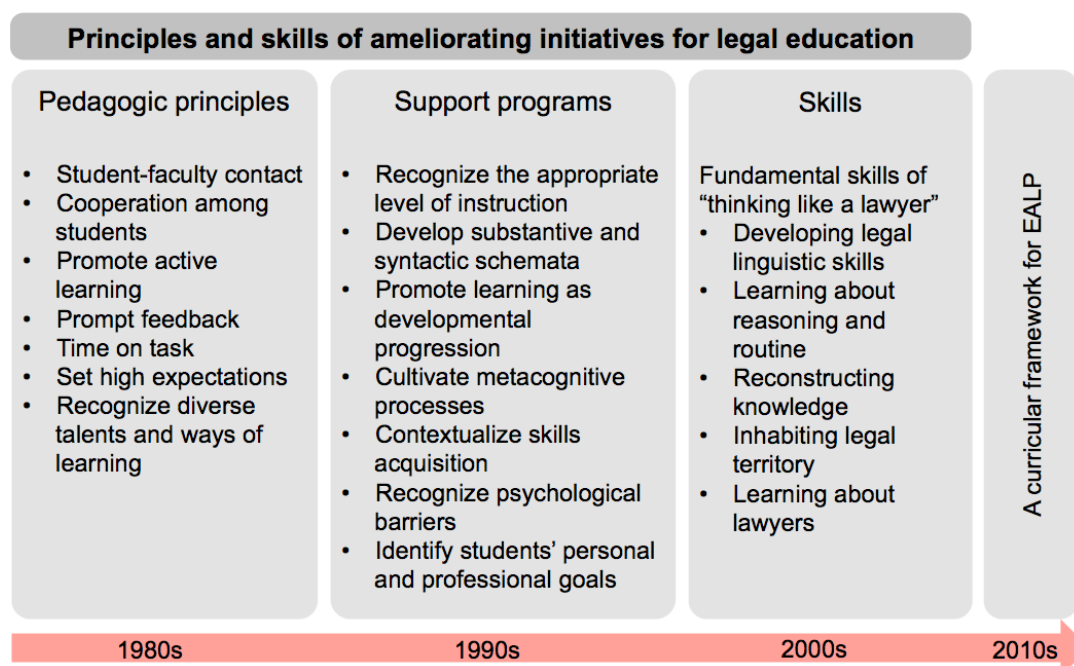


Figure 9.6: Summary of pedagogic principles and skills for legal education

After the publication of the *MacCrate Report* in 1993 until the publication of the *Carnegie Report* (Sullivan *et al.* 2007) and *Best Practices for Legal Education Report* (Stuckey 2007) in 2007, scholarship devoted considerable attention to distinguishing principles and skills for legal education. These reports and scholarship in general discuss a cluster of skills called lawyering skills. The significance of lawyering skills to bridge doctrinal instruction and practice is not questioned, as the relevance of lawyering skills is attested to by the various reports and by ample scholarship. However, to design an informed EALP curriculum, one must identify the skills that will feature most prominently in such a curriculum. With the EALP curriculum in mind, it is imperative to establish which skills or clusters of skills should be incorporated and how they can be sequenced most productively across the EALP curriculum.

## Chapter 10: EALP-type textbook analysis

### 10.1 Introduction

English for academic legal purposes-type textbooks aim to improve the legal linguistic skills of students at the university level. The relationship between EALP-type textbooks and law school curricula and syllabi can be described as referential-reciprocal. Textbooks are not equated to curricula or syllabi; however, they are used to structure, facilitate, and/or operationalize components of curricula and possibly entire syllabi. The purpose of Chapter 10 is to answer the second research question, *viz.* which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks?

The research methodology provided the methodical framework to answer this question by conceptualizing a purposive sample of EALP-type textbooks as a collective case study consisting of various cases (textbooks) that investigated a general phenomenon (EALP) (Dörnyei 2007:152). The collective case study facilitated the presentation of L2 pedagogic realities across the three circles of world English that include the United States, South Africa, and South Korea. The collective case study was then subjected to a qualitative content analysis. The objectives of the qualitative content analysis include the following (*cf.* Chapter 2):

- to describe trends in the communicative content of EALP-type textbooks;
- to match the characteristics of communicative tools with the messages that they produce;
- to audit textbook content against the principles of theoretical linguistics, L2 pedagogy, and legal education; and
- to identify and describe patterns of communication.

To meet the objectives, it would be prudent to consider the sequence of this chapter.

#### *Chapter preview*

This chapter consists of six parts that address the first two phases of the qualitative content analysis (*cf.* Chapter 2). Following the introduction, part two reports on the

results of phase one of the qualitative content analysis, *viz.* the results of the coding procedure. These results include four components: (1) the search results for the EALP-type textbooks; (2) the distribution of textbooks across the search terms and circles of world English; (3) the distribution of textbooks across the content clusters, which constitute a skills-based typology of EALP-type textbooks; and (4) the coding scheme for the qualitative content analysis. The succeeding four parts of this chapter report on phase two of the qualitative content analysis: the interpretation of the results of the coding procedure. This second phase is structured according to the content clusters created by the coding scheme and includes the following: (1) communication skills; (2) thinking skills; (3) research skills; and (4) pedagogic skills.

Part three is the most comprehensive of the four parts because the purposive sample favored EALP-type textbooks with legal linguistic foci. Therefore, the content of this part is clustered as communication skills. The categories include the traditional language skills (writing, reading, speaking, and listening) and social skills that account for the use of legal language in the context of the situation or the legal discourse community. Part four is intricately connected with communication skills. The focus in part four is on thinking skills, which includes the following categories: critical thinking, hermeneutical skills, legal content knowledge, study skills, and technological skills. Part five provides an analysis of research skills. The research categories include the following: literature search, research design, research tools, and publishing. Part six traces categories and keywords related to pedagogic skills. The two categories included here focus on law school teaching methods and legal epistemological concerns. Because the four clusters of skills are firmly interlocked through EALP, they are collectively referred to as legal linguistic skills.

## 10.2 Results of the coding procedure

The results of the coding procedure include the following:

- the search results of EALP-type textbooks based on the search terms identified by the information specialist and the researcher (*cf.* Chapter 2);
- the cataloguing of the search results according to the search terms and the distribution of EALP-type textbooks across the circles of world English;
- a skills-based typology of EALP-type textbooks; and

- the coding scheme used to analyze the sample of EALP-type textbooks.

The literature search strategy and the criteria for the screening of textbooks explicated in Chapter 2 resulted in a purposive sample in which  $N = 44$ . The search results are listed in Appendix B. The purpose of listing the results is to determine whether the selection of terms delivered the purposive sample. *Legal skills* and *legal English* were the only terms on which the searches conducted by the information specialist and the researcher overlapped (*cf.* Chapter 2). The collaboration with the information specialist seems to have been productive, since these groups of textbooks are well represented. However, search terms that do not overlap are equally important - in fact, the additional term *academic legal English* provided access to a group of textbooks with a more academic linguistic focus. With the term *legal skills*, 17 textbooks were identified. However, *thinking like a lawyer*, the most important skill vigorously advocated by legal scholarship, delivered only three textbooks (*cf.* Chapter 9). Does this mean that scholarship overemphasizes the skill, or are textbooks not catalogued accurately? The term may not be used for cataloging purposes because *thinking like a lawyer* consists of a set of skills (*cf.* Chapter 9 and 11), each of which may be catalogued individually. The term *English for academic legal purposes* delivered only two books, which may indicate that the term is not yet fully embraced by legal scholarship despite its proliferation in L2 pedagogy (*cf.* Chapter 1).

Table 10.1 provides a summary of the distribution of textbooks across the search terms. The results of the first three terms may be grouped together as texts with more prominent linguistic foci and account for 54.50% (24/N) of the sample.<sup>1</sup> Categories four and five include language instruction but share a bifurcated focus on legal skills and clinical skills and account for 45.50% (20/N) of the sample. Because of the

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<sup>1</sup> As part of the auditing trail, expressions of percentage are followed by the calculation in parenthesis. The first number, for example 24, represents the number of books, out of the entire sample, which is 44 or N. To express 24/44 as a percentage or fraction of 100, the number of books (24) is multiplied by 100 and divided by N. Therefore,  $24 \times 100 \div 44 = 54.50\%$ . All calculations are based on the quantitative component of the analysis as accounted for in Appendices B through D. While Appendix C reports the main quantitative analysis from a skills perspective, Appendix D provides it from the perspective of the textbook typology. However, the data are similar, which means that Appendices C and D serve an auditing function.



refinement of search terms and the initial screening of content and prefaces, all the textbooks contain components on legal English instruction. Importantly, different search phrases identified the same sources. This may be the result of advanced cataloging algorithms used by libraries. Searches were conducted in the sequence displayed in Table 10.1.

Table 10.1: Distribution of EALP-type textbooks across the categories of search terms

	Search terms	Number of textbooks	Aggregate	Percentage
1	English for academic legal purposes	2	24	54.50%
2	Academic legal language	9		
3	Legal English	13		
4	Legal skills	17	20	45.50%
5	Thinking like a lawyer	3		
<b>Total</b>		<b>N = 44</b>	<b>N = 44</b>	<b>100 %</b>

The sample was also screened to determine the distribution of textbooks across the circles of world English (*cf.* Table 10.2). This distribution is based on the legal content focus of each textbook; that is, which legal systems are used as conduits for linguistic skills instruction. The inner circle is represented by 93.18% (41/N) of the textbooks, which rely on American or British law. The outer circle is represented by 4.54% (2/N) of textbooks based on South African law. Textbooks in the outer circle include the academic legal language skills book entitled *English for Law Students* (Van der Walt & Nienaber 2009) and a legal skills book entitled *Introduction to Law and Legal Skills in South Africa* (Humby, Kotze, Du Plessis, & Du Plessis 2012). The expanding circle is represented by 2.27% (1/N) of the books, *viz.* an academic legal language skills book entitled *Basic Legal English* (Yu & Kwon 2011). The skewed representation may be the result of the reliance of the outer and expanding circles on the inner circle as norm providing L1 community. It may also be the result of the political and economic ascendancy of the inner circle and the ensuing proliferation of English as the world language.

Table 10.2: Distribution of textbooks across the circles of world English

	Inner circle	Outer circle	Expanding circle	Total
<b>Number of books</b>	41	2	1	<b>N = 44</b>
<b>Percentage of total</b>	93.18%	4.54%	2.27%	<b>100%</b>



### 10.2.1 Typology of EALP-type textbooks

In contrast to the review of 37 legal English textbooks by Candlin *et al.* (2002), who categorized textbooks based on pedagogic approaches (*cf.* Chapter 2), this study drew on the results of the coding procedure and legal scholarship to create a skills-based typology. There are at least three advantages to a skills-based typology. Firstly, textbook users may be more familiar with the skills they need to acquire than the underlying pedagogic currents of a textbook. The author of a textbook may endorse certain pedagogies, yet the user is not bound by such decisions. Skills, in contrast, remain relatively stable or reified. The same set of skills may be conceptualized, imparted, and acquired through any number or combination of pedagogic approaches not necessarily envisioned by the author. For instance, the category of writing skills in the communication skills content cluster is represented by 86.36% (38/N) of the entire sample; however, their pedagogic underpinnings vary across the spectrum from traditional teacher centered methods (Brown 2007; Gubby 2006; Yu & Kwon 2011) to critical, postmodern approaches (McClurg 2008; Shapo & Shapo 2009). The second advantage of a skills-based textbook typology is that it conceptualizes the progression of legal linguistic skills diachronically throughout law school. An emphasis on LSAT test taking by law school textbooks is indicative of the pre-law school writing and thinking skills of initiates. The consideration of legal epistemological concerns by clinical legal skills textbooks indicates use by a more advanced, senior student. Classifying textbooks according to the skills they endorse indicates when the textbooks may be most suitable during law school education. Finally, a skills-based textbook typology also performs a methodological function because it establishes the underpinning of a skills-based coding scheme and maintains the focus on skills during the analysis of textbook content.

As explicated in Chapter 2, sample textbooks were classified into four groups based on their content to create a textbook typology.<sup>2</sup> The groups were assigned symbols (♣, ★, ■, ○) to assist the manual quantitative component accounted for in Appendix B.

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<sup>2</sup> Reference is made to *groups* of textbooks rather than categories. The term *categories* is reserved for reference to subsections within the content clusters created for the content analysis of the EALP-type textbooks. This distinction is made to avoid confusion.

The four groups of textbooks, their symbols, and contribution to the sample are summarized in Table 10.3.

Table 10.3: Skills-based typology of EALP-type textbooks

	Textbook types				Total
	❖ Law school	★ Academic legal language skills	■ Legal skills	○ Clinical legal skills	
Number of books	7	23	7	7	N = 44
Percentage	16%	52%	16%	16%	100%

Each group of textbooks is defined in terms of four variables: (1) the sequencing and scaffolding of skills in the diachronic progression through law school education; (2) the legal linguistic character of the skills addressed; (3) the circles of world English; and (4) the portion it occupies in the sample of EALP-type textbooks.

*Law school textbooks* focus on law school education and the introductory legal linguistic skills needed prior to and at the beginning of law school. These skills may include, for example, preparation for the LSAT and academic essay writing. However, they do not address advanced genres, such as the dissertation and research paper. Typically, these textbooks are written by authors from the inner circle for students from the inner circle of world English. These books are mainly for an American-based law school system also implemented in South Korea, but skills can be utilized in other jurisdictions as well. Law school textbooks account for 15.90% (7/N) of the sample of EALP-type textbooks. McClurg's (2008) *IL of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School* serves as an apt example of this group.

*Academic legal language textbooks* are a group of textbooks that cover a broad spectrum of academic legal linguistic skills aimed typically at the first year of law school education. However, they do not cover pre-law school skills and focus primarily on communication skills for academia and legal practice. Typically, these textbooks are written by the inner and outer circles, and their academic foci render them useful in all three circles of world English. Specific legal content, however, can pose a pedagogic hurdle in foreign jurisdictions. Academic legal language skills

textbooks account for 52.27% (23/N) of the sample of EALP-type textbooks. *International Legal English: A Course for Classroom or Self-Study Use* (Day, Krois-Linder, & TransLegal 2006) and *Legal English: How to Understand and Master the Language of the Law* (McKay, Charlton, & Barsoum 2011) are two apt examples of this group.

*Legal skills textbooks* cover the most comprehensive and diverse set of skills throughout law school and are represented prominently by all four categories of skills identified for the content analysis. Typically, these textbooks are written by the inner and outer circles, and their focus on skills renders them useful in all three circles of world English. Similar to the other groups of textbooks, specific legal content can pose pedagogic challenges. Legal skills textbooks account for 15.90% (7/N) of the total sample of EALP-type textbooks. A prime example of a legal skills textbook is *Legal Skills* by Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, and Rook (2011:v). It is the most comprehensive textbook in the legal skills textbook group and is characterized by its authors as an uneasy fit, since it is difficult to determine where it belongs in the law school curriculum. In an attempt to define the encyclopedic parameters of the text, the authors ask: “Is it concerned with ‘professional’ skills, ‘academic’ skills or ‘career’ skills? Does it cover ‘personal’ skills or could it be a combination of all four?” (Cherkassky *et al.* 2011:v).

The fourth group of textbooks is the *clinical legal skills textbooks*. These books employ a clinical legal pedagogy to focus on lawyering skills needed in legal practice. Lawyering skills overlap with academic legal language skills but extend beyond the classroom and include the skills of practice, such as drafting, advocacy, and negotiation (*cf.* MacLean 2006:510-513). As such, they focus on productive skills set within substantive and procedural law and emphasize an ethical legal epistemology. Typically, these textbooks are written by the inner circle for the inner circle of world English. However, the globalization of law school and transnational legal practice (*cf.* Chapter 8) proliferates the use of clinical legal skills textbooks globally. Clinical legal skills textbooks account for 15.90% (7/N) of the total sample of EALP-type textbooks. A principal example of a clinical legal skills textbook is *Excellence in the Workplace: Legal and Life Skills in a Nutshell*. The authors, Kavanagh and Nailon (2007), clearly imply in their purpose statement that clinical legal skills are more concerned with

legal practice than academia: “This is the book we both wish we’d had when we started working in our first law jobs. It’s intended as a safety net to help you with challenges you’ll likely face in your first days, weeks, and months on the job” (Kavanagh & Nailon 2007:iii). With this text, Kavanagh and Nailon answer the question posed in Chapter 7, *viz.* “Why didn’t I learn this in law school.”

Figure 10.1 provides a summary of the composition of the sample. It also serves as a legend for succeeding doughnut charts. All doughnut charts follow a similar structure, in which law school textbooks occupy a segment beginning at the 12 o’clock position, followed clockwise by the segments of the other textbook groups.

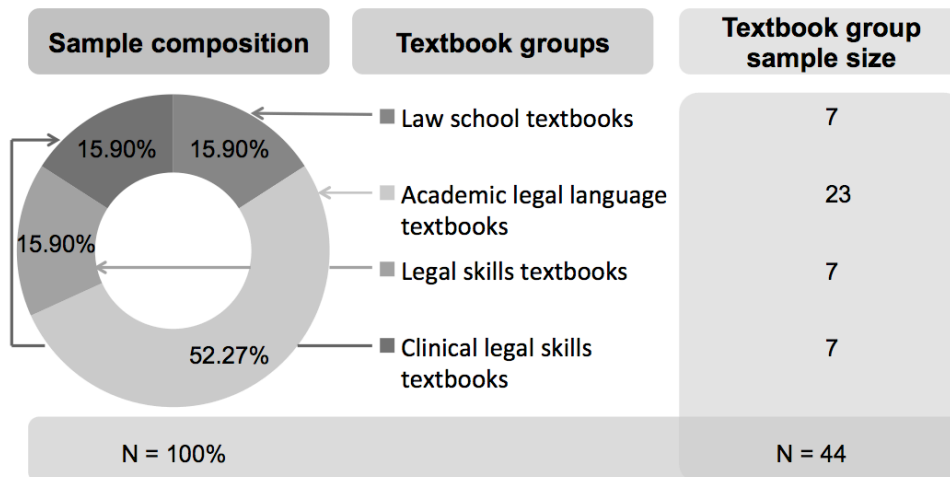


Figure 10.1: Summary of sample composition

### 10.2.2 Coding scheme

The coding scheme proceeded *a priori* from the literature reviews in Chapters 3 through 9, selection of the sample, and description of the typology of EALP-type textbooks. The coding scheme also developed *a posteriori* during the coding of the EALP-textbooks. The coding scheme consists of four imbricated layers, *viz.* content clusters, categories, keywords, and genres. Genre is relevant only to the first content cluster regarding communication skills.

Four content clusters developed from the preceding analyses, *viz.* (1) communication skills; (2) thinking skills; (3) research skills; and (4) pedagogic skills. A content cluster is an encompassing collection of skills that is directly related to the skill describing the cluster. Not all textbooks in the sample addressed the content of each

cluster and some textbooks were relevant to more than one cluster. Hence, the sum total of textbooks of the four content clusters ( $n_1+n_2+n_3+n_4 = 124$ ) exceeds the total sample ( $N = 44$ ). Constituting parts of the sample relevant to each content cluster are expressed in Figure 10.2. Communication skills received the highest representation by 95.45% ( $42/N$ ) from the sample followed by thinking skills (90.90%,  $40/N$ ), research skills (59.09%,  $26/N$ ) and pedagogic skills, which ranked the lowest with 36.36% ( $16/N$ ).

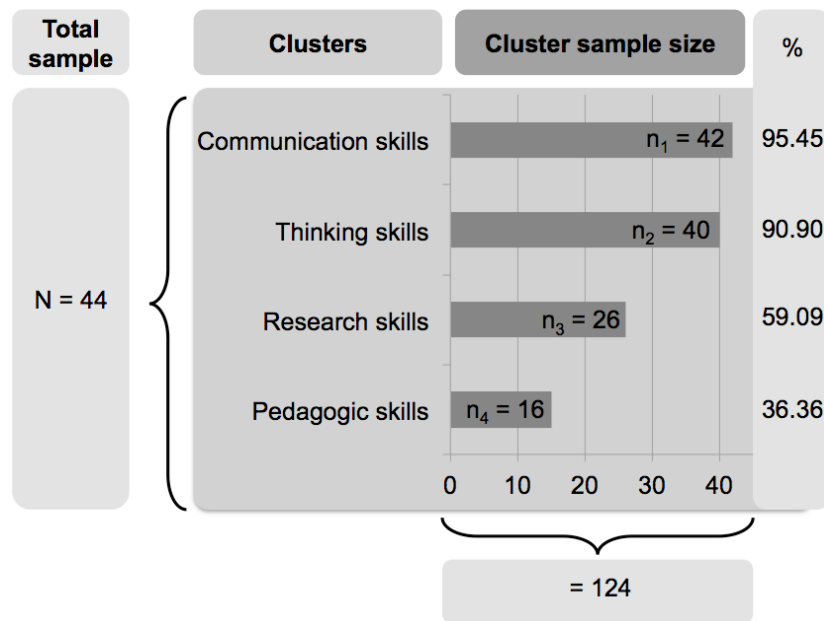


Figure 10.2: Summary of content clusters

Content clusters consist of categories, keywords, and genre. Categories are sets of particular skills that function as constituting parts of their cluster, and keywords provide detailed descriptions of categories. Genres, which are applicable only to the communications skills cluster, function as examples of the keywords. No genres were identifiable within the other content clusters. Together, the content clusters, categories, keywords, and genres constitute the coding scheme as summarized in Table 10.4.

Chapters of the literature review with more pronounced theoretical analyses contributed more toward framing the content clusters and informing the categories (*cf.* Chapters 3 – 8). The profound focus of legal scholarship on legal skills in Chapter 9 contributed more to the specificity of categories and keywords. During the analysis of the textbooks, genres were identified.

Table 10.4: Coding scheme

Content cluster #1: Communication skills		n <sub>1</sub> = 42
Categories	Keywords	
Writing skills	Grammar Legal vocabulary (lexicon) Punctuation, proofreading, & editing Structure & organization of ideas (e.g. topic sentence & thesis statement) Outlining & drafting Academic genres <ul style="list-style-type: none"> <li>• Paragraphs, essays &amp; reports</li> <li>• Dissertation &amp; thesis</li> <li>• Research paper</li> </ul> Drafting of legal documents <ul style="list-style-type: none"> <li>• Case brief</li> <li>• Appellate brief</li> <li>• Legal memoranda</li> <li>• Court documents (e.g. pleadings &amp; motions)</li> </ul> Professional correspondence <ul style="list-style-type: none"> <li>• Statement of purpose</li> <li>• E-mails, letters, &amp; other company documents</li> <li>• Cover letter, CV, &amp; résumé</li> </ul> Writing style (tenor) <ul style="list-style-type: none"> <li>• Academic / informative style</li> <li>• Persuasive / litigious style</li> </ul> Clarity (Plain legal English)	
Reading skills	Reading tips & techniques Genre analysis of case law & statutes	
Speaking skills	Rhetorical features: body language, tone of voice, emphasis, & pronunciation Academic genres <ul style="list-style-type: none"> <li>• Discussions &amp; participation</li> <li>• Formal presentations</li> </ul> Legal genres <ul style="list-style-type: none"> <li>• Argumentation, negotiation &amp; dispute resolution</li> <li>• Client interviewing &amp; counseling</li> <li>• Court advocacy (e.g. opening statements, closing arguments, &amp; examinations).</li> <li>• Moot court</li> </ul>	
	Professional genres <ul style="list-style-type: none"> <li>• Telephoning</li> <li>• Business meeting</li> <li>• Job interviews</li> </ul>	

Listening skills	Note taking Listening to a lecture
Social skills	Networking, collaboration, law school community (culture), & socialization (context of culture) Diversity management

**Content cluster #2: Thinking skills** **n<sub>2</sub> = 40**

Categories	Keywords
Critical thinking	Mnemonic devices (e.g. IRAC, IPAC, CLEO, & PLAN) Inductive & deductive reasoning Lateral thinking (legal problem diagnosis)
Hermeneutical skills	Interpretation of cases & statutes
Cognitive schemata	Legal content knowledge
Study skills	Collaboration Intelligences Time & project management
Examination skills	LSAT test taking skills Examination preparation & writing Revision
Technological skills	Computer literacy

**Content cluster #3: Research skills** **n<sub>3</sub> = 26**

Categories	Keywords
Literature search	Library & electronic legal research Fact finding / literature search
Research design	Qualitative & quantitative research Methodologies & methods
Research tools	Synthesizing legal sources & ideas Academic research ethics Conventions, citation styles, & document design Feedback
Publishing	Publishing process & writing competitions

**Content cluster #4: Pedagogic skills** **n<sub>4</sub> = 16**

Categories	Keywords
Law school teaching methods	Traditional, contemporary & clinical teaching methods Classroom etiquette
Legal epistemological concerns	Ethical & jurisprudential concerns

The distribution may appear unequal; however, the search terms favored communication skills. Consequently, the first content cluster may be perceived as most directly related to EALP curriculum development because of its explicit linguistic character. However, content clusters two through four are inextricably connected with the teaching, learning, and use of legal language. For example, it is challenging to conceptualize thinking skills (*cf.* content cluster two) without recognizing the theory of legal knowledge and legal epistemology (*cf.* content cluster four). However, neither a legal epistemology nor thinking skills can be conceptualized without legal language and communication skills (*cf.* content cluster one). Each content cluster and category is provided with a working definition that fits the content analysis and justifies its inclusion. What follows is a discussion and interpretation of the results of the qualitative content analysis of the four content clusters. To enhance a methodical discussion, each part (cluster) is structured according to the sequence of its constituent categories and keywords.

### 10.3 Communication skills

The content cluster on communication skills can be defined as a class of skills comprising the traditional language skills as four categories, *viz.* writing, reading, speaking, and listening. Because of the keen focus on the traditional language skills, this cluster is closely related to pedagogic methods and approaches that advance micro- and mesolinguistic skills. However, legal language is not used in isolation; the social skills needed for the production of legal meaning constitute a fifth category of communication skills, *viz.* social skills. The recognition of social skills relates the communication skills cluster to pedagogic methods and approaches that advance macrolinguistic skills. The parameters of each category were set by several keywords.

Because the sample of textbooks was determined by a set of focused search terms that prioritized legal linguistic skills, the communication skills content cluster is exceedingly well represented especially by academic legal language textbooks that account for 52.38% (22/n<sub>1</sub>) of the cluster sample. Figure 10.3 illustrates the distribution of EALP-type textbooks in the communication skills content cluster.



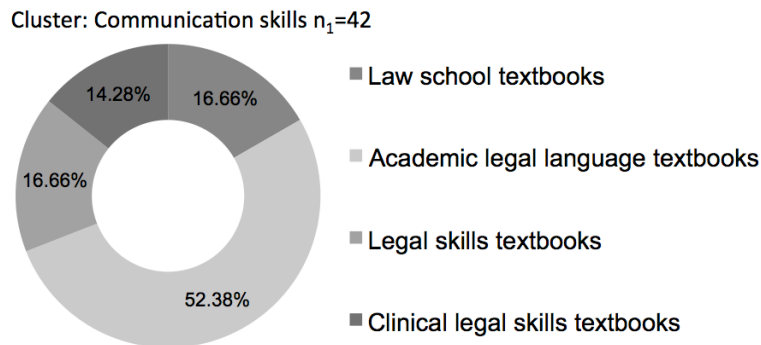


Figure 10.3: Composition of communication skills cluster

From the total sample of textbooks, only two books did not cover communication skills explicitly. Each book belongs to a different circle of world English and a different textbook group. *Legal Analysis: The Fundamental Skill* (Romantz & Vinson 2009) is a clinical legal skills textbook from the inner circle of world English. Because “lawyers are required to analyze an ever-increasing body of law [...] and to apply that law to an infinite variety of fact scenarios”, Romantz and Vinson (2009:3) identify analytic thinking as fundamental to succeed as a lawyer. Yet, analytic thinking skills do not function independently from legal linguistic skills. The conventionalized use of grammar and syntax can be considered an analytic process. The second book, *Basic Legal English* (Yu & Kwon 2011), is a publication by Korean authors from the academic legal language textbooks group and the only book from the expanding circle of legal English. *Basic Legal English* (Yu & Kwon 2011) is based on the grammar translation and direct methods of instruction that assume language acquisition through the translation of legal content to English. The authors recognize this implicitly by stating that the “book is unique in the sense that the Korean legal system is introduced in English” (Yu & Kwon 2011:7). However, different from the grammar translation method, the unit of analysis does not include vocabulary or sentences. In fact, language instruction has been relinquished to the teacher altogether. As applied in *Basic Legal English* (Yu & Kwon 2011), the grammar translation method assumes that familiarity with content knowledge will assist language acquisition.

The two books discussed above represent only 4.54% (2/N) of the total sample. They may be considered statistical outliers that do not address any of the categories of communication skills addressed by 95.46% (42/N) of the sample. *Basic Legal English* (Yu & Kwon 2011) was the only textbook available in the expanding circle, which demonstrates the dire need for more tailored L2 legal English textbooks in South Korea.

### 10.3.1 Writing skills

Writing skills is the most comprehensive category that is addressed by 90.47% (38/n<sub>1</sub>) of the textbooks in the communication skills cluster where n<sub>1</sub>=42 (*cf.* Figure 10.2). Writing skills may be defined as a linguistic category consisting of 11 keywords that address the craft of writing on a sliding scale of micro- and macrolinguistic skills. Microlinguistic skills include the ability to manipulate word parts (morphology), legal vocabulary (lexicon), sentences (syntax), and punctuation (*cf.* Chapter 1). The microlinguistic particles are potentially utilized as mesolinguistic skills to recognize and produce larger text types, such as outlines, academic genres, legal documents, and professional correspondence. Ultimately, the tenor and clarity of micro-, meso-, and macrolinguistic features need to be refined to succeed at legal writing. As interpreted in this study, micro-, meso-, and macrolinguistic writing skills function in a multidirectional, desegregated legal linguistic environment.

#### 10.3.1.1 Linguistic features

The first five writing skills cover language acquisition from micro- to macrolinguistic features. Grammar, for example, addresses morphology, lexicon, and syntax and is addressed by 50% (19/38) of the textbooks in the writing category. However, more emphasis is placed on legal vocabulary with 57.89% (22/38) and on the structure and organization of ideas with 55.26% (21/38). The skills of outlining (drafting) and punctuation (including proofreading and editing) are addressed by 47.36% (18/38) and 31.57% (12/38) of textbooks respectively in the writing category (*cf.* Figure 10:4).

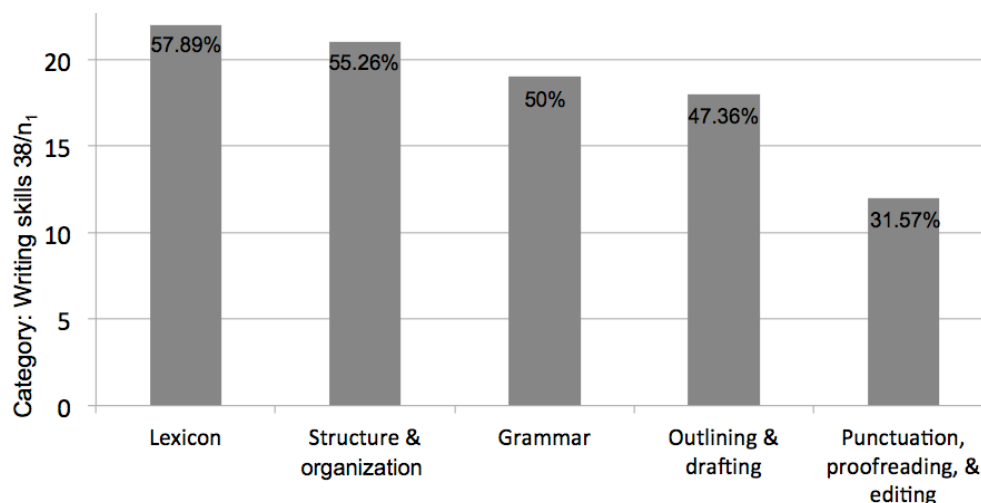


Figure 10.4: Distribution of writing skills

Lexico-grammatical skills are instilled through a variety of exercises, such as matching exercises, in which legal terms should be matched with their correct definitions, or fill in the missing word exercises (Brostoff & Sinsheimer 2003; Brown 2007; Brown & Rice 2007). Grammar, lexicon, and structure and organization receive more coverage than outlining and punctuation. Outlining and punctuation may be interpreted as steps in a time-consuming, process-based writing instruction class, in which an outline and multiple drafts are revised, peer-reviewed, and edited. This technique of instruction is often employed in content-based ESP courses (*cf.* Flowerdew & Wan 2010:79; Larsen-Freeman & Anderson 2011:143; Paltridge 2007:931). In principle, textbooks that impart outlining and drafting skills inculcate process writing, because the outline and draft are steps in the writing process.

Process writing in L2 pedagogy is reminiscent of the fourth principle of good practice in undergraduate education *viz.* prompt feedback that subsumes the editing process (*cf.* Chickering & Gamson 1989:140-141; Hattie & Timperley 2007:81; Paulus 1999:283; Taras 2003:550). However, grammar, lexicon, and structure and organization may be more readily associated with the traditional, teacher-centered grammar translation and direct (natural) methods of L2 instruction that fit within the framework of the teacher-centered, lecture method in legal education (*cf.* Larsen-Freeman & Anderson 2011:19-31; Mertz 2007a:164). The lecture method is also known as the textbooks method that requires students to memorize grammar and vocabulary (Boyle & Dunn 1998:217). As such, language learning becomes a process of habit-formation through

operant conditioning similar to the traditional audiolingual method (*cf.* Brown 2007b:85). Although the advantages of feedback (process writing) have been addressed in legal education, since the late 1980s textbooks in the writing category seem to demonstrate a predilection for lecture-based instruction.

### 10.3.1.2 Academic, professional, and legal genres

In the writing category, EALP-type textbooks distinguish among the skills of composing the following three groups of genres: academic genres, drafting of legal documents, and professional correspondence. Academic genres are addressed by 31.57% (12/38) of the textbooks in the writing skills category, while legal documents by 55.26% (21/38) and professional correspondence by 57.89% (22/38). Figure 10.5 illustrates that written genres related directly to legal practice are prioritized over academic genres. There are two possible reasons. Firstly, it may be the result of the influence of clinical legal education that accentuates preparation for legal practice, even though clinical legal education does not advocate practice to the detriment of academia (Tarr 1993:33). Secondly, academic genres are relatively limited in comparison to the number of legal genres available. For example, the United States Legal Forms website provides access to more than 50,000 forms from approximately 130 categories of legal documents (genres) ranging from acknowledgements to wills (Uslegalforms.com). Considering the magnitude of legal genres available, the priority given to legal documents and professional correspondence seems justified (*cf.* Figure 10.5).

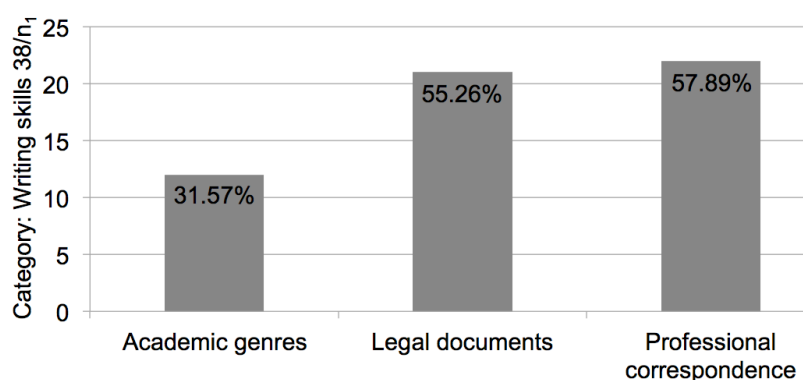


Figure 10.5: Ranking of written genres

A graphic comparison of the genres that constitute academic, legal, and professional writing enables a deeper appreciation of the priorities of EALP-type textbooks (*cf.*

Figure 10.6). The number of textbooks in the writing skills category is represented on the y-axis, and the individual genres are listed on the x-axis.

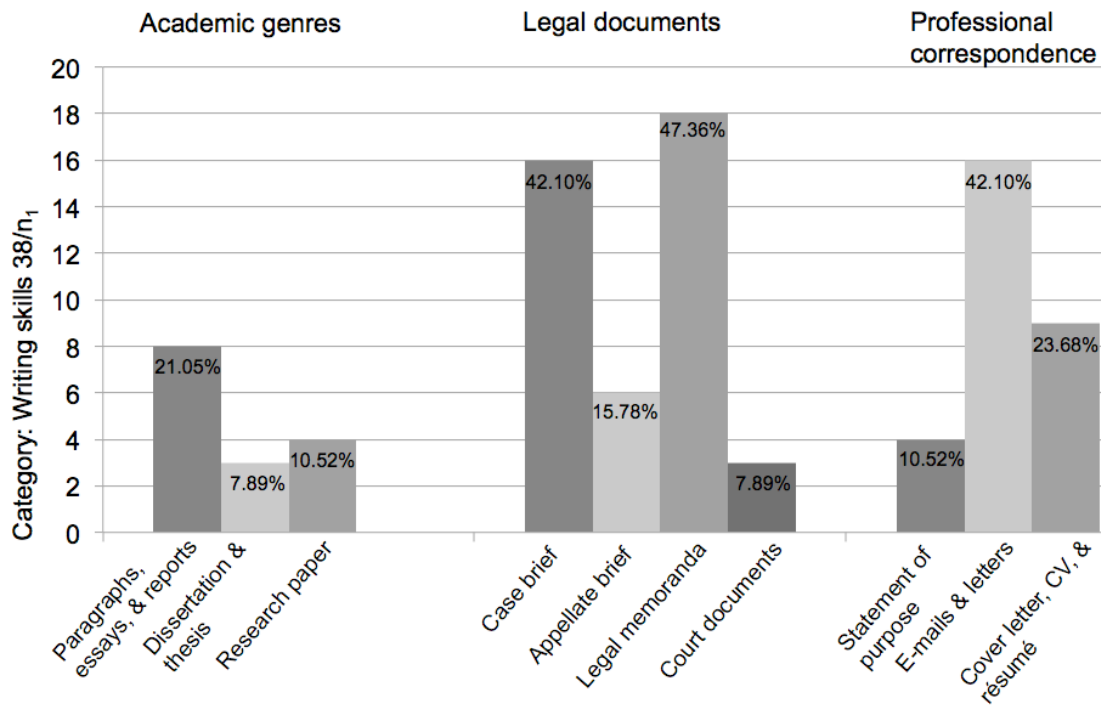


Figure 10.6: Comparison of academic, legal, and professional written genres

In general, the academic genres dissertation, thesis, and research paper are less relevant to students at the beginning of law school education than students toward the end of their law school experience. However, paragraphs (not strictly a genre but a core component of larger genres), essays, and reports are fundamental academic genres addressed by only 21.05% of EALP-type textbooks in the writing skills category. This relatively low representation of such fundamental academic genres may be explained by the curricular structure of law school in the inner circle of world English. The first year of law school in the United States and South Korea is also the first year of postgraduate study. It is therefore plausible that American and Korean students receive instruction on the writing of paragraphs, essays, and reports in undergraduate studies. In South Africa, however, the first year of law school is also the first year at university, and instruction on paragraph, essay, and report writing is essential.

Textbooks that address essay writing tend to subscribe to process writing that emphasizes certain steps in the creation of the essay. These steps include problem analysis, research preparation, writing, and refining (Cherkassky *et al.* 2011:180-191; Finch & Fafinski 2011:301-326). While these steps describe the process, they also include a multitude of other skills. Table 10.5 provides a cursory summary of the possible steps and associated skills. The table can be more extensive or simplified and can be applied to different written genres as it illustrates the confluence of legal writing skills and generic writing skills. Table 10.5 therefore reiterates the complex relationship among the skills across the content clusters and categories of the coding scheme, and thus it suggests a component of the framework for the EALP curriculum (*cf.* Chapter 11). Finch and Fafinski (2011:302) instruct students that “a good essay is one that answers the question, and in doing so, demonstrates a range of written and analytical skills.” The writing process should be seen as a multidirectional network of skills and influences. The process is simultaneously linear, cyclical, and recursive, and it requires agile movement among the steps.

Table 10.5: Steps and skills in the writing process

	Writing process	Content cluster	Category of skills
Step 1	Identify deadlines	Thinking skills	<ul style="list-style-type: none"> <li>Study skills: time &amp; project management</li> </ul>
Step 2	Analyze the problem	Thinking skills	<ul style="list-style-type: none"> <li>Critical thinking: inductive &amp; deductive reasoning and lateral thinking</li> </ul>
Step 3	Gather information	Research skills	<ul style="list-style-type: none"> <li>Literature search: library &amp; electronic legal research &amp; fact finding</li> </ul>
Step 4	Plan the structure of the essay	Writing skills	<ul style="list-style-type: none"> <li>Outlining and drafting</li> </ul>
Step 5	Write and rewrite the essay	Writing skills	<ul style="list-style-type: none"> <li>Grammar</li> <li>Legal vocabulary</li> <li>Writing style (tenor): academic, informative, persuasive, &amp; litigious style</li> <li>Clarity</li> </ul>
Step 6	Reference all sources	Research skills	<ul style="list-style-type: none"> <li>Research tools: synthesizing legal sources &amp; ideas, academic research ethics, conventions, citation styles, &amp; document design</li> </ul>
Step 7	Editing of final essay	Writing skills  Pedagogic skills	<ul style="list-style-type: none"> <li>Punctuation, proofreading, &amp; editing</li> <li>Legal epistemology: conformity with ethical and jurisprudential issues</li> </ul>

Of the written genres, professional correspondence is emphasized most by 57.89% (22/38) of the textbooks, which consists of the statement of purpose, e-mails, letters, the CV, and résumé. In the context of EALP-type textbooks, the statement of purpose refers specifically to law school applications in the inner circle of world English. However, genre transfer may occur and be applied to a job application in the other circles of world English. E-mails, letters, and other business documents refer specifically to legal practice. Genre transfer may also apply to this group, as e-mails and letters are equally applicable across international academic institutions.

Legal documents constitute an important set of genres, represented by 55.26% (21/38) of the textbooks in the writing category. Figure 10.6 illustrates that case briefs (or case summaries) and legal memoranda (e.g. agreements or contracts) are accentuated in particular. Because of their nature, legal documents require substantive legal input, that is, cognitive schemata about law or legal content knowledge. As such, the instruction of legal genres may require both the weak and strong versions of content-based pedagogy associated with communicative L2 approaches (Larsen-Freeman & Anderson 2011:131; Richards & Rodgers 2001:155). In the EALP context, in which L1 and L2 students learn a new language, legal English and legal genres are learned for communicative purposes (weak version) and to acquire legal content knowledge through English (strong version) (*cf.* Bhatia 1989:233). For example, *Introduction to Law and Legal Skills in South Africa* (Humby *et al.* 2012), a legal skills textbook, reiterates the use of content knowledge to facilitate the legal language skills. In *Professional English in Use: Law* (Brown & Rice 2007), an academic legal language skills textbook with its primary focus on legal vocabulary acquisition, Brown and Rice (2007:6) state expressly that vocabulary acquisition is one possible step toward becoming a member of the legal discourse community. With their encumbered meanings, legal terms constitute legal content; hence, the authors' claim to a content-based pedagogy seems to be justified.

Legal genres are legal context-dependent, because the relationship between text and context determines the social function of a legal document (Hyon 1996:704). Specific legal genres fulfill certain actions in certain situations (Paltridge 2007:933-934). The relationship between text and context and the function that genre performs in this context indicate the influence of a new rhetoric-based pedagogy. As such, EALP-type

textbooks that focus on legal genre instruction support a definite relation between language (genre) and society (context) that is determined by the functions of legal genres.

### 10.3.1.3 Tenor

The tenor (writing style) of texts produced by legal scholars or practitioners may be described as either academic-informative or persuasive-litigious. Naturally, any combination of styles is possible, not to mention advantageous. In the writing process (*cf.* Table 10.5), most of the EALP-type textbooks that address tenor are characterized as academic legal language textbooks represented by 58.33% (7/12) books as opposed to the presentation of legal skills (33.33%, 4/12) and clinical legal skills textbooks (8.33%, 1/12). Tenor is closely associated with grammar, vocabulary, punctuation, and text structure. The analysis of textbooks indicates that the aforementioned skills are typically addressed by academic legal language textbooks. It would therefore be logical to group grammar, vocabulary, punctuation, text structure, and tenor together for instructional purposes because the clarity of a text depends to a large extent on these skills.

### 10.3.1.4 Clarity (plain legal English)

Clarity of legal writing is associated with the development of the notion of plain legal language. Mellinkoff eloquently illustrates the necessity of plain legal English: “What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue” (Mellinkoff in Tiersma 2013:n.p.). Because plain legal English is not considered in the previous chapters as a pedagogic approach or ameliorating initiative for traditional teaching methods, it behooves this analysis and interpretation to consider its definition and origin briefly.

Plain legal English is defined as “[t]he writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding it at first reading, and in the same sense that the writer meant it to be understood” (Cutts in Petelin 2010:206; *cf.* Schiess 2004; 2009). Modern linguistic interest in legal language began with the publication of Mellinkoff’s *The Language of Law* (1963) and Charrow and Charrow’s *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions* (1979). Together with these publications, the proliferation



of consumer movements in the 1960s served as catalysts for plain legal language (Gibbons 1999:161; Tiersma 2006:30; Petelin 2010:207). The common objective was to empower ordinary consumers against corporate and government bodies that attempted to circumvent product liability through legalese. The consumer movements attempted to abolish bureaucratese, officialese, and legalese, so that non-members of the legal discourse community can understand such documents as tax forms, credit card statements, and insurance policies (Williams 2004:116). The empowerment agenda of plain legal English was similar to that of postmethod, critical literacy, and multiliteracies pedagogy to empower learners (*cf.* Chapter 6).

Plain legal English attempts to resolve the linguistic obstacles posed by traditional legal English. The seven goals of plain legal English include the following (*cf.* Bhatia 1993:138; Cornelius 2010:177; Gibbons 1999:158-161; Gibbons 2004:286; Kimble 1995; 1997; 2002; Tiersma 2006:30-45; Williams 2004:112-115):

- to minimize the use of archaic words and expressions,
- to limit the use of foreign words and expressions,
- to avoid prolixity or repetition of words or phrases,
- to avoid run-on sentences,
- to limit the use of passive voice constructions,
- to limit an impersonal and technical writing style, and
- to avoid nominalizations

Plain legal English is addressed by 47.36% (18/38) of the textbooks in the writing skills category. The textbook distribution reveals that the clarity of legal English is prioritized by academic legal language and legal skills textbooks (*cf.* Figure 10.7). However, 52.63% (20/38) of the textbooks did not address plain legal English.

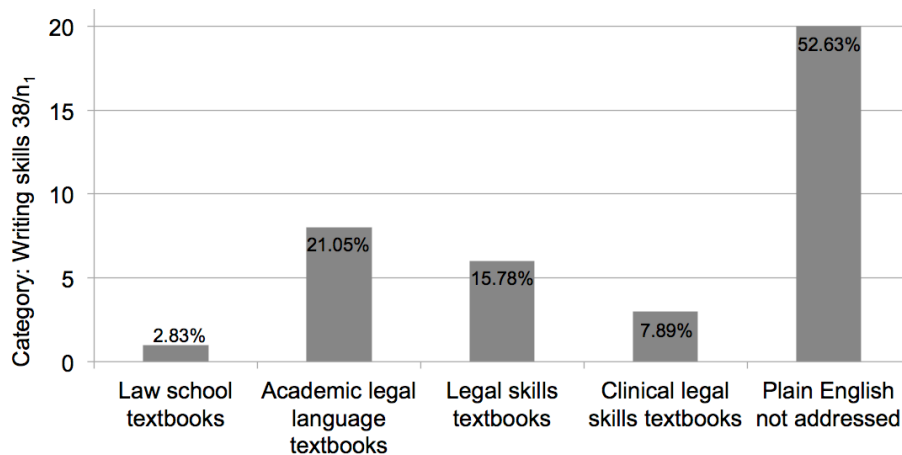


Figure 10.7: Distribution of textbooks addressing plain legal English

Drawing on the writing skills category, a keyword search, using *clarity* and *plain legal English*, was conducted to identify the characteristics of plain legal English. A summary of the linguistic characterizes of plain legal English is provided in Table 10.6.

Table 10.6: Linguistic features of plain legal English (*cf.* Shapo & Shapo 2009; Armstrong & Terrell 2008; Brown & Rice 2007; Day, Krois-Linder, & TransLegal 2006; Garner 2013; Haigh 2009; Ray & Ramsfield 2010; Van der Walt & Nienaber 2009; Volokh 2007; Bradney *et al.* 2005; Cherkassky *et al.* 2011; Finch & Fafinski 2011; Ramy 2010; Schultz & Sirico 2010; Slocum 2011; Coughlin, Malmud Rocklin, & Patrick 2013; Hegland 2008; Maughan & Webb 2005).

Elements of plain legal English	
<b>General elements</b>	
1	Avoid being too formal, but do not be excessively informal.
2	Omit unnecessary detail.
3	Use examples where necessary to explain the text.
4	Punctuate correctly by using standard punctuation.
<b>Typographic elements</b>	
1	Use a legible typeface and type size.
2	Use diagrams, tables, and charts as needed to explain the text.
3	Use highlighting techniques when needed.
<b>Organization</b>	
1	Use short sections or subdivide longer ones.
2	Group related material together.
3	Use logical sequencing: put the more important before the less important, the general before the specific, and the ordinary before the extraordinary.
4	Use informative headings.
5	Avoid excessive cross-references.

<b>Sentences</b>	
1	Keep sentences and paragraphs short. Keep the average sentence to approximately 20 words.
2	Keep the subject near the beginning of the sentence.
3	Put the central action in strong verbs, not in abstract nouns. <ul style="list-style-type: none"> <li>• Not: "Late delivery of the goods may result in cancellation of the contract."</li> <li>• Rather: "If the seller delivers the goods late, the buyer may cancel the contract."</li> </ul>
4	Put the most important information at the end of the sentence – where the emphasis falls.
5	Prefer the active voice. Use the passive only when the agent is unknown or unimportant.
<b>Words</b>	
1	Prefer short words to long ones, simple to fancy.
2	Avoid unnecessary Latin, formal words, and jargon.
3	Explain technical terms that cannot be avoided.
4	Omit unnecessary words.
5	Avoid doubles and triplets or redundant words (e.g. <i>evil and wrong; give, devise, and bequeath</i> ).
6	Use <i>must</i> instead of <i>shall</i> .
7	Avoid multiple negatives.

### 10.3.2 Reading skills

*Reading skills* constitutes the second category in the communication skills cluster. Reading in law is a challenging task, not only because legal writing is traditionally convoluted, but also because the content may be particularly complex. In their introduction to reading and briefing cases, Brostoff and Sinsheimer (2003:53) explain that case reading is substantially different from everyday reading.

Despite the complexity and confluence of skills in legal reading, textbooks in the communication skills cluster neglect reading instruction. The neglect is evident not only in the weak presentation of reading skills, but it is also apparent by the limited amount of categories that define reading skills. Compared to the writing skills category addressed by 90.47% (38/n<sub>1</sub>) of textbooks, reading skills are addressed by merely 43.90% (18/n<sub>1</sub>) where n<sub>1</sub>=42 (*cf.* Figure 10.2). Figure 10.8 illustrates the distribution of textbooks that address reading skills. Reading skills are most frequently addressed by two groups of textbooks, *viz.* academic legal language and legal skills textbooks. Law school textbooks are relatively under represented by 16.66% (3/18). With their focus on the initiation into law school, more emphasis on reading skills is to be expected because of the voluminous amount of reading that law students endure. Clinical legal skills textbooks constitute only 11.11% (2/18) of this

category, as the user of this kind of textbooks is usually already inculcated into law school study practices and should be familiar with legal reading skills.

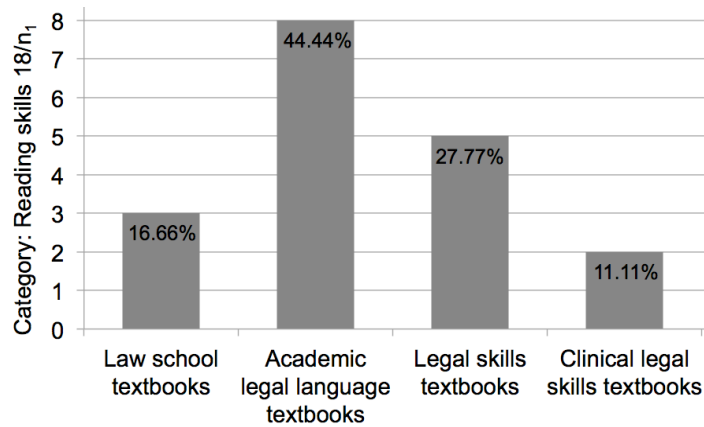


Figure 10.8: Composition of reading skills category

Similar to writing skills, improved reading skills serve various objectives that intersect with skills across the four content clusters. The objectives of reading law at university are summarized appropriately by McKay, Charlton, and Barsoum (2011:37). These objectives include the following:

- to undertake the arduous task of reading a substantial amount of textbooks, statutes, and cases;
- to understand legal language;
- to develop skills in taking notes;
- to understand questions of law; and
- to develop analytical skills for case law and examination techniques.

The reading skills category is defined by two phrases *viz.* (1) reading tips and techniques, and (2) the genre analysis of case law and statutes. Reading tips and techniques is a set of reading skills that consists of scanning, skim reading, deducing the meaning of a word from the text, and reading for detail. These skills are typically focused on L2 learners, although it would behoove L1 learners to flex these skills. In *Legal English: How to Understand and Master the Language of the Law* (McKay *et al.* 2011:37-42), the direct method of instruction is used to teach reading tips and techniques. However, these skills may not necessarily be addressed directly, as they can be integrated in extensive reading passages as guiding and explanatory annotations. For example, in *International Legal English: A Course for Classroom or*

*Self-study Use* (Day *et al.* 2006), a variety of 68 reading passages, including paragraphs, essays, and academic articles, are provided with notes on the reading and comprehension questions. Generally, reading tips and techniques focus on the reading of academic genres.

The second phrase that defines reading skills relies on the reading skills for academic genres and integrates these skills with legal hermeneutical skills in the thinking skills content cluster to constitute what may be called *legal reading*.

*Reading Like a Lawyer: Time-Saving Strategies for Reading Like an Expert* (McKinney 2012) equates success in legal studies and legal practice to superior strategic reading skills. “Later, in practice, lawyers read statutes, cases, and administrative regulations every day, decoding the words in the texts and reaching behind the words to the many possible meanings that could be attributed to the law they’re reading” (McKinney 2012:xiii). Mertz (2007b) describes the method of reading employed by legal professionals as a form of “agnosticism” that is confusing to social scientists. She argues that lawyers read, “not to determine ‘what actually happened,’ but rather to determine whether the legal-textual ordering of authority has been satisfied” (2007b:496). Mertz’s explanation, of what can be called legal reading, is partially valid, yet misleading. It is valid, because lawyers read case law, for example, without developing personal interest or feelings toward a case. However, Mertz’s interpretation is also misleading; legal scholars are interested in “what actually happened” because they pursue facts. Facts should be considered in the context of precedent, statutory law, and other legal considerations. To the outsider, legal reading is confusing, because every fact must be interpreted in the context of a vast legal history of which the layperson may be unaware.

Together the reading skills for academic genres, hermeneutical skills, and the genre analysis of case law and statutes enable law students to read legal genres. Brostoff and Sinsheimer (2003:53) provide a constructive, critical linguistic articulation of the confluence of skills and challenges posed by reading case law:

When you read a case, you must pay attention to all of the details of the case including its social content and background. You must also be aware of the reasoning or principles that result from the court’s decision, even if those principles are not fully

articulated in the text of the opinion. Remember that the court communicates its decision on the case to the parties in the form of an order, a short document communicating the precise procedural disposition of the case. The case opinions that you will be reading are pieces of advocacy, in which the courts explain their rulings. The court wants the reader to accept the ruling as the inevitable outcome of that legal dispute. However, your job, as law student and lawyer, is to read critically and try to understand how the case follows and departs from existing law in the jurisdiction (Brostoff & Sinsheimer 2003:53).

In addition to thinking skills, reading in law also relies on genre analysis, the identification of textual and lexico-grammatical features of cases and statutes. These features perform certain functions that provide access to the text and eventually to the discourse community. As Brostoff and Sinsheimer illustrate in the quotation above, the procedural disposition of a case is to be found in a court order, which communicates the court's decision. Therefore, students should be able to recognize the position and features of an order in a case report. Similarly, legislation consists of various components, such as the short title that is often used for referencing and the long title that provides an indication as to the purpose and content of the statute. Authors may refer to the genre analysis of case law and statutes as the anatomy of legal texts (Finch & Fafinski 2011:66). To assist instruction, textbooks rely on reproductions of sections from cases and statutes and provide extensive annotations in the margins to identify the constituent parts of legal genres.

### 10.3.3 Speaking skills

*Speaking skills* constitutes the third category in the communication skills cluster. Speaking skills is a comprehensive category that is addressed by 66.66% (28/42) of the sample textbooks in the communication skills cluster where  $n_1=42$  (*cf.* Figure 10.2). The working definition of speaking skills describes them as productive, communicative skills that are characterized by the use of rhetorical features, such as body language, tone of voice, emphasis, and pronunciation. Similar to writing skills, speaking skills are practiced across three groups of genres, *viz.* academic, legal, and professional.

Speaking skills are particularly well represented by law school, legal skills, and clinical legal skills textbooks. Figure 10.9 illustrates the distribution of textbooks that

address speaking skills. Academic legal language skills textbooks account for the largest portion of this category, yet it is only represented by 28.12% (9/23) of the textbooks in its group. The modest focus on speaking skills may be attributed to the keen focus of academic legal language textbooks on writing skills. The other groups of textbooks address speaking skills exceedingly well within their own textbook groups. Six out of seven (85.71%) law school and clinical legal skills textbooks and all of the legal skills textbooks (100%, 7/7) provide instruction on speaking skills.

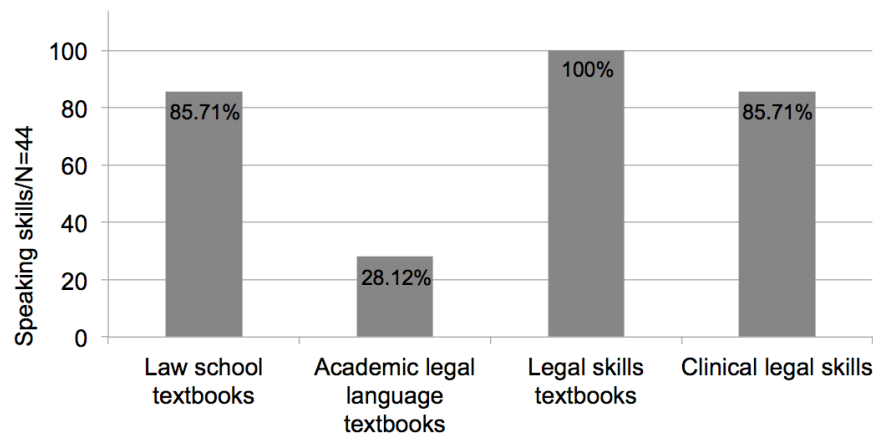


Figure 10.9: Distribution of textbooks addressing the speaking skills category across N

### 10.3.3.1 Rhetorical features

Rhetorical features of speaking skills are techniques used by the speaker to convey a message with more clarity and persuasion, such as body language, tone of voice, emphasis, and pronunciation. In terms of systemic functional linguistics, the context of culture determines the rhetorical structure of the text (Paltridge 2007:933). For example, asking closed questions during cross-examination determines the rhetorical features of the questioning.

Textbooks that address rhetorical features originate primarily in the inner circle of world English. The target audiences include all three circles of world English. Yet, rhetorical features may be of more use to L2 learners than to L1 students. This could explain why only 23.68% (9/38) of textbooks in the communication skills cluster address rhetorical skills.

### 10.3.3.2 Academic, legal, and professional genres

Similar to writing skills, speaking skills include three groups of genres. Academic genres are discussed in 53.57% (15/28) of the textbooks, legal genres in 78.57% (22/28), and professional genres in 39.28% (11/28) (*cf.* Figure 10.10).

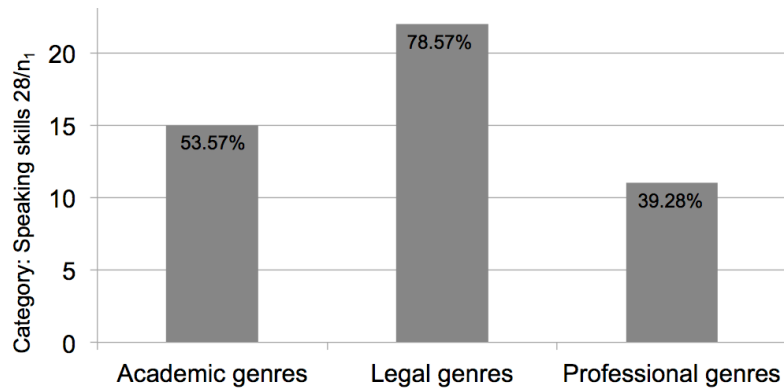


Figure 10.10: Distribution of speaking genres within the speaking skills category

Each group of speaking genres consists of member genres. Figure 10.11 provides a visual comparison of these specific genres. This comparison illustrates that EALP-type textbooks prioritize legal speaking genres, which advance the agenda of clinical legal education.

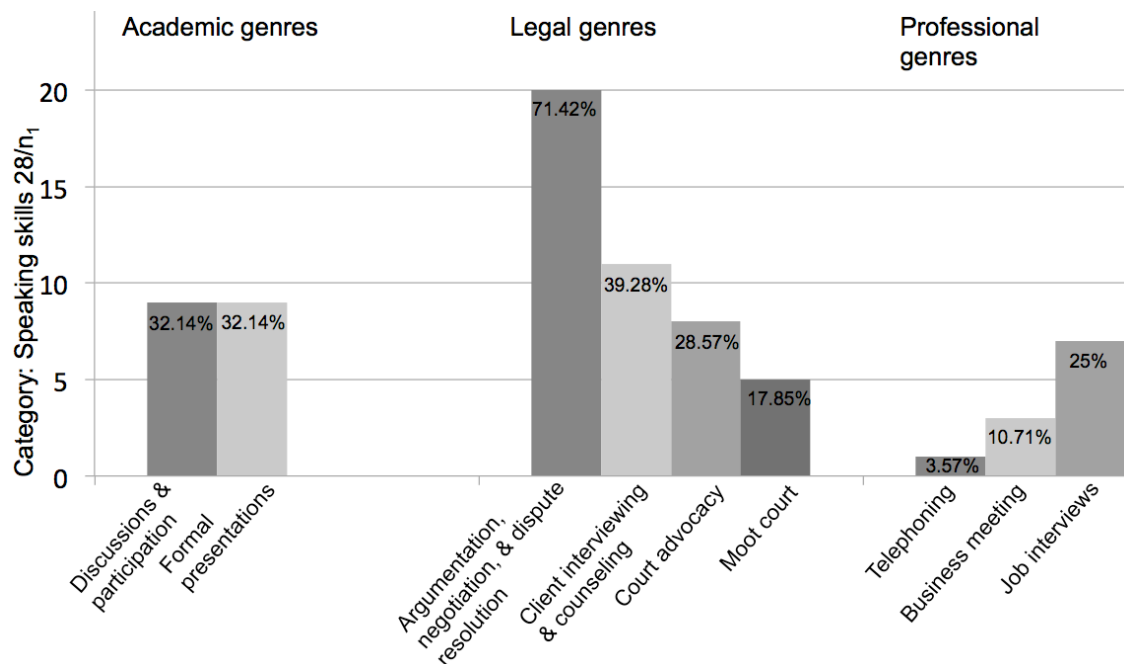


Figure 10.11: Comparison of academic, legal, and professional speaking genres within the speaking skills category



The emphasis on legal speaking genres is evident in Figure 10.11, as argumentation, negotiation, and dispute resolution are addressed by 71.42% (20/28) of the textbooks in the speaking skills category. Although all of the speaking genres require productive, communicative skills, legal genres are particularly well suited to instill the broad spectrum of clinical skills proposed by clinical legal education (*cf.* Chapter 8) and the lawyering skills summarized by the *MacCrate Report* (ABA 1992; *cf.* Chapter 9). Clinical legal education requires the acquisition of skills through performance and the incorporation of collaborative and experiential learning models (Davis & Steinglass 1997:250). Lawyering skills accentuated by the *MacCrate Report* include problem solving, legal analysis and reasoning, legal research, factual investigation, communication, negotiating, alternative dispute resolution, organization and management of legal work, and recognizing and resolving ethical dilemmas (*cf.* Menkel-Meadow 1994:593-624; Munneke 2001:105-154; Sonsteng & Camarotto 2000:332-333).

The emphasis on legal genres may be interpreted as a transition from traditional lecture and Socratic teaching toward a clinical approach. This interpretation is supported by the Korean *Law School Act* that requires practical courses, such as moot court, to instill clinical skills among students (Ahn 2006:239; Jeong 2010:179). Because mooting is a process-based instructional tool that simulates an entire court proceeding from the filing of the case, the legal research involved, the delivering of arguments, to the final judgment (*cf.* Finch & Fafinski 2011:417-449), it inculcates all of the skills listed by the *MacCrate Report* and the collaborative and experiential learning modes proposed by clinical legal education. The above analysis suggests that legal speaking genres advance the agenda of clinical legal pedagogy through modes not necessarily met by academic or professional speaking genres.

#### **10.3.4 Listening skills**

Listening skills is the fourth and smallest category in the communication skills cluster, accounted for by 38.09% (16/n<sub>1</sub>) of the textbooks where n<sub>1</sub>=42 (*cf.* Figure 10.2). The working definition of listening skills recognizes it as a productive, communicative skill that involves active note taking skills. Therefore, EALP-textbooks do not

consider listening as a passive skill. Figure 10.12 illustrates the distribution of textbooks in the listening skills category.

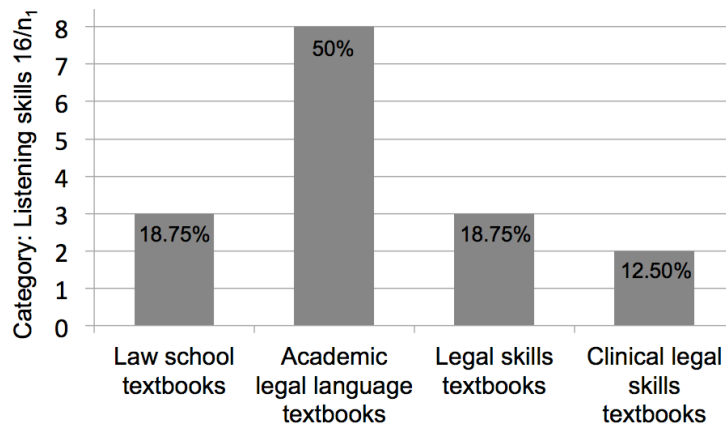


Figure 10.12: Distribution of textbooks in the listening skills category

Listening skills are usually addressed within the context of the lecture. Finch and Fafinski (2011:212) state that students tend to like the lecture, because it is “a relatively effortless method of learning, as little more seems to be required than attending, listening, and writing notes.” Lectures are based on the pedagogic principles of traditional legal education that rely on deductive instructional procedures, vicarious learning, and a teacher-centered orientation. Courses that cover vast amounts of material may resort to lectures because of the time-consuming nature of experiential learning modes (*cf.* Chapter 7). Lectures enable the coverage of large quantities of material but not necessarily in a passive manner. In addition to thinking skills that require the production of meaning, note taking renders listening an active skill.

Brostoff and Sinsheimer (2003:8) identify the following three practices in the process of listening to a lecture that may assist students to utilize the lecture productively:

- gain background knowledge on the lecture topic by conducting pre-lecture reading;
- take notes during the lecture by focusing on the main idea and paraphrasing; and
- determine the structure of the lecture by listening for structural markers, such as transition signals or coordinating and subordinating conjunctions.

The first practice relies on independent legal reading skills; the second practice requires writing skills, such as outlining; and the third practice requires grammar skills to identify syntactic markers. By taking notes during a lecture, listening is turned into a skillful practice.

Note taking is also related to computer literacy, as EALP-textbooks propose the use of laptops for note taking and the acquisition of commercial lecture outlines (Shapo & Shapo 2009). An online discussion forum that supplements the lecture will incorporate a Web 2.0 pedagogic approach. This issue is revisited in the thinking skills cluster on computer literacy.

### 10.3.5 Social skills

*Social skills* constitutes the fifth category in the communication skills cluster. The social skills category is associated with a confluence of contemporary theoretical and applied linguistic approaches. Social constructionism and critical discourse analysis theorize that language is community generated and that meaning is situated in living conversations. Discourse communities of like-minded peers co-construct epistemologies, ontologies, and grammar (Bruffee 1986:774; Cunliffe 2008:130; McKenna 2004:12). Because genres are speech activities of social action (Swales 2004:61), the social skills of the legal discourse community are essential to students who wish to engage with legal genres and the community. Such social skills may also be expressed in the digital community when blogging is considered as social action (Miller & Shepherd 2004). Similar to postmethod pedagogy, multiliteracies pedagogy considers knowledge as the result of mutual collaborations with people of different aptitudes, backgrounds, and persuasions. They collaborate in an “epistemic community [...] centered around a specific (historically and socially constituted) domain of knowledge” (New London Group 1996:82), whether that domain is constructed physically or digitally.

The social skills category is defined as a collection of productive communicative skills that are characterized by their social dimensions. These social dimensions include the academic and professional discourse communities, in which networking, collaboration, socialization, and diversity management ensue. The social skills category is accounted for by 29.26% (12/n<sub>1</sub>) of the textbooks in the communication

skills cluster as illustrated in Figure 10.13 where  $n_1=42$  (*cf.* Figure 10.2). The relatively low representation may be the result of a general neglect of the issue. Considering the temporal parameters of the sample from 2003 through 2013 and the 12 books that address social skills, only two publications per year cover social, communicative skills. Most of these books are legal skills textbooks that contextualize the social dimensions of language within the broad framework of legal skills. This means that the other three groups of textbooks pay less attention to the social dimensions of language. However, how can legal language be used without a social context? This question summons the epic jurisprudential debate between positivist and natural law scholars and the interpretation of the use of legal language.<sup>3</sup>

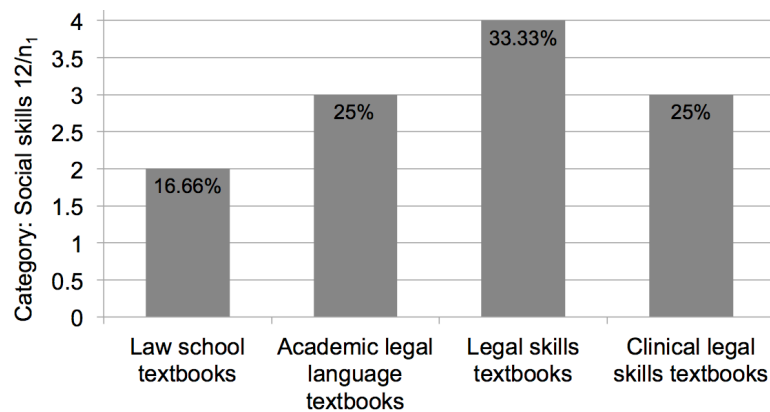


Figure 10.13: Distribution of textbooks in the social skills category

The diverse populations of law schools and legal practice have influenced the social dimensions of legal language. This diversity is brought about by globalization (*cf.*

<sup>3</sup> Within the philosophy of language and law (jurisprudence), the indeterminacy of legal language constitutes raging debates and a corpus of academic literature far beyond the rationale and scope of this study. However, it would be imprudent not to refer to the most influential discourse. The debate revolves around legal positivism (sources of law are the ones codified and recognized by government and judicial bodies) and the natural law (law includes unwritten moral principles) notions of legal interpretation and are therefore intimately connected to legal language. The debate between Hart and Dworkin oscillates between legal positivism and natural law. The Hart-Dworkin debate concentrates on the relation between hermeneutical legality and morality. Dworkin, a natural law thinker, argues that “legality is ultimately determined not by social facts alone, but by moral facts as well” (in Shapiro 2007:5). This notion threatens Hart’s legal positivism, because Hart postulates that legality is never established by morality but only by social practice (*cf.* Culver 2001:367-398; Leiter 2003:17-51; Shapiro 2007:1-54).

Chapter 8). Brostoff and Sinsheimer (2003:35-42) recognize the effects of globalization and devote a substantial portion of their textbook to cross-cultural issues under the heading “Culture Shock.” This section is devoted particularly to L2 students from the outer and expanding circles of world English, who pursue legal studies in the inner circle. In the quest to overcome the culture shock of the inner circle, L2 students are advised to recognize their culture shock symptoms, such as stereotypes about the host culture and loss of identity. In addition to practical advice to overcome culture shock through the practice of patience and finding a hobby, integration is proposed through language and academic discourse socialization. Language socialization may be facilitated through the acquisition of law school slang vocabulary that may integrate L2 or EFL students with students from the inner circle. Academic discourse socialization involves the acquisition of academic, legal vocabulary to assist communication in the classroom and about legal content (Brostoff & Sinsheimer 2003:41-42).

To facilitate integration across the circles of world English in law school, the community of practice may serve as a useful model. As a social theory of practice-based learning, the community of practice promotes three principles: (1) it confronts the tension between the group and the individual; (2) it describes community in terms of reciprocal social and collaborative engagement; and (3) it recognizes the inevitability of diversity (Garrett & Baquedano-Lopez 2002:347-348). However, these advantages are reliant on their conceptualization of the community of practice through the language of the legal discourse community.

#### **10.4 Thinking skills**

Thinking skills constitutes the second of the four clusters of the qualitative content analysis. It is also the second largest cluster after the communication skills cluster with 90.90% (40/N) of the total sample of EALP-type textbooks addressing six categories of thinking skills (*cf.* Figure 10.2). This cluster can be defined as a class of skills that recognizes and requires multiple intelligences (including linguistic intelligence) to perform higher order linguistic functions. In this context, higher order linguistic functions refer to activities in which language facilitates the execution of sophisticated socio-cognitive tasks that are essential to law school education and legal practice. For example, within the category of critical thinking, one may consider

analytical tools, such as the IRAC-method for case analysis and case briefs, lateral thinking for legal problem diagnosis, and inductive and deductive reasoning, as higher order thinking skills that are not limited to linguistic intelligence. Thinking skills also include hermeneutical skills, legal content that depends on the creation of new schemata, study skills, and technological expertise. Figure 10.14 presents the distribution of textbooks that address thinking skills across the total sample (N=44) and as they address thinking skills within the thinking skills cluster (n<sub>2</sub>=40).

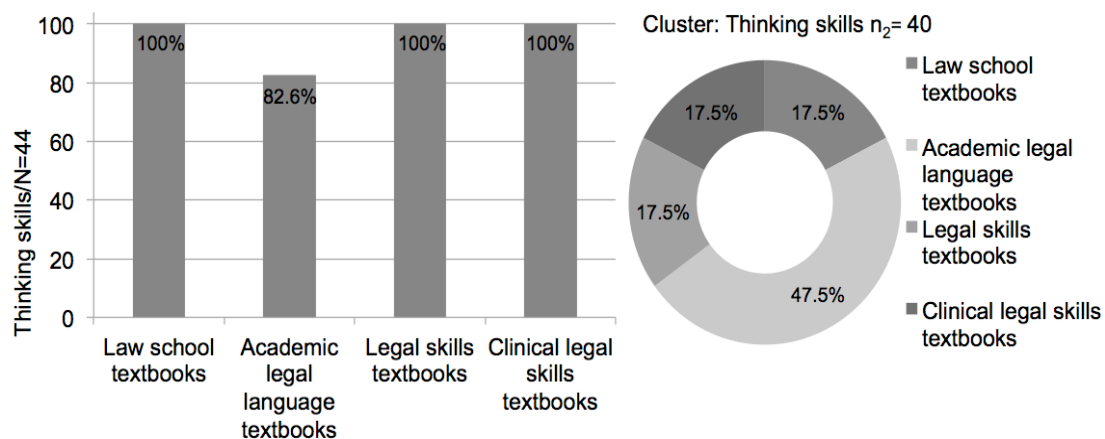


Figure 10.14: Distribution of textbooks addressing thinking skills across N and the composition of the thinking skills cluster

Thinking skills are especially well represented by the four groups of textbooks. Viewed within the entire sample (N), academic legal language textbooks account for the highest representation of thinking skills with 47.5% (19/n<sub>2</sub>). This could be attributed to the nature of academic language that requires high levels of critical thinking skills, hermeneutical skills, and cognitive schemata. However, when the textbook representation is viewed within the individual textbooks groups, then academic legal language textbooks are ranked lowest with 82.60% (19/23). On the other hand, thinking skills are addressed by 100% of the textbooks in the three other textbook categories. This may be the result of the diversity of skills included in the thinking skills cluster (*cf.* Figure 10.14).

Thinking skills can be divided into three groups based on the analysis above, and they are represented as such in Figure 10.15. Firstly, critical thinking skills, hermeneutical skills, and cognitive schemata may be grouped together as traditional thinking skills

that feature prominently within the communication skills cluster. Secondly, study and examination skills are essential for the acquisition of legal language and can be interpreted as a response to the *MacCrate Report* (ABA 1992) that lists problem solving, legal analysis and reasoning, legal research, and factual investigation as fundamental lawyering skills (*cf.* Chapter 9). Thirdly, technological skills refer primarily to computer literacy and are related to Web 2.0 pedagogy and the digital discourse community articulated by the new literacies studies (*cf.* Chapter 6). Because of their importance in the EALP curriculum, these categories are discussed in more detail.

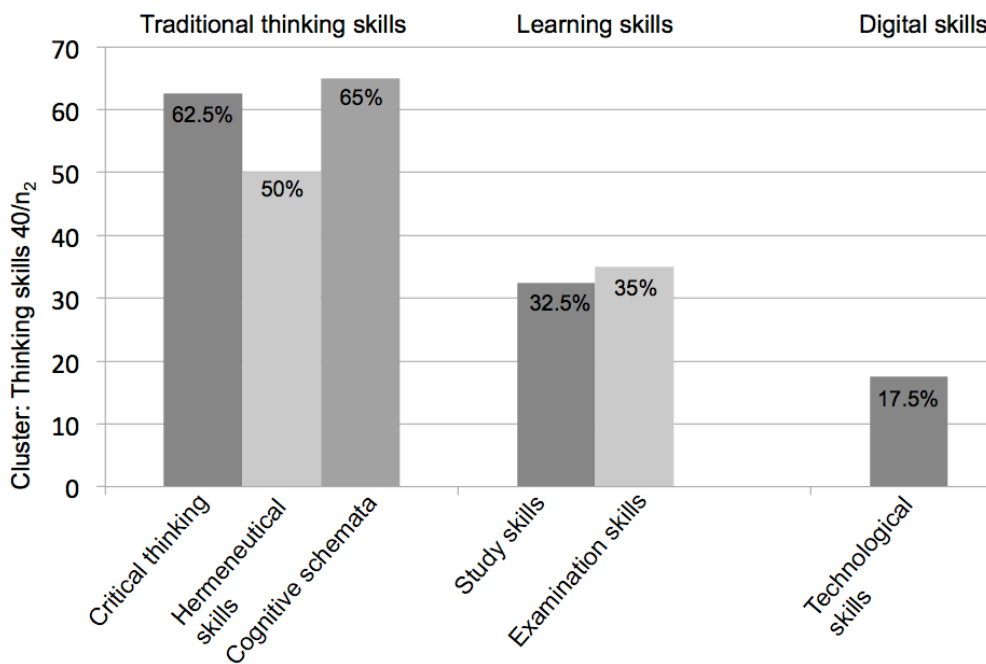


Figure 10.15: Comparison of groups of skills within the thinking skills content cluster

### 10.4.1 Critical thinking

As derived from the sample textbooks and informed by legal scholarship, critical thinking consists of three modes: (1) method of analysis, which includes IRAC, for example; (2) techniques for inductive and deductive reasoning; and (3) lateral thinking to conduct legal problem diagnosis. Critical thinking skills are addressed by 62.50% (25/n<sub>2</sub>) of the textbooks in the thinking skills cluster, and 40% of these books are grouped as academic legal language textbooks. However, within its own textbook group, only 32.25% (10/23) of academic legal language textbooks address critical thinking skills. Legal skills and clinical legal skills textbooks address critical thinking

skills with 100% and 71.42% respectively. Because of their focus on pre-law school, authors of law school textbooks may instead emphasize the category of study skills (*cf.* Figure 10.16).

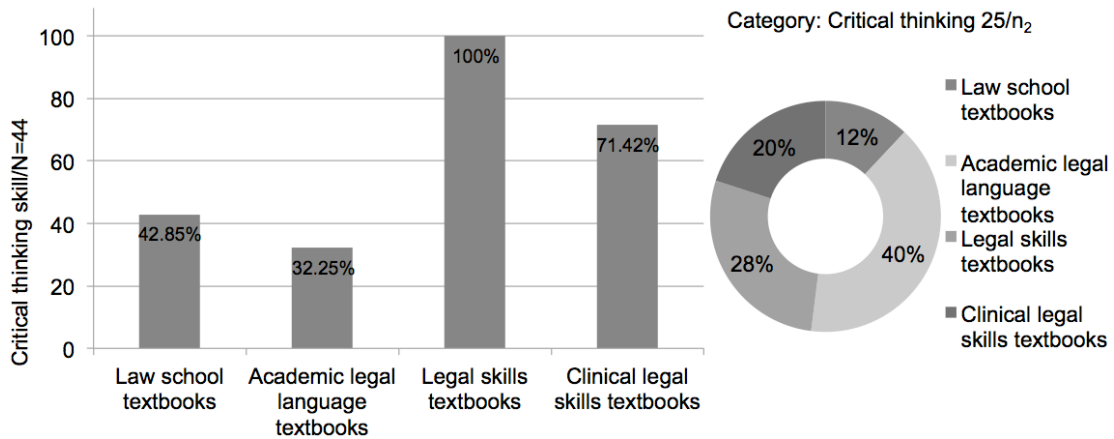


Figure 10.16: Distribution of textbooks addressing critical thinking skills across N and the composition of the critical thinking category

A closer analysis of critical thinking skills reveals the emphasis on the different forms of thinking (*cf.* Figure 10.17). Inductive and deductive reasoning are accentuated with 88% (22/25) of the textbooks addressing this form of thinking to conduct legal analysis. Lateral thinking is addressed by 80% (20/25) of the textbooks. Together, inductive and deductive reasoning and lateral thinking should equip students with the thinking capacity to analyze, diagnose, and solve legal problems. However, because of the complexity of legal problems, analytic tools have emerged to assist students. These tools manifest as mnemonic devices, such as IRAC. These tools may also be called study or examination aids, but they foster a manner to “think like a lawyer” and to reason and reconstruct knowledge like a lawyer, hence their inclusion as thinking skills (*cf.* Chapter 9).

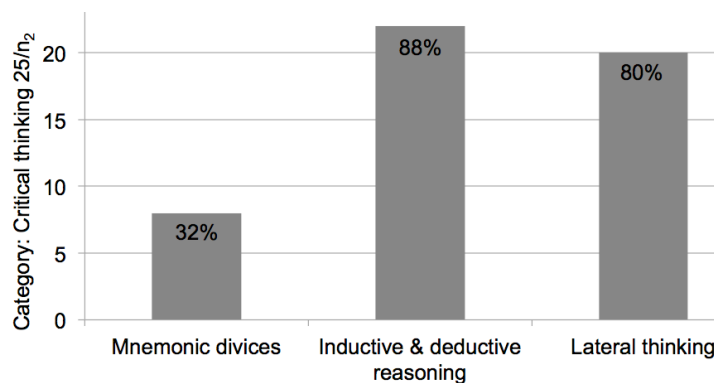


Figure 10.17: Composition and distribution of critical thinking skills



The mnemonic devices are known by different names, but they serve the same purpose, *viz.* systematizing legal problem solving. The stages in these mnemonic devices can be summarized as follows in Figure 10.18.

IRAC	IPAC	CLEO	PLAN	Cycle of legal problem-solving
• Issue	• Issue	• Claim	• Problem	Legal problem or question identification
• Rule	• Principle	• Law	• Legal rule	Recognition of problem in substantive law
• Application	• Application	• Evaluation	• Application	Application of substantive law to problem
• Conclusion	• Conclusion	• Outcome	• Note outcome	Provide answer to legal problem

Figure 10.18: Summary of mnemonic devices and cycle of legal problem solving (adapted from Finch & Fafinski 2011:346).

The four stages of the analytic process illustrated by the four mnemonic devices can be merged as four summative points.

- Identify the question that needs to be answered.
- State the law that enables the question to be answered.
- Work out how the law operates in relation to the question identified.
- Reach a conclusion that answers the question (Finch & Fafinski 2011:346).

Although useful for law school, mnemonic devices may be exceedingly static to accommodate the vicissitudes of legal practice envisioned by clinical education. Emblematic of a clinical program is the incorporation of collaborative and experiential learning models (Davis & Steinglass 1997:250), as opposed to reliance on vicarious learning by traditional legal education. Clinical programs inspire lateral thinking because the formulas learned in class (such as mnemonic devices) may not solve the problems of actual clients. However, a combination of mnemonic devices and group collaboration within the law school clinic may address the difficulties of

legal analysis procedures, lateral thinking that may be inspired by group collaboration, and experiential learning fostered through the law school clinic.

### 10.4.2 Hermeneutical skills

The working definition of hermeneutical skills refers to the ability to interpret, understand, and find the purpose of case law and statutes. Hermeneutical skills is the second category of thinking skills and is focused on by 52.63% (20/n<sub>2</sub>) of textbooks in the thinking skills cluster and 45.45% (20/N) of the entire sample of EALP-type textbooks. In general, law schools offer courses on legal hermeneutics or legal interpretation beyond the first year. Therefore, the inclusion of legal hermeneutics in more than half of the EALP-type textbooks in this cluster signals the importance of understanding legal language, which is also highlighted by legal skills and clinical legal skills textbooks that devote most attention to hermeneutic skills as illustrated by Figure 10.19. In contrast, with their attention primarily on communication skills, academic legal language textbooks appear to neglect hermeneutical skills. This appears to be at odds with their purpose of instruction on the accurate use of legal language.

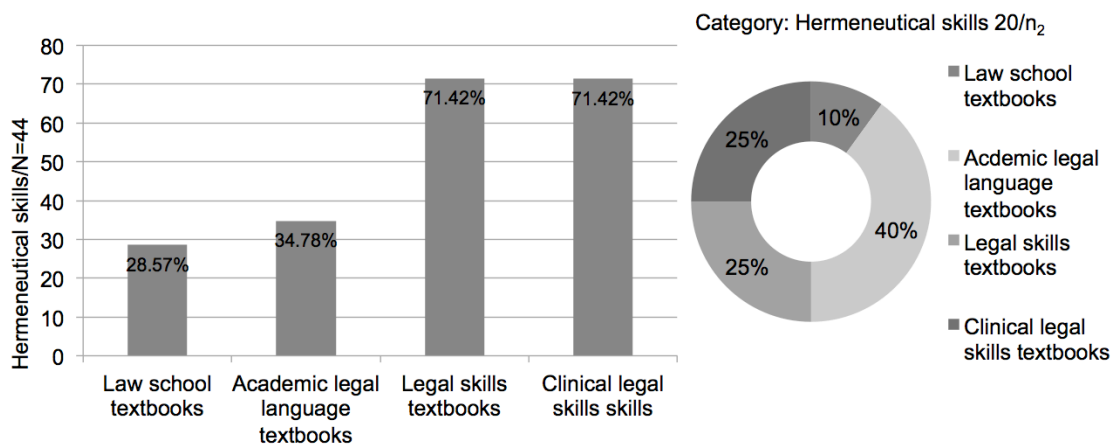


Figure 10.19: Distribution of textbooks addressing hermeneutical skills across N and the composition of the hermeneutical skills category

Legal hermeneutics is intricately connected with the linguistic and legal indeterminacy of language. Indeterminacy may be defined as vagueness or ambiguity of written or spoken language (New Oxford American Dictionary; Peczenik 2008:19). A brief discussion of indeterminacy is warranted for two reasons. Firstly, on an epistemological level, because EALP is intrinsically concerned with the creation of

meaning through legal English, such meaning must be shared; that is, it must not be vague or ambiguous. Textbooks in this category address ambiguity by imparting techniques for defining or explaining terms through definition writing, for instance (Brostoff & Sinsheimer 2003:15). On an ontological level, radical indeterminacy threatens the very existence of law. Secondly, the differentiation between legal and linguistic indeterminacy is important, because legal indeterminacy displays features that are absent from linguistic indeterminacy. This indicates that linguistics alone cannot resolve law's indeterminacy.

#### 10.4.2.1 Legal indeterminacy

Legal hermeneutic research by Bhatia and Candlin (2008:127-143) illustrates how the major developments in sociolinguistics and law and society permeate the understanding of legal language and indeterminacy. Because legal writing is exceedingly intertextual and because hermeneutics can be described as an interdiscursive activity, comprehension of legal texts requires reference to the socio-political intentions of the text. Therefore, "legal interpretation based on purely syntactic information can be misleading, and [...] interpretation often relies on a consideration of socio-pragmatic factors lying outside specific linguistic textualisations" (Bhatia & Candlin 2008:138).

Law students should be critically aware of the intertextuality of legal texts and that the interpretation of legal texts is also a socio-political action. Without consideration of socio-political contexts, students risk understanding and applying law in diminished contexts. When "the established law regulates a case in a morally unacceptable way," an axiological gap exists in legal reasoning (Peczenik 2008:18-19). In addition to an axiological gap, law can also display an insufficiency gap (when law does not regulate a case) or inconsistency gap (when law regulates an issue over time in a logically inconsistent manner). However, when "law regulates a case in a vague or ambiguous manner," it is called an indeterminacy gap or legal indeterminism (Peczenik 2008:18).<sup>4</sup> Legal indeterminism is inevitable because of the "open-texture"

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<sup>4</sup> Legal indeterminacy should not be confused with overdeterminacy and underdeterminacy as discussed in critical legal scholarship. A court's decision is overdetermined when there is an excess of

of natural language;” therefore, jurists need hermeneutical principles to resolve legal indeterminism (Kennedy & Eastal 2011:50).

Radical legal indeterminacy originates in the postmodern philosophy of language (Kress 1989:322). Radical legal indeterminacy contends that any concept is open to more than one interpretation. “Indeterminacy becomes radical when linguistic analysis seems to show that the meaning of virtually any concept or text can be interpreted in a multiplicity of ways” (Tebbit 2005:80). Indeterminacy becomes extreme when no objective meanings are recognized. Naturally, when applied to the language of the law, statutes and legal precedents become meaningless. It is for this reason that EALP students need to be able to convey, determine, or negotiate “objective” (generally agreed upon) meanings.

One pedagogic strategy proposed by the applied legal storytelling movement is that the narrative serves as a “powerful tool for exerting control over facts (real or fictional), or, more accurately, control over the *indeterminacy* of facts” (Foley 2008:52). Traditional legal teaching methods have the relative comfort of using rules of interpreting legal precedent and understanding legal theory as pedagogic tools. Storytelling can serve as a tool for skills instruction, such as dispute resolution, negotiation, and advocacy (Foley 2008:52).

#### 10.4.2.2 Linguistic indeterminacy

Legal indeterminacy does not necessarily entail linguistic indeterminacy.<sup>5</sup> Linguistic indeterminacy refers to ambiguous linguistic expressions, which can in turn lead to legal indeterminacy (Endicott 1996:669). For example, if a legal system contained two rules with opposing obligations, the indeterminacy caused by the ontological

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legal reasons for the decision. Underdeterminacy does not mean the opposite of overdeterminacy; instead, it denotes that prevailing law permits a variety of viable outcomes (Tebbit 2005:81).

<sup>5</sup> Legal and linguistic indeterminacy should not be confused with communicative indeterminacy, which means that “the receiver gets less information than expected in a given situation” (Engberg & Heller 2008:146). Semantic indeterminacy involves a statement that can be: true or false, can be phrased more accurately, and the indeterminacy should emerge from the linguistic declaration (Engberg & Heller 2008:147).

conflict is not necessarily the result of the indeterminacy of the language of the rules. In addition, where rules omit to regulate conduct, ensuing conflict cannot be blamed on linguistic indeterminacy (Schauer 1993: xiii). Yet, when the language of the law is too indeterminate (flexible), law loses its certainty. From a linguistic perspective, the problem here is language, not the law (legal morality aside). “[Y]et the two are intimately connected, for the law is *carried* by the language; so is it not true that the law is the language?” (Hanson 2003:13).

To answer Hanson’s rhetorical question, social constructionist, Gergen, merges truth-conditional semantics and jurisprudence when he postulates that truth is not an accurate description of the world or what happens; truth is “[...] to participate in a set of social conventions, a way of putting things sanctioned within a given form of life” (Gergen 2001:806).<sup>6</sup> Where Gergen describes language as a set of social conventions, constitutionalist Balkin (2003:5) describes law as a set of social conventions that render “statements of law [to] be true by virtue of those conventions.” Through deductive reasoning, these statements can be expressed as formulas:

Participation in social conventions	=	the truth
Law	=	a set of social conventions
Law	=	participation in the truth

As practitioners of law, lawyers participate in the proliferation of legal truth, or, as Balkin (2003:11) formulates it: “Law exercises its power over people by creating reality and proliferating truth, not simply by misrepresenting reality and distorting truth.” Therefore, is it not important that legal truth be morally justified? Is it not important to formulate a legal linguistic epistemology for EALP? This question will be revisited in the final cluster of skills.

Shapo and Shapo (2009) devote Chapter 8 of *Law School Without Fear: Strategies for Success* to the interpretation of language. The chapter consists of two parts. Firstly, the discussion begins by addressing linguistic indeterminacy in terms of lexical,

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<sup>6</sup> Truth-conditional semantics is a theory that explains the meaning of natural language sentences. “It takes the language-world relation as the basic concern of semantics rather than the language-mind relation: language is about states of affairs in the world” (Carson 2011:280).

semantic, and syntactic structures. These grammatical features are then combined with legal content knowledge to define words in terms of legal policies, legislation, and legal precedent. The second part addresses legal indeterminacy in terms of statutory interpretation and focuses on the following essentials: (1) the procedure of reading statutes by beginning with the title and following the sequence of the text; (2) the plain meaning principle that words are used with their ordinary meaning in mind; (3) the use of legislative history to determine the meaning of ambiguities; and (4) the use of canons of statutory construction, such as *expressio unius*, *ejusdem generis*, the narrow construction of statutes in derogation of the common law, and the broad construction of remedial statutes.

### 10.4.3 Cognitive schemata

*Cognitive schemata* is the third category of thinking skills and refers to legal content knowledge or substantive law (schemata) used as an instrument for legal English acquisition. The cognitive schemata category is represented significantly by 65% (26/n<sub>2</sub>) of the books across the typology of textbooks in the thinking skills cluster (*cf.* Figure 10.20).

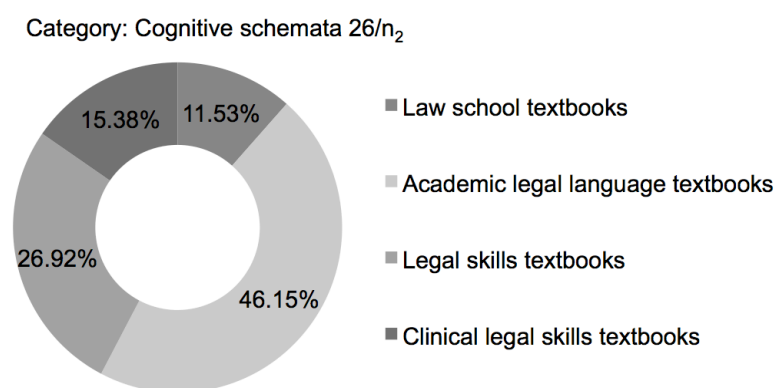


Figure 10.20: Distribution of textbooks in the cognitive schemata category

The use of content knowledge can be connected with various theoretical and applied linguistic perspectives. In terms of theoretical linguistics, the connection with pragmatics is particularly fruitful, because it provides an epistemological connection between hermeneutical skills and social communication skills discussed earlier and cognitive (re)presentation. Epistemologically, pragmatics is concerned with the creation of meaning (knowledge) in the context of “particular occasions of use” (Cruse 2006:136). Pragmatics conceptualizes contextual meaning-making in terms of

linguistic context (surrounding co-text) and physical context that includes the cognitive (re)presentation of the physical. Van Dijk (2009:249) explains cognitive (re)presentations as context models collected in episodic memory. Mental context models (cognitive schemata) enable the production and understanding of communicative events. Cognitive (re)presentation includes the “participants in the speech event, their interrelations, content knowledge (schemata), goals, and the social and physical setting of the speech event” (Cruse 2006:136). As such, pragmatics promotes teaching that is thoughtful of discursal contexts and the use of (legal) language in those contexts (Hyland 2006:30).

Cognitive schemata as legal content knowledge is also connected to various L2 pedagogies, perhaps most notably content-based instruction, such as EALP. Language is not used only for the sake of learning English; it is also use to learn content. Content-based instruction implicitly endorses the Vygotskian zone of proximal development by suggesting that teachers should consider learners’ current knowledge to determine the scaffolding of practices for anticipated outcomes. Scaffolding in an EALP course can be particularly challenging, since content and language should be scaffolded simultaneously. Appropriate cognitive schemata should therefore be in place for both legal language and legal content to determine the appropriate zone of proximal development.

In terms of the scaffolding of legal language learning, legal terminology serves as “prompts that activate background knowledge structures” (Biel 2008:22). The learning of these background knowledge structures (cognitive schemata) is important, as is evident by the publication of numerous specialized legal dictionaries (Brown & Kauffman 2012; Nolfi 2008). Traditionally, these publications are etymological and hermeneutical in nature. However, contemporary textbooks approach learning differently. For example, in *How to Learn & Memorize Legal Terminology* by Metivier and Briton (2013), multiple intelligences are utilized to improve the memorization (or creation of cognitive schemata) and activation of legal terminology. Unfortunately, this text was not available when the sample of textbooks was compiled, but its unusual approach deserves mention.

Content-based legal English textbooks are more comprehensive than textbooks that focus on either content or language instruction, because a legal framework is used to teach legal language. To achieve this goal, legal analysis, reasoning, and substantive law are used. These texts may be criticized for their bias in “favor of legal content rather than the language of the law” (Candlin *et al.* 2002:302).

#### 10.4.4 Study skills

The thinking skills content cluster does not emphasize diverse learning aptitudes as the multiple intelligences pedagogy of Gardner (1987; 1995; 2003). However, in the *study skills* category, explicit reference is made to intelligences (Cherkassky *et al.* 2011; Kavanagh & Nailon 2007; Maughan & Webb 2005). The study skills category can therefore be defined as a set of skills that promote three aptitudes: (1) the social skill of collaboration among students, faculty, and practitioners; (2) the recognition of multiple intelligences to manage the intellectual and social demands of law school; and (3) time and project management skills.

Study skills are addressed by 32.5% (13/n<sub>2</sub>) of the textbooks in the thinking skills cluster. In the typology of EALP-type textbooks, academic legal language textbooks are least represented by 7.69%, possibly because they rely less on legal content as an instructional tool (*cf.* Figure 10.21). However, such low representation indicates the need to develop study skills tailored for legal language acquisition. Of the typology of EALP-type textbooks, law school and legal skills textbooks share the most pronounced focus on study skills. Law school textbooks that are written mainly for pre-law school and freshmen students in the inner circle of world English address study skills in preparation for law school (Francis, Johnson, & Jones, 2012; Levine 2013; Montauk 2011). Legal skills textbooks that approach legal English from a content-based pedagogy may include study skills to facilitate the formation of cognitive schemata (Bradney, Cownie, Masson, Neal, & Newell 2005).



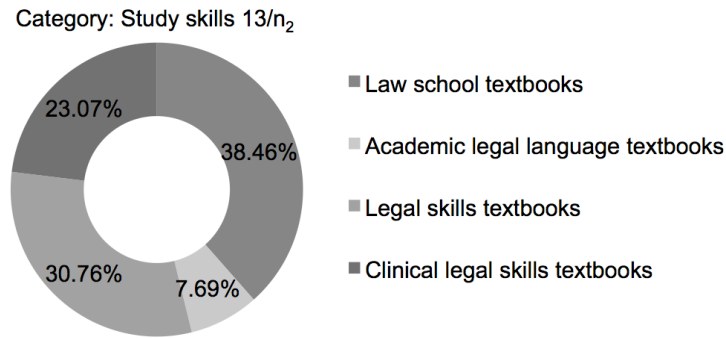


Figure 10.21: Distribution of textbooks in the study skills category

Study skills identified through the qualitative content analysis include collaboration, intelligences, and time and project management (*cf.* Figure 10.22). Time and project management share a bifurcated focus that accentuate the importance of time management and punctuality in law school and practice. Project management is refined to an analytic process that includes four stages: defining, planning, executing, and analyzing the success and shortcoming of the project (Cherkassky *et al.* 2011:270-275).

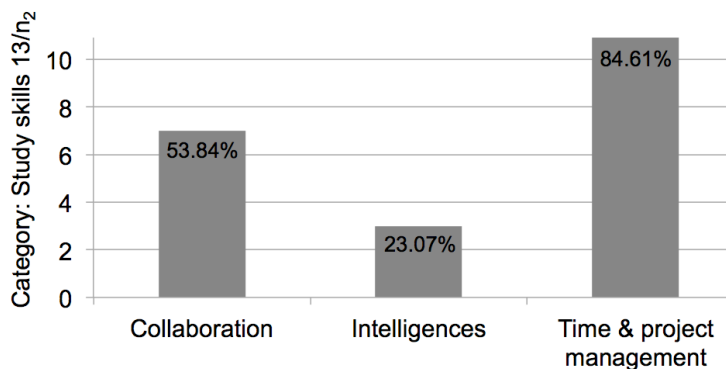


Figure 10.22: Distribution of study skills

Similar to time and project management, collaboration and intelligences apply to law school and legal practice. The relationship between collaboration and intelligences is based in psychology. Collaboration is used to instill the importance of group work among law students. The stress accompanied by the overwhelming amount of studying in law school is reduced through collaboration in study groups, and thus collaboration manifests as a study skill in the thinking skills cluster. The advantages of collaboration in a study group include the forming of cognitive schemata as a thinking skill, and it fosters language and discourse socialization associated with the

socioliterate approach to L2 learning (*cf.* Chapter 5). Collaboration is also a key component of clinical legal education (Davis & Steinglass 1997:250). As such, collaboration in law school accentuates the active roles of learners as they toil to become members of the legal discourse community, because fluency in academic discourse is essential to gaining access to this privileged community (*cf.* Hyland 2004:ix).

Intelligences are also referred to in the context of legal practice as a means to manage the pressure of work-related stress. Kavanagh and Nailon (2007:252) introduce students to certain components of emotional intelligence as coping strategies, which include effective interpersonal relations, models of professionalism, conflict and stress management, and generational differences.

#### 10.4.5 Examination skills

*Examination skills* can be defined as a set of skills, related to study skills, but with an explicit focus on examination preparation, revision, and writing. Examination skills cover pre-law, LSAT testing and examinations conducted during law school. The post-law school bar examination was excluded by the selection of search terms and phrases, yet this category constitutes a lucrative industry (Basick & Schindler 2012; Emanuel 2006; Rivenburgh 2014).

Textbooks that focus most on examination skills are law school and legal skills textbooks. Examination skills may fall outside the purview of academic legal language and clinical legal skills textbooks as illustrated in Figure 10.23.

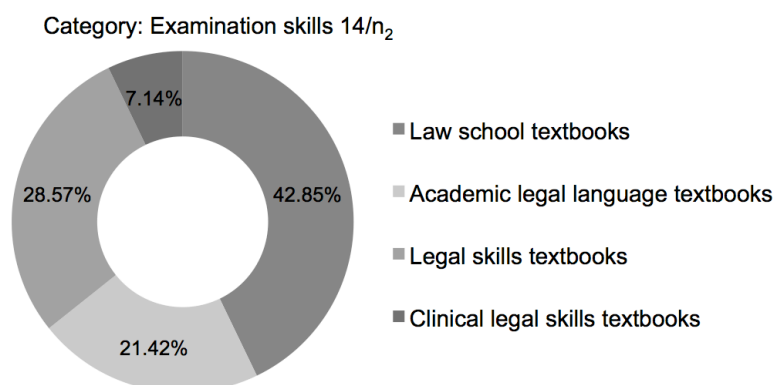


Figure 10.23: Distribution of textbooks in the examination skills category

The skills distribution in Figure 10.24 indicates that the preparation and writing of examinations is deemed important, because 78.57% (11/14) of the texts across the writing category provide instruction on examinations (*cf.* Figure 10.24). Only law school textbooks address the skills of LSAT text-taking. The LSAT evaluates reading comprehension and logical reasoning. Miller (2011:43) cautions that, in contrast to the SAT, the LSAT is “major-league reading comprehension” that requires accurate and swift reading. The logical reasoning questions require case study analysis, evaluation, and drawing of inferences. The LSAT therefore tests how reading and thinking skills are used simultaneously.

Revision is addressed primarily by legal skills textbooks and includes a rigorous regimen. Typically, textbooks suggest a process that includes the organization of notes, selection of and prioritization of important content, compilation of a revision schedule, synchronization of notes with personal learning styles that recognizes multiple intelligences pedagogy, techniques to improve memory, revision of past examinations, collaboration with a study group, and stress management (Cherkassky *et al.* 2011:279-286; Finch & Fafinski 2011:367-381).

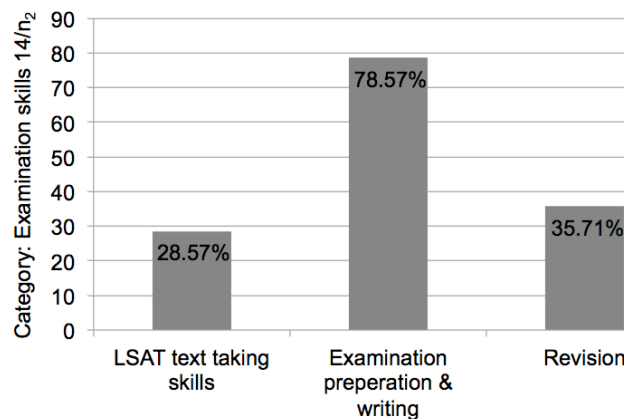


Figure 10.24: Distribution of skills in the examination skills category

Examination skills can be subsumed by the study skills category; however, tests and examinations perform such an important role prior to, during, and after law school, that it is important to iterate test-taking skills in relation to other skills. Examinations put a high premium on writing skills. In addition to lexico-grammatical skills, writing skills have developed mnemonic devices to assist students not only to emulate critical

legal thinking skills but also to (re)produce a genre narrative regarding a set of cognitive schemata. To enable students to succeed in examinations, authors address (1) types of examinations, such as open and closed book tests; (2) types of questions, including case studies and essays; (3) strategies and examination techniques, such as time constraints, reading of questions, structure of answers, referencing of research, stress management, and conciseness and relevance of answers (Cherkassky *et al.* 2011:286-306). Throughout the law school curriculum, an examination can be thought of as the ultimate test of the accumulation of the set of skills represented in the coding scheme of the qualitative content analysis.

#### 10.4.6 Technological skills

*Technological skills* is the final category in the thinking skills content cluster and focuses primarily on computer literacy. This category is represented by only 18.42% (7/38) of the textbooks in the thinking skills cluster concerned with the interface between technology and learning. However, the increased digitalization of society elicits profound interest in the convergence of L2, legal pedagogy, and technology as expressed by the new literacies and multiliteracies movements (*cf.* Chapter 6).

However, in the sample textbooks, technological skills are not addressed in terms of pedagogy. Law school and legal skills textbooks address technology as it relates to writing and research skills, such as note taking during lectures, the word processing of assignments, and electronic research (Miller 2011:126).

In *Fundamentals of Law Office Management* (2009:313), Pamela Everett-Nollkamper devotes an entire chapter to technology in the law office. She addresses a range of software applications to create documents and manage cases and billing. Substantial attention is devoted to electronic mail with the specific focus on etiquette, managing e-mails, keeping e-mail correspondence confidential, and e-mails in the workplace (Everett-Nollkamper 2009:332-339). The text does not elaborate on lexicogrammatical features or e-mail genre structure because it is written for the inner circle of world English. Nevertheless, Everett-Nollkamper (2009:337) emphasizes spelling and grammar checks and the development of personal e-mail templates for future use.

In light of the emphasis placed on the creation of the digital discourse community and Web 2.0 pedagogy by new literacies studies (*cf.* Chapter 6), EALP-type textbooks demonstrate a lack of commitment to developing e-based learning. In contrast, publishers of general EFL and L2 instructional materials embrace technology, as online tutorials and exercises extend the learning experience beyond the textbook, such as the *In Use*-series by Cambridge Publishers or the *Quest*-series by McGraw-Hill. To embrace the learning differences of millennials and digital natives, EALP-type textbooks designers can utilize pedagogic strategies employed by general EFL and L2 publishers.

### 10.5 Research skills

Law students cannot engage with the academic discourse community without being able to think about the law. To about the law, law students need to conduct research to construct new cognitive schemata. The content cluster labeled *research skills* may be defined as a class of skills that utilizes legal language and thinking skills to understand and conduct legal research procedures. The research skills cluster consists of four categories, *viz.* literature search, research design, research tools, and publishing. The four categories of research skills are addressed by 59.09% (26/N) of the sample EALP-type textbooks (*cf.* Figure 10.25). Legal skills textbooks are most productive in imparting research skills possibly because of their comprehensive approach to legal skills beyond communication skills. Law school and clinical legal skills textbooks cater to pre-law and senior students who do not yet necessarily need research skills or have already acquired research skills through legal skills textbooks.

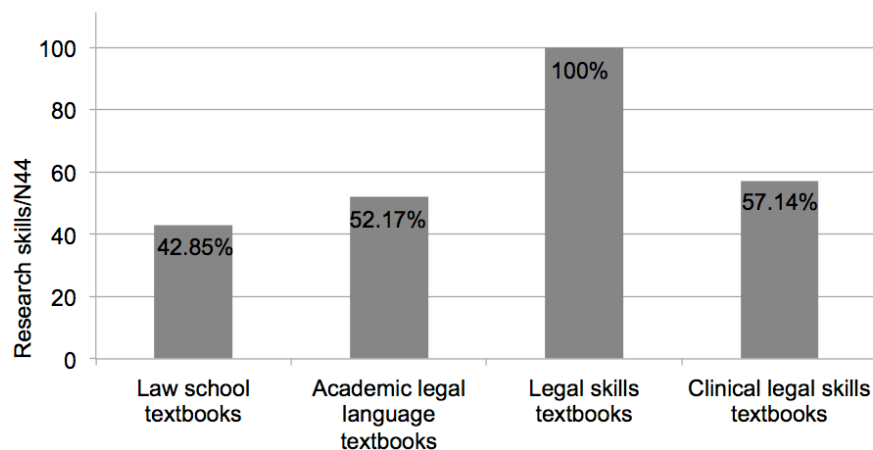


Figure 10.25: Distribution of textbooks in the research skills content cluster

Categories that illuminate this content cluster include literature search, research design, research tools, and publishing. Figure 10.26 illuminates the distribution of the categories of research skills.

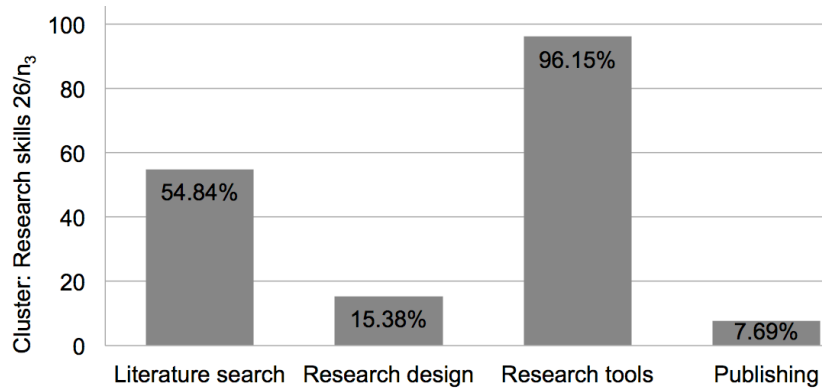


Figure 10.26: Distribution of research skills categories

In addition to a lack of general lawyering skills, scholarship confirms an absence in the law curriculum of legal research skills (*cf.* Stuckey *et al.* 2007; Sullivan *et al.* 2007). There are several reasons why legal research skills should be included. Firstly, because the administrative state is growing, students should know how to find statutes and regulations. Secondly, globalization requires law schools to introduce students to international and foreign law; therefore, students should know how and where to find it. Thirdly, the growth and development of the Internet and technological tools enable lawyers to research sources that previously were virtually inaccessible (Valentine 2010:173; *cf.* Munneke 2001:111-112).

### 10.5.1 Literature search

Fifty-three percent (14/n<sub>3</sub>) of the textbooks in the research skills cluster address the *literature search*. From the qualitative content analysis, the literature search can be defined as an academic and professional requirement that utilizes legal linguistic and thinking skills to conduct library or electronic research to find sources and facts. Garth and Martin (1993:469-492) found that hiring partners consider library legal research as the most important skill and computer legal research as the fourth most important skill after oral and written communication (*cf.* Chapter 9). The literature search is covered by 53.84% (14/n<sub>3</sub>) of the books in the research skills content cluster

(cf. Figure 10.24). Library and electronic research is accounted for by 64.28% (9/14) textbooks and fact-finding by 85.71% (12/14) textbooks.

In the context of legal skills textbooks, Schultz and Sirico (2010) provide a pragmatic, literature search structure in *Legal Writing and Other Lawyering Skills*. First, young researchers should begin their fact-finding in printed sources, such as statutes and legal encyclopedias. Then, other sources should be considered, including digests and legal periodicals. Third, computer research should be conducted to locate updated resources that are not purely legal. Finally, they suggest that on-point cases should be considered to bring the legal problem full circle.

In the context of managing a law office, Everett-Nollkamper (2009:489-520) introduces students to the classes of authority in a legal literature search, and she explains the organization, maintenance, and lending system. With regard to electronic research, she discusses legal and nonlegal databases, the use of microfilm, CD-ROM, e-mail and telefacsimile transmissions, and electronic citations. Although her book may be written for senior students, it provides a user-friendly, detailed account of library and electronic research. Everett-Nollkamper (2009) and Schultz and Sirico (2010) illustrate that the legal research process requires extensive reading and analytical skills.

### 10.5.2 Research design

*Research design* is the most neglected category across all four content clusters. Only 15.38% (4/n3) of the books in the research skills cluster and only 9.09% (4/44) of the entire sample of EALP-type books address research design. Van Hoecke, quoting Smits, explains this relative neglect by stating that “knowledge is acquired in another way that is not strictly prescribed by research methods: the legal discipline is primarily a practice, in which the community of academic colleagues (the forum) decides on what is to be seen as reliable knowledge” (Van Hoecke 2013:vii). No one particular group in the typology of textbooks can be isolated here, because only one book from each group of textbooks emerged (Cherkassky *et al.* 2011; Kavanagh & Nailon 2007; Shapo & Shapo 2009; Volokh 2007).

Research design may be defined as the procedures of inquiry or the “philosophical assumptions the researcher brings to the study,” *viz.* quantitative, qualitative and mixed method research (Creswell 2014:3-5). The formulation of a research design may be seen as a skill, because it utilizes the communication skills of academic legal language and analytic, critical, and creative thinking skills. Acquiring skill at designing research requires instruction and practice. As the research design skill emerged from the sample textbooks, two primary characteristics can be identified, *viz.* the distinction between qualitative and quantitative research and descriptions of methodologies and methods. Qualitative and quantitative research is addressed only by Cherkassky *et al.* (2011) in their legal skills textbook. Methodologies and methods are addressed by Cherkassky *et al.* (2011); Kavanagh and Nailon (2007); Shapo and Shapo (2009); and Volokh (2007).

Among these books, Cherkassky *et al.* (2011) provide the most comprehensive account of research procedures. Interestingly, they separate legal research that comprises the reading and analysis of cases, statutes, legal journals, and other legal material (Cherkassky *et al.* 2011:78-88) from “Other Approaches to Research: Socio-Legal and Empirical Research” (Cherkassky *et al.* 2011:91-103). The latter focuses on the following:

- research approaches (qualitative and quantitative);
- research philosophies;
- research methodologies (surveys, experimental studies, longitudinal studies, cross-sectional studies, case studies, and action research); and
- methods (interviews, focus groups, participant observation, and questionnaires).

The distinction created by Cherkassky *et al.* (2011) between legal research and “other approaches” and the vast neglect of EALP-type textbooks to address research design mirrors the criticism of the legal discipline. It is argued that “it is not easy to see that law is a discipline in the usual sense. What truths do lawyers come up with? What are the great legal discoveries of the past ten, or fifty years, or even a hundred? There do not seem to be any?” (Simpson in Siems 2013:78). Law students are required to research prior to writing their assignments, yet the procedures of inquiry are neglected.



Because legal communication requires research, EALP-type textbooks should include descriptions of such procedures of inquiry.

### 10.5.3 Research tools

The *research tools* category is an eclectic collection of four skills that share a common foundation in research and extend into different skills in other categories and content clusters. Research tools are accounted for in 96.15% (25/n<sub>3</sub>) of textbooks in the research skills cluster. The books are distributed among the groups in the EALP textbook typology ranging between 16% (4/25) and 48% (12/25) (*cf.* Figure 10.27).

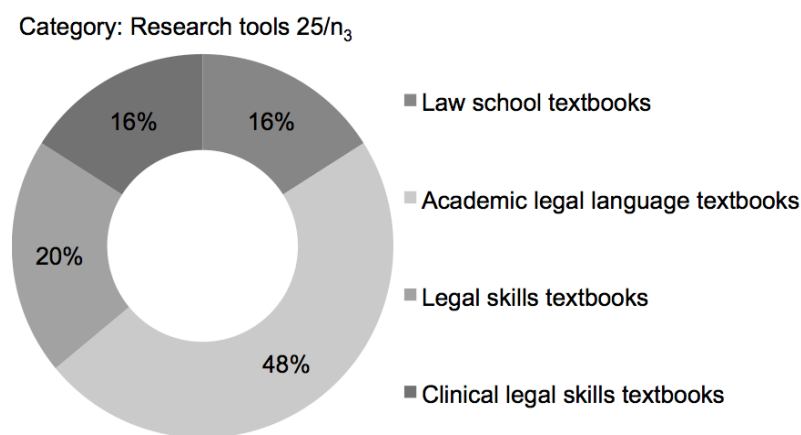


Figure 10.27: Distribution of textbooks in the research tools category

The working definition that emerged from the research tools category defines research tools as a collection of skills with the following objectives:

- to synthesize academic and legal sources;
- to report findings in a logical, coherent, and ethical manner;
- to conform to genre requirements set by the discourse community; and
- to utilize commentary to advance the research project.

These objectives are based on the keywords that constitute the research tools category as illustrated in Figure 10.28. Synthesizing legal resources and ideas is the most prominent skill addressed by 56% (14/25) of the textbooks in the research tools category. To synthesis legal resources, law students rely on reading skills, thinking skills, and writing skills. The synthesizing of legal sources should be conducted ethically by considering plagiarism, consent from human subjects, and confidentiality

of information (Cherkassky *et al.* 2011:104-106). Research tools may be incorporated with less difficulty than research design in the process of writing instruction.

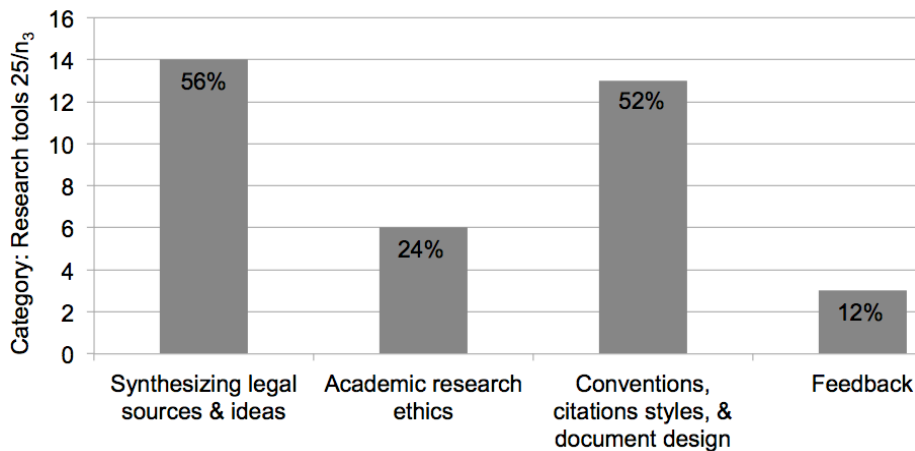


Figure 10.28: Distribution of research tools in the research tools category

### 10.5.4 Publishing

The final category of the research skills cluster describes the publishing process and participation in writing competitions. Although this category is the smallest across the content analysis with only 7.69% (2/26) representation, at least two textbooks (Fajans & Falk 2011; Volokh 2007) consider the skill to publish important enough to convey to students. These two textbooks belong to the academic legal language group.

### 10.6 Pedagogic skills

The final content cluster of the qualitative content analysis is entitled *pedagogic skills*, which may be defined as a class of skills related to the theoretical and practical matters of legal education. Legal epistemology constitutes a category of theoretical issues identified with such keywords as ethical and jurisprudential concerns. In the category on law school teaching methods, keywords, such as Socratic, Langdellian, clinical education, and classroom etiquette, signify practical concerns related to pedagogic skills for legal education. This cluster is addressed by 36.36% (16/N) of the sample of EALP-type textbooks with more pronounced attention by law school and clinical legal skills textbooks. Figure 10.29 illustrates the textbook distribution in the pedagogic skills cluster.

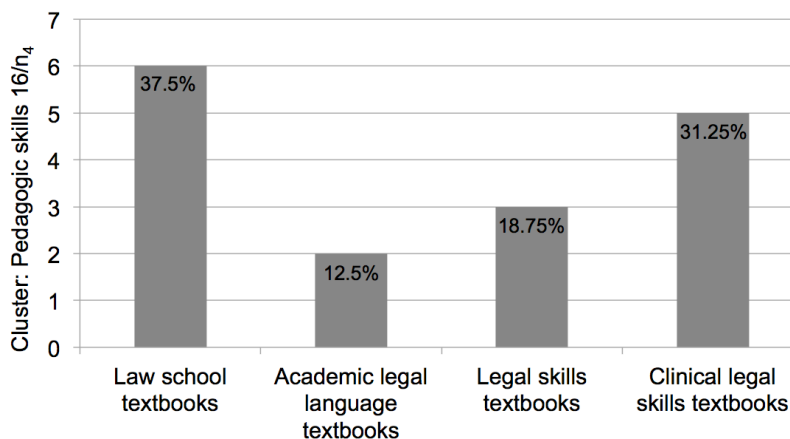


Figure 10.29: Distribution of textbooks in the pedagogic skills content cluster

### 10.6.1 Law school teaching methods

*Law school teaching methods* may be defined as a category of inconspicuous skills that inform students about practices that would assist as induction into the classroom etiquette of the lecture, Socratic, Langdellian, and clinical teaching methods. Of the four groups of textbooks, law school textbooks focus most on law school teaching methods because they initiate prospective law students into law school education (*cf.* Figure 10.30).

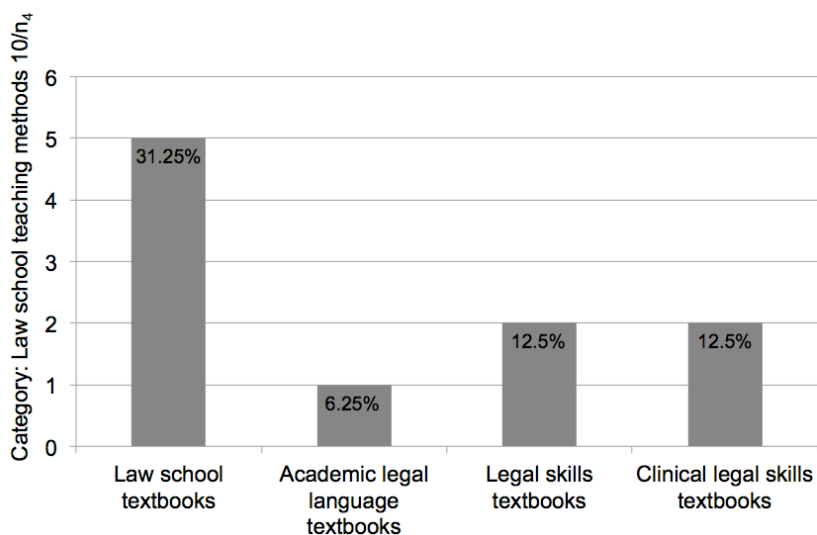


Figure 10.30: Distribution of textbooks that address law school teaching methods

One of the most authoritative texts in the group of law school textbooks is *Law School Confidential: A Complete Guide to the Law School Experience: By Students, for Students* (Miller 2011). The text guides students from the point of applying to law

schools through three years of law school study and includes strategies for ABA examinations. In addition to its comprehensive coverage of communication, thinking, and research skills, the text also provides a thorough introduction to the philosophy and epistemology of legal education. Miller (2011) discusses in sufficient, explicit detail the recommendations of the *MacCrate Report*, *Carnegie Report*, and *Best Practices for Legal Education Report* (Miller 2011:77-84). Therefore, students who consult this text enter law school with an awareness of the dominant discourses in applied legal linguistics and the purposes of a legal education.

In the last two chapters of *Law School Without Fear: Strategies for Success* (Shapo & Shapo 2009), the authors devote considerable effort to psychological guidelines for studying law. These psychological coping mechanisms are a response to law school teaching methods and law school as immersion education. The Socratic method, in particular, causes students to feel “put down” by the professor. Law school is also similar to immersion education, as the magnitude of studying involved can be overwhelming and can lead to psychological breakdown (*cf.* Chapter 5). The coping mechanisms introduced by Shapo and Shapo (2009) include determining what is expected from students, considering that the professor might be wrong, reliance on fellow students, and inspirational narratives by practicing lawyers.

### 10.6.2 Legal epistemology

The second category that comprises the pedagogic skills cluster is concerned with legal epistemology, which concerns ethical and jurisprudential issues that come into existence through legal language. Because social constructionism positions language at the center of social activity, language becomes the core of our epistemologies and ontologies (Gergen 2001:810). “If language performs such a vital, existential role in knowledge-production, then should language instruction not be at the center of the educational process?” (Bruffee 1986:778). Should language not be taught across the curriculum? (*cf.* Chapter 5). Meaning is situated in living conversations “in dialogue and utterances where everything that is said is in relationship to others: other people, other ideas, other conversations (past, present and anticipated)” (Cunliffe 2008:130). With legal language, quite literally, determining social reality, why then are EALP students not instructed in the ethical and moral use of such a powerful artifact? In fact,

only nine textbooks from the entire sample (N=44) mention legal epistemological issues.

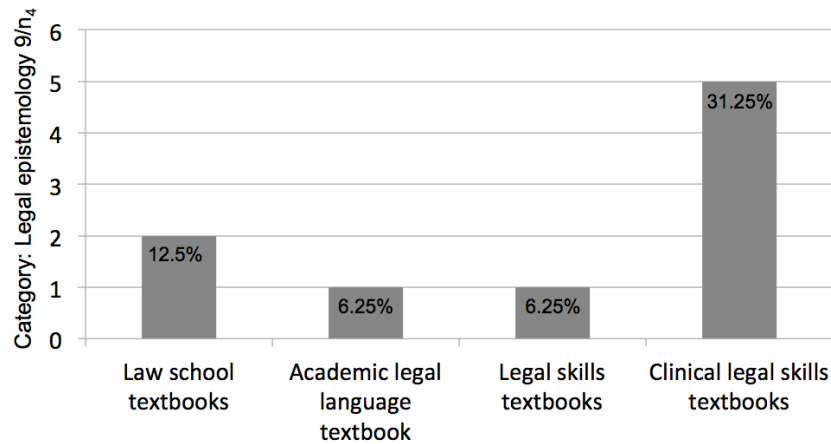


Figure 10.31: Distribution of textbooks that address legal epistemological concerns

Textbooks that remain silent about a legal epistemology adhere to White’s (2003:35) dictum of imparting “doctrine in a vacuum.” A legal epistemology contextualizes legal English socially, culturally, geographically, and politically. As such, a legal epistemology echoes the three primary objectives of legal education, *viz.* the truth-seeking political objective, moral and ethical objectives, and “thinking like a lawyer” (*cf.* Chapter 7). A legal epistemology probes for truth and political values in legal education by asking: “Who learns to do what? Why? Who benefits?” (Raines 1991:422). Quoting Simon, Raines (1991:423) reminds us: “to propose a pedagogy is to propose a political vision.”

A legal epistemology for legal education is profoundly concerned with moral and ethical objectives, as it attempts to train legal academics, ethical practitioners, and discerning moral citizens (Bennett 2010:88; Edwards 1992:34; Jakab 2007:253). The one skill that may summarize the four content clusters, “thinking like a lawyer,” also attempts to inculcate a legal epistemology among law students to “develop a critical consciousness about their professional role” (Davis & Steinglass 1997:252). For example, in *Fundamentals of Law Office Management* (2009:340-342), Pamela Everett-Nollkamper addresses ethics of cyberspace related to the creation of a domain name for a law office, protocols for sending e-mails, and the unauthorized practice of law through technology.

Theoretical linguistic approaches that promote a critical epistemology include the interactional, constructive, and critical approaches. Interactionism recognizes the responsibilities of the individual in a shared world of socially negotiated interactions. Constructivism questions an objective legal reality, as individuals construct different realities and knowledge in social interactions. While social constructionism recognizes the individual, it iterates the relations among individuals and groups, as language is a community-generated social artifact that is rhetorical-responsive and heteroglossic. Critical discourse analysis acknowledges language as social action that creates realities of unequal power relations. Although the philosophical underpinnings of a legal linguistic epistemology may be intellectually and linguistically challenging to L2 students of EALP, rudimentary principles can be formulated and scaffolded throughout law school education. Without sufficient knowledge to control the immense power of legal language through micro-, meso-, and macrolinguistic manipulation, legal language becomes a potentially hazardous tool to the uninformed student.

### 10.7 Summative notes

As stated in the introduction, the purpose of Chapter 10 is to answer the second research question, *viz.* which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks? The question was answered through a qualitative content analysis that revealed a skills-based typology of EALP-type textbooks and four clusters of skills employed across the circles of world English.

The composition of a purposive sample based on a narrow selection of search terms delivered EALP-type textbooks that share a common purpose for legal English instruction. However, despite the purposive sample, a typology of EALP-type textbooks can be identified. The typology is diachronically arranged to address the skills law students need prior to, during, and post law school. Figure 10.32 illustrates the progression of skills as they are addressed by the four groups of textbooks. Although law school education may be temporally bound, the skills imparted are transferable and relatively scaffolded across the period of law school.

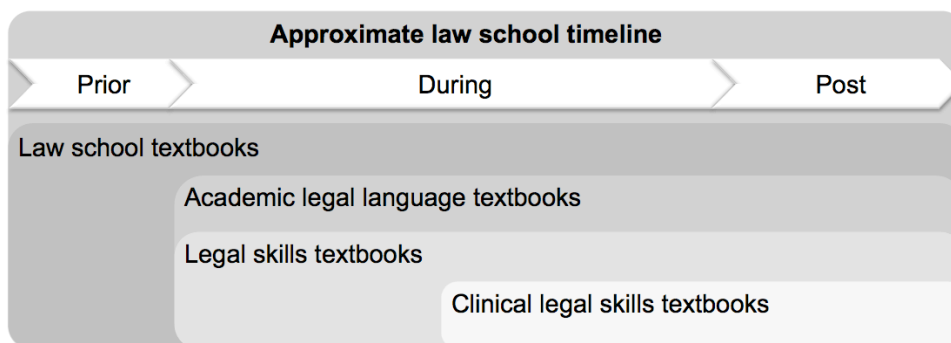


Figure 10.32: Typology of EALP-type textbooks in relation to an approximate law school timeline

In the typology of EALP-type textbooks, four clusters of skills were identified, *viz.* communication, thinking, research, and pedagogic skills. The writing skills category is the most prolific in the communication skills cluster. In general, microlinguistic skills are imparted through traditional L2 methods, and macrolinguistic skills are inculcated through process-based pedagogies. It seems as if microlinguistic skills are treated more within the natural scientific paradigm of traditional, theoretical linguistics, such as structuralism, semiotics, and universal grammar. However, macrolinguistic skills are considered more within the contextual underpinnings of functional, contextual, interactive, and constructive linguistic approaches associated with theoretical linguistics as social practice.

In terms of the thinking skills cluster, traditional thinking skills (e.g. critical thinking, hermeneutical skills, and cognitive schemata) are emphasized over learning skills and digital skills. Although traditional thinking skills are crucial for inculcating the fundamental skills of “thinking like a lawyer,” contemporary lawyers may have to participate in the digital discourse community, and such skills need to be nurtured as well.

Research skills are addressed across the typology of textbooks. The literature search and research tools provide research skills that transcend academia and may be applied in legal practice. However, the research design that may be more useful within academia is neglected.

Similarly, pedagogic skills are neglected across the typology considering that all of the textbooks in the typology are directly related to law school pedagogy. Pedagogic

skills may be neglected; however, they perform a crucial role in contextualizing the other clusters of skills.

Although the four clusters of skills function as features of EALP-type textbooks, they also function as structural elements for a curricular framework for EALP addressed in Chapter 11.



## Chapter 11: A curricular framework for EALP

### 11.1 Introduction

Chapter 11 is the culmination of the preceding chapters and concludes the study. As such, it is the confluence of the principal rationale posed in Chapter 1, *viz.* to address the inadequate legal linguistic skills of law students across the three circles of world English. Three research questions were formulated to systematically probe the rationale and to provide a logical framework of analysis, thus evoking the research approach. Based on a social constructionist worldview, case study methodology, and the qualitative content analysis method, the literature reviews of the three tributary disciplines and an analysis of EALP-type textbooks provided the theoretical and empirical underpinnings to synthesize a curricular framework for EALP. While scholarship provided ample evidence to justify the critical need for a curricular framework, an emic perspective on law and language caused the objectives of the study to resonate on a personal level. The primary goal of Chapter 11, as the research outcome of the study, is to answer the third and final research question: *How can the literature review and the EALP-type textbook analysis be synthesized into a coherent curricular framework for EALP that can be applied across the circles of world English?* To this end, it is necessary to summarize the answers to research questions one and two; therefore, the organizational structure of Chapter 11 was determined by the objectives set in Chapter 1.

#### *Chapter preview*

Following the brief introduction, part two considers the research process retrospectively. The answer to research question one is summarized in part three; it provides a synthesis of the literature reviews on the three tributary disciplines to formulate curricular principles for EALP. Research question two is summarized in part four, which revisits the qualitative content analysis of EALP-type textbooks. Part five provides a synthesis of research questions one and two to create a curricular framework for EALP. The limitations of the study are addressed in part six, and part seven concludes this study with summative notes and future directions.

## 11.2 Research process

This project departed from the supposition that law students across the circles of world English display inadequate legal linguistic skills. At the outset, it became evident that the distinction between academic and professional legal communication skills was untenable, because EALP subsumes skills from both domains; it consolidates English for academic purposes (EAP) and English for professional purposes (EPP) (*cf.* Chapter 1). In addition, contemporary legal education illustrates that legal practice compels law schools to impart skills for academia and practice through *Standard 302* (*cf.* Chapter 9). Yet a “mismatch between what legal employers, law students, and clients need from law schools and what too many legal educators want to give” endures (Joy 2014:178). Consequently, the research approach was designed to conduct comprehensive literature reviews and a qualitative content analysis of EALP-type textbooks that accounted for the underpinnings of the law school curriculum. Because EALP is inherently interdisciplinary, it was essential for the literature reviews to draw on the three main tributary disciplines: theoretical linguistics, applied linguistics, and legal education or legal studies.

The extent of the interdisciplinarity of EALP required the reduction of the research focus through the implementation of three limitations. Firstly, the three levels of curricularization, defined in Chapter 1, limited the formulation of principles to the macropedagogic domain of the curriculum and pedagogic approaches and the mesopedagogic domain of the syllabus and instructional methods. The micropedagogic domain of lesson planning and classroom procedures was not considered because the variability of such procedures would dilute the research focus. Secondly, the circles of world English provided the initial methodological parameters conceptualized as instrumental case study, summarized in Figure 11.1. The case study methodology was then used to conceptualize the typology of EALP-type textbooks as a collective case study. As the culmination of the preceding literature reviews and content analyses, EALP was conceptualized as an intrinsic case study to explicate the inherent intriguing nature of one specific case.

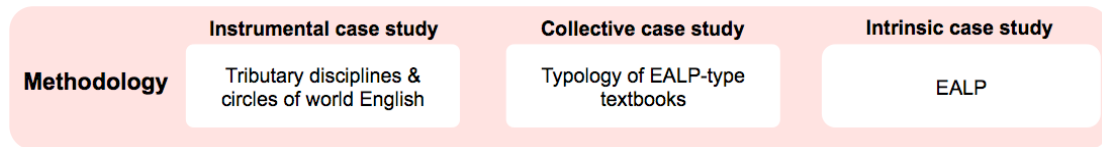


Figure 11.1: Summary of the case study methodology

Finally, tapering the research scope also occurred through a purposive sample of EALP-type textbooks used across the circles of world English. The sample of textbooks addressed the academic and real-world needs of the legal discourse community as researched and presented by the textbook authors.

The analysis revealed clusters of skills that bridge the divide between academia and practice and that can be applied across the circles of legal English. Ultimately, the curricular framework for EALP is underpinned by four clusters of skills deduced from the sample of 44 EALP-type textbooks, and the curricular framework is justified and underpinned by the literature reviews on the relevant scholarship from the three tributary disciplines.

The formulation of principles was not only influenced by the literature reviews and textbook analysis, but they were also inspired by the ontological, epistemological, and methodological underpinnings espoused in Chapter 2. Because of the confluence of perspectives, the formulation of principles entails the “recognition of complexity [as] a necessary basis for principled model [or framework] building” (Raimes 1991:421). The complexity of EALP can be embraced through an accommodative social constructionist worldview from which different theoretical or practical frames of reference are equally valid because they contribute to the collective construction of multiple realities. For example, the complexity of the skills needed to be a lawyer cannot be explained by a single pedagogic theory or approach, hence the intricate multifaceted meaning of “thinking like a lawyer.”

The social constructionist worldview encourages the logical consideration and pragmatic borrowing of ideas from the different approaches and initiatives consulted across the three disciplines. Throughout the study, the characteristics, critique, and contributions of the different approaches and initiatives have been uncovered. Each approach may be practical under specific circumstances. “A pragmatic orientation to

teaching ensures that action is informed by understanding, so that curricular decisions are underpinned by sensitivity to the contexts of teaching and to the most urgent needs of learners” (Hyland 2006:30).

### 11.3 Question 1: Curricular principles for EALP

*Which curricular principles can be deduced from theoretical linguistics, L2 pedagogy, and legal education to constitute a framework for EALP?*

#### 11.3.1 Theoretical linguistic principles

Principles based on theoretical linguistics explain the nature and structure of language and respond to “what” questions. The principles draw on all of the theoretical linguistic perspectives discussed in the literature reviews to create a synchronized framework for EALP that explicates the nature and structure of language in the micro-, meso-, and macrolinguistic domains (*cf.* Chapter 1).

In the *microlinguistic domain*, principles are drawn primarily from traditional, formal linguistic approaches because of their keen focus on word- and sentence-level linguistic structures.

- A curricular framework for EALP should embrace a holistic pedagogy for the instruction of legal English. To consider legal English holistically, the EALP syllabus should provide instruction on the use of the micro-, meso-, and macrolinguistic features of legal English including morphology, lexicon, syntax, genre instruction, and the sociopolitical dimensions of legal English.
- The relationship among the presentational natures of language and icons, symbols, and indexes can be used to facilitate legal language instruction. Images, figures, graphic organizers, and infographics of varying complexity can be used across the circles of world English and across the law school curriculum. Because semiotics relies on visual learning, different forms of intelligence are utilized during learning.
- Across the circles of world English and the law school curriculum, legal English exhibits a universal grammar that is not innate to law students. Law students need to gain linguistic competence of legal English and legal content to conduct legal linguistic performance.

In the *mesolinguistic domain*, principles are drawn primarily from functional, contextual and interactional, constructivist linguistic approaches that focus on linguistic structures, such as the paragraph and genres. Principles in this domain extend to the macrolinguistic domain by addressing linguistic concerns related to sociocultural and political issues; however, they are not necessarily critical about such issues.

- Pragmatics underscores the hermeneutic value of legal English, as it gains meaning from rhetorical, discursive, social, and physical contexts across the circles of world English. Students of legal English should be encouraged to investigate how different contexts proliferate meaning. Because law school curricula often include courses on legal hermeneutics, such courses should be coordinated with EALP.
- Systemic functional linguistics provides an apt description of language to understand the dimensions of legal genres: written and spoken legal genres derive meaning and achieve social purposes through the structuring of subject matter and the recognition of the relationships among the participants in the communication event. In the EALP syllabus, legal genres could be grouped together according to their social purposes to facilitate genre transfer and to accelerate learning. Similarly, genre transfer should be encouraged among courses in the law school curriculum.
- Legal language enables law students to interact with the legal community. Students should comprehend legal linguistic input to produce comprehensible output.
- The zone of proximal development (ZDP) between law students' existing linguistic abilities and the legal linguistic objectives of EALP should be scaffolded appropriately to provide sufficient intellectual challenges that do not over or under estimate law students' aptitudes. Hence, the ZDP should be tailored to meet local requirements within the circles of world English. As such, the EALP syllabus should consider the ZDP as socially mediated and contextually situated within the law school curriculum and a particular circle of world English.

In the *macrolinguistic domain*, principles are drawn mainly from social constructionism, critical discourse analysis, and critical language awareness because of their common focus on sociocultural and political linguistic concerns beyond the sentence- and genre-levels.

- The rhetorical-responsive and heteroglossic nature of language inculcates a critical legal linguistic epistemology among law students to recognize the presence of others in the self to recognize the possible constructive and destructive power of legal language and its repercussions throughout society. Linguistic sensitivity should be nurtured across the law school curriculum because law is language.
- Critical discourse analysis (CDA) provides an alternative hermeneutical platform for the analysis of written and spoken legal texts or discourses: (1) textual analysis investigates text features; (2) text as discursive practice investigates the production, distribution, interpretation, and consumption of texts; and (3) text as social, cultural practice is concerned with the inequality produced through the interdiscursivity and hegemony of power relations. The principles of CDA are applicable across the circles of world English and law school curricula because, regardless of the context, legal texts exhibit textual features and perform discursive sociocultural functions that create power relations.
- As law students gain legal linguistic independence, they become linguistically and socially emancipated to engage critically with the inequalities of hegemonic structures. In turn, as qualified lawyers, students may assist in the emancipation of members of society in the future. The following principles may be taken into account when critical language awareness informs law school curriculum development: (1) social mindfulness of discourse; (2) critical understanding of diversity; and (3) consciousness of, and practice for, change.

The theoretical linguistic principles promote profound awareness of the nature and structure of language from the smallest word- and sentence-level microlinguistic domain to the sociocultural and political currents in the macrolinguistic domain. Students and teachers of EALP should be aware of the nature and structure of legal

English because such knowledge informs and guides the applied linguistic principles or the teaching and learning of EALP.

### 11.3.2 Applied linguistic principles

Principles based on applied linguistics attempt to provide guidelines to pedagogic challenges related to legal English teaching and learning. In the *microlinguistic domain*, principles are drawn from traditional teacher-centered pedagogy based on the grammar translation, direct, and audiolingual methods.

- To provide instruction on structural, grammatical features of legal English, a method-based theory of learning may be advantageous, as it focuses on the translation of the target language and/or the exclusive use of the target language to form linguistic habits. Initially, teachers may assume directive roles to provide direct instruction. However, as students acquire linguistic skills, teachers should relinquish authority to allow and enable students' linguistic autonomy.
- To provide instruction on the structural and lexical linguistic features, progressivist learner-centered theories of learning may benefit students, as learning occurs through active social communication. Because language is used as a socializing agent, learning language should occur in social settings, such as moot courts and law school clinics.
- Because the micro-, meso-, and macrolinguistic features of legal English are not innate to law students across the three circles of world English, legal language should be learned to enable students to communicate.

In the *mesolinguistic domain*, principles are drawn primarily from text-based approaches that accentuate the discipline-specific and functional nature of communication.

- The use of legal English in “real-world” contexts can be initiated through substantive legal content and imparted through task-based instruction. The EALP syllabus should draw on the law school curriculum and legal practice to determine which legal content will prepare students best for prospective linguistic challenges.

- The radical evolution of genres should be dealt with cautiously because of the relative stability of legal genres.
- Strong genre framing of legal texts should be provided to entry-level law students. Genre framing should then be reduced systematically as students gain linguistic independence.
- Genre analysis that determines legal text features should be used to unravel the cultural-specificity, form, function, and possible evolution of legal text types. As such, the communicative purpose, discourse registers, and ethnographic features of legal genres are used to learn legal English. Genre analysis can be applied across the circles of world English by using jurisdiction-specific and level-appropriate genres.

The *macrolinguistic domain* draws primarily on socioliterate approaches and critical postmodern pedagogy. Macrolinguistic principles also derive from learner-centered approaches that nurture psychological awareness within the learning environment. It can be argued that these approaches are practice-based and therefore focused on the socio-political and discursive dimensions of discourse.

- Entry-level law students can be socialized into the law school community by utilizing a language socialization approach that relies more on conversational English rather than legal English.
- Once law students form cognitive schemata about legal content, a discourse socialization approach can be utilized to facilitate socialization through the use of legal English into various academic and legal discourse communities.
- Legal language learning is affected by psychological factors that may either inhibit or encourage learning. Teachers should be sensitive to these psychological factors to create intellectual environments that are conducive to the use of multiple intelligences. Educational stressors may be reduced when students are encouraged to use their natural aptitudes to learn.
- Communicative functions of language should be imparted through communicative, functional approaches that engage students in pragmatic, authentic, functional uses of legal English.
- Experiential learning through active participation should be used to encourage communicative competence and linguistic autonomy.



- The particularities (linguistic, sociocultural, and political) of local jurisdictions should be acknowledged to avoid a blanket acceptance of the dominant status quo.
- Teaching and learning are relational and dialogic activities. Therefore, the stakeholders in the legal discourse community should inform legal pedagogic theory. At a minimum, these stakeholders include students, teachers, academia, legal practice, bar associations, and government.
- Beyond the communicative and socialization purposes of legal English, EALP should lead to the liberation and empowerment of segregated, disempowered individuals and communities.
- Because of the citizenship that digital natives occupy in digital worlds, EALP should attempt to utilize digital platforms as intellectual tools for legal English learning.
- Teachers of EALP should be sensitive enough to accommodate the diversity of ontologies, epistemologies, and communication styles brought to the classroom by a globalized student population of digital immigrants and digital natives. Insensitivity toward the differences between “teacher generations” and “student generations” results in disharmonious learning environments.

The theoretical and applied linguistic principles provide two perspectives on legal English. Where the theoretical linguistic principles inform and guide knowledge about the nature and structure of legal language, the applied linguistic principles inform and guide the teaching and learning of legal language. A third dimension is added by legal scholarship that provides an emic perspective on legal education.

### **11.3.3 Legal educational principles**

Principles for legal education are derived from traditional and contemporary legal education and the ameliorating initiatives of law school academic support programs. Legal educational principles may overlap with pedagogic principles, especially with regard to principles formulated with the macrolinguistic domain in mind. The following principles could be applied across the law school curriculum and across the circles of world English:

- Student-faculty discourse socialization should be encouraged to create harmonious learning environments. This can be achieved through enhanced reciprocal collaboration in informal and formal learning activities. Collaboration is especially useful to construct shared meaning within the EALP classroom.
- Syntactic schemata or legal linguistic skills should be developed through active learning strategies that enhance learning and fosters long-term memory.
- Time management skills should be fostered to enhance the skill of developing work routine and discipline. Student, teacher, and institutional time on task should be synchronized. Proper time management enhances learning by spacing continuous evaluation opportunities and providing prompt feedback. Law school syllabi should be synchronized within the law school curriculum, and the law school curriculum should be synchronized with the university and the national calendars.
- Metacognitive processes should be cultivated through different strategies that foster different ways of “thinking like a lawyer”, such as the (re)construction of knowledge, formulation of questions, problem solving, legal analysis, reasoning, legal research, investigation, and diagnoses of legal problems.
- Law schools should inculcate ethical principles and sensitivity to professional concerns determined by law schools and bar associations.
- Instruction should entail critical, constructive, and individualized feedback.
- High expectations should be posed to students within a reasonable zone of proximal development.
- Diverse talents and multiple intelligences should be recognized through a variety of teaching methods.
- Continuous learning beyond law school should be promoted to improve academic and professional actualization.
- Psychological barriers should be recognized, and efforts should be made to negotiate their transcendence.

The principles formulated in response to research question one emanate from the literature reviews. The review of legal scholarship to formulate legal educational principles also informed research question two.

### 11.4 Question 2: Legal linguistic skills

*Which legal linguistic skills clusters can be identified from a typology of EALP-type textbooks?*

The analysis of EALP-type textbooks revealed a typology of four types of books that share a common focus on legal English. The typology distinguishes the following books: law school textbooks, academic legal language textbooks, legal skills textbooks, and clinical legal skills textbooks. Apart from their different contributions to the sample size, five variables distinguish the four types of EALP textbooks: (1) the sequencing and scaffolding of skills in the diachronic progression through law school education; (2) the legal linguistic character of the skills addressed; (3) the circle of world English; (4) the theoretical linguistic approach; and (5) the applied linguistic, L2 pedagogy embraced. Table 11.1 provides a comprehensive summary of the features of the typology of EALP-type textbooks.

It would be prudent to reconsider each variable and the possible reasons for the typology of EALP-type textbooks to respond to these characteristics the way they do. Table 11.1 illustrates that the different textbooks are utilized at different stages during law school education. As such, an inherent scaffolding of skills occurs across the duration of law school as an extended zone of proximal development. This explains why legal linguistic skills progress from pre-law school skills to communication skills, to a comprehensive focus on all four clusters of skills, and conclude with lawyering and legal linguistic skills needed particularly in legal practice. Clinical legal education, however, attempts to introduce lawyering skills throughout law school education to prepare law students more adequately for legal practice.

The summary of characteristics also illustrates that the inner circle of world English dominates the production of EALP-type textbooks. Textbooks may address appropriate skills through appropriate L2 pedagogy, but a critical pedagogic position should be inculcated among teachers and students in the outer and expanding circles to prevent a blatant acceptance of the inner circle status quo.

Table 11.1: Summary of the features of the typology of EALP-type textbooks

	<b>Law school textbooks</b>	<b>Academic legal language textbooks</b>	<b>Legal skills textbooks</b>	<b>Clinical legal skills textbooks</b>
<b>Diachronic position in law school education</b>	Applicable mainly to pre-law school and during the first year of law school	Aimed mainly at the first year of law school, though it could be used in succeeding years	Applicable throughout law school	Applicable toward the end of law school
<b>Legal linguistic character of skills</b>	Legal linguistic skills focus on LSAT answer formulation and essay writing	Primarily a broad spectrum of legal communication skills	Most comprehensive of EALP textbooks typology, cover all four clusters of skills	Legal linguistic skills focus on lawyering skills needed in legal practice
<b>Circles of world English</b>	Applicable mainly to the inner circle of world English	Applicable mainly to the outer and expanding circles for world English but very useful in the inner circle as well	Typically written for the inner circle, but globalization renders these books useful in other circles as well	Typically written for the inner circle, but globalization renders them useful in other circles as well
<b>Theoretical linguistic approach</b>	Pragmatics Systemic functional linguistics Interactionism Constructivism Social constructionism Critical language awareness	Pragmatics Systemic functional linguistics Interactionism Constructivism Social constructionism Critical discourse analysis Critical language awareness Grammar translation	Pragmatics Systemic functional linguistics Interactionism Constructivism Social constructionism Critical discourse analysis Critical language awareness Grammar translation	Pragmatics Systemic functional linguistics Interactionism Constructivism Social constructionism Critical discourse analysis Critical language awareness Direct method
<b>Applied linguistic, L2 pedagogy</b>	Direct method Community language learning Task-based instruction English for specific purposes New rhetorical Academic discourse socialization Critical literacy pedagogy	Direct method Community language learning Content-based instruction Task-based instruction English for specific purposes New rhetoric Language socialization Discourse socialization Academic discourse socialization Critical literacy pedagogy Multiliteracies pedagogy New literacies studies	Direct method Community language learning Content-based instruction Task-based instruction English for specific purposes New rhetoric Language socialization Discourse socialization Academic discourse socialization Critical literacy pedagogy Multiliteracies pedagogy New literacies studies	Community language learning Content-based instruction Task-based instruction English for specific purposes New rhetoric Language socialization Discourse socialization Academic discourse socialization Critical literacy pedagogy Multiliteracies pedagogy New literacies studies

With regard to theoretical linguistic approaches, the typology of EALP-type textbooks neglects to explain the nature and structure of language through traditional, formal linguistic approaches. However, this does not mean that structuralism, semiotics, and universal grammar may not be utilized productively as illustrated in the formulation of the theoretical linguistic principles above. Similarly, with regard to L2 pedagogy, the typology of textbooks avoids the audiolingual, silent way, and suggestopedia methods. Traditional, formal linguistic approaches and traditional, teacher centered pedagogy developed long before the temporal parameters set for the sample of textbooks between 2003 and 2013. This time difference could explain why authors of EALP-type textbooks neglect traditional approaches and methods. Yet, these traditional approaches and methods are not necessarily obsolete.

The typology of EALP-type textbooks displays substantial variation, yet two factors are shared, *viz.* legal English communication and a skills-based typology. Both of these factors are recognized through the objectives of legal education explicated in Chapter 7 and illustrated in Figure 11.2. The most prominent skills, emphasized by traditional and contemporary legal education, is the fundamental skill of “thinking like a lawyer.” In Chapter 9, “thinking like a lawyer” is deconstructed to its five constituting parts. These five constituting parts or skills of “thinking like a lawyer” correspond directly with the content clusters of the qualitative content analysis identified in Chapter 10.

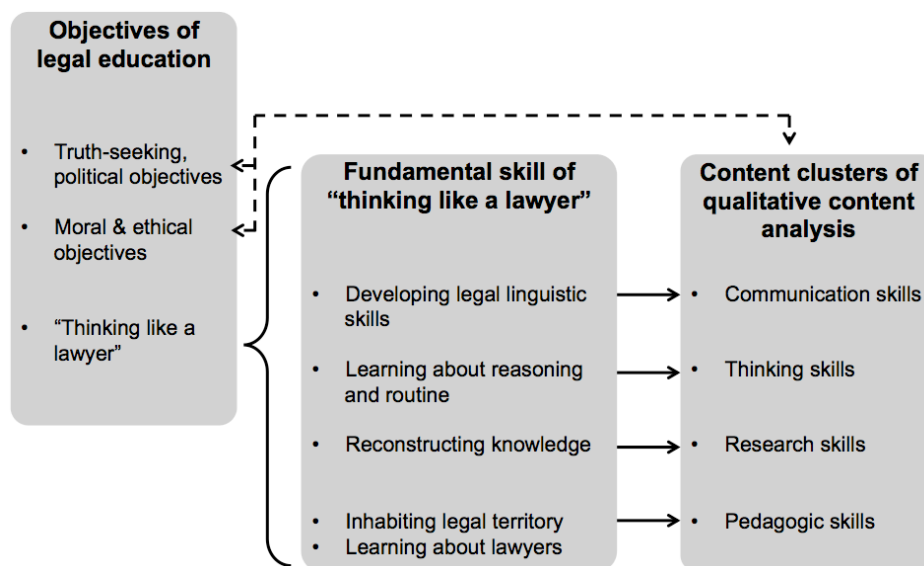


Figure 11.2: Relationship between the objectives of legal education and a legal skills-based pedagogy

As illustrated in Figure 11.2, the truth-seeking, political and the moral and ethical objectives refigure throughout the content clusters because of the application of a language based, social constructionist epistemology for EALP (*cf.* Chapter 3).

Together, the curricular principles, the typology of EALP-type textbooks, and the clusters of skills initiate a step toward a curricular framework for EALP. This may be accomplished by applying the skills in the content clusters to the diachronic progression of law school evident in the EALP-type textbook typology. Currently, law schools in the United States and South Korea are three-year, graduate-level institutions. In both countries, students may graduate in an undergraduate major before taking the LSAT and applying to law school. In contrast, South African universities offer a four-year, undergraduate LL.B. degree that provides access to the bar examination and legal practice. This difference is important, because it influences how the curriculum is designed and operationalized. American and South Korean students enter law school after earning first/bachelor degrees, whereas South African students enter law school immediately after graduating from high school. It is therefore logical to position EALP in the first year of the South African law curriculum to initiate students into the acquisition of legal language as soon as they assume legal studies.

It is advisable that American and South Korean law schools consider instituting EALP at the undergraduate level or as a transition course between undergraduate studies and graduate school. EALP can be included at the undergraduate level for at least three reasons: (1) graduate law school is too demanding to overburden students with additional language programs; (2) it is also advisable to internalize legal language and to become accustomed to the legal linguistic epistemology before the assumption of law school; and (3) students who wish to pursue diplomatic, governmental, or political careers often show interest in taking EALP at the undergraduate level.

Despite the differences in the formal structure of law school curricula, this study proposes EALP as a prolonged course of approximately two years. The reason for the

prolonged duration is the complexity and extent of legal linguistic skills that can be honed productively as a craft over an extended period of time. It is also advisable to integrate, coordinate, and synchronize EALP in relation to the law school curriculum, since the entire law school curriculum is taught through legal language. Figures 11.3 through 11.6 illustrate how the communication, thinking, research, and pedagogic skills in the four content clusters could be scaffolded over approximately two years. Law schools in the different circles of world English can adapt the scaffolding to meet their individual needs and circumstances.

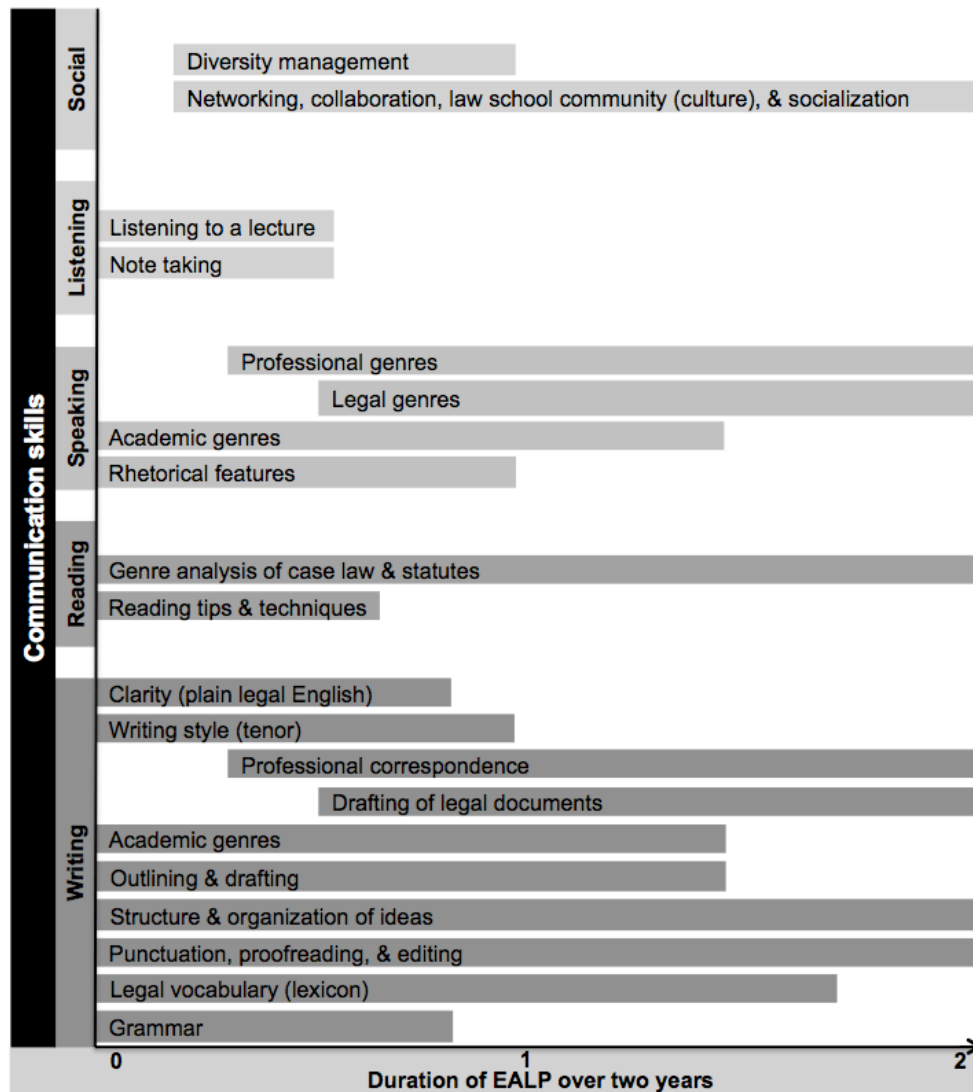


Figure 11.3: Communication skills across the law school curriculum

Communication skills, specifically writing skills, prioritize the microlinguistic features of legal English to provide an underpinning for the scaffolding of meso- and macrolinguistic features (*cf.* Figure 11.3). For example, academic genres, such as the



argumentative essay, can be introduced at the beginning of EALP instruction with strong genre framing. With the aid of linguistic transfer and moderate genre framing, students can then be introduced to legal writing, which includes professional correspondence and the drafting of legal documents. Similarly, within the speaking category, rhetorical features and academic genres should precede the professional genres and legal genres.

Because legal communication skills are inherent to thinking skills, Figure 11.4 illustrates the assumption of thinking skills at the beginning of EALP instruction. However, mnemonic devices, intelligences, and computer literacy may not need prolonged instruction, as a solid initial foundation will suffice throughout law school. As legal communication skills improve, the remaining thinking skills may be expressed more accurately and eloquently. These skills are also essential in legal practice and need to be sustained.

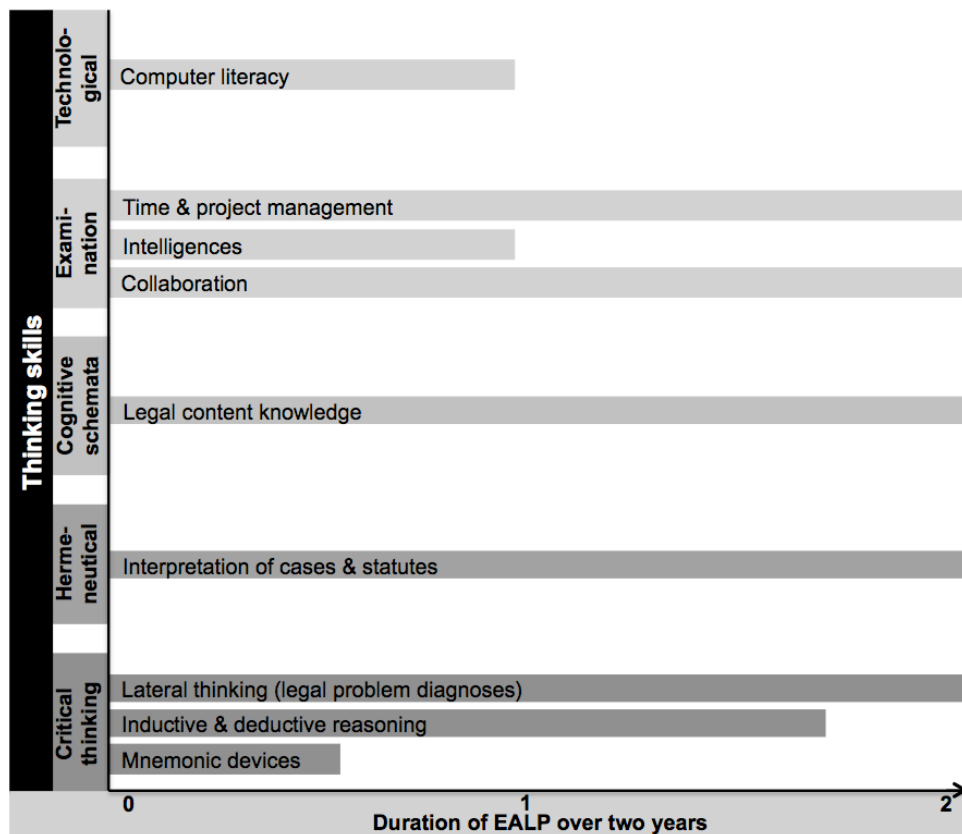


Figure 11.4: Thinking skills across the law school curriculum



Research skills (*cf.* Figure 11.5) follow a similar pattern; certain skills need only brief introductions, while others need sustained practice. Qualitative and quantitative research designs, methodologies and methods, and the synthesis of legal sources and ideas need prolonged practice, as these skills may become increasingly complex and require years of practice to perfect. Publishing skills may be delayed in the outer and expanding circles because students first need to master legal language.

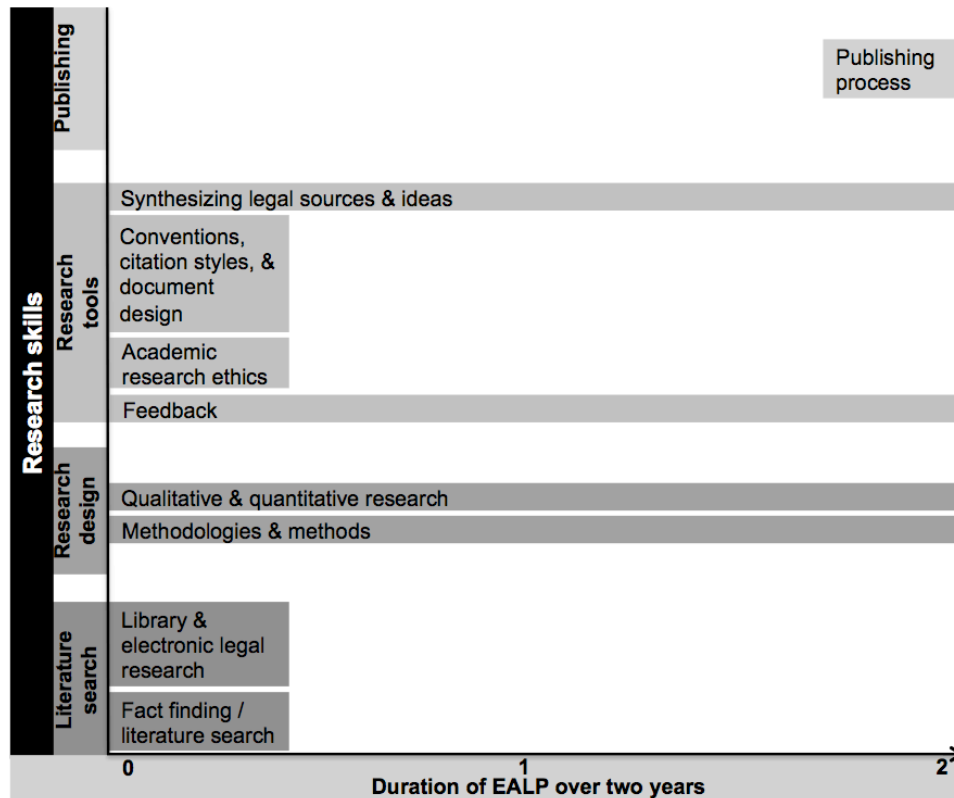


Figure 11.5: Research skills across the law school curriculum

Pedagogic skills may be addressed for the entire duration of EALP instruction, since curricular goals and course or lesson objectives need to be explained at the beginning of each class. When the course objectives and instructional methods are discussed with and justified to students, then the curricular transparency of the EALP is enhanced. Ethical and jurisprudential concerns permeate EALP through a language-based epistemology and remain applicable beyond law school and legal practice (*cf.* Figure 11.6). Therefore, it is essential that students are well-versed in ethical legal practice.

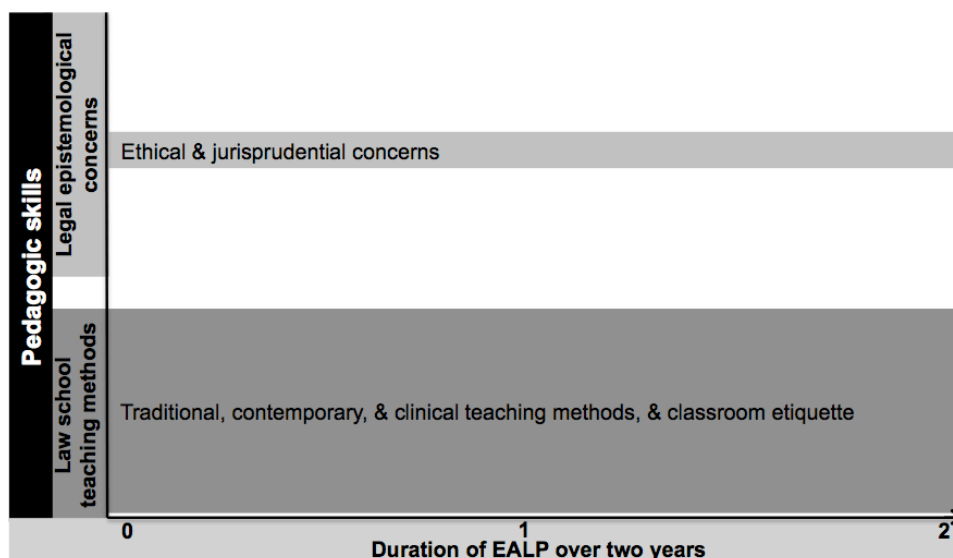


Figure 11.6: Pedagogic skills across the law school curriculum

The answer to question two provided an elaborate framework of skills that can be explored at different stages during law school. The question now arises as to which theoretical linguistic and L2 pedagogic methods and approaches may be utilized for the instruction of these skills. The answer to this question (the research outcome) requires synthesizing the distribution of skills across the law school curriculum with theoretical linguistics, applied linguistics, and the EALP-type textbooks analysis.

### 11.5 Question 3: A curricular framework for EALP

*How can the literature review and the EALP-type textbook analysis be synthesized into a coherent curricular framework for EALP that can be applied across the circles of world English?*

Research question three synthesizes questions one and two on a linear scale representing the progression through an EALP course. To this end, five variables are superimposed on each other:

- The arrangement of the four content clusters of skills arranged across a period of approximately two years (*cf.* research question two) serves as the point of departure.
- The content clusters of skills are superimposed on the three linguistic domains (*cf.* Chapter 1). The linguistic domains contextualize EALP as a profoundly

linguistic endeavor and facilitate the application of the principles (*cf.* research question one) for EALP curriculum development.

- The content clusters of skills and linguistic domains are then considered in relation to theoretical linguistic approaches.
- A fourth dimension is added by relating L2 pedagogy to the arrangement of content clusters of skills, linguistic domains, and theoretical linguistic approaches.
- Finally, curved lines that signify possible transitions or scaffolding are superimposed on the aforementioned variables. The curved lines perform two important functions: (1) they provide guidance for the scaffolding of skills across the duration of EALP instruction thereby dividing instruction into four invented periods or semesters; (2) they also connect certain theoretical linguistic and L2 pedagogic approaches to the scaffolded skills and relevant linguistic domains.

Figures 11.7 through 11.10 illustrate the synchronization of a curricular framework for EALP and can be explained through several examples. In the communication skills cluster, the writing skills category is defined by ten skills ranging from grammar to diversity management. In terms of EALP, writing instruction should include grammar instruction from the outset of the curriculum (*cf.* Figure 11.7). For the most part, grammar instruction can rely on traditional formal linguistics to explain the nature and structure of language. At the beginning, grammar can be taught through traditional teacher centered methods, such as the direct method because L2 students may not be familiar with the target language, and a teacher-directed foundation can assist learning. The teacher-directed foundation can focus on the microlinguistic features of legal English, such as subject-verb agreement, the elimination of nominalizations, and passive sentence structures.

As students acquire more linguistic autonomy, grammar instruction may shift to the mesolinguistic features of legal English, such as the use of different tenses in different parts of an academic essay. Therefore, genre features may become more pronounced. Together with the grammar shift, theoretical linguistic and pedagogic shifts also occur. While the nature and structure of grammar are initially explained through traditional

theoretical linguistics, functional and contextual linguistic approaches may be used to explain the nature and structure of legal English in the mesolinguistic domain. This is followed by interactive, constructive, and critical linguistic approaches.

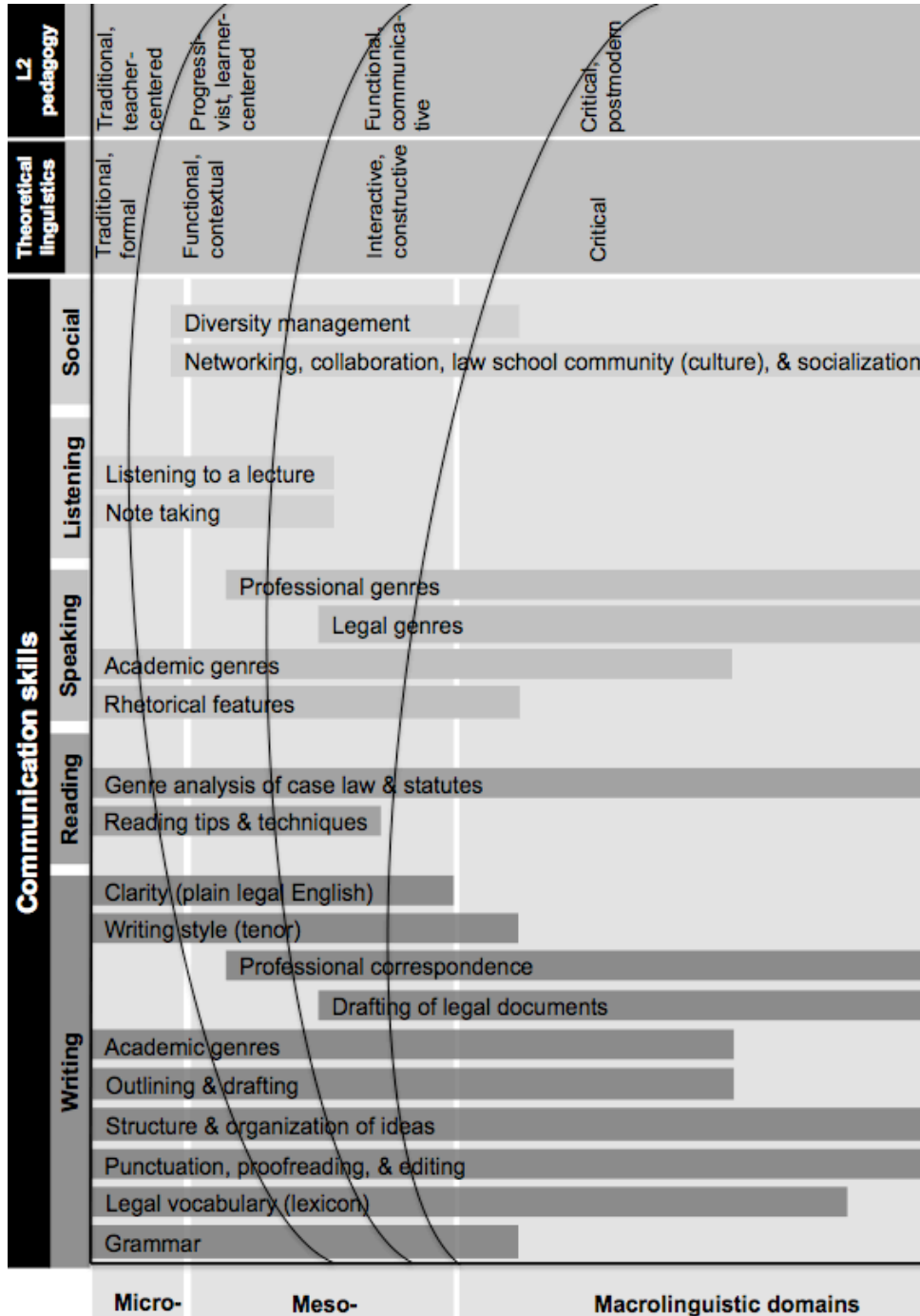


Figure 11.7: Synchronization of communication skills, theoretical linguistics, and L2 pedagogy

Similarly, pedagogic approaches are imbricated to accommodate the development or evolution of skills. This means that, just as skills are scaffolded, theoretical linguistic

and pedagogic approaches are scaffolded accordingly. The changing nature of the learning environment requires the use of different theoretical linguistic and pedagogic approaches to enhance learning.

Figure 11.8 illustrates the synchronization of thinking skills across the linguistic domains and in relation to theoretical linguistic approaches and L2 pedagogy.

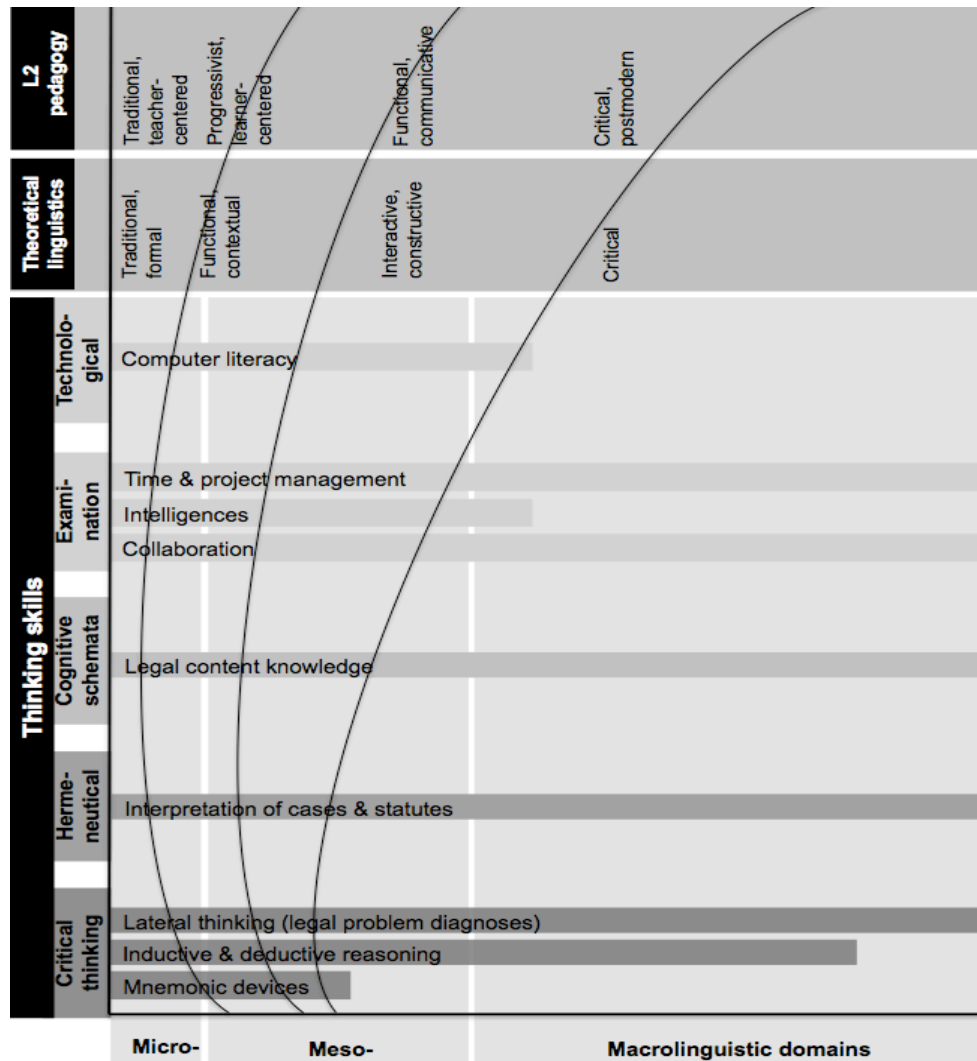


Figure 11.8: Synchronization of thinking skills, theoretical linguistics, and L2 pedagogy

Computer literacy as a technological skill, for example, crosses the three linguistic domains, as it involves language from word-level structures and genres to sociocultural and political concerns. The advancement of students' computer literacy occurs simultaneously with the transition from traditional pedagogies to progressivist, functional, and critical approaches. For example, computer literacy associated with

the macrolinguistic domain refers to the sociocultural and political concerns of the digital discourse community. As such, Web 2.0 pedagogy proposed by new literacies studies as a critical, postmodern approach provides an apt pedagogic underpinning at this stage of computer literacy instruction. Similarly, the nature and structure of language in the macrolinguistic domain for the use of computer literacy can be explained with interactive, constructive and critical linguistics.

Figure 11.9 illustrates the synchronization of the third skills cluster, *viz.* research skills, and its integration across the linguistic domains and in relation to theoretical linguistic approaches and L2 pedagogy. For example, when feedback is considered across the linguistic domains, assessment is based on the holistic features of an assignment instead of an overemphasis on microlinguistic grammar.

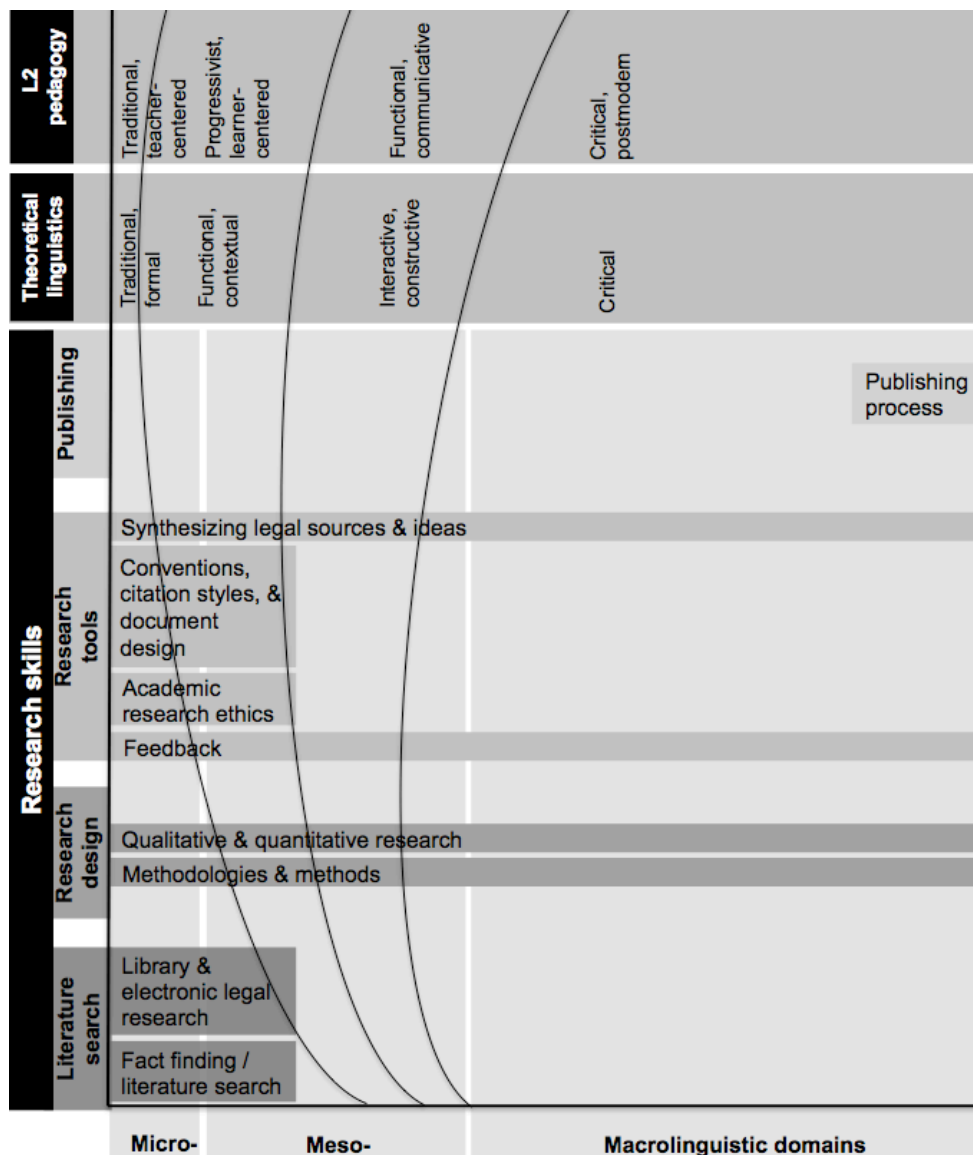


Figure 11.9: Synchronization of research skills, theoretical linguistics, and L2 pedagogy

Figure 11.10 illustrates the synchronization of pedagogic skills in relation to theoretical linguistic and L2 pedagogic approaches across the linguistic domains. For example, at the beginning of the EALP course, legal epistemological concerns should be shared explicitly through traditional, teacher-centered L2 pedagogy because novice students may have no cognitive schemata to accommodate “new” knowledge.

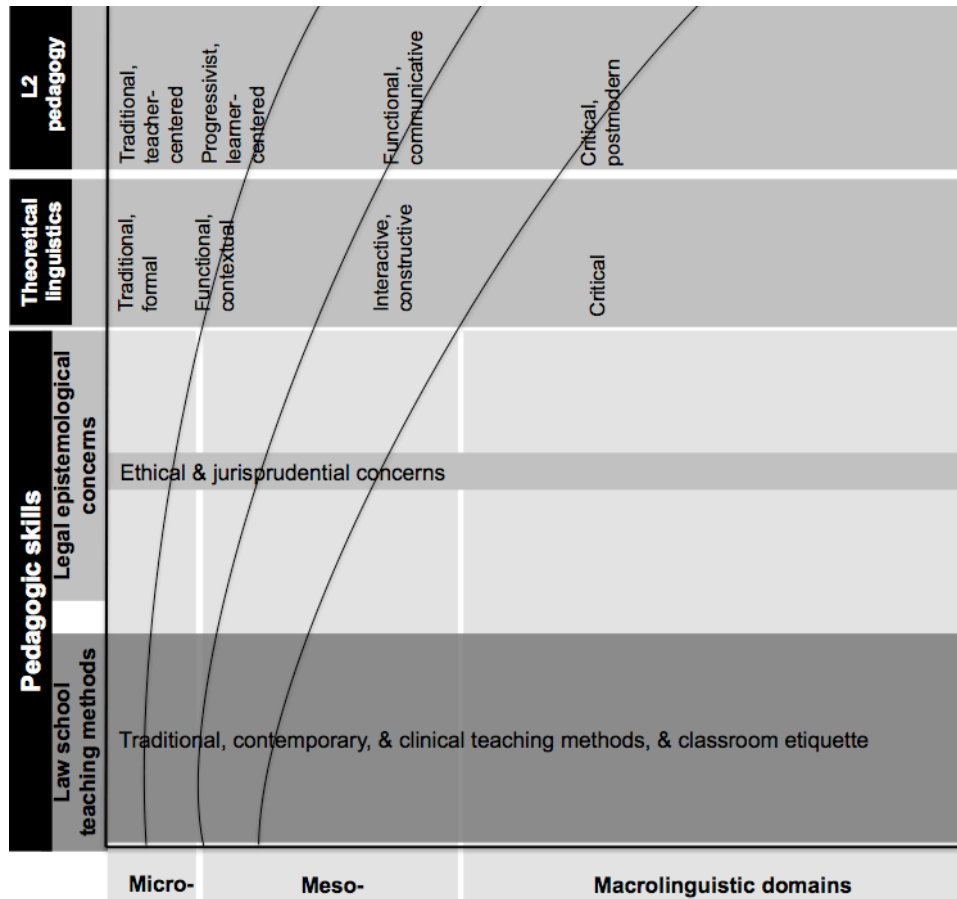


Figure 11.10: Synchronization of pedagogic skills, theoretical linguistics, and L2 pedagogy

Each skill identified through the qualitative content analysis and presented in Figures 11.7 through 11.10 can be interpreted in relation to its position relative to the accompanying theoretical linguist approaches, L2 pedagogy, and linguistic domains. It should be iterated that the proposed configurations are based on the research in this project; minor variations may be necessary to configure the curricular framework for EALP for local settings.

### 11.6 Limitations of the study

In retrospect, the study displays four main limitations: (1) the comprehensive literature reviews; (2) reliance on theory; (3) quantitative data collection; and (4) empiricism.

Firstly, the attempt to synthesize a broad spectrum of theoretical linguistic perspectives and L2 pedagogy can be seen as a limitation, since it can be perceived as an attenuated research focus. However, the synthesis of multiple theories was an attempt to become informed about pedagogic practice. In terms of pedagogy, Hinkel observes that “[...] teachers exercise a considered or principled eclecticism by creating individualized teaching methods through the blending of other methods” (2010:111). In terms of theoretical linguistics, Pennycook (1990:13) cautions that “disregard for linguistic history and politics cannot explain contending struggles over meaning.” Disregard for historical, anthropological, and socio-linguistics indicates neglect of major questions about the power of language and linguistic inequality.

The second limitation is related to the comprehensive literature reviews that may seem to favor theory. Initially, attempts were made to connect theory with teaching practice by including EALP-type syllabi from three universities in the circles in world English. Syllabi are considered operationalizing tools for teaching. These attempts faced two major challenges. Several law schools that indicate on their websites that EALP-type courses are contained in law school curricula admitted, upon formal inquiry, that these courses were either planned or discontinued. The second challenge involves the proprietorship of syllabi. In general, teachers were willing to share syllabi outlines, but they were reluctant to disclose detailed syllabi containing course material and sample texts and assessments. These challenges motivate the exclusion of syllabi from the data analysis. It also justifies the inclusion of EALP-type textbooks as public documents that were relatively easily accessible.

The third limitation concerns the manual data analysis. Admittedly, human error can have occurred during the coding of the sample of EALP-type textbooks. Digital coding would have ensured more accurate coding results. However, technological constraints, such as the unavailability of the sample textbooks in digital format,



hampered such aspirations. In contrast to digital coding, the manual coding did offer a sense of “acquaintance” with the sample textbooks.

Finally, the study may be criticized for excluding an empirical component, in the traditional sense of the phrase. Initially, an empirical component was included in the form of semi-structured interviews with professors from three universities in the three circles of world English. An initial analysis of the interviews revealed a substantial lack of contribution to issues discussed in the theoretical expositions. The interviews also contributed no new issues to the analysis. This was of great concern, since it would have detracted from the quality of the project. Instead, the qualitative content analysis of EALP-type textbooks developed organically out of the needs of the study and replaced the original semi-structured interviews.

Exclusion of a traditional empirical component may also be justified by contemporary developments in research practices. Today, empiricism is celebrated and valued as much, if not more, than at the zenith of its philosophical origin in the work of John Lock, George Berkeley, and David Hume in the 17<sup>th</sup> and 18<sup>th</sup> centuries. Naturally, empirical research contributes substantially to illuminating the “real world.” Yet, this so-called real world may be brought to understanding through sound logical argumentation. The contemporary emphasis on empirical and statistical research may be described as a result of the corporatization of tertiary education. In his recent free online lecture entitled *The Corporatization of the University*, Chomsky argues that the pathology of contemporary research is fueled and funded in search of models based on data or, even more enticingly, big data. From a critical pedagogic stance, Chomsky argues that young researchers should not propose to understand phenomena, because research funding is not allocated for comprehension studies; rather, it is allocated for collecting quantitative data (Chomsky 2013).

### **11.7 Summative notes and future directions**

This project originated out of the inadequate legal linguistic skills of law students across the circles of world English. Although elementary and secondary education may exacerbate the inadequate linguistic skills of law students, this project focused on the linguistic, pedagogic, and legal educational challenges faced by EALP at tertiary institutions.

Throughout the diachronic development of the three tributary disciplines, methods and approaches were analyzed to verify their contributions, or lack thereof, to the conceptualization of a curricular framework for EALP. First, levels of curricularization were created to identify the parameters of the applicability of methods and approaches (*cf.* Chapter 1). The layers of curricularization (*viz.* lesson, syllabus, and curriculum) were synchronized with the layers of L2 pedagogy (*viz.* technique, methods, and approach).

In conjunction with the literature reviews, the qualitative content analysis of EALP type textbooks revealed that traditional, formal linguistic approaches and traditional teacher-centered methods became relatively derelict, as contemporary approaches are more in touch with the contemporary needs of the legal discourse community. The qualitative content analysis of EALP-type textbooks was considered as one possible method to determine these contemporary needs. These needs manifested as four clusters of skills, *viz.* communication, thinking, research, and pedagogic skills. Not only do these clusters of skills subsume the fundamental skills of “thinking like a lawyer”, but they also embrace the objectives of legal education: truth-seeking, political, moral, and ethical objectives.

A curricular framework for EALP that is comprehensive enough to transcend the circles of world English, yet specific enough to embrace local diversity, cannot relinquish certain methods and approaches, just because they became obsolete in dominant circles. A curricular framework for EALP should provide the necessary detailed theoretical and practical underpinnings that enable the users of the framework to make informed decisions for the application of the framework within local EALP settings.

Because of the interdisciplinary nature of EALP, the curricular framework may be applicable to different settings. Law school education has been compared to medical school and engineering departments, which indicates that the framework may be applicable beyond law school in the circles of legal English. Future comparative studies may investigate the transferability of this curricular framework.

Future research can also explore more student involvement in the development of pedagogic theory. For example, although EALP-type textbooks facilitate legal vocabulary acquisition primarily through traditional, teacher-centered methods, which techniques do students actually use to remember legal terminology?

The future of EALP-type textbooks should be reconsidered from a critical literacy perspective that recognizes Web 2.0 and 3.0 pedagogy. Authors in the outer and expanding circles should challenge the dominance of the status quo of the inner circle of world English by producing EALP-type textbooks tailored for local jurisdictions. While the curricular framework for EALP created in this study has identified the clusters of skills that students need to improve their inadequate legal linguistic skills, it may also provide a framework for EALP-type textbook authors and law schools across the circles of world English to assist their students in this challenging, yet stimulating endeavor called EALP.



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# Appendices

## Appendix A: Ethics clearance certificate



### RESEARCH ETHICS COMMITTEE

**CLEARANCE CERTIFICATE**

**DEGREE AND PROJECT**

**INVESTIGATOR(S)**

**DEPARTMENT**

**DATE CONSIDERED**

**DECISION OF THE COMMITTEE**

**CLEARANCE NUMBER :**

HU 11/06/02

PhD

A curricular framework for English for Academic Legal Purposes

Christiaan Prinsloo

Humanities Education

30 May 2014

APPROVED

Please note:

*For Masters applications, ethical clearance is valid for 2 years*

*For PhD applications, ethical clearance is valid for 3 years.*

**CHAIRPERSON OF ETHICS  
COMMITTEE**

Prof Liesel Ebersöhn



DATE

30 May 2014

CC

Jeannie Beukes  
Liesel Ebersöhn  
Prof A Carstens  
Prof A Nienaber

This ethical clearance certificate is issued subject to the following condition:

1. It remains the students' responsibility to ensure that all the necessary forms for informed consent are kept for future queries.

Please quote the clearance number in all enquiries.

## Appendix B: Search results

Search terms	EALP-type textbooks	Subtotals
English for academic legal purposes	<p>Lee, D. S., Hall, C., &amp; Barone, S. M. (2007). <i>American Legal English: Using Language in Legal Contexts</i>. Ann Arbor: University of Michigan Press.</p> <p>Reinhart, S. M. (2007). <i>Strategies for Legal Case Reading and Vocabulary Development</i>. Ann Arbor: University of Michigan Press.</p>	2
Academic legal language	<p>Coughlin, C., Malmud Rocklin, J., &amp; Patrick, S. (2013). <i>A Lawyer Writes: A Practical Guide to Legal Analysis</i>. Durham: Carolina Academic Press.</p> <p>Fajans, E. &amp; Falk, M. R. (2011). <i>Scholarly Writing for Law Students: Seminars, Law Review Notes and Law Review Competitions</i>. St. Paul: Thomson West.</p> <p>McKinney, R. A. (2012). <i>Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert</i>. Durham: Carolina Academic Press.</p> <p>McMurtry-Chubb, T. A. (2012). <i>Legal Writing in the Disciplines: A Guide to Legal Writing Mastery</i>. Durham: Carolina Academic Press.</p> <p>Putman, W. H. (2013). <i>Legal Analysis and Writing</i>. New York: Delmar Cengage Learning.</p> <p>Ray, M. B. &amp; Ramsfield, J. J. (2010). <i>Legal Writing: Getting it Right and Getting it Written</i>. St. Paul: Thomson West.</p> <p>Volokh, E. (2007). <i>Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review</i>. New York: Foundation Press.</p> <p>Van der Walt, C. &amp; Nienaber, A. G. (2009) <i>English for Law Students</i>. Cape Town: Juta.</p> <p>Walenn, J. (2008). <i>English for Law in Higher Education Studies</i>. Reading: Garnet Education.</p>	9
Legal English	<p>Brostoff, T. K. &amp; Sinsheimer, A. (2003). <i>Legal English: An Introduction to the Legal Language and Culture of the United States</i>. New York: Oceana Publications.</p> <p>Brown, G. W. (2007). <i>Legal Terminology</i>. New York: Prentice Hall.</p> <p>Brown, G. W. &amp; Rice, S. (2007). <i>Professional English in Use: Law</i>. Cambridge: Cambridge University Press.</p> <p>Day, J. Krois-Linder, A. &amp; TransLegal. (2006). <i>International Legal English: A Course for Classroom or Self-Study Use</i>. Cambridge: Cambridge University Press.</p> <p>Frost, A. (2009). <i>English for Legal Professionals</i>. Oxford: Oxford University Press.</p> <p>Garner, B. A. (2013). <i>Legal Writing in Plain English: A Text with Exercises</i>. Chicago: University of Chicago Press.</p> <p>Gubby, H. (2006). <i>Practical Legal English</i>. Den Haag: Boom Juridische Uitgevers.</p> <p>Gubby, H. (2011). <i>English Legal Terminology: Legal Concepts in Language</i>. Den Haag: Boom Juridische Uitgevers.</p> <p>Haigh, R. (2012). <i>Legal English</i>. New York: Routledge.</p> <p>McClurg, A. J. (2008). <i>1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School</i>. St. Paul: Thomson West.</p> <p>McKay, W., Charlton, H. E. &amp; Barsoum, G. (2011). <i>Legal English: How to Understand and Master the Language of the Law</i>. London: Pearson Longman.</p> <p>Wyatt, R. (2006). <i>Check your English Vocabulary for Law: All You Need to Improve Your Vocabulary</i>. London: A&amp;C Black.</p> <p>Yu, K. K. &amp; Kwon, I. H. (2011). <i>Basic Legal English</i>. Cheonan. Sun Moon University.</p>	13



<b>Legal skills</b>	<p>Bradney, A., Cownie, F., Masson, J. M., Neal, A. C., &amp; Newell, D. W. (2005). <i>How to Study Law</i>. London: Sweet &amp; Maxwell.</p> <p>Cherkassky, L., Cressey, J., Gale, C., Guth, J., Kapsis, I., Lister, R., Onzivu, W., &amp; Rook, S. (2011). <i>Legal Skills</i>. China: Palgrave Macmillan.</p> <p>Everett-Nollkamper, P. (2009). <i>Fundamentals of Law Office Management</i>. New York: Delmar Cengage Learning.</p> <p>Finch, E. &amp; Fafinski, S. (2013). <i>Legal Skills</i>. Oxford: Oxford University Press.</p> <p>Francis, T. B., Johnson, L. J., &amp; Jones, W. C. (2012). <i>So You Want to be a Lawyer: The Ultimate Guide to Getting into and Succeeding in Law School</i>. New York: Skyhorse Publishing.</p> <p>Hegland, K F. (2008). <i>Introduction to the Study and Practice of Law in a Nutshell</i>. St. Paul: Thomson West.</p> <p>Hyams, R., Campbell, S., &amp; Evans, A. (2004). <i>Practical Legal Skills</i>. Oxford: Oxford University Press.</p> <p>Humby, T., Kotze, L., Du Plessis, A., &amp; Du Plessis, W. (2012). <i>Introduction to Law and Legal Skills in South Africa</i>. Cape Town: Oxford.</p> <p>Levine, A. K. (2013). <i>The Law School Admission Game: Play like an Expert</i>. Santa Barbara: Abraham Publishing.</p> <p>Maughan, C. &amp; Webb, J. (2005). <i>Lawyering Skills and the Legal Process</i>. Cambridge: Cambridge University Press.</p> <p>Montauk, B. (2011). <i>How to get into Top Law Schools</i>. New York: Prentice Hall Press.</p> <p>Ramy, H. N. (2010). <i>Succeeding in Law School</i>. Durham: Carolina Academic Press.</p> <p>Romantz, D. S. &amp; Vinson, K. E. (2009). <i>Legal Analysis: The Fundamental Skill</i>. Durham: Carolina Academic Press.</p> <p>Schultz, N. L. &amp; Sirico, L. J. (2010). <i>Legal Writing and Other Lawyering Skills</i>. New York: Aspen Publishers.</p> <p>Shapo, H. S. &amp; Shapo, M. S. (2009). <i>Law School Without Fear: Strategies for Success</i>. Spring Valley: Foundations Press.</p> <p>Slocum, R. W. (2011). <i>Legal Reasoning, Writing, and Other Lawyering Skills</i>. LexisNexis e-publications.</p> <p>Stropus, R. &amp; Taylor, C. D. (2009). <i>Bridging the Gap Between College and Law School</i>. Durham: Carolina Academic Press.</p>	<p style="text-align: center;">17</p>
<b>Thinking like a lawyer</b>	<p>Armstrong, S. V. &amp; Terrell, R. P. (2008). <i>Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing</i>. New York: Practising Law Institute.</p> <p>Kavanagh, K. &amp; Nailon, P. (2007). <i>Excellence in the Workplace: Legal and Life Skills in a Nutshell</i>. St. Paul: Thomson West.</p> <p>Miller, R. H. (2011). <i>Law School Confidential: A Complete Guide to the Law School Experience: By Students, for Students</i>. New York: St. Martin Griffin.</p>	<p style="text-align: center;">3</p>
<b>Total</b>		<p style="text-align: center;"><b>N = 44</b></p>

## Appendix C: Quantification of qualitative content analysis

Key: ❖ Law school textbooks ★ Academic legal language textbooks ■ Legal skills textbooks  
 ○ Clinical legal skills textbooks

Key: ❖ Law school textbooks		★ Academic legal language textbooks		■ Legal skills textbooks		○ Clinical legal skills textbooks		N = 44	
Content cluster #1: Communication skills									
Categories	Keywords	Sources	Refined keyword count	Keyword count	Category count	Cluster count			
Writing skills	Grammar	★Armstrong & Terrell (2008); ★Brostoff & Sinsheimer (2003); ★Day, Krois-Linder, & TransLegal (2006); ★Garner (2013); ★Haigh (2012); ★Lee, Hall, & Barone (2007); ★Putman (2013); ★Volokh & Ramsfield (2010); ★Volokh (2007); ★Wyatt (2006) ■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011); ■Ramy (2010); ■Schultz & Sirico (2010); ■Slocum (2011) ○Coughlin, Maimud Rocklin, & Patrick (2013); ○Hegland (2008); ○Maughan & Webb (2005)		★= 10 ■= 6 ○= 3 Total: 19	❖= 6 ★= 22 ■= 6 ○= 4 Total: 38	❖= 7 ★= 22 ■= 7 ○= 6 Total: 42 n <sub>1</sub> =42			
	Legal vocabulary (lexicon)	❖Francis, Johnson, & Jones (2012) ★Armstrong & Terrell (2008); ★Brostoff & Sinsheimer (2003); ★Brown (2007); ★Brown & Rice (2007); ★Day, Krois-Linder, & TransLegal (2006); ★Frost (2009); ★Garner (2013); ★Gubby (2006); ★Gubby (2011); ★Haigh (2012); ★Lee, Hall, & Barone (2007); ★Putman (2013); ★Ray & Ramsfield (2010); ★Reinhart (2007); ★Walemm (2008); ★Wyatt (2006) ■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Slocum (2011) ○Coughlin, Maimud Rocklin, & Patrick (2013); ○Maughan & Webb (2005)		❖= 1 ★= 16 ■= 3 ○= 2 Total: 22					
	Punctuation, proofreading, & editing	❖Miller (2011); ❖Montauk (2011) ★Fajans & Falk (2011); ★Garner (2013); ★Haigh (2012); ★Putman (2013); ★Volokh (2007) ■Bradney & Cownie (2005); ■Finch & Fafinski (2011); ■Ramy (2010); ■Slocum (2011) ○Coughlin, Maimud Rocklin, & Patrick (2013); ○Maughan & Webb (2005)		❖= 1 ★= 5 ■= 4 ○= 2 Total: 12					

<p><b>Structure &amp; organization of ideas (e.g. topic sentence &amp; thesis statement)</b></p>	<p>♣Shapo &amp; Shapo (2009)</p> <p>★Armstrong &amp; Terrell (2008); ★Brown &amp; Rice (2007); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Frost (2009); ★Garner (2013); ★McKay, Charlton, &amp; Barsoum (2011); ★McMurtry-Chubb (2012); ★Ray &amp; Ramsfield (2010); ★Van der Walt &amp; Nienaber (2009); ★Volokh (2007); ★Walenn (2008)</p> <p>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>○Coughlin, Maimud Rocklin, &amp; Patrick (2013); ○Hegland (2008); ○Maughan &amp; Webb (2005)</p> <p>♣McClurg (2008); ♣Miller (2011); ♣Montauk (2011); ♣Shapo &amp; Shapo (2009); ♣Stropus &amp; Taylor (2009)</p>	<p>♣= 1 ★= 11 ■= 6 ○= 3 Total: 21</p>
<p><b>Outlining / drafting</b></p>	<p>★Day, Krois-Linder, &amp; TransLegal (2006); ★Fajans &amp; Falk (2011); ★Garner (2013); ★Lee, Hall, &amp; Barone (2007); ★McMurtry-Chubb (2012)</p> <p>■Bradney &amp; Cownie (2005); ■Finch &amp; Fafinski (2011); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>○Kavanagh &amp; Nailon (2007); ○Hegland (2008); ○Coughlin, Maimud Rocklin, &amp; Patrick (2013)</p>	<p>♣= 5 ★= 5 ■= 5 ○= 3 Total: 18</p>
<p><b>Academic genres</b></p> <ul style="list-style-type: none"> <li>Paragraphs, essays &amp; reports</li> </ul>	<p>♣Levine (2013); ♣McClurg (2008); ♣Miller (2011); ♣Montauk (2011)</p> <p>★Walenn (2008)</p> <p>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011)</p> <p>★Volokh (2007)</p>	<p>♣= 4 ★= 1 ■= 3 Total: 8</p>
<ul style="list-style-type: none"> <li>Dissertation &amp; thesis</li> </ul>	<p>■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011)</p>	<p>★= 1 ■= 2 Total: 3</p>
<ul style="list-style-type: none"> <li>Research paper</li> </ul>	<p>★Brostoff &amp; Sinzheimer (2003); ★Fajans &amp; Falk (2011); ★Garner (2013); ★Volokh (2007)</p>	<p>★= 4 Total: 4</p>
<p><b>Drafting of legal documents</b></p> <ul style="list-style-type: none"> <li>Case brief</li> </ul>	<p>♣Francis, Johnson, &amp; Jones (2012); ♣McClurg (2008); ♣Shapo &amp; Shapo</p>	<p>♣= 4</p>

			<p>(2009); ♣Stropus &amp; Taylor (2009)</p> <p>★Armstrong &amp; Terrell (2008); ★Brostoff &amp; Sinsheimer (2003); ★Day, Krois-Linder, &amp; TransLegal (2006); ★McMurtry-Chubb (2012); ★Putman (2013); ★Reinhart (2007); ★Walenn (2008)</p> <p>■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>○Hegland (2008)</p>	<p>★= 7 ■= 4 ○= 1 Total: 16</p>	<p>★= 9 ■= 4 ○= 4 Total: 21</p>
<ul style="list-style-type: none"> <li>Appellate brief</li> </ul>	<p>♣Stropus &amp; Taylor (2009); ♣McClurg (2008)</p> <p>★Brostoff &amp; Sinsheimer (2003); ★Garner (2013)</p>	<p>♣= 2 ★= 2 ■= 2 Total: 6</p>			
<ul style="list-style-type: none"> <li>Legal memoranda</li> </ul>	<p>■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>♣McClurg (2008)</p> <p>★Armstrong &amp; Terrell (2008); ★Brostoff &amp; Sinsheimer (2003); ★Brown &amp; Rice (2007); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Garner (2013); ★Haigh (2012); ★McKay, Charlton, &amp; Barsoum (2011); ★McMurtry-Chubb (2012); ★Putman (2013)</p> <p>■Bradney &amp; Cownie (2005); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>○Coughlin, Malmud Rocklin, &amp; Patrick (2013); ○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005)</p> <p>★McKay, Charlton, &amp; Barsoum (2011); ★Putman (2013)</p> <p>■Schultz &amp; Sirico (2010)</p>	<p>♣= 1 ★= 10 ■= 4 ○= 3 Total: 18</p>			
<ul style="list-style-type: none"> <li>Court documents (e.g. pleadings &amp; motions)</li> </ul> <p><b>Professional correspondence</b></p> <ul style="list-style-type: none"> <li>Statement of purpose</li> <li>E-mails, letters, &amp; other company documents</li> </ul>	<p>♣Francis, Johnson, &amp; Jones (2012); ♣Levine (2013); ♣Montauk (2011); ♣Stropus &amp; Taylor (2009)</p> <p>★Armstrong &amp; Terrell (2008); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Frost (2009); ★Haigh (2012); ★McKay, Charlton, &amp; Barsoum (2011); ★Putman (2013) ★Van der Walt &amp; Nienaber (2009)</p> <p>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p>	<p>★= 2 ■= 1 Total: 3</p>	<p>♣= 5 ★= 8 ■= 5 ○= 4 Total: 22</p>		





		Total: 13	Total: 18
	<p>(2013); ★Van der Walt &amp; Nienaber (2009); ★Walenn (2008)</p> <p>■Cherkassky, Cresssey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Ramy (2010); ■Slocum (2011)</p> <p>○Coughlin, Maimud Rocklin, &amp; Patrick (2013); ○Hegland (2008)</p> <p>✦Francis, Johnson, &amp; Jones (2012); ✦Stropus &amp; Taylor (2009)</p> <p>★Day, Krois-Linder, &amp; TransLegal (2006); ★McKinney (2012); ★Putman (2013); ★Van der Walt &amp; Nienaber (2009); ★Reinhart (2007)</p> <p>■Bradney &amp; Cownie (2005); ■Cherkassky, Cresssey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook(2011); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</p> <p>○Coughlin, Maimud Rocklin, &amp; Patrick (2013); ○Hegland (2008)</p> <p>✦Miller (2011)</p> <p>★Brostoff &amp; Sinzheimer (2003); ★Brown &amp; Rice (2007); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Haigh (2012)</p> <p>■Finch &amp; Fafinski (2011); ■Schultz &amp; Sirico (2010)</p> <p>○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005)</p>	<p>✦= 2 ★= 5 ■= 5 ○= 2 Total: 14</p>	<p>✦= 6 ★= 9 ■= 7 ○= 6 Total: 28</p>
<b>Genre analysis of case law &amp; statutes</b>			
<b>Rhetorical features: body language, tone of voice, emphasis, &amp; pronunciation</b>			
<b>Academic genres</b>			
<ul style="list-style-type: none"> <li>Discussions &amp; participation</li> </ul>	<p>✦= 2 ★= 5 ○= 2 Total: 9</p>	<p>✦= 2 ★= 7 ■= 3 ○= 3 Total: 15</p>	
<ul style="list-style-type: none"> <li>Formal presentations</li> </ul>	<p>★= 5 ■= 3 ○= 1 Total: 9</p>		

<p><b>Legal genres</b></p> <ul style="list-style-type: none"> <li>Argumentation, negotiation &amp; dispute resolution</li> </ul>	<p>♣=3 ★=6 ■=7 ○=6 Total: 22</p>	<p>♣=2 ★=6 ■=7 ○=5 Total: 20</p>	<p>♣=3 ★=6 ■=7 ○=6 Total: 22</p>
<ul style="list-style-type: none"> <li>Client interviewing &amp; counseling</li> </ul>	<p>★=5 ■=3 ○=3 Total: 11</p>	<p>♣=1 ★=2 ■=2 ○=3 Total: 8</p>	<p>♣=1 ★=2 ■=2 ○=3 Total: 8</p>
<ul style="list-style-type: none"> <li>Court advocacy (e.g. opening statements, closing arguments, &amp; examinations)</li> </ul>	<p>♣=2 ★=1 ■=2 Total: 5</p>	<p>♣=2 ★=1 ■=2 Total: 5</p>	<p>♣=2 ★=1 ■=2 Total: 5</p>
<ul style="list-style-type: none"> <li>Moot court</li> </ul>	<p>★=1</p>	<p>★=1</p>	<p>★=1</p>
<p><b>Professional genres</b></p> <ul style="list-style-type: none"> <li>Telephoning</li> </ul>	<p>♣=4</p>	<p>♣=4</p>	<p>♣=4</p>

				<ul style="list-style-type: none"> <li>★= 3</li> <li>■= 3</li> <li>○= 1</li> <li>Total: 11</li> </ul>	
	<ul style="list-style-type: none"> <li>• Business meetings</li> <li>• Job interviews</li> </ul>	<ul style="list-style-type: none"> <li>★Frost (2009); ★Haigh (2012)</li> <li>○Kavanagh &amp; Nailon (2007)</li> <li>♣Levine (2013); ♣Miller (2011); ♣Montauk (2011); ♣Stropus &amp; Taylor (2009)</li> <li>★Day, Krois-Linder, &amp; TransLegal (2006)</li> <li>■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Ramy (2010)</li> <li>♣McClurg (2008); ♣Shapo &amp; Shapo (2009); ♣Stropus &amp; Taylor (2009)</li> <li>★McKay, Charlton, &amp; Barsoum (2011); ★McMurtry-Chubb (2012); ★Van der Walt &amp; Nienaber (2009); ★Volokh (2007); ★Walenn (2008)</li> <li>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011)</li> <li>○Hegland (2008); ○Maughan &amp; Webb (2005)</li> <li>★Brostoff &amp; Sinsheimer (2003); ★Lee, Hall, &amp; Barone (2007); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Van der Walt &amp; Nienaber (2009); ★Walenn (2008)</li> <li>■Bradney &amp; Cownie (2005); ■Finch &amp; Fafinski (2011)</li> <li>♣Montauk (2011); ♣McClurg (2008)</li> <li>★Brostoff &amp; Sinsheimer (2003); ★Haigh (2012); ★Lee, Hall, &amp; Barone (2007)</li> <li>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011); ■Slocum (2011)</li> <li>○Everett-Nollkamper (2009); ○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005)</li> <li>★Brostoff &amp; Sinsheimer (2003)</li> <li>○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005)</li> </ul>	<ul style="list-style-type: none"> <li>Total: 1</li> <li>★= 2</li> <li>○= 1</li> <li>Total = 3</li> <li>♣= 4</li> <li>★= 1</li> <li>■= 2</li> <li>Total: 7</li> </ul>	<ul style="list-style-type: none"> <li>♣= 3</li> <li>★= 5</li> <li>■= 3</li> <li>○= 2</li> <li>Total: 13</li> </ul>	<ul style="list-style-type: none"> <li>♣= 3</li> <li>★= 8</li> <li>■= 3</li> <li>○= 2</li> <li>Total = 16</li> </ul>
<b>Listening skills</b>	<b>Note taking</b>				
	<b>Listening to a lecture</b>			<ul style="list-style-type: none"> <li>★= 5</li> <li>■= 2</li> <li>Total: 7</li> </ul>	
<b>Social skills</b>	<b>Networking, collaboration, law school community (culture), &amp; socialization (context of culture)</b>			<ul style="list-style-type: none"> <li>♣= 2</li> <li>★= 3</li> <li>■= 4</li> <li>○= 3</li> <li>Total = 12</li> </ul>	
	<b>Diversity management</b>			<ul style="list-style-type: none"> <li>★= 1</li> <li>○= 2</li> <li>Total: 3</li> </ul>	



<b>Content cluster #2: Thinking skills</b>					
<b>Categories</b>	<b>Keywords</b>	<b>Sources</b>	<b>Keyword count</b>	<b>Category count</b>	<b>Cluster count</b>
Critical thinking	Mnemonic devices (e.g. IRAC, IPAC, CLEO, & PLAN)	<ul style="list-style-type: none"> <li>♣Stropus &amp; Taylor (2009)</li> <li>★Putman (2013)</li> <li>■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011); ■Ramy (2010)</li> <li>○Hegland (2008); ○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005); ○Romantz &amp; Vinson (2009)</li> </ul>	<ul style="list-style-type: none"> <li>♣= 1</li> <li>★= 1</li> <li>■= 3</li> <li>○= 4</li> <li>Total: 8</li> </ul>	<ul style="list-style-type: none"> <li>♣= 3</li> <li>★= 10</li> <li>■= 7</li> <li>○= 5</li> <li>Total: 25</li> </ul>	<ul style="list-style-type: none"> <li>♣= 7</li> <li>★= 19</li> <li>■= 7</li> <li>○= 7</li> <li>Total: 40</li> <li>n<sub>2</sub>=40</li> </ul>
	Inductive & deductive reasoning	<ul style="list-style-type: none"> <li>♣Francis, Johnson, &amp; Jones (2012); ♣Shapo &amp; Shapo (2009)</li> <li>★Armstrong &amp; Terrell (2008); ★Brostoff &amp; Sinsheimer (2003); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Fajans &amp; Falk (2011); ★Gubby (2006); ★Lee, Hall, &amp; Barone (2007); ★Putman (2013); ★Van der Walt &amp; Nienaber (2009); ★Volokh (2007)</li> <li>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011); ■Humby, Kotze, Du Plessis, &amp; Du Plessis (2012); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</li> <li>○Coughlin, Malmud Rocklin, &amp; Patrick (2013); ○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005); ○Romantz &amp; Vinson (2009)</li> </ul>	<ul style="list-style-type: none"> <li>♣= 2</li> <li>★= 9</li> <li>■= 7</li> <li>○= 4</li> <li>Total: 22</li> </ul>		
Hermeneutical skills	Lateral thinking (legal problem diagnosis)	<ul style="list-style-type: none"> <li>♣Francis, Johnson, &amp; Jones (2012); ♣Shapo &amp; Shapo (2009)</li> <li>★Armstrong &amp; Terrell (2008); ★Brostoff &amp; Sinsheimer (2003); ★Day, Krois-Linder, &amp; TransLegal (2006); ★Lee, Hall, &amp; Barone (2007); ★McMurtry-Chubb (2012); ★Putman (2013); ★Volokh (2007)</li> <li>■Bradney &amp; Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■Finch &amp; Fafinski (2011); ■Humby, Kotze, Du Plessis, &amp; Du Plessis (2012); ■Ramy (2010); ■Schultz &amp; Sirico (2010); ■Slocum (2011)</li> <li>○Coughlin, Malmud Rocklin, &amp; Patrick (2013); ○Kavanagh &amp; Nailon (2007); ○Maughan &amp; Webb (2005); ○Romantz &amp; Vinson (2009)</li> </ul>	<ul style="list-style-type: none"> <li>♣= 2</li> <li>★= 7</li> <li>■= 7</li> <li>○= 4</li> <li>Total: 20</li> </ul>		
	Interpretation of cases & statutes	<ul style="list-style-type: none"> <li>♣Francis, Johnson, &amp; Jones (2012); ♣Shapo &amp; Shapo (2009)</li> <li>★Brostoff &amp; Sinsheimer (2003); ★Brown &amp; Rice (2007); ★Day, Krois-Linder, &amp; TransLegal</li> </ul>	<ul style="list-style-type: none"> <li>♣= 2</li> <li>★= 8</li> <li>■= 5</li> </ul>	<ul style="list-style-type: none"> <li>♣= 2</li> <li>★= 8</li> <li>■= 5</li> </ul>	

Cognitive schemata	Legal content knowledge	<p>(2006); ★Haigh (2012); ★McKinney (2012); ★Putman (2013); ★Van der Walt &amp; Nienaber (2009); ★Yu &amp; Kwon (2011)</p> <p>■ Finch &amp; Fafinski (2011); ■ Humby, Kotze, Du Plessis, &amp; Du Plessis (2012); ■ Ramy (2010); ■ Schultz &amp; Sirico (2010); ■ Slocum (2011)</p> <p>○ Coughlin, Malmud Rocklin, &amp; Patrick (2013); ○ Hegland (2008); ○ Hyams, Campbell, &amp; Evans (2004); ○ Kavanagh &amp; Nailon (2007); ○ Romantz &amp; Vinson (2009)</p> <p>♣ Francis, Johnson, &amp; Jones (2012); ♣ Shapo &amp; Shapo (2009); ♣ Stropus &amp; Taylor (2009)</p> <p>★ Brostoff &amp; Sinzheimer (2003); ★ Brown (2007); ★ Brown &amp; Rice (2007); ★ Day, Krois-Linder, &amp; TransLegal (2006); ★ Gubby (2006); ★ Gubby (2011); ★ Lee, Hall, &amp; Barone (2007); ★ Putman (2013); ★ Reinhart (2007); ★ Van der Walt &amp; Nienaber (2009); ★ Walenn (2008); ★ Yu &amp; Kwon (2011)</p> <p>■ Bradney &amp; Cownie (2005); ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Finch &amp; Fafinski (2011); ■ Humby, Kotze, Du Plessis, &amp; Du Plessis (2012); ■ Ramy (2010); ■ Schultz &amp; Sirico (2010); ■ Slocum (2011)</p> <p>○ Coughlin, Malmud Rocklin, &amp; Patrick (2013); ○ Hegland (2008); ○ Kavanagh &amp; Nailon (2007); ○ Maughan &amp; Webb (2005)</p> <p>♣ Miller (2011)</p> <p>■ Bradney &amp; Cownie (2005); ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Finch &amp; Fafinski (2011); ■ Ramy (2010)</p> <p>○ Kavanagh &amp; Nailon (2007); ○ Hegland (2008)</p> <p>■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011)</p> <p>○ Kavanagh &amp; Nailon (2007); ○ Maughan &amp; Webb (2005)</p> <p>♣ Miller (2011); ♣ Montauk (2011); ♣ Shapo &amp; Shapo (2009); ♣ Stropus &amp; Taylor (2009)</p> <p>★ Volokh (2007)</p> <p>■ Bradney &amp; Cownie (2005); ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Finch &amp; Fafinski (2011); ■ Ramy (2010)</p> <p>○ Everett-Nollikamper (2009); ○ Kavanagh &amp; Nailon (2007)</p> <p>♣ Levine (2013); ♣ McClurg (2008); ♣ Miller (2011); ♣ Montauk (2011)</p>	<p>○ = 5 Total: 20</p>	<p>○ = 5 Total: 20</p>
Study skills	Collaboration	<p>♣ = 1 ■ = 4 ○ = 2 Total: 7</p>	<p>♣ = 5 ★ = 1 ■ = 4 ○ = 3 Total: 13</p>	
Examination skills	LSAT test taking skills	<p>■ = 1 ○ = 2 Total: 3</p> <p>♣ = 4 ★ = 1 ■ = 4 ○ = 2 Total: 11</p>	<p>♣ = 4 Total: 4</p> <p>♣ = 6 ★ = 3</p>	

Categories	Keywords	Sources	Keyword count	Category count	Cluster count
Technological skills	Examination preparation & writing	♣McClurg (2008); ♣Shapo & Shapo (2009); ♣Stropus & Taylor (2009) ★Brostoff & Sinsheimer (2003); ★McKay, Charlton, & Barsoum (2011); ★McMurtry-Chubb (2012) ■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011); ■Ramy (2010) ○Hegland (2008) ♣Shapo & Shapo (2009)	♣= 3 ★= 3 ■= 4 ○= 1 Total: 11	■= 4 ○= 1 Total: 14	
	Revision	■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011); ■Ramy (2010) ♣Francis, Johnson, & Jones (2012); ♣McClurg (2008); ♣Miller (2011)	♣= 1 ■= 4 Total: 5		
	Computer literacy	■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011) ○Everett-Nollkamper (2009)	♣= 3 ■= 3 ○= 1 Total: 7	♣= 3 ■= 3 ○= 1 Total: 7	
<b>Content cluster #3: Research skills</b>					
Literature search	Library & electronic legal research	★Putman (2013); ★Reinhart (2007); ★Volokh (2007) ■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011); ■Humby, Kotze, Du Plessis, & Du Plessis (2012); ■Schultz & Sirico (2010)	★= 3 ■= 5 ○= 1 Total: 9	★= 5 ■= 6 ○= 3 Total: 14	♣= 3 ★= 12 ■= 7 ○= 4 Total: n <sub>3</sub> =26
	Fact finding / literature search	○Everett-Nollkamper (2009) ★Fajans & Falk (2011); ★Putman (2013); ★Van der Walt & Nienaber (2009); ★Volokh (2007) ■Bradney & Cownie (2005); ■Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, & Rook (2011); ■Finch & Fafinski (2011); ■Humby, Kotze, Du Plessis, & Du Plessis (2012); ■Ramy (2010); ■Schultz & Sirico (2010)	★= 4 ■= 6 ○= 2 Total: 12		

<b>Research design</b>	<p> <b>Qualitative &amp; quantitative research</b>  <b>Methodologies &amp; methods</b> </p>	<p>           O Coughlin, Maimud Rocklin, &amp; Patrick (2013); O Kavanagh &amp; Nailon (2007)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011);            ♣ Shapo &amp; Shapo (2009)            ★ Volokh (2007)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011)            O Kavanagh &amp; Nailon (2007)         </p>	<p>           ■= 1            Total = 1            ♣= 1            ★= 1            ■= 1            O= 1            Total: 4         </p>	<p>           ♣= 1            ★= 1            ■= 1            O= 1            Total: 4         </p>
<b>Research tools</b>	<p> <b>Synthesizing legal sources &amp; ideas</b> </p>	<p>           ♣ Shapo &amp; Shapo (2009); ♣ Stropus &amp; Taylor (2009)            ★ Brostoff &amp; Sinzheimer (2003); ★ Lee, Hall, &amp; Barone (2007); ★ Frost (2009); ★ Putman (2013); ★ Ray &amp; Ramsfield (2010); ★ Volokh (2007)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Ramy (2010); ■ Slocum (2011)            O Coughlin, Maimud Rocklin, &amp; Patrick (2013); O Hegland (2008); O Kavanagh &amp; Nailon (2007)         </p>	<p>           ♣= 2            ★= 6            ■= 3            O= 3            Total: 14         </p>	<p>           ♣= 4            ★= 12            ■= 5            O= 4            Total: 25         </p>
	<p> <b>Academic research ethics</b> </p>	<p>           ★ Fajans &amp; Falk (2011); ★ Putman (2013); ★ Volokh (2007)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Finch &amp; Fafinski (2011)         </p>	<p>           ★= 3            ■= 2            O= 1            Total: 6         </p>	
	<p> <b>Conventions, citation styles, &amp; document design</b> </p>	<p>           O Coughlin, Maimud Rocklin, &amp; Patrick (2013)            ♣ McClurg (2008); ♣ Shapo &amp; Shapo (2009)            ★ Brostoff &amp; Sinzheimer (2003); ★ McKay, Charlton, &amp; Barsoum (2011); ★ Garner (2013); ★ Haigh (2012); ★ Putman (2013); ★ Volokh (2007)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011); ■ Finch &amp; Fafinski (2011); ■ Ramy (2010); ■ Schultz &amp; Sirico (2010)         </p>	<p>           ♣= 2            ★= 6            ■= 4            O= 1            Total: 13         </p>	
	<p> <b>Feedback</b> </p>	<p>           O Coughlin, Maimud Rocklin, &amp; Patrick (2013)            ■ Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, &amp; Rook (2011)         </p>	<p>           ■= 1            O= 2            Total: 3         </p>	
<b>Publishing</b>	<p> <b>Publishing process &amp; writing competitions</b> </p>	<p>           O Kavanagh &amp; Nailon (2007); O Maughan &amp; Webb (2005)            ★ Fajans &amp; Falk (2011); ★ Volokh (2007)         </p>	<p>           ★= 2            Total: 2         </p>	<p>           ★= 2            Total: 2         </p>

<b>Content cluster #4: Pedagogic skills</b>					
<b>Categories</b>	<b>Keywords</b>	<b>Sources</b>	<b>Keyword count</b>	<b>Category count</b>	<b>Cluster count</b>
Law school teaching methods	Traditional, contemporary, & clinical teaching methods & classroom etiquette	♣Francis, Johnson, & Jones (2012); ♣McClurg (2008); ♣Miller (2011); ♣Shapo & Shapo (2009); ♣Stropus & Taylor (2009) ★Brostoff & Sinsheimer (2003) ■Finch & Fafinski (2011); ■Ramy (2010) ○Hegland (2008); ○Maughan & Webb (2005) ♣Montauk (2011); ♣Shapo & Shapo (2009) ★Yu & Kwon (2011) ■Humby, Kotze, Du Plessis, & Du Plessis (2012) ○Everett-Nollkamper (2009); ○Hegland (2008); ○Hyams, Campbell, & Evans (2004); ○Kavanagh & Nailon (2007); ○Maughan & Webb (2005)	♣= 5 ★= 1 ■= 2 ○= 2 Total: 10	♣= 5 ★= 1 ■= 2 ○= 2 Total: 10	♣= 6 ★= 2 ■= 3 ○= 5 Total: $n_4=16$
Legal epistemology	Ethical & jurisprudential concerns	○Hegland (2008); ○Maughan & Webb (2005) ♣Montauk (2011); ♣Shapo & Shapo (2009) ★Yu & Kwon (2011) ■Humby, Kotze, Du Plessis, & Du Plessis (2012) ○Everett-Nollkamper (2009); ○Hegland (2008); ○Hyams, Campbell, & Evans (2004); ○Kavanagh & Nailon (2007); ○Maughan & Webb (2005)	♣= 2 ★= 1 ■= 1 ○= 5 Total: 9	♣= 2 ★= 1 ■= 1 ○= 5 Total: 9	



**Appendix D: Skills distribution across typology of EALP-type textbooks**

Skills-based textbook typology		Content clusters			
EALP-type textbooks		Communi- cation skills	Thinking skills	Research skills	Pedagogic skills
<b>+</b> Law school textbooks	Francis, T. B., Johnson, L. J. & Jones, W. C. (2012). <i>So You Want to be a Lawyer: the Ultimate Guide to Getting into and Succeeding in Law School</i> . New York: Skyhorse Publishing.	*	*		*
	Levine, A. K. (2013). <i>The Law School Admission Game: Play Like an Expert</i> . Santa Barbara: Abraham Publishing.	*	*		
	McClurg, A. J. (2008). <i>1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School</i> . St. Paul: Thomson West.	*	*	*	*
	Miller, R. H. (2011). <i>Law School Confidential: A Complete Guide to the Law School Experience: By Students, for Students</i> . New York: St. Martin Griffin.	*	*		*
	Montauk, B. (2011). <i>How to get into Top Law Schools</i> . New York: Prentice Hall Press.	*	*		*
	Shapo, H. S. & Shapo, M. S. (2009). <i>Law School Without Fear: Strategies for Success</i> . Spring Valley: Foundations Press.	*	*	*	*
	Stropus, R. & Taylor, C. D. (2009). <i>Bridging the Gap Between College and Law School</i> . Durham: Carolina Academic Press.	*	*	*	*
		<b>7</b>	<b>7</b>	<b>3</b>	<b>6</b>
<b>★</b> Academic legal language textbooks	Armstrong, S. V. & Terrell, R. P. (2008). <i>Thinking like a Writer: A Lawyer's Guide to Effective Writing and Editing</i> . New York: Practicing Law Institute.	*	*		
	Brostoff, T. K. & Sinsheimer, A. (2003). <i>Legal English: An Introduction to the Legal Language and Culture of the United States</i> . New York: Oceana Publications.	*	*	*	*
	Brown, G. W. (2007). <i>Legal Terminology</i> . New York: Prentice Hall.	*	*		
	Brown, G. W. & Rice, S. (2007). <i>Professional English in Use: Law</i> . Cambridge: Cambridge University Press.	*	*		
	Day, J., Krois-Linder, A. & TransLegal. (2006). <i>International Legal English: A Course for Classroom or Self-Study Use</i> . Cambridge: Cambridge University Press.	*	*		
	Fajans, E. & Falk, M. R. (2011). <i>Scholarly Writing for Law Students: Seminars, Law Review Notes and Law Review Competitions</i> . St. Paul: Thomson West.	*	*	*	
	Frost, A. (2009). <i>English for Legal Professionals</i> . Oxford: Oxford University Press.	*		*	
	Garner, B. A. (2013). <i>Legal Writing in Plain English: A Text with Exercises</i> . Chicago:	*		*	

	University of Chicago Press.				
	Gubby, H. (2006). <i>Practical Legal English</i> . Den Haag: Boom Juridische Uitgevers.	*	*		
	Gubby, H. (2011). <i>English Legal Terminology: Legal Concepts in Language</i> . Den Haag: Boom Juridische Uitgevers.	*	*		
	Haigh, R. (2012). <i>Legal English</i> . New York: Routledge.	*	*	*	
	Lee, D. S., Hall, C., & Barone, S. M. (2007). <i>American Legal English: Using Language in Legal Contexts</i> . Ann Arbor: University of Michigan Press.	*	*	*	
	McKay, W. & Charlton, H. E. & Barsoum, G. (2011). <i>Legal English: How to Understand and Master the Language of the Law</i> . London: Pearson Longman.	*	*	*	
	McKinney, R. A. (2012). <i>Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert</i> . Durham: Carolina Academic Press.	*	*		
	McMurtry-Chubb, T. A. (2012). <i>Legal Writing in the Disciplines: A Guide to Legal Writing Mastery</i> . Durham: Carolina Academic Press.	*	*		
	Putman, W. H. (2013). <i>Legal Analysis and Writing</i> . New York: Delmar Cengage Learning.	*	*	*	
	Ray, M. B. & Ramsfield, J. J. (2010). <i>Legal writing: getting it right and getting it written</i> . St. Paul: Thomson West.	*		*	
	Reinhart, S. M. (2007). <i>Strategies for legal Case Reading and Vocabulary Development</i> . Ann Arbor: University of Michigan Press.	*	*	*	
	Volokh, E. (2007). <i>Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review</i> . New York: Foundation Press.	*	*	*	
	Van der Walt, C. & Nienaber, A. G. (2009) <i>English for Law Students</i> . Cape Town: Juta.	*	*	*	
	Walenn, J. (2008). <i>English for law in higher education studies</i> . Reading: Garnet Education.	*	*		
	Wyatt, R. (2006). <i>Check your English Vocabulary for Law: All You Need to Improve Your Vocabulary</i> . London: A&C Black.	*			
	Yu, K. K. & Kwon, I. H. (2011). <i>Basic Legal English</i> . Cheonan. Sun Moon University.		*		*
		<b>22</b>	<b>19</b>	<b>12</b>	<b>2</b>
■ Legal skills textbooks	Bradney, A., Cownie, F., Masson, J. M., Neal, A. C., & Newell, D. W. (2005). <i>How to Study Law</i> . London: Sweet & Maxwell.	*	*	*	
	Cherkassky, L., Cressey, J., Gale, C., Guth, J., Kapsis, I., Lister, R., Onzivu, W.,	*	*	*	



	& Rook, S. (2011). <i>Legal Skills</i> . China: Palgrave Macmillan.				
	Finch, E. & Fafinski, S. (2013). <i>Legal Skills</i> . Oxford. Oxford University Press.	*	*	*	*
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		<b>7</b>	<b>7</b>	<b>7</b>	<b>3</b>
<b>O Clinical legal skills textbooks</b>	Coughlin, C., Malmud Rocklin, J., & Patrick, S. (2013). <i>A Lawyer Writes: A Practical Guide to Legal Analysis</i> . Durham: Carolina Academic Press.	*	*	*	
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		<b>6</b>	<b>7</b>	<b>4</b>	<b>5</b>
<b>Number of EALP-type textbooks addressing skills in the different content clusters</b>		<b>n<sub>1</sub> = 42</b>	<b>n<sub>2</sub> = 40</b>	<b>n<sub>3</sub> = 26</b>	<b>n<sub>4</sub> = 16</b>