The Law Teacher

ISSN: 0306-9400 (Print) 1943-0353 (Online) Journal homepage: www.tandfonline.com/journals/ralt20

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Marc Johnson & Laura Bradley

To cite this article: Marc Johnson & Laura Bradley (2024) Essays as "clinical" pedagogy: a Hegelian approach to essay writing, The Law Teacher, 58:4, 515-534, DOI: 10.1080/03069400.2024.2422752

To link to this article: https://doi.org/10.1080/03069400.2024.2422752

Published online: 13 Nov 2024.

THE LAW TEACHER
2024, VOL. 58, NO. 4, 515–534
https://doi.org/10.1080/03069400.2024.2422752

Essays as "clinical" pedagogy: a Hegelian approach to essay writing

Marc Johnson [a] and Laura Bradley [b]

[a]Department of Business, Management, and Law, Cardiff School of Management, Cardiff Metropolitan University, Cardiff, UK; [b]University of Law, Birmingham, UK

ABSTRACT

Current debates in clinical legal education (CLE) exclude essay writing as a legitimate form of "clinical" pedagogy. This article argues that essay writing should be classified as a form of CLE due to its potential to mirror legal practice and enhance students' reflective capacities. By incorporating Hegelian dialectical reasoning, the paper proposes a structured approach to legal essay writing that includes thesis, antithesis and synthesis. This method encourages students to engage deeply with legal arguments, reflecting on their merits and counterarguments. The dialectical approach aligns with constructivist teaching methodologies, promoting critical thinking and practical skills relevant to legal practice and beyond. The article outlines the theoretical basis of this model and provides a practical framework for its implementation in legal education. It further connects this pedagogical strategy to the development of transferable skills that prepare students for professional legal environments. Through this dialectical method, the paper advocates a more holistic and nuanced understanding of legal concepts, bridging the gap between academic theory and practical application, and, thus, making the case for the incorporation of Hegel-inspired essay writing into the definition of CLE.

ARTICLE HISTORY Received 15 February 2024; Accepted 7 October 2024

KEYWORDS Clinical legal education; Derrida; essay writing; Hegel; legal pedagogy

Introduction

Legal education is an evolving field, continuously striving for a more effective pedagogic strategy which adequately meets the needs of the several professions that law students progress into, and the appropriate academic rigour associated with the respective levels of study.[1] However, one of the challenges facing legal education is that professionals, such as lawyers, encounter problems which can be convoluted, chaotic and confusing and may not be solved through technical rationality.[2] Donald

CONTACT Marc Johnson mrjohnson@cardiffmet.ac.uk Department of Business, Management, and Law, Cardiff School of Management, Cardiff Metropolitan University, Llandaff Campus, Western Ave, Cardiff CF5 2YB, UK

[1]Stephen Mayson, "The Education and Training of Solicitors: Time for Change" (2011) 45 The Law Teacher 278.

[2]Donald Schön, *Educating the Reflective Practitioner* (Jossey-Bass 1987) 3. For a critique of the positivist approach in legal education, see Omar Madhloom, "A Normative Approach to Developing Reflective Legal Practitioners: Kant and Clinical Legal Education" (2019) 53 The Law Teacher 416.

Schön defines technical rationality as an "epistemology of practice derived from the positivist philosophy".[3] In other words, problems encountered by professionals may not necessarily be found in books.[4] This is largely due to the "indeterminate zones" experienced by practitioners.[5] Consequently, one of the perennial challenges that educators in the legal disciplines face is applying relevant pedagogies that reflect the complexities and nuances of practising law and offer transferable skills to the myriad of other professions that law students take up.

In highlighting the distinctive features of a law degree, the Quality Assurance Agency's Subject Benchmark Statement (SBS) for Law[6] recommends practical teaching and assessment opportunities, such as through clinical legal education and other experiential methods.[7] This article seeks to start an academic debate regarding the use of the dialectic method in essay writing, namely in relation to Hegel's work. It is, therefore, beyond the scope of this article to discuss how this method should be incorporated into the curriculum and assessed. Consequently, this article will only assert that essays ought to be classed as clinical pedagogy because they mirror, to a certain extent, the realities of legal practice, broadly defined.

Clinical legal education

Clinical legal education (CLE) is a type of experiential education, which can incorporate various forms of active learning, such as seminar work.[8] However, for Richard Grimes, drafting exercises, moots and presumably essay writing cannot be described as "clinical", because this term is reserved exclusively for "a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised".[9] We agree with Grimes' description of "clinical" activities, but also submit that essay writing, underpinned by Hegel's dialectic reasoning, promotes the application of research, drafting and application of skills that judges and lawyers frequently use in practice. Rachel Dunn, on the other hand, while also excluding essays from the definition of CLE, includes non-live client-focused experiential models, such as policy clinics/projects, within her taxonomy of CLE.[10] While policy clinics are not new to CLE,[11]

[3]Schön (n 2) 3.
[4]Roscoe Pound, "Law in Books and Law in Action" (1910) 44 American Law Review 12.
[5]Schön (n 2) 3.
[6]The SBS for Law defines what can be expected of a law graduate, in terms of what they might know at the end of their studies. While not a regulatory requirement, SBSs are an established part of the quality assurance arrangements in UK higher education; see Quality Assurance Agency, Subject Benchmark Statement: Law (March 2023) <www.qaa.ac.uk/the-quality-code/subject-benchmark-statements/subject-benchmark-statement-law> accessed 10 June 2024; for an explanation concerning the aims of the Statement, see Chris Ashford, "The Quality Assurance Agency Law Subject Benchmark Statement 2023" (2024) 58 The Law Teacher 421.
[7]Quality Assurance Agency, Subject Benchmark Statement: Law (March 2023) 6 <www.qaa.ac.uk/the-quality-code/subject-benchmark-statements/subject-benchmark-statement-law> accessed 10 June 2024.
[8]Richard Grimes, "The Theory and Practice of Clinical Legal Education" in Julian Webb and Caroline Maughan (eds), *Teaching Lawyers' Skills* (Butterworths 1996) 138.
[9]ibid.
[10]Rachel Dunn, "The Taxonomy of Clinics: The Realities and Risks of All Forms of Clinical Legal Education" (2016) 3 Asian Journal of Legal Education 174.
[11]William Wesley Patton, "Getting Back to the Sandbox: Designing a Legal Policy Clinic" (2011) 16 International Journal of Clinical Legal Education 96; Michael Coper, "Law Reform and Legal Education: Uniting Separate Worlds" (2008) 39 University of Toledo Law Review 233.

they are an emerging concept in England and Wales.[12] Students in these clinics are engaged in activities such as responding to consultation papers, drafting literature reviews on a particular topic, and making recommendations for law reform. Essay writing utilises skills similar to those required in policy clinics, such as research, writing skills and making normative claims about what the law ought to be.[13]

It will be argued that essay writing, when deployed in accordance with our proposed model, is discursive in nature and contains a subjective element by requiring the students to evaluate an issue and justifying the reasoning process which underpinned their evaluation.[14] Because of this, the proposed model below ought to be classed as "clinical". To achieve these two aims (that essays can be clinical and mirror the realities of legal practice), this article will begin by proposing that essay writing, when coupled with the dialectical structure outlined below, ought to fall within the definition of CLE. By combining the process of essay writing with a form of argumentation which targets functional knowledge in context, we can produce an essay structure and open the door to an exciting use of essays as a tool to demonstrate functional knowledge in context. The form of argumentation proposed here is based on Hegelian dialectical reasoning.[15]

This paper also contends that using a dialectical approach to writing legal essays is a useful transferable skill and enhances students' reflective capacities. The adoption of a dialectical approach to essay writing, informed by Hegelian dialectics, applies the triadic structure of thesis, antithesis and synthesis to create a form of argumentation that bridges the theory–practice divide. This form causes students to reflect on the weight of an argument, the merits of counterarguments, and to engage with the process of synthesis of information from several sources. A dialectical approach to writing legal essays appears to align well with a constructivist approach to teaching, which encourages students to construct knowledge through critical analysis and synthesis of interaction between evolving knowledge and the developing environment.[16] This article will seek to demonstrate that the approach causes students to create a legal argument by analysing their thesis and reflecting on the weight of their argument by considering the authority for each element of their thesis *seriatim*. Particularly in legal education, where critical thinking[17] and argumentative skills are

[12]Rachel Dunn, Lyndsey Bengtsson and Siobhan McConnell, "The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Education Tool for Students" (2020) 27(2) International Journal of Clinical Legal Education 68.

[13]We are grateful to the reviewers for their feedback on this point.

[14]Patrick R Goold, "The Legal Judgment: A Novel Twist on the Classic Law School Problem Question" (2022) 56 The Law Teacher 368.

[15]It should be noted here that the type of dialectics proposed is not solely attributed to GWF Hegel. Rather, it is a culmination of dialectical theory that stretches back as far as Plato. This will be explored later in this article; however, for an excellent explanation of Hegel's dialectics and the development thereof, see Julie E Maybee, "Hegel's Dialectics", *Stanford Encyclopedia of Philosophy* (3 June 2016) <https://plato.stanford.edu/entries/hegel-dialectics/> accessed 10 October 2023.

[16]Yu Wu, Patrick C Shih and John M Carroll, "Design for Supporting Dialectical Constructivist Learning Activities" in L Gómez Chova, A López Martínez, and I Candel Torres (eds), *Proceedings of the International Conference on Education and New Learning Technologies* (International Conference on Education and New Learning Technologies, Barcelona, Spain, July 2014). See also David Moshman, "Exogenous, Endogenous, and Dialectical Constructivism" (1982) 2 Developmental Review 371.

[17]Here, we draw on two definitions of critical thinking. First, the "active, persistent and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it, and the further conclusions to which it tends" from John Dewey, *How We Think* (first published 1910, DC Heath and Co 1933) 6. Second, the "intellectually disciplined process of actively and skillfully conceptualizing, applying, analyzing, synthesizing, and/or evaluating information gathered from, or generated by, observation, experience, reflection, reasoning, or communication, as a guide to belief and action" from Michael Scriven and Richard Paul, "A Statement by Michael Scriven & Richard Paul" (Annual International Conference on Critical Thinking and Education Reform, Summer 1987).

pivotal, a dialectical approach can facilitate deeper understanding and more effective communication of legal concepts and arguments.[18] Here, we contend that this both emulates, and prepares students for, the reasoning process that professionals, such as lawyers, encounter when attempting to address a problem or proposition that may arise in a professional scenario, whether that be within the legal profession or otherwise.

To achieve this objective, this article will first outline the theoretical basis for dialectical essay writing that has been mentioned above. It will then describe the structure that we propose in our model. Following this, it will then outline the implementation of that structure, regarding which we annex a useful diagram at the Appendix along with suggested allocations of word counts to help with the practical application of this structure. This article will then connect the theoretical model with workplace utility to reassert the experiential nature of the dialectical essay before concluding.

The theoretical basis for dialectical essay writing

Unlike problem-based questions which benefit from literature on models such as IRAC (Issue, Rule, Application, Conclusion),[19] there is a relative dearth of literature providing students with a framework that aids in structuring dialectical essays. First, it is necessary to map out the theoretical basis for our dialectical model, given that it is deeply rooted in the Hegelian dialectical reasoning framework. For ease of instruction, the clarity in application to essays and the effective development of skills, we have adopted the triadic formula of thesis, antithesis and synthesis. We recognise that Hegel himself never used these terms; rather, in the development of his work, it has become commonplace to use these terms to represent elements of his work and the post-Hegelian development in this field of philosophy.

Hegelian dialectics

Generally, the concept of dialectics can be traced to Heraclitus;[20] however, we do not suggest it is necessary to trace its origins back prior to the focus of this article. The dialectic is inherent in, and pervasive throughout, Hegel's work. For example, when discussing the body of Hegel's work on the dialectic, it has become commonplace to refer to Being, Nothing and Becoming as the textbook description of his dialectical process.[21] Here, the thesis exists as pure Being, the antithesis is the process of recognising that pure Being is indistinguishable from Nothing, and the synthesis is the process of recognising that both Being and Nothing unite to become Becoming.[22] The synthesis in this triad both abolishes and preserves the differences between the thesis and antithesis. However, one particular complicating factor for those reading Hegel's work on the dialectics is that his use of terminology develops through his writing. Notwithstanding this, it is not a matter which is a cause for concern as the fundamental

[18]Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (Oxford University Press 2007) 109, 170, and see notes on 228, 246–47.
[19]Jeffrey Metzler, "The Importance of IRAC and Legal Writing" (2003) 80 University of Detroit Mercy Law Review 501.
[20]Howard Williams, "Heraclitus's Philosophy and Hegel's Dialectic" (1985) 6 History of Political Thought 381.
[21]Georg Wilhelm Friedrich Hegel, *Science of Logic* (AV Miller tr, Oxford University Press 1977) 105.
[22]ibid.

structure and process of the dialectics persist throughout the several name changes. For example, in the *Science of Logic*, Hegel appears to prefer the Immediate, Mediate and Concrete formulation while in the *Phenomenology of Spirit*, he prefers the Abstract, Negative and Concrete structure. In any event, Hegel adopts a clear triadic structure and, for want of a universally accessible triad, we have decided to adopt the Thesis, Antithesis and Synthesis formulation.[23] We acknowledge that there is an epistemological and ontological tension in favouring this formulation and, in choosing this particular styling, there exists a tension between the Kantian and Hegelian approach to the dialectic. However, this cannot be resolved here.[24] For the fullness of understanding we will briefly connect Hegel's triadic dialectic adopted in the *Science of Logic*[25] with the Thesis, Antithesis, Synthesis approach that will be proposed below.

In *Science of Logic*, the triad of Immediate, Mediate and Concrete appears throughout Hegel's work and aligns with the process and nomenclature of Thesis, Antithesis and Synthesis that we will adopt. The Immediate, or Thesis, represents the initial stage in this dialectical process. It is characterised by an abstract, undeveloped notion that, while serving as the foundational concept, remains devoid of specific content and determination. This immediate concept is essential, as it establishes the starting point from which the dialectical process unfolds. It is the impetus and the fundamental thread that will lead to the finished piece. Transitioning from the Immediate to the Mediate phase corresponds to the movement from Thesis to Antithesis. It requires the application of analytical thought to recognise the difference between the immediate and mediate, and to categorise these elements of the triad. This stage is marked by the introduction of negation, contradiction and opposing elements that challenge the initial concept. Through this process of contradiction and negation, the Mediate or Antithesis emerges to challenge and enrich the original concept by engaging directly with its opposites or inconsistencies. This engagement is crucial, as it paves the way for the dialectical process to develop to the next step in the process, namely, the development of more sophisticated thinking through the resolution of contradictions. This more sophisticated stage is the Concrete stage, or Synthesis, and it represents the culmination of this dialectical process. Its objective is to transcend the opposition between the Immediate and Mediate, reconciling the contradictions encountered in the previous stages and recognising commonalities where present. It is reliant on synoptic thinking and reasoning, and thus makes it a developed and more challenging skill to undertake.[26] This synthesis preserves the essential elements of both the Thesis and Antithesis, while simultaneously overcoming their respective limitations. The resulting Concrete concept is significantly richer and more developed, embodying a unity of opposites that reflects a higher level of conceptual understanding. Thus, Hegel's use of the Immediate, Mediate and Concrete triad not only facilitates a dynamic and progressive unfolding of concepts but also exemplifies the dialectical method's capacity to achieve a comprehensive and nuanced synthesis of opposing elements, leading to

[23]Walter Kaufmann, *Hegel: Reinterpretation, Texts, and Commentary* (Doubleday and Co 1965) 165.

[24]Paul Bishop, "Hegel and the Dialectic" in Paul Bishop, *German Political Thought and the Discourse of Platonism: Finding the Way Out of the Cave* (Palgrave Macmillan 2019); Denis Kiyak Ebbesen and Jeppe Olsen, "Exploring the Preconditions for a Developmental Science: Hegelian Metaphysics and Dialectics" (2023) 6 human Arenas 328. See also Stephen Houlgate, *The Opening of Hegel's Logic: From Being to Infinity* (Purdue 2006) 12–16.

[25]Hegel (n 21).

[26]Here, the word "synoptic" is used in a global sense of seeing everything as it resides together, and this is a term that has been in use since Plato. We would commend the following as reading on this point: Lewis W Beck, "The Synoptic Method" (1939) 36 The Journal of Philosophy 337.

a more profound grasp of reality. Similarly, our adoption of the Thesis, Antithesis and Synthesis structure aims to emulate this though, as we will explain later, this requires practical adaptation to fit the essay structure that we propose. In our structure, the thesis is analysed, the antithesis is analysed, and the role of synthesis is synoptic. It is, therefore, necessary to explain further how Hegel identifies and defines analytical thought and synoptic thought.

Understanding and synoptic thought

According to Hegel, in his *Encyclopaedia of the Philosophical Sciences*, there are two forms of reasoning: analytic or understanding as Hegel refers to it (see below), and synoptic, or reason again as Hegel refers to it (see below). The analytic mode aims to break down complex issues into their constituent elements for easier understanding. It is a process of dissection and, ultimately, a form of deconstruction.[27] Its objective is to see the nature of things by their elements and to categorise, organise and ascribe logical structures to things and their parts. We recognise here, as it has been recognised severally, that any attempt to offer a concrete definition of analytic philosophy is troublesome.[28] Notwithstanding this, we can assert, rather benignly, that analytic philosophy (and, therefore, analysis as a skill) is the persistent and logical focus, review and reflection on component elements of a greater problem with a view to obtaining a greater understanding of the whole. However, this approach may tend towards an abstract universalism that may ignore the interconnectedness of various elements.[29] By singling out individual component elements and applying thought to each in turn, we may develop a greater understanding of those elements at the expense of that which connects those elements. For example, take a person: are they merely a collection of organs and masses which operate in an interdependent state, or is there more to us than our component parts alone? In a trope often used in several ways to describe parts of Hegel's work, Humpty Dumpty can help us portray the point more clearly.[30] When Humpty Dumpty falls from the wall, through understanding we analyse him, and the parts of his broken shell, and can proclaim to understand Humpty Dumpty more following this analysis. Through synthesis and the synoptic we see that he is more than this. Synthesis sees Humpty Dumpty as greater than the sum of his parts alone. Synoptic reasoning, that we find in the synthesis section of our proposed structure, is that which puts Humpty Dumpty back together again and recognises him as comprising more than the component fragments of his shell, much in the same way that a person is seen as more than the component organs and musculoskeletal elements that make up their physical structure. Synoptic reasoning, therefore, aims to grasp the unity among things. It sees that there is more to be known about the whole over and above component parts that make up the whole, and how these parts are connected. The whole has evolved and taken on a newer state beyond the mere elemental nature of its components. We assert that essays adopting a dialectical structure can encompass both analytic and synoptic reasoning, demonstrating a deeper knowledge of the matter

[27]This will be discussed later when considering the relevance of Derrida to our model.
[28]Rosa M Calcaterra (ed), *New Perspectives on Pragmatism and Analytic Philosophy* (Rodopi 2011) 62.
[29]See Hegel (n 31) below.
[30]Merold Westphal, "William Desmond's Humpty Dumpty Hegelianism" (1991) 20 Clio: A Journal of Literature, History, and the Philosophy of History 353.

in issue and helping the student to offer a comprehensive perspective on the subject matter through our structure.

For a Hegelian-based structure, this synoptic reasoning is important as Hegel was notoriously caustic about mere analytic knowledge alone (*viz* understanding). He contends that,

> That dialectic is the very nature of thought, and that, as understanding, thought must inevitably fall into contradiction and the negation of itself, forms one of the main lessons of logic. When thought grows hopeless of ever achieving, by its own means, the solution of the contradiction which it has by its own action brought upon itself, it turns back to those solutions of the question with which the mind had learned to pacify itself in some of its other modes and forms. Unfortunately, however, the retreat of thought has led it, as Plato noticed even in his time, to a very uncalled-for hatred of reason (misology); and it then displays a hostile front against its own endeavours. An example of this dislike to thought may be found in the doctrine, that immediate knowledge, as it is called, is the exclusive form in which we become cognisant of truth.[31]

Here, Hegel outlines the intrinsic propensity towards contradiction in his dialectics. He posits that contradiction is not merely an occasional hurdle encountered by thought, rather, it is embedded within the very fabric of thinking itself. Accordingly, it is Hegel's view that understanding, in its attempt to apprehend reality through analysis, is inevitably led into contradiction and self-negation.[32] Such contradictions are not accidental but are created by the operations of thought itself. Hegel appears to state that, when confronted with the insurmountable contradictions it has generated, our thought often finds itself at an impasse, despairing of its capacity to resolve these contradictions through its own mechanisms. This despair, according to Hegel, prompts thought to revert to solutions offered by analytical forms of consciousness with which the mind has previously sought comfort and resolution as they bring certainty, logic and defined boundaries. Hegel views this retreat not as a benign return to logical analysis, but as a problematic renunciation of the rigorous demands of synoptic reason, leading to what he identifies as a misology, or a disdain for reason. This antipathy towards reason manifests itself in a scepticism or outright hostility towards the endeavours of synoptic reasoning, marking a significant hurdle in the thought process and a challenge to adopting and encouraging higher-level thinking. A poignant illustration of this crisis, as Hegel notes, is the doctrine that champions immediate knowledge as the sole legitimate avenue to truth.[33] This is a retreat to the relative absurdity that arises from the immediate presence of a person or thing, and Hegel calls this "sense-certainty".[34] This retreat to sense-certainty is problematic, as Hegel contends that there is no value in sense-certainty. In order to rationalise that knowledge, to use it, incorporate it into other knowledge, or even merely to convey it, the thinker needs to rely on the vocabulary of mediate knowledge.[35] Even basic categories such as "that" or "this" require basic analytic thought to reason relationships between that which is perceived. We contest that this perspective, which elevates unmediated, direct observance above

[31]Georg Wilhelm Friedrich Hegel, *The Logic of Hegel Translated from the Encyclopaedia of the Philosophical Sciences with Prolegomena* (first published 1873, William Wallace tr, Oxford University Press 1965) 18–19.
[32]Deng Xiaomang, *A New Exploration of Hegel's Dialectics II: Negation and Reflection* (Routledge 2022) ch 1.
[33]Willem A deVries, "Hegel on Reference and Knowledge" (1988) 26 Journal of the History of Philosophy 297, 297; Valentin Asmus, "The Problem of Immediate Knowledge in the Philosophy of Hegel" (1963) 1(4) Soviet Studies in Philosophy 44.
[34]Georg Wilhelm Friedrich Hegel, *Phenomenology of Mind* (2nd edn, JB Baillie tr, George Allen & Unwin 1971) 149–60.
[35]deVries (n 33) 297.

the mediated processes of reasoning, fundamentally contradicts the dialectical nature of thought as Hegel conceives it. Such a stance not only undermines the complexity and depth of dialectical reasoning but also signals a retreat from the challenges posed by the inherent contradictions of thought. The advocacy of immediate knowledge as the exclusive path to truth represents a refusal to engage with the inherent dialectic, through which thought transcends its contradictions and progresses towards a higher understanding that overcomes earlier contradictions.[36] The elements comprising the contradiction are preserved and maintained as foundations of a deeper critical knowledge of the whole. The term *Aufheben* is used in Hegel's work to denote that process of both destroying and maintaining the knowledge of the immediate and mediate.[37] *Aufheben*, or to sublate, is resistance to "either-or" logic which posits that something, or its opposite, must be correct.[38] It resists what we would call binary reasoning[39] and the retreat to the simplicity of a superficial answer devoid of nuance and depth of critical thought.

Hegel's critique of the preference for immediate knowledge over dialectical reasoning highlights a broader philosophical contention: the avoidance of dialectical engagement in favour of an uncritical acceptance of immediacy is a negation of the transformative potential of thought. This preference denotes a failure to recognise that the resolution of contradiction, and thus the advancement of knowledge, is achieved not by circumventing the dialectical process but by immersing oneself within it. Through this, Hegel's work reaffirms how indispensable dialectical reasoning is in the pursuit of truth and the cultivation of a genuine philosophical disposition that embraces rather than avoids the contradictions inherent in thought. Finally, here, the dialectical method serves as an intellectual scaffold for the academic pursuit of university education mandated under ss 2 and 14 of the Higher Education and Research Act 2017. The Act requires universities to test received wisdom, a principle deeply embedded in Hegel's dialectical process of synthesis through contradiction and negation. In essence, Hegel's dialectical reasoning not only promotes a comprehensive understanding beyond mere analytical deconstruction, but also ethically binds academic institutions to foster a culture of critical inquiry and intellectual freedom.[40] This engagement with the dialectical process is vital for advancing knowledge and cultivating critical thinking skills, aligning with the legislative intent to encourage an academic environment where traditional wisdom is rigorously examined and challenged. It is on this point that it is appropriate to connect Hegel's work to the more general pedagogic justification for our model.

[36]Hegel (n 31) 18–19.

[37]Hegel uses the contentious term *Aufheben* which many have debated. Here, we have referred to the translation provided in Georg Wilhelm Friedrich Hegel, *The Science of Logic* (first published 1812–16, George Di Giovanni tr, Cambridge University Press 2010); see pages 81 for *Aufheben* and sublate, and 341 where Hegel says, "And so it has immediacy over against it, as something from which it has come to be but which has preserved and maintained itself in this sublating."

[38]BC Birchall, "Hegel's Notion of *Aufheben*" (1981) 24 Inquiry: An Interdisciplinary Journal of Philosophy 75, 75.

[39]This term was used by Paul Verhaeghe to mean a similar thing in a specific setting: Paul Verhaeghe, "Phallacies of Binary Reasoning: Drive Beyond Gender" in Iréne Matthis (ed), *Dialogues on Sexuality, Gender and Psychoanalysis* (Routledge 2004).

[40]An interesting point here is made in Niall McCrae, "Nurturing Critical Thinking and Academic Freedom in the 21st Century University" (2011) 23 International Journal of Teaching and Learning in Higher Education 128.

Pedagogic justification

According to Ira Shor, critical pedagogy can be defined as:

> Habits of thought, reading, writing, and speaking which go beneath surface meaning, first impressions, dominant myths, official pronouncements, traditional clichés, received wisdom, and mere opinions, to understand the deep meaning, root causes, social context, ideology, and personal consequences of any action, event, object, process, organisation, experience, text, subject matter, policy, mass media, or discourse.[41]

To connect critical pedagogy to the proposed essay structure and justification in this article further, John Paddison sets out that Shor's own approach to critical pedagogy is derived from his "dialectical critique" in his book.[42] Paddison states that Shor's focus in his third chapter is the evaluation and revaluation of "context-laden" questions, which requires reflection on the part of the student. Shor asserts that the discourse necessary for effective reflection can only arise when the student engages in "critical, dialectical questioning".[43] Furthermore, the origin of critical pedagogy is often ascribed, in part at least, to Paulo Freire and his notable work, *Pedagogy of the Oppressed*.[44] There are several references throughout his work to the dialectical process and the impact that identifying and utilising the dialectic can have. Because of this pervasiveness, it is evident that Freire is influenced by the work of Hegel. Freire states that the notion of critical consciousness underlines the need for a deep understanding of the socio-political context which shapes people's lives.[45] It requires that we challenge the structures of oppression and, Freire argues, that education is the tool to do this. He states that education is not the mere transfer of knowledge, but it should help students to question received wisdom. The objective of critical consciousness is, therefore, the empowering of others to see the world not as a static reality but as a process of action, reflection and action (or reaction).[46] There also appears to be some evidence that Freire is connecting Hegel with the universal contradiction found in Hegel's work, though this is not surprising. The transmission of Hegelian dialectics, through Georg Lukács, culminated in the formation of the Frankfurt School of sociology and critical philosophy.[47] This approach played a pivotal role in perpetuating the study of Hegel and Critical Theory. At the heart of Hegel's influence on Freire is the dialectical method, which posits contradiction as the primary driver of progress and transformation. Hegel's philosophy underscores the importance of contradictions within core principles, advocating that these inherent tensions are not mere obstacles but catalysts for systemic evolution. This perspective resonates through Freire's work, which dissects social, economic and political contradictions, compelling us to recognise and confront these disparities as a precondition for emancipatory action. Freire's emphasis on the dialectical process echoes Hegel's assertion that reality is not static but a dynamic interplay of conflicting forces that, when acknowledged and addressed, can lead to profound societal

[41] Ira Shor, *Empowering Education* (University of Chicago Press 1992) 129.
[42] John Paddison, "Review: *Empowering Education* by Ira Shor" (1993) 12 Rhetoric Review 194.
[43] ibid 197.
[44] Paulo Freire, *Pedagogy of the Oppressed* (Myra Bergman Ramos tr, Continuum 2000); see also Paulo Freire, *Education for Critical Consciousness* (first published 1974, Bloomsbury Publishing 2021).
[45] Paulo Freire, *Education for Critical Consciousness* (first published 1974, Bloomsbury Publishing 2021); see also John L Elias, "Social Earning and Paulo Freire" (1974) 8 The Journal of Educational Thought 5.
[46] Andy Blunden, "Contradiction, Consciousness and Generativity: Hegel's Roots in Freire's Work" in Robert Lake and Tricia Kress (eds), *Paulo Freire's Intellectual Roots: Toward Historicity in Praxis* (Bloomsbury 2013).
[47] ibid 11.

transformation. Furthermore, Freire's concept of *conscientização*, or consciousness-raising,[48] appears to show a direct manifestation of Hegelian dialectics, advocating a deep understanding of contradictions to engage in transformative and, we suggest, reflective, practice.[49] It is because of this point that we assert that the dialectical process is a key skill to help students develop into reflective practitioners.[50] This approach not only seeks to raise individual awareness but also aims to incite collective action towards social change. Therefore, Freire and Hegel both appear to assert, albeit in different contexts, that actively falling into contradiction is crucial for the evolution of consciousness and society.[51] In relation to Hegel's contradiction, Alice Graves noted that, "'All must fall into Nought if it would continue in Being' – that is, in finite Being, which is indebted to Contradiction for its existence, and through the dialectic of which it is further developed".[52] Similarly, Freire's work includes several examples of this contradiction in action.[53] However, as we have outlined above, this contradiction is not to be understood in some Goethen sense in that "all that exists deserves to perish".[54] Rather, Hegel explains that everything comprises this inherent relationship between immediacy and mediation as a form of contradiction. The authors of this paper recall that we are both, at the same time, the same people that we were yesterday, while also being a day older and more experienced and, as such, different from those people that we were yesterday. In the *Science of Logic*, Hegel states,

> Here we need only quote from it this, there is nothing, nothing in heaven, or in nature or in mind or anywhere else which does not equally contain both immediacy and mediation, so that these two determinations reveal themselves to be unseparated and inseparable and the opposition between them to be a nullity. But as regards the philosophical discussion of this, it is to be found in every logical proposition in which occur the determinations of immediacy and mediation and consequently also the discussion of their opposition and their truth.[55]

Hegel's assertion is that all entities, concepts or phenomena, whether in the realms of the divine, natural, mental or otherwise, are inherently characterised by both immediacy and mediation. Immediacy refers to the direct state of being or understanding not subjected to reflection.[56] That is, where a sensation is taken at face value or accepted without a process of reasoning. On the other hand, mediation involves a process of reflection, transformation or development, where the initial, immediate state undergoes a process to reveal deeper, more complex relationships. Hegel's assertion that "there is nothing … which does not equally contain both immediacy and mediation" reinforces the idea that these two aspects are not only coexistent but also fundamentally interdependent. They

[48]William A Smith, *The Meaning of Conscientizacao: The Goal of Paulo Freire's Pedagogy* (Center for International Education, University of Massachusetts 1976).
[49]Leon Benade, "Teaching and Critically Reflective Practice in Freire" in Michael A Peters, *Encyclopedia of Educational Philosophy and Theory* (Springer 2020).
[50]Leah E Polcar, "From Dialectical Theory to Reflective Practice: Response to Hunt, Meyer, and Lippert" (2006) 42 Argumentation and Advocacy 169.
[51]Alice A Graves, "Hegel's Doctrine of Contradiction" (1888) 22 The Journal of Speculative Philosophy 118, 137.
[52]ibid.
[53]Blunden (n 46).
[54]Johann Wolfgang von Goethe, *Faust: Part 1* (Project Gutenberg 2016). NB this translation uses a different formulation, though the one in our text is that preferred in Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (Marx/Engels Internet Archive 2006) 7.
[55]Georg Wilhelm Friedrich Hegel, *Science of Logic* (first published 1812–16, AV Miller tr, Routledge 2002) 68.
[56]For a reflective cycle informed by Hegelian Dialectics and Transcendental Idealism, see Marc Johnson and Omar Madhloom, "Addressing Implicit Bias: A Theoretical Model for Promoting Integrative Reflective Practice in Live-Client Law Clinics" (2024) 5 European Journal of Legal Education 55.

are unseparated and inseparable, meaning that one cannot exist without the other, and any perceived opposition between them is ultimately "a nullity". This reflects Hegel's dialectical reasoning, where thesis and antithesis are seen not as binary opposites but as integral to the synthesis that transcends and includes them. We recall here that Humpty Dumpty may be more than the sum of his parts, but he includes his parts also. The quote also suggests that this interplay between immediacy and mediation is not a peripheral aspect of Hegel's philosophy, but a pervasive principle that applies universally. This principle is evident in every logical proposition that deals with the notions of immediacy and mediation, implying that the dialectical process is not merely a philosophical tool but a fundamental characteristic of reality itself. In essence, Hegel is advocating a holistic approach to understanding the world, one that recognises the dynamic and intertwined nature of immediacy and mediation. This perspective challenges simplistic, binary ways of thinking and invites a more nuanced, reflective consideration of how things come to be understood or realised. The dialectical relationship between immediacy and mediation is crucial for revealing the nature in synthesis. It is noteworthy here that Hegel argued against the proposition that the nature of a thing could be known without knowledge of categories (that is, analytical thought). Robert C Solomon summarises Hegel's position by stating that "[i]n familiar Wittgensteinian argument, Hegel shows that a 'this' presupposes an understanding of 'what', that identifying a particular presupposes being able to describe it in universal terms".[57]

Similarly, we can see parallels in Freire's educational philosophy, which is deeply rooted in a commitment to liberation and humanisation, with Hegelian dialectics through its emphasis on the dynamic interaction between teachers and students, and the process of consciousness-raising, or *conscientização*.[58] Freire critiques the banking model of education, where knowledge is deposited into passive students by an authoritative teacher, as a form of oppression that mirrors an immediate, unreflected state of knowledge transfer, similar in some respects to that cited by Hegel.[59] Therefore, this model aligns with Hegel's concept of immediacy, where understanding or consciousness is taken at face value, without undergoing the mediation of critical reflection or dialectical reasoning.[60] Freire's rejection of this model is predicated on the belief that true learning and liberation require a process of mediation (or reflection), dialogue and critical engagement that transform both the learner and the knowledge being engaged with.[61] This process of mediation in Freire's pedagogy is dialectical in nature. It involves a continuous, reflective dialogue between the teacher and the student, in which both are co-learners and co-creators of knowledge.[62] Here, the immediate act of learning is always intertwined with the mediated process of critical reflection and dialogue.[63] We propose that the key factor here is the development of the skills necessary to carry out this process. The opposition between teacher and student (mirroring Hegel's thesis and

[57]Robert C Solomon, "Hegel's Epistemology" (1974) 11 American Philosophical Quarterly 277, 279.
[58]Luis A Lei, "Hegel and Critical Pedagogy" in Michael A Peters, *Encyclopedia of Educational Philosophy and Theory* (Springer 2020).
[59]See Freire, *Pedagogy of the Oppressed* (n 44) 72.
[60]Johnson and Madhloom (n 56).
[61]Blunden (n 46) 22–24. See also Freire, *Education for Critical Consciousness* (n 45) 100, where Freire states, "As in other cases, it is imperative to reflect philosophically."
[62]See Freire, *Pedagogy of the Oppressed* (n 44) 72. Freire believed that "The students, alienated like the slave in the Hegelian dialectic, accept their ignorance as justifying the teacher's existence – but, unlike the slave, they never discover that they educate the teacher".
[63]Johnson and Madhloom (n 56).

antithesis) is transcended in the creation of a new learning environment that values the mutual acquisition of knowledge (synthesis). Furthermore, Freire's concept of *conscientização* urges individuals to perceive and understand the contradictions in their reality, thereby moving from a state of oppressed immediacy to one of liberated mediation. This consciousness-raising process is not a mere acquisition of knowledge but a transformation of one's perception of the world and one's place within it. This is a concept consistent with Hegel's assertion that truth emerges from the dialectical process that reconciles immediacy and mediation, suggesting that liberation is a process of becoming that involves navigating and transcending these contradictions.

In essence, Freire's educational philosophy and Hegel's dialectical method advocate a move beyond surface-level engagement with reality towards a deeper, more nuanced understanding that is achieved through the dialectical reasoning. For Freire, this translates into an educational practice that seeks not only to impart knowledge but to foster critical consciousness and liberation, mirroring Hegel's broader philosophical endeavour to understand the development of consciousness and freedom through the dialectic of immediacy and mediation. Therefore, it appears that Freire's work, insofar as it has been discussed above at least, is deeply rooted in Hegelian dialectics, and this demonstrates the enduring relevance of contradiction as a driving force for educational and societal development.

Derrida's deconstruction and dialectics

Deconstruction, as conceived by Derrida, essentially seeks to expose the inherent instabilities and contradictions in any given text or concept. Derrida's substantial body of work, which includes seminal works such as *Of Grammatology*[64] and *Writing and Difference*,[65] lays the foundation for this method of analysis. Unlike traditional forms of critique, deconstruction does not aim to arrive at a singular, unified interpretation. Instead, it focuses on unveiling the multiplicities and nuances inherent in the text, which can be of significant relevance when dissecting a legal thesis.[66] We accept that Derrida's and Hegel's works contain contentious elements and, despite adopting a dialectical process in his earlier work, Derrida criticises the use of the dialectics in metaphysics.[67] However, as we have already noted, the dialectical method contains a triadic process often referred to as the thesis, antithesis and synthesis. The thesis stands as an intellectual proposition that must be unpacked and substantiated, and herein lies the juncture where Derrida's deconstruction contributes to our model of essay writing. The process of deconstruction offers the intellectual tools to analyse the thesis by breaking it into its component elements, and to expose its inherent inconsistencies or paradoxes, and to lay bare its assumptions. This process of analysis adds a layer of complexity and depth to the thesis, thereby enriching the entire dialectical exercise. Derrida's deconstruction is a critical inquiry that challenges the foundational premises of Western metaphysics, particularly the binary arguments, binary oppositions and the concept of presence or essence that have traditionally underpinned philosophical discourse. It seeks to expose and unravel the structural unconscious or

[64]Jacques Derrida, *Of Grammatology* (Gayatri Chakravorty Spivak tr, Johns Hopkins University Press 1997).
[65]Jacques Derrida, *Writing and Difference* (Alan Bass tr, University of Chicago Press 1978).
[66]Brooj Nasser A Alsaqer, "The Role of Deconstructing as a Part of Translation Process in Literary Text" (2023) 20(2) World Journal of Advanced Research and Reviews 960, 962.
[67]Michael Ryan, *Marxism and Deconstruction: A Critical Articulation* (Johns Hopkins University Press 2019) ch 3 "Deconstruction and Dialectics".

différance,[68] a term Derrida coins to describe the interplay of differences and deferrals in meaning that constitute the possibility and impossibility of philosophical rigour. This approach fundamentally questions the stability of meaning, the reliability of language as a medium for conveying truth, and the pursuit of philosophical totalisation.

The intersection between Derrida's deconstruction and Hegel's thesis can be seen in their mutual recognition of the inherent instability within structures of thought and language.[69] However, their responses to this recognition diverge significantly. Derrida's deconstruction resists the closure and totality that Hegel's dialectic seeks, emphasising instead the perpetual deferral of meaning and the impossibility of achieving a final, absolute truth.[70] Deconstruction focuses on the margins, the excluded and the repressed, highlighting how these elements undermine the coherence and unity that Hegel's dialectic aims to achieve through synthesis.[71] While Hegel views the dialectical process as a means of progressing towards a comprehensive understanding of truth and reality, Derrida critiques this very aspiration, arguing that the desire for totality and the reliance on binary oppositions (such as presence/absence, subject/object) overlook the complexity and multiplicity of meaning.[72] Deconstruction thus challenges the Hegelian dialectical synthesis by asserting that the oppositions and contradictions it seeks to reconcile are not merely stages in a linear progression towards truth, but indicative of the fundamental indeterminacy and undecidability of meaning.[73] Furthermore, Derrida's critique of Hegel's dialectic exposes deconstruction's ethical dimension, its concern with the otherness of the other and the limitations of philosophical dialectics to fully account for alterity without reducing it to an object of cognition or recognition.[74] This ethical concern contrasts with Hegel's systematic approach, where the dialectical resolution of contradictions within the thesis–antithesis–synthesis framework ostensibly leads to a deeper understanding and the realisation of freedom. Although, as William Desmond succinctly puts it, "… But where deconstruction seems to give us analysis without synthesis, dialectic insists that we return again to the original synthesis, now with the enrichment of having passed through the analysis".[75] Notwithstanding this, deconstruction allows for a systematic and layered exploration of the thesis through analysis. Again, according to Hegel, the process of analysis is more than the mere articulation of the constituent elements of a single concept.[76] Hegel explains that,

> Analysis is, however, the progression from the immediacy of perception to thought, insofar as the determinations, which the object analysed contains amalgamated within itself, receive the form of universality by being separated …
>
> This, however, is only one side, and the chief point consists in the unification of what has been severed.[77]

[68]Jacques Derrida, *Margins of Philosophy* (Alan Bass tr, University of Chicago Press 1984) 3–27.
[69]ibid.
[70]Stuart Barnett (ed), *Hegel After Derrida* (Routledge 2001) particularly Parts 2 and 3.
[71]Peter V Zima, *Deconstruction and Critical Theory* (Continuum 2002).
[72]Karin de Boer, "Différance as Negativity: The Hegelian Remains of Derrida's Philosophy" in Stephen Houlgate and Michael Baur (eds), *A Companion to Hegel* (Blackwell Publishing 2011).
[73]William Desmond, "Hegel, Dialectic, and Deconstruction" (1985) 18 Philosophy & Rhetoric 244, 257.
[74]Innocenzo Sergio Genovesi, "Otherness and Deconstruction in Jacques Derrida" (Dakam Conference, Istanbul, September 2016) <https://dergipark.org.tr/en/download/article-file/1174771> accessed 3 June 2024.
[75]Desmond (n 73) 259.
[76]Johnson and Madhloom (n 56) draw on this same point.
[77]Georg Wilhelm Friedrich Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline, Part 1, Science of Logic* (first published 1817, Klaus Brinkmann and Daniel O Dahlstrom trs, Cambridge University Press 2010) 80. We note that we have knowingly used an alternative translation of this same book (cited in 21, 37, 55 and 67 above).

According to this perspective, to analyse a concept is to see the internal oppositions and tensions within that concept, or the inherent dialectic. Where we undertake a further and deeper analysis of the thesis, however, it will lead us to conclude that the thesis also contains elements at cell-like levels, or as Goethe may have called it, *urphänomen*.[78] To analyse is, therefore, to see elements within the singular object, and recognise that those elements contain or relate to categories, universals and relationships between themselves and the singular object analysed. For instance, as a legal example, consider the thesis: "freedom of speech is an inalienable human right". Deconstruction would prompt us to question the concepts of "freedom", "speech" and "inalienable human right", exploring how these concepts are socially constructed, how they differ across jurisdictions, and how they are frequently in tension with other rights and social goods.

Through Hegel's definition of analysis, we see that the proposition consists of component elements to be understood both in isolation and in relation to the singular proposition. However, through deconstruction we are challenged to recognise that the nature and understanding of those elements can betray a privilege for one definition, one understanding of the field, or one general view over another. Analysis can lead to the dismantling of a single thing into its component elements, but deconstruction exposes more about our understanding, perspectives and biases causing the analysis to develop a reflective approach to dialectics.[79] In deconstructing the thesis, lawyers can anticipate counterarguments and nuances that they may encounter in court, thus providing them with a more robust argumentative strategy, which is set out further below. This skill is also transferable to other disciplines and professional settings that require critical thinking and complex problem-solving abilities. In the context of legal practitioners drafting legal/skeleton arguments, breaking down the thesis is an essential part of presenting a comprehensive legal argument. The Solicitors Regulation Authority, the regulatory body of solicitors in England and Wales, defines a skeleton argument as:

> [W]ritten documents filed with the court and exchanged with the other side before a hearing or trial. They should enhance your oral advocacy by providing a clear, concise, focused and persuasive summary of your client's case, as well as any legal, evidential or procedural issues.[80]

Whilst Hegel's dialectics offer a structure to explore the inherent dialectics within a concept or phenomenon, Derrida's deconstruction offers a complex framework for delving deeper into the dialectics in essay writing in law. By teasing out the multiple and inherent elements within the thesis, recognising the inherent contradiction giving rise to the antithesis and attempting to reconcile that which can be reconciled in the synthesis, deconstruction enriches the dialectical process, making it a more comprehensive method for both CLE and real-world application.

[78]Sebastian Meixner, "Urphänomen (Original/Primordial Phenomenon)" (2022) 2(1) Goethe-Lexicon of Philosophical Concepts <https://goethe-lexicon.pitt.edu/GL/article/view/46> accessed 12 November 2024.
[79]Johnson and Madhloom (n 56).
[80]Solicitors Regulation Authority, "Drafting a Persuasive Skeleton Argument" (31 August 2022) <www.sra.org.uk/solicitors/resources/advocacy/persuasive-skeleton-argument/> accessed 10 June 2024.

A description of the dialectical structure: thesis, antithesis and synthesis

We will now briefly describe the component elements to the structure proposed and this has been given in bullet format in a student-friendly format in the Appendix also.

Thesis

The thesis is the core element of an essay: it is an intellectual proposition that provides the lens through which the essay topic will be examined. For a legal essay, the thesis may present as a stance on a contentious legal issue, a unique interpretation of a legal text, or a proposition to be argued for or against. Here, the student is not merely required to state their argument but is expected to dismantle their thesis by breaking it down into its component elements and meticulously considering the legal authorities which support and substantiate each element. In practice, this will also involve the student engaging in evidence, such as witness statements, to support their client's case. Through a combination of both critical and reflective thinking, each element (and its associated authority) is justified as a component part of the thesis and relevant to the topic or the argument presented by the writer. Doing so lends credibility to the thesis and forms a robust argumentative structure.[81] Necessarily, there is a creative element to breaking down a single argument into component elements and structures and this is particularly useful given that, according to Sharon Bailin, critical thinking is also a creative process.[82]

Antithesis

The antithesis serves as a counterpoint to the thesis, providing a critical perspective on the argument adopted by the author in their thesis. It is derived from the thesis and may be inherent within it. Often, this may take the form of alternative interpretations, counterarguments or points of contention raised by others. However, the antithesis should be interpreted broadly; it does not need to represent the opposite position to that adopted in the thesis. It need only demonstrate that the writer can comprehend an inconsistent position which is not in line with the thesis; that the writer is able to apply analytical thought to the thesis and antithesis in order that they may deal with the component elements of such *seriatim*. The inclusion of an antithesis is pivotal in legal education as it prepares students for the adversarial nature of legal practice. Notwithstanding this, the recognition of an antithesis can also go some way to showing that the writer is aware of the spread of opinions that exist on a particular legal topic and, moreover, that these alternative positions often have authority to substantiate them too. The ability to understand and engage with opposing viewpoints is not just a valuable academic skill but also an essential professional competency.[83] In this regard, this stage draws on both John Rawls' famous reflective equilibrium[84] and principles of constructing one's case theory.[85]

[81]George P Fletcher, "The Right and the Reasonable" (1985) 98 harvard Law Review 949.
[82]Sharon Bailin, "Critical and Creative Thinking" (1987) 9 Informal Logic 23.
[83]Daniel Rodger and Adéle Stewart-Lord, "Students' Perceptions of Debating as a Learning Strategy: A Qualitative Study" (2020) 42 Nurse Education in Practice, Article 102681; Sharon Bailin and others, "Conceptualizing Critical Thinking" (1999) 33 Journal of Curriculum Studies 285, 294–96.
[84]John Rawls, *A Theory of Justice* (Harvard University Press 1971) 49.
[85]Binny Miller, "Teaching Case Theory" (2022) 9 Clinical Law Review 293.

Synthesis

Lastly, for the proposed structure, the synthesis serves to reconcile the thesis and antithesis by highlighting common truths or proposing a resolution to the contested issue. This segment of the essay encapsulates the critical reasoning skills acquired through legal education and focuses the writer's ability to weigh opposing arguments, identify the most persuasive points, and defend their thesis, all examples of higher-level critical skills. We recall that synoptic reasoning here is the reconciliation of what was broken apart through the application of analysis, or the process of putting Humpty Dumpty back together again and seeing him as more than the sum total of his broken parts. Moreover, metacognition is often described in shorthand as the process of thinking about thinking,[86] which is a key element in reflecting on what a person purports to know. Therefore, thinking about the weight of an argument and how multiple conflicting or inconsistent authority can exist within a single legal system employs higher-order thinking and, according to Hamzah and others and Jarmain and others,[87] is a skill which is a necessary skill for shaping the twenty-first century. The synthesis does not merely summarise points made, it builds upon points already made to form a new or enlightened proposition, creating a full-circle argumentative structure. Fichte argues that there is not only merit in the synthesis, but a need for synthesis in order to resolve the opposing contradiction, and that this can be done through "discovering in opposites the respect in which they are alike".[88] Fichte suggests that the nature of this part of the process of reasoning employs the use of higher-level thinking by unifying commonalities in the thesis and antithesis to prevent,[89] as Kant and others had found, a *reductio ad absurdum*.[90] According to Clarence Edward Beeby, the process of evaluation contains four key steps: the collection of relevant material; the interpretation of that material through the application of relevant knowledge; a judgement of value of that material, leading to an action or outcome.[91] Furthermore, Peter Facione states that critical thinking is "purposeful, self-regulatory judgment which results in interpretation, analysis, evaluation, and inference, as well as explanation of the evidential, conceptual, methodological, criteriological, or contextual considerations upon which that judgment is based".[92] Therefore, the forming of judgements being a key component element in evaluation and critical thinking, it can be seen here that the inclusion of synthesis as a form of synoptic reasoning with a view to identifying commonalities and forming judgements encourages critical thinking and evaluation, helping students to develop and deploy their higher-level thinking skills.

Considering this, the incorporation of synthesis within the framework is not merely a pedagogical and philosophical preference, but a foundational necessity for fostering

[86]JH Flavel, "Metacognition and Cognitive Monitoring: A New Area of Cognitive–Developmental Inquiry" (1979) 34 American Psychologist 906.
[87]Hainora Hamzah, Mohd Isa Hamzah and Hafizhah Zulkifli, "Systematic Literature Review on the Elements of Metacognition-Based Higher Order Thinking Skills (HOTS) Teaching and Learning Modules" (2022) 14 Sustainability, Article 813.
[88]Johann Gottlieb Fichte, *The Science of Knowledge* (originally published 1794/95, Peter Heath and John Lachs trs, Cambridge University Press 1982) 111.
[89]ibid 112.
[90]Immanuel Kant, *Critique of Pure Reason* (originally published 1781, JMD Meiklejohn tr, the Floating Press 2009) Book II – Of the Dialectical Procedure of Pure Reason, for example, see 639.
[91]CE Beeby, "The Meaning of Evaluation" (1977) 4 Current Issues in Education 66.
[92]Peter A Facione, "Critical Thinking: A Statement of Expert Consensus for Purposes of Educational Assessment and Instruction" (California Academic Press 1990) 2.

an environment where critical thinking flourishes. This approach embodies the essence of dialectical reasoning, as posited by Hegel, and further iterated by Fichte, where the reconciliation of thesis and antithesis through synthesis brings about the greatest benefit for the student's development. By engaging students in the process of identifying commonalities between opposing viewpoints and constructing a coherent resolution, educators are essentially equipping them with the tools to navigate the complexities of modern legal and philosophical dilemmas. It has also been seen how this element encourages the challenging of received wisdom and encouraging intellectual exploration. Furthermore, as suggested by Beeby and Facione, the evaluative process inherent in synthesis, which contains the process of collecting and interpreting material and making informed judgements, serves as a direct conduit to cultivating the skills necessary today. Consequently, by fostering an academic culture that prioritises dialectical synthesis, universities are preparing students to contribute meaningfully to societal advancement through reasoned argumentation and the application of critical thought. This holistic approach to education, therefore, not only satisfies the academic objectives set forth by regulatory frameworks but also ensures that students are well equipped with the cognitive skills necessary to address and resolve the multifaceted challenges that they are exposed to today.

Implementation in an essay structure

Hitherto, the structure has been discussed in abstract; however, to present a unified model with the accepted structure of essays, we present a basic outline that may be used to help legal academics teach the dialectical structure above in a usable framework for writing essays. This framework can be found in the Appendix.

It can be seen from the Appendix that a broad and general outline of allocation of word count has been included to support legal academics in their use of this model. These recommended allocations of word counts can be altered or omitted without harm to the dialectical framework and are offered as a suggestion only. The dialectical model above has been spread effectively in the main body of the essay in the proposed structure in the Appendix. Notwithstanding this, there is a need for some elements to be referenced in the introduction and conclusion so that the author is presenting and sustaining a coherent legal argument throughout their work.[93] To this end, the introduction of an essay will, generally speaking, need to outline three elements: the topic written for the specified audience;[94] the author's thesis in brief; and a roadmap of the essay's structure. The main body will be divided into three subsections dedicated to the development and analysis of the thesis, the recognition and careful selection of the antithesis, and the synoptic reasoning that comes with the synthesis. These divisions will facilitate a balanced, yet focused argument which, if deployed with care and skill and consistent with the theoretical justifications above, will assist the author to develop

[93]The need to present a logical and coherent argument is derived from the Framework of Higher Education Qualifications Descriptors, specifically 4.10 Descriptor for a higher education qualification at level 4 on the FHEQ which states that, at successful completion of Level 4, students will be able to "communicate the results of their study/work accurately and reliably, and with structured and coherent arguments". See Quality Assurance Agency, "UK Quality Code for Higher Education, Part A: Setting and Maintaining Academic Standards; The Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies" (Quality Assurance Agency 2014) 21 (or 22 for the Scottish Credit and Qualifications Framework).

[94]This is both level and assessment specific.

their analytical, evaluative and critical thought. The essay will conclude by offering something new, derived from the synthesis, rather than merely regurgitating what has been discussed. By adopting a dialectical approach to essay writing, the author can infuse the essay with a level of authenticity that reflects the multidimensional thinking required in, among other places, legal practice. It offers a holistic model for critical analysis, pulling together disparate arguments into a coherent, nuanced viewpoint and, in doing so, serves as an integral clinical pedagogic tool.

Connecting theoretical basis with practical skills and workplace utility

Given that CLE is a methodology which is designed, inter alia, to mirror the realities of legal practice, broadly defined, then it ought to include a Hegelian approach to essay writing, for three reasons. First, traditionally, essay writing has been excluded from the definition of CLE. However, clinical models such as policy clinics require students to utilise skills like research and making recommendations regarding what the law ought to be. Second, lawyers, while acting for their clients, and judges regularly engage in doctrinal, normative and conceptual analysis. Third, our model is designed to enhance students' reflective capacities. The dialectical model for essay writing proposed in this article embeds within it a framework that mirrors complexities in the law and legal argumentation. This model not only equips students with the necessary cognitive depth and skills but also ensures that their learning is deeply rooted in practical utility, thereby enhancing their critical and reflective capabilities. By aligning essay writing with the elements of CLE and the dialectical method, we prepare students for the challenges of professional legal practice and beyond. This approach not only adheres to the pedagogical imperatives of engaging with knowledge critically and reflectively, but also responds to the evolving needs of legal education in cultivating critical and reflective practitioners. This model aims to refine students' abilities to engage critically with complex legal issues, and also nurture a profound understanding of the dynamic interplay between opposing viewpoints, encouraging a synthesis that reveals deeper insights and resolutions.

Conclusion

It is recalled here that the purpose of this article was to make out the case for the adoption and use of dialectical reasoning in essay writing as a form of clinical pedagogy. We acknowledge that this leaves further scope for research into the practicalities of delivering and assessing such use, but there is no scope within this article to explore that further. The application of dialectical reasoning, inspired by Hegelian principles, transcends mere academic exercises, and offers significant practical benefits in professional settings, particularly in the legal field. One salient example is the drafting of skeleton arguments, where this approach demonstrates its efficacy. As outlined, the proposed model for essay writing encompasses complexity, relevance beyond academia, cognitive depth and skill, making it a strong candidate for inclusion within the spectrum of CLE. This approach to essay writing aligns closely with constructivist pedagogical principles, which emphasise active and reflective learning. It encourages students to construct knowledge through critical analysis and synthesis, fostering a deeper understanding and more effective communication of legal concepts. The dialectical model also resonates with the imperatives of critical pedagogy, as

highlighted by scholars like Ira Shor and Paulo Freire. By empowering students to challenge received wisdom and engage in transformative learning, this model promotes an active, reflective and critical engagement with knowledge.

The practical implications of this model are profound. It prepares students for the intricacies of legal argumentation and decision-making in their professional careers. By cultivating higher-order thinking skills, such as metacognition and synoptic reasoning, this approach ensures that students are well equipped to handle the multifaceted challenges they will encounter in the legal field and beyond. The dialectical method requires the identification and interplay of thesis, antithesis and synthesis, mirroring the stages of legal argumentation and decision-making in professional practice. Furthermore, this model supports the notion that essay writing, when coupled with a dialectical structure, can fall within the definition of CLE. It combines the process of essay writing with a form of argumentation that targets functional knowledge in context, producing an essay structure that demonstrates practical legal skills. The dialectical approach causes students to reflect on the weight of an argument, the merits of counterarguments, and the process of synthesising information from multiple sources. This reflective practice is crucial for developing critical thinking and argumentative skills, which are essential in legal education and professional practice.

Moreover, the adoption of this model responds to the evolving needs of legal education by cultivating critical and reflective practitioners. It refines students' abilities to engage critically with complex legal issues and nurtures a profound understanding of the dynamic interplay between opposing viewpoints. The synthesis that emerges from this process reveals deeper insights and resolutions, contributing to a more nuanced and comprehensive understanding of legal concepts. In the context of CLE, the dialectical model not only enhances students' cognitive depth and skills but also ensures that their learning is deeply rooted in practical utility. This approach aligns essay writing with the realities of legal practice, preparing students for the challenges they will face as professionals. By introducing students to a more experiential mode of learning, this model bridges the gap between academic learning and professional application.

Therefore, in summary, the application of dialectical reasoning in essay writing, inspired by Hegelian principles, offers significant benefits for legal education and professional practice. It aligns with constructivist and critical pedagogical principles, prepares students for the complexities of legal argumentation and decision-making, and fosters higher-order thinking skills. By incorporating this approach into CLE, we can cultivate critical and reflective practitioners who are well equipped to navigate the multifaceted challenges of the legal field and beyond. This model represents a holistic approach to legal education, integrating theoretical knowledge with practical skills, and ultimately contributing to the development of well-rounded legal professionals. Given the prevalence of critical thinking, analysis and synthesis or synoptic reasoning in the proposed dialectical structure for essay writing, we are put in mind of a quote from TS Eliot who, we believe, eloquently captures the essence of our structure. Elliot said, "we shall not cease from exploration and the end of all our exploring will be to arrive where we started and know the place for the first time".[95]

[95]Thomas Stearns Elliot, "Little Gidding" in Thomas Stearns Elliot, *Four Quartets* (Faber 2001).

Disclosure statement

No potential conflict of interest was reported by the authors.

ORCID

Marc Johnson http://orcid.org/0000-0002-6922-549X
Laura Bradley http://orcid.org/0009-0007-9488-4095

Appendix

Introduction *(approx. 10% of word limit)*

- Introduce the topic
- Introduce your thesis
- Introduce your structure

Main Body *(approx. 80% of word limit)*

- **Thesis** *(approx. 50% of main body)*
  - Break your thesis into elements and deal with each element *seriatim*
    - What authority or support do these elements have?
    - How are these elements relevant to your argument, and how do they connect with each other?
- **Antithesis** *(approx. 30% of main body)*
  - Is there an alternative argument or contrary position which has supporting authority?
- **Synthesis** *(approx. 20% of main body)*
  - Why is your argument stronger than the alternative?
  - Can you learn anything from the antithesis which strengthens your argument?
  - Can you reconcile your thesis with the antithesis?

Conclusion *(approx. 10% of word limit)*

- Create something new from the conclusions you reached when setting out the elements to your thesis in your main body.