

**An examination of the University as a disciplinary institution
in terms of Michel Foucault's postmodernist concept of
disciplinary power, with specific reference to
the nature of power relations between
students and faculty**

by

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DECLARATION

I, Maryanne Angumuthoo, hereby declare that the work contained herein is entirely my own, except where indicated in the text itself, and that this work has not been submitted in full or partial fulfilment of the academic requirements for any other degree or qualification at any other university.

Signed and dated at Durban on the 28th day of February 2001.

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INTRODUCTION

Postmodernism can be defined as a way of looking at the world'.¹ The postmodernist period is distinguished by some of the following characteristics. Firstly, truth is relative. According to Derrida, a pivotal philosopher of postmodernism, 'we bring our own community's perspectives with us when we seek to understand the truth'. Therefore, 'all truth is coloured by the perspective we bring to the table'. Secondly, 'science does not have all the answers, nor can it obtain them'. This follows from the view that 'since truth is relative to the community of knowers, all knowledge is incomplete'. While science is useful, it is limited in its ability to interpret reality, and is 'one of many tools to help us understand life and the world we live in'. Thirdly, there is the 'distrust of the "Big"', which suggests that 'systems, structures, and institutions are unreliable because of their abuses that have been seen'. 'Institutions (government, universities, organized religion, etc.) still have a function, but they are not to be trusted implicitly and do not hold the kind of safety and security that they did in the modern mind'. Fourthly, 'human progress is not inevitable'. One of the reasons cited for this is that despite the discovery of atomic energy, there have been damaging effects upon the world 'with things such as the atomic bomb, the nuclear arms race, and nuclear disasters such as Chernobyl'. Fifthly, 'fragmentation and diversity are the norm'. Unlike the modern era, universality is not an objective of the Postmodern worldview. Instead, the norm is diversity - this worldview 'seeks to be sensitive to and accepting of all forms of diversity'. The sixth characteristic deals with the increasingly important position of spirituality. Unlike modernism which looked to science and rationalism for all its answers, postmodernists are open to 'the need for some kind of spirituality in their lives'. Finally, 'the electronic word is the dominant media' and has replaced the written word.²

¹ What is Postmodernism?
www.brookwood.org/membersite/javcarson/postmod.htm

² Ibid. These characteristics of postmodernism have been elicited from pages 2 and 3 of 'What is postmodernism?'.
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The main characteristic of postmodernism (as is evident from the above discussion) is its opposition to the Enlightenment tradition of thought.³ The Enlightenment was characterized by the Age of Reason, with man being 'elevated to the centre of truth'.⁴ This tradition gave rise to a scientific method of understanding how the world works. 'Modernity is fundamentally about order ... the more ordered society is, the better it will function'.⁵ It was during this time that systems, institutions and structures began to thrive.⁶ The institutions which developed during the modern period were aimed at establishing this ordered society, for example through prisons, schools and hospitals.

The French philosopher Michel Foucault, one of the proponents of postmodernism, expresses a great interest in the constitution of this modern state. He provides an interesting approach to the manifestation of hierarchical power relations in operation in the modern institutions formed during the Enlightenment period. His interest may therefore be said to involve a 'distrust of the "Big"'.

In this dissertation, I intend discussing Foucault's postmodernist concepts of power, discipline and discourse. In so doing, I want to examine the university as a disciplinary institution in terms of the classifications Foucault provides. Secondly, I want to consider how the disciplinary nature of the university constitutes certain negative power relations between students and faculty. Finally, I wish to examine the first year Introduction to Law course, as taught in the Law School since 1998, within the framework of Foucault's submissions. My aim in doing so is to illustrate the ways in which this teaching methodology, design and approach departs from traditional methods, and thus constitutes new, positive relationships of power between students and lecturers, as well as between students themselves.

³ Neophytou. Sociology 3A Worksheet Four:Postmodernism (1998) 3.

⁴ Supra note 1 at 1.

⁵ Professor Mary Klages 'Postmodernism' 1997
www.colorado.edu/English/ENGL2012Klages/pomo.html

⁶ What is postmodernism?
www.brookwood.org/membersite/javcarson/postmod.htm

Before engaging in a full examination of Foucault's submissions, I want to include a brief summary of Foucault's understanding of power, as articulated by Barend Kieffe (This should serve as an introductory comment to the exposition that follows) :

Foucault does not consider power in monolithic terms. Power does not reside completely in the State, nor is it a feature of a dominant class, though each may utilize and express some aspect of it. Power also does not result directly from an individual or a collective will. There are intricate power relations that give the State its particular form, or make for a dominant class, or condition the possibility of ethical or political will. Power may be overtly organized hierarchically, but its real effects are concentrated and diffused in a complex manner throughout hierarchies...(Foucault) focuses on the specificity of power, the particular power relations governing certain identifiable configurations in society, such as the law, education, medicine, the family and so on.⁷

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The Deconstruction and Construction of Subjectivity in Foucault.
www.mun.ca/phil/codgito/vol/v3doc2htm

MICHEL FOUCAULT

It is in the work of Michel Foucault that the poststructuralist principles of the plurality and constant deferral of meaning and the precarious, discursive structure of subjectivity have been integrated into a theory of language and the social power which pays detailed attention to the institutional effects of discourse and the role in the constitution and government of individual subjects.¹

THE MODERN STATE

In the Afterword to Dreyfus and Rabinow's *Michel Foucault : Beyond Structuralism and Hermeneutics*, entitled 'The Subject and Power', Foucault notes that a new form of power has been continuously developing since the sixteenth century, namely the state.² Foucault avers that the state's power is both individualizing and totalizing.³ He attributes the formation of the state to the integration of an old power technique (which he terms pastoral power), which originated in Christian institutions, into the modern western state.⁴ He says that Christianity 'proposed and spread new power relations throughout the world'.⁵ Christianity, in organizing itself as a Church, posits that certain individuals, by virtue of their religious quality, can serve others as pastors.⁶ Foucault suggests that 'pastor' designates a very special form of power.⁷

Pastoral power:

- aims to assure individual salvation in the next world;
- in addition to commanding, must be prepared to sacrifice itself for the life and salvation of the flock (unlike royal power which demands that subjects sacrifice themselves for the throne);
- looks after both the whole community and each individual during his entire life;

¹ Chris Weedon 'Discourse, Power and Resistance'. In: *Feminist Practice & Poststructuralist Theory* (1987) 107.

² (1982) 213.

³ Ibid.

⁴ Ibid.

⁵ Michel Foucault 'Afterword : The Subject and Power' In *Michel Foucault : Beyond Structuralism and Hermeneutics* by H.L Dreyfus and P.Rabinow (1982) 214.

⁶ Ibid.

⁷ Ibid.

- cannot be exercised without exploring peoples' minds and souls - 'It implies a knowledge of conscience and an ability to direct it'.⁸

Foucault distinguishes between the ecclesiastical institutionalization (the pastorate) which he says has lost most of its vitality and efficiency since the eighteenth century, from its function, which he submits has spread and multiplied outside the ecclesiastical institution.⁹ Around the eighteenth century, says Foucault, there was a new distribution and organization of the above individualizing power - he calls this a new form of pastoral power - the modern state. He describes the modern state as 'a very sophisticated structure' into which 'individuals can be integrated, under one condition: that this individuality would be shaped in a new form, and submitted to a set of very specific patterns'.¹⁰ The objective of this power was to ensure peoples' salvation in this world. 'Salvation', he says, now means 'health, well-being, security, protection against accidents' - worldly aims in place of religious aims.¹¹ Secondly, he says that there was an increase in the officials of this new pastoral power - some belonged to state apparatus or a public institution, sometimes private ventures, welfare societies, benefactors and philanthropists - ancient institutions like the family, were also mobilized to take on pastoral functions. In addition, complex structures like medicine (including the private sector) and public institutions like hospitals also exercised this power.¹² Thirdly, Foucault notes that the increase in the aims and objectives of this 'pastoral power focused on developing man's knowledge around two roles' - the first 'globalizing and quantitative - concerning the population' (earlier called totalizing) and the second 'analytical, concerning the individual'.¹³ This new pastoral power, according to Foucault, 'spread out into the whole social body' and 'found support in a multitude of institutions'.¹⁴ He comments further that 'an individualizing "tactic" ...characterized a series of

⁸ Supra note 5 at 1.

⁹ Ibid.

¹⁰ Supra note 5 at 1.

¹¹ Michel Foucault 'Afterword: The Subject and Power' In: *Michel Foucault: Beyond Structuralism and Hermeneutics*. (1982) 215.

¹² Ibid.

¹³ Ibid.

¹⁴ Supra note 11.

powers - those of the family, medicine, psychiatry, education and employers.¹⁵

Thus, for Foucault, '(M)odern power has emerged in the name of governance', a term James Marshall says Foucault introduced in an important paper "Governmentality" (Foucault 1979b).¹⁶ In this paper, Marshall says that Foucault 'traces the shift in the relations between the sovereign and individuals from the time of Machiavelli to the modern state'¹⁷ (earlier called the new pastoral power). According to Foucault, there is a change from 'obedience to a violent and imposed power where property was protected at any cost' (the sovereign), to a 'theme of governance of the self, children, family and state'.¹⁸ Although initially the family as model was used to identify governance, modern notions of governance and power emerged, when the family became instead, the instrument of government.¹⁹ According to Foucault, the '(P)opulation and its welfare ... became the central theme of governance'.²⁰ This links up with the new meaning accorded to 'salvation' by Foucault in terms of the new pastoral power. Marshall describes the development of this new power.

Marshall notes that there is a shift from 'the violent exercise of power of the sovereign upon the body of the subject' to 'the emergence of lenience with offenders and other people classified as delinquent'.²¹ Marshall refers to Foucault's (1979a) *Discipline and Punish* which details the violence of a public execution and then moves to 'a quiet, ordered and private scenario in which peoples' abilities and knowledge about themselves are gently and quietly shaped into a gentle "caring" institution'²² (institutions typifying the modern state). Marshall points out that although there were many such institutions to emerge, Foucault focuses on the prison, hospital, asylum, military, work place and school (what Foucault calls disciplinary

¹⁵ Ibid.

¹⁶ James D. Marshall 'Educational Research' In: *Foucault and Education : Disciplines and Knowledge*. (1990) 15.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Supra note 16.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

institutions). Prior to engaging in a discussion of disciplinary power, I want to first consider Foucault's views on the nature of power.

THE NATURE OF POWER

In *Discipline and Punish* Foucault submits that

there may be a 'knowledge' of the body that is not exactly the science of its functioning, and a mastery of its forces that is more than the ability to conquer them : this knowledge and this mastery constitute what might be called the political technology of the body. ²³

Foucault says that 'power is the operation of political technologies throughout the social body'.²⁴ 'The functioning of these political rituals of power...sets up ...nonegalitarian, asymmetrical relations.'²⁵ Dreyfus and Rabinow in discussing Foucault's account of power, refer to his comment that 'power is in reality an open, more-or-less co-ordinated cluster of relations'.²⁶ Cousins and Hussain also refer to the relational nature of power in referring to a quote from Foucault's *The Subject and Power* that 'power denotes the ensemble of actions exercised by and bearing on individuals, which guide conduct and structure its possible outcomes'.²⁷ Dreyfus and Rabinow says that Foucault also call these power relations "mobile". They explain that this mobility is evidenced by 'the spread of these technologies and their everyday operation, localized spatially and temporally...'.²⁸ Gergen in interpreting Foucault says that it is not the obvious forms of power that are being referred to (for example control by law and arms) but rather 'the insinuation of power into the ordinary'. Despite individual capacities for variation, 'for the most part we live ordered lives; with few questions or qualms, we attend school, enter professions, pay for our purchases, go to the doctors, and so on'. He explains that it is 'in the very exercise of these taken for granted practices, we demonstrate our subjugation to power'²⁹. Thus Foucault's concepts of power involve open-textured (power is exercised from a wide

²³ Foucault op cit 26.

²⁴ Dreyfus and Rabinow op cit 185.

²⁵ Ibid.

²⁶ 1982 (184)

²⁷ 1984 (229)

²⁸ Ibid.

²⁹ Kenneth J Gergen *An Invitation to Social Construction* (1999) 38.

variety of points and is not limited to one particular domain)³⁰ relations between individuals structured by the operation of disciplinary technologies which typify the modern state.

Foucault explains that this political technology of the body' implements a disparate set of tools and methods' (which will be the disciplinary techniques discussed below). He says further that this technology cannot be localized in a particular type of institution or state apparatus but that these have recourse to certain of its (the technology's) methods. He expands that these institutions and apparatuses operate 'a micro-physics of power'. With this study of the micro-physics that Foucault advocates, power is exercised on the body as a strategy, and its effects of domination are attributed to 'dispositions, manoeuvres, tactics, techniques, functionings'. He elaborates that in this micro-physics, a network of relations, constantly in tension, in activity, rather than a privilege that one might possess.' This power is not exercised as an obligation or prohibition on those who 'do not have it', but that 'it invests them, is transmitted by them and through them; it exerts pressure upon them, just as they themselves, in their struggle against it, resist the grip it has on them'.³¹ In suggesting that power is exercised on the body, Barend Kieft explains that Foucault is concerned with the materiality of power.³² Foucault, he says 'speaks about the capillary mode of power that operates on the body and that deeply controls individuals and their knowledge about themselves :

But in thinking of the mechanisms of power, I am thinking rather of its capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives.³³

Dreyfus and Rabinow discuss this micro-physics of power when they remark that according to Foucault, 'Power plays a "directly productive role;" "it comes from below;" it is multidirectional, operating from the top down and also from the bottom up. They interpret

³⁰ Cousins and Hussain op cit 228.

³¹ This paragraph has been drawn from page 26-7 of *Discipline and Punish*.

³² Barend Kieft. 'The Deconstruction and Construction of Subjectivity in Foucault'
www.mun.ca/phil/codgito/vol3/v3doc2.html

³³ Ibid.

Foucault's comments saying that 'Power is a general matrix of force relations at a given time'.³⁴

Giving the example of a prison, they explain that 'both the guardians and the prisoners are located within the same specific operations of discipline and surveillance, within the concrete restrictions of the prison's architecture'. They observe that although Foucault says that 'power comes from below and we are all enmeshed in it, he is not suggesting that there is no domination'. They refer to a prison example used by Foucault and aver that he affirms that of all the groups that were involved in power relations, however unequal and hierarchical, which they did not control in any simple sense.' Cousins and Hussain in interpreting Foucault also find that relations of power are only partially co-ordinated.³⁵ Dreyfus and Rabinow provide this insightful comment :

For Foucault, unless these unequal relations are traced down to their actual material functioning, they escape our analysis and continue to operate with unquestioned autonomy, maintaining the illusion that power is only applied by those at the top to those at the bottom.³⁶

'Foucault does remark that power is omni-present, that power is everywhere.'³⁷ Cousins and Hussain says that this is a critical remark by Foucault, directed against the habitual identification of power with repression. One of the purposes of this view is to 'break the spell of notions of liberation, political or sexual, promising a realm free of the hold of power. They explain that a realm devoid of all power relations is illusory. Further, they say that for Foucault, so too is a society under the grip of total-coherent-domination.³⁸ Thus,

Foucault sees power not set in one centre, with one group dominating another, but operating more autonomously. We all exercise power, often in the most unwitting of circumstances. For example, social workers, who may have the most altruistic motives to help and liberate, are given the power to look into other people's lives and supervise them. Power thus works in a capillary fashion rather

³⁴ (1982) 186.

³⁵ (1984) 228.

³⁶ This paragraph has been drawn from pages 185-6 of *Michel Foucault : Beyond Structuralism and Hermeneutics*.

³⁷ Cousins and Hussain quoting Foucault from *The History of Sexuality* (93).

³⁸ This paragraph has been drawn from pages 229-30 of *Michel Foucault: Theoretical Traditions in the Social Sciences*.

than being directed from a centre.³⁹

'Foucault cautions against a solely negative view of power.'⁴⁰ In *Discipline and Punish*, Foucault concludes chapter two 'The means of correct training' of Part Three 'Discipline', says that we should stop describing the effects of power in negative terms (represses, excludes, censors). He explains that the individual is a reality fabricated by the specific technology of power that he has called 'discipline'. He elaborates that power produces reality and 'domains of objects and truths' and that 'the individual and the knowledge that may be gained of him belong to this production'.⁴¹ The fabrication of the reality of the individual by discipline and its accompanying power will be discussed below.

³⁹ (Ed) Richardson 'Post-Structuralism and Modern Magic' (Part 2).
www.phhinc.ndirect.co.uk/archives/ess-post2.htm.

⁴⁰ Kiefe op cit 8.

⁴¹ Foucault op cit 194.

DISCIPLINE

Foucault says that in the classical age, the body was discovered as object and target of power. He speaks of the 'body that is manipulated, shaped, trained, which obeys, responds, becomes skilful and increases its forces.'⁴² Thus for Foucault, 'discipline operates primarily on the body, at least in the early stages of its deployment'.⁴³ Dreyfus and Rabinow find that although 'a form of social control over the body is found in all societies,...in disciplinary societies (it) is the form that this control takes' that is 'distinctive'.⁴⁴ They say further that '(T)he body is approached as an object to be analyzed and separated into its constituent parts'. They quote Foucault, stating that the 'aim of disciplinary technology is to forge a "docile [body] that may be subjected, used, transformed and improved'.⁴⁵ Thus 'discipline in Foucault refers to the deployment of disciplinary techniques. 'His usage is nearer to the original meaning of the word : instruction imparted to scholars and to disciples'.⁴⁶

Foucault submits that 'there were several new things in these (disciplinary) techniques, which differed from other 'powers':

1) **the scale of control** : the body was not treated 'as an indissociable unity'⁴⁷ but as being 'divided into units, for example the legs and arms - (T)hese are then taken up separately and subjected to a precise and calculated training'.⁴⁸ Dreyfus and Rabinow comment that the key to disciplinary power is '(T)he construction of a "micropower", starting from the body as object to be manipulated'.⁴⁹

2) **the object of control** : 'it was no longer the signifying elements of behaviour or the language

⁴² Foucault op cit 136.

⁴³ Dreyfus and Rabinow op cit 153.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Cousins and Hussain op cit 185.

⁴⁷ Foucault op cit 137.

⁴⁸ Dreyfus and Rabinow op cit 153

⁴⁹ Ibid.

of the body'⁵⁰, instead the focus was on the formal organization and disciplined response of the constituent parts of the body, the automatic reflex of hands, legs or eyes. Foucault gives the example of military exercises'.⁵¹

3) **the modality** : 'it implies an uninterrupted, constant coercion, supervising the process of the activity rather than the result and it is exercised according to a codification that partitions as closely as possible time, space, movement'.⁵² Dreyfus and Rabinow explain that micropower is directed towards a different use of time...If disciplinary power...is to work efficiently and effectively it must operate on the bodies it seeks to reduce to docility as continuously as possible'.⁵³

After describing these new aspects to disciplinary techniques, Foucault says that it is these methods, 'which made possible the meticulous control of the operations of the body, which assured the constant subjection of its forces and imposed upon them a docility-utility', that 'might be called "disciplines"'.⁵⁴

Cousins and Hussain in *Michel Foucault: Theoretical Traditions in the Social Sciences*, say that in Part Two of *Discipline and Punish*, Foucault engages in a discussion of disciplinary techniques, which he says 'came to permeate all varieties of social practices marking out the power relations characteristic of modernity'.⁵⁴ In Part Three 'Discipline' of *Discipline and Punish* and chapter one entitled 'Docile bodies', Foucault confirms this, saying that he does not intend to write a history of the different disciplinary institutions. He says that his intention is to 'map on a series of examples of the essential (disciplinary) techniques that most easily spread from one to another'.⁵⁵ These are techniques which Foucault describes as 'always meticulous, often minute', and characterized by attention to detail,

⁵⁰ Supra note 30 at 6.

⁵¹ Dreyfus and Rabinow op cit 154.

⁵² Supra note 30 at 6.

⁵³ (1982) 154.

⁵⁴ (1984) 244.

⁵⁵ Michel Foucault *Discipline and Punish: The Birth of the Prison* (1975) 139.

but 'important because they defined a certain mode of detailed political investment in the body, a "new micro-physics" of power'. He thus sees the disciplines and the accompanying techniques as 'a political anatomy', 'which was also a mechanics of power'.⁵⁶

Cousins and Hussain summarize the four techniques that Foucault says are deployed in discipline⁵⁷:

1. The division, distribution and arrangement of bodies

According to Foucault, 'discipline proceeds from the distribution of individuals in space'⁵⁸ and 'it therefore requires a specific enclosure of space'.⁵⁹ Hence the spread of disciplinary techniques has been accompanied by a proliferation of functional monuments, inter alia, schools, prisons, hospitals and factories.⁶⁰ These enclosures function as a grid, permitting the sure distribution of individuals in addition to securing their supervision.⁶¹ This distribution is achieved by 'partitioning' within the enclosed spaces - 'Each individual has his own place; and each place its individual'.⁶² Foucault says further that,

'Discipline is the art of rank, a technique for the transformation of arrangements. It individualizes bodies by a location that does not give them a fixed position, but distributes them and circulates them in a network of relations'.⁶³

Thus within the enclosed, functional space which is partitioned into units, discipline also arranges bodies according to a particular order. Foucault describes a military hospital where patients were categorized according to their age, disease and so forth, to illustrate an early experiment in disciplinary space. He also mentions the classroom 'in which spacial distribution

⁵⁶ Foucault op cit 141.

⁵⁷ Cousins and Hussain op cit 185.

⁵⁸ Foucault op cit 141.

⁵⁹ Dreyfus and Rabinow op cit 154.

⁶⁰ Cousins and Hussain op cit 185.

⁶¹ Supra note 40 and 41 at 8.

⁶² Foucault op cit 143.

⁶³ Foucault op cit 146.

might provide a whole series of distinctions at once : according to the pupils' progress, worth,⁶⁴ and so forth. He makes the following important point:

In organizing 'cells', 'places' and 'ranks', the disciplines create complex spaces that are at once architectural, functional and hierarchical. It is spaces that provide fixed positions and permit circulation, ...they mark places and indicate values; they guarantee the obedience of individuals...'.⁶⁵

2. A detailed prescription of activities

Cousins and Hussain provides the following succinct comment on the second disciplinary technique which Foucault calls 'the control of activity':

The disciplinary mechanism programmes activities by means of variety of techniques. Of these, the timetable an old inheritance, is the most important. It institutes rhythms, allocates activities to the slices of time and regulates the cycles of repetition.⁶⁶

Other techniques include specifying exactly how an activity is to be carried out.

3. The division of time into periods and the establishment of links between them, and a sketch of the path of evolution over time

'The clearest example of the division of time into segments and the arrangement of these segments into series is provided by pedagogic practices.'⁶⁷ At the end of the eighteenth century, pupils came to be divided according to age and ability, 'vertical and horizontal divisions'. 'The important point is that, implicit in the educational divisions and their mutual inter-relations is the path of evolution from elementary to more advanced stages.'⁶⁸

⁶⁴ Foucault op cit 147.

⁶⁵ Foucault op cit 148.

⁶⁶ (1984) 185.

⁶⁷ Cousins and Hussain op cit 185.

⁶⁸ Cousins and Hussain op cit 186.

4. The establishment of a network of links between the arranged bodies and their respective activities

Foucault says : 'Discipline is no longer simply an art of distributing bodies, of extracting time from them and accumulating it, but of composing forces in order to obtain an efficient machine.'⁶⁹ Foucault describes 'the mutual improvement school (which was developed from the seventeenth to the beginning of the nineteenth century), :

first the oldest pupils were entrusted with tasks involving simple supervision, then of checking work, then of teaching; in the end, all the time of the pupils were occupied either with teaching or being taught. The school became a machine for learning, in which each pupil, each level and each moment, if correctly combined, were permanently utilized in the general process of teaching.⁷⁰

In his introductory comments to chapter 2 'The means of correct training', of Part 3 'Docile bodies' of *Discipline and Punish*, Foucault says that 'Discipline "makes" individuals; it is the specific technique of power that regards individuals both as objects and instruments of its exercise.'⁷¹ Dreyfus and Rabinow explain that this is not done by crushing them or lecturing them, but by "humble" procedures of training and distribution.⁷² Discipline operates through a combination of hierarchical observation, and normalizing judgment.⁷³ These combine into a central technique of disciplinary power: the examination.⁷⁴

1. Hierarchical observation

'The exercise of discipline presupposes a mechanism that coerces by means of observation'.⁷⁵ The act of looking over and being looked over will be a central means by which individuals are linked together in a disciplinary space.⁷⁶ Foucault uses the model of the military camp (where total organization and observation were possible) to illustrate the control provided

⁶⁹ Foucault op cit 164.
⁷⁰ Foucault op cit 165.
⁷¹ Foucault op cit 170.
⁷² (1982) 156.
⁷³ Ibid.
⁷⁴ Ibid.
⁷⁵ Foucault op cit 170.
⁷⁶ Dreyfus and Rabinow op cit 156.

through hierarchy and observation.⁷⁷ This model he says later spread to schools, prisons and so forth. The structure of these buildings allowed for the observation/surveillance of each individual (individualization) and for the creation of hierarchies. Foucault describes a school where the 'monitors' were chosen from among the best pupils - one of their tasks involving surveillance of other pupils. He also illustrates the creation of hierarchy and surveillance by describing the factories, where supervision was undertaken by clerks, supervisors and foremen. Foucault says that

Hierarchized, continuous and functional surveillance...owed its importance to the mechanisms of power that it brought with it...The power in hierarchized surveillance of the disciplines functions like a piece of machinery...disciplinary power...is everywhere... and constantly supervises the very individuals who are entrusted with the task of supervising. Discipline makes possible the operation of a relational power that sustains itself by its own mechanism...⁷⁸

2. Normalizing judgement

'Discipline proceeds by laying down norms of conduct and instituting procedures to rectify deviations from the norm.'⁷⁹ This norm/standard was 'normalizing judgment'. Dreyfus and Rabinow explain that Foucault characterizes this as a kind of 'micropenalty', in which even trivial and local areas of life have been captured by power. They refer inter alia, to Foucault's example of the 'micro-penalty of time' (lateness, absences, interruptions of tasks).⁸⁰ Foucault says that the power of the Norm appears through the disciplines. He provides these examples :

The Normal is established as a principle of coercion in teaching with the introduction of a standardized education and the establishment of teachers' training colleges, it is established in the effort to organize a national medical profession and a hospital system capable of operating general norms of health....⁸¹

Foucault describes normalization as a great instrument of power. Dreyfus and Rabinow explain

⁷⁷ Dreyfus and Rabinow op cit 157.

⁷⁸ Foucault op cit 176-7.

⁷⁹ Cousins and Hussain op cit 186-7.

⁸⁰ (1982) 158.

⁸¹ Foucault op cit 184.

the effect of normalizing judgement :

It proceeds from an initial premise of formal equality among individuals. This leads to an initial homogeneity from which the norm of conformity is drawn. But once the apparatus is put in motion, there is a finer and finer differentiation and individuation , which objectively separates and ranks individuals.⁸²

3. The examination

For Foucault, the examination combines the techniques of an observing hierarchy and those of a normalizing judgement. The examination is seen to be at the heart of the procedures of discipline, and Foucault says 'it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected.'⁸³ Also, he says that it combines the modern form of power and the modern form of knowledge. One of the examples Foucault gives is of the school, where examinations became a permanent feature and were used to measure, compare and judge students. 'The examination in the school was a constant exchanger of knowledge; it guaranteed the movement of knowledge from the teacher to the pupil, but it extracted from the pupil a knowledge destined and reserved for the teacher.'⁸⁴ The examination for Foucault, 'introduced a whole mechanism that linked to a certain type of the formation knowledge a certain form of the exercise of power'.⁸⁵

He explains that disciplinary power is exercised through its invisibility and that it is the subjects who have to be seen in discipline - their visibility assures the hold of the power over them. The disciplined subject is kept in subjection through being constantly seen. The examination, says Foucault, is the technique by which power holds subjects in a mechanism of objectification.⁸⁶ The second comment he makes is that in addition to placing individuals in a field of surveillance, the examination 'situates them in a network of writing'. 'Through the

⁸² (1982) 158.

⁸³ Foucault op cit 184-5.

⁸⁴ Foucault op cit 187.

⁸⁵ Ibid.

⁸⁶ Ibid.

compilation of dossiers the examination makes each individual a case to be known.⁸⁷ Unlike the feudal times where one was marked more as an individual the more one exercised power, in the disciplinary regime, all those subject to control are individualized through surveillance and constant observation. 'The most mundane activities and thoughts are scrupulously recorded.'⁸⁸ For example, dossiers are compiled on the child, the patient, the criminal. Foucault referring to the school says that 'the register enables one...to know the habits of the children, their progress in piety, in catechism, in the letters, during the time they have been at the School'.⁸⁹ This 'power of writing' says Foucault constituted an essential part in the mechanisms of discipline. The apparatus of writing that accompanied the examination allowed the 'constitution of the individual as a describable, analyzable object...in order to maintain him in his individual features' and secondly allowed the

constitution of a comparative system that made possible the measurement of overall phenomena, the description of groups, the characterization of collective facts, the calculation of the gaps between individuals, their distribution in a given "population".⁹⁰

The third point that Foucault makes is that the examination, with all its documentary techniques makes each individual a "case" :

a case which at one and the same time constitutes an object for a branch of knowledge and a hold for the branch of power...The case...is the individual as he may be described, judged, measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalized, excluded, etc.⁹¹

Foucault explains that disciplinary methods have made ordinary individuality describable and that this description functions as a means of control and a method of domination, as a document for possible use. 'The turning of real lives into writing is no longer a procedure of heroization;

⁸⁷ Dreyfus and Rabinow op cit 159.

⁸⁸ Ibid.

⁸⁹ Foucault op cit 189.

⁹⁰ Foucault op cit 190.

⁹¹ Foucault op cit 191.

it functions as a procedure of objectification and subjection.⁹² Towards the end Part two 'The means of correct training' of Chapter Three 'Discipline' in *Discipline and Punish*, Foucault makes the comment that the examination is situated at the centre of the procedures that 'constitute the individual as effect and object of power, as effect and object of knowledge'. He says further that by combining hierarchical surveillance and normalizing judgement, the examination 'assures the great disciplinary functions of distribution and classification, maximum extraction of forces and time...optimum combination of aptitudes and , thereby, the fabrication of ...combinatory individuality'.⁹³

⁹² Foucault op cit 192.

⁹³ Ibid.

THE PANOPTICON

One sees therefore that Foucault,

charts the transition from a top-down form of social controls in the form of physical coercion meted out by the sovereign to a more diffuse and insidious form of social surveillance and process of "normalization".⁹⁴

'Normalization' (discussed earlier under normalizing judgment) for Foucault, Ball explains, means 'the establishment of measurements, hierarchy and regulations around the idea of a distributionary norm within a given population - the idea of judgment based on what is normal and thus what is abnormal'.⁹⁵ Jerry Pinkus avers that normalization for Foucault 'is encapsulated by Bentham's Panopticon'.⁹⁶ The Panopticon was designed by Jeremy Bentham, as the ideal prison, which he tried to sell to the British Government without much success at first.⁹⁷ Though the Panopticon plan was never fully realized, its architectural principles came to be embodied in a large number of prisons built during the nineteenth century in Britain, the United States and other countries.⁹⁸ The Panopticon was an eighteenth century prison system. Dreyfus and Rabinow provide the following description :

It consists of a large courtyard with a tower in the centre and a set of buildings, divided into levels and cells, on the periphery. In each cell, there are two windows : one brings in light and the other faces the tower, where large observatory window allow for the surveillance of the cells. The cells are like "small theatres in which each actor is alone, perfectly individualized and constantly visible" (Discipline and Punish 200). The inmate ...is only visible to the supervisor; he is cut off from any contact with those in the adjoining cells.⁹⁹

⁹⁴ Jerry Pinkus 'Foucault' (1996) 1.
<http://www.massey.ac.nz/~ALock/theory/foucault.htm>

⁹⁵ Stephen J. Ball 'Introducing Monsieur Foucault' In: *Foucault and Education : Disciplines and Knowledge* (1982) 2.

⁹⁶ Supra note 23 at 5.

⁹⁷ Cousins and Hussain op cit 190.

⁹⁸ Ibid.

⁹⁹ Dreyfus and Rabinow op cit 189.

The purpose of the Panopticon was the 'constant surveillance of its inhabitants' and its function to increase control.¹⁰⁰ 'The major benefit Bentham claimed for his Panopticon, was a maximum of efficient organization.' According to Foucault, this was achieved by 'inducing in the inmate a state of objectivity, a permanent visibility'.¹⁰¹ Because the inmate cannot see if the guardian is in the tower or not, he has to behave as if the 'surveillance is constant, unending and total'.¹⁰² Thus even if there is no guardian present, 'the apparatus of power is still operative'.¹⁰³ Since the prisoner is never certain when he is being observed, he becomes his own guardian.¹⁰⁴ Pinkus in describing the Panopticon, says that since 'the inmates could never be certain when they were being watched, ...over time, they began to police their own behaviour'.¹⁰⁵ The Panopticon 'assures the automatic functioning of power'.¹⁰⁶ Even those who observe the prisoners are 'themselves thoroughly enmeshed in a localization and ordering of their behaviour'.¹⁰⁷ In the process of observing, 'they are also fixed, regulated, and subject to administrative control'.¹⁰⁸

'Foucault picks out Jeremy Bentham's plan for the Panopticon (1791) as the paradigmatic example of a disciplinary technology.'¹⁰⁹ It is a clear example of how power operates.¹¹⁰ That this is so, is borne out by what Foucault himself says about the Panopticon in *Discipline and Punish: The Birth of the Prison* (1975. 1979 translation):

The Panopticon...must be understood as a generalizable model of functioning; a way of defining power relations in terms of the everyday life of men...it is the diagram of a mechanism of power reduced to its ideal form...it is in fact a figure of political technology that may and must be detached from any specific use...The Panopticon functions as a laboratory of power.¹¹¹

¹⁰⁰ Dreyfus and Rabinow op cit 191.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Supra note 23 at 5.

¹⁰⁶ Foucault op cit 201.

¹⁰⁷ Dreyfus and Rabinow op cit 189.

¹⁰⁸ Ibid.

¹⁰⁹ Dreyfus and Rabinow op cit 188.

¹¹⁰ Ibid.

¹¹¹ Michel Foucault *Discipline and Punish: The Birth of the Prison* (1975) 204-5.

Dreyfus and Rabinow describe this power as 'continuous, disciplinary and anonymous'. It could be operated by anyone 'as long as he were in the correct position and anyone could be subjected to its mechanisms'.¹¹² Foucault says further:

It is polyvalent in its applications; it serves to reform prisoners, but also to treat patients, to instruct schoolchildren, to confine the insane, to supervise workers, to put beggars and idlers to work. It is a type of location of bodies in space, of distribution of individuals in relation to one another, of hierarchical organization, of disposition of centres and channels of power, of definition of the instruments and modes of intervention of power, which can be implemented in hospitals, workshops, schools, prisons.¹¹³

Foucault also states that the panoptic schema may be used '(W)henever one is dealing with a multiplicity of individuals on whom a task or a particular form of behaviour must be imposed'.¹¹⁴ Pinkus further comments that the 'Panopticon has become a metaphor for the processes whereby "disciplinary technologies", together with the emergence of a normative social science, "police" both the mind and body of the modern individual'.¹¹⁵ Dreyfus and Rabinow further support Pinkus' contention by saying that Foucault's proposal is that punishment and prisons should be viewed as a complex social function. They comment further that 'Foucault's approach to the prison is a way of isolating the development of a specific technique of power'. They draw the conclusion that the object of study in *Discipline and Punish* is disciplinary technology (as Foucault himself has implied when speaking about the possibilities for the Panopticon - quoted above) and not really the prison.¹¹⁶

¹¹² (1982) op cit 189.

¹¹³ Foucault op cit 205.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Dreyfus and Rabinow op cit 143-144.

DISCOURSE

In Foucault's *Discipline and Punish : The Birth of the Prison*, he examines and analyzes the exercise of power and power relationships in certain institutions, where power has taken different forms ('based around the school, the family, and the justice and economic systems'¹¹⁷ - inter alia, he examines the prison, the asylum, and the 'discursive production of sexuality'¹¹⁸).

According to Foucault, in order to reveal the systems of power and knowledge at work in society and 'their part in the overall production and maintenance of existing power relations', analysis must consider 'the specific detail of the discursive field which constitutes, for example madness, punishment or sexuality'.¹¹⁹ The following quote provides an apt illustration :

Madness cannot be found in a wild state. Madness exists only within a society, it does not exist outside the forms of sensibility which isolate it and the forms of repulsion which exclude it or capture it.¹²⁰

For Foucault, history does not provide 'fixed universal meanings' of madness or sexuality, for example. Instead, 'meanings always take the forms defined for them by historically specific discourses'.¹²¹ Discourse is the pivotal concept in Foucault's theory. Weedon describes discourse as,

ways of constituting knowledge, together with social practices, forms of social practices, forms of subjectivity and power relations which inhere in such knowledge and the relations between them.¹²²

Stephen Ball quotes Foucault who says that discourses are 'practices that systematically form the objects of which they speak....they (discourses) constitute them (objects) and in the

¹¹⁷ Michael Peters *Poststructuralism, Politics and Education* (1996) 82.

¹¹⁸ Supra note 1 at 1.

¹¹⁹ Ibid.

¹²⁰ Kenneth Gergen *An Invitation to Social Construction* (1999) 38.

¹²¹ Ibid.

¹²² Weedon op cit 108.

practice of doing so conceal their own invention'.¹²³ He supports Weedon's definition saying that 'the possibilities for meaning and for definition, are pre-empted through the social and institutional position held by those who use them' and further that '(M)eanings...arise not from language but from the institutional practices, from power relations'.¹²⁴ '(T)he concept discourse emphasizes the social processes that produce meaning'.¹²⁵ In Foucault's theory, power and knowledge ('the single inseparable configuration of ideas and practices that constitute a discourse'¹²⁶) are seen as interdependent. 'The knowledge that is used to structure and fix representations in historical forms is the accomplishment of power'.¹²⁷ Stewart Clegg points out that '(P)articular concepts of power should not be viewed simply as an effect of a particular discourse', but that '(S)uch discourses are a means by which a certain theorizing power itself is constituted.'. ¹²⁸

Gergen says that 'Language is a critical feature of power relations...in particular the discourse of knowledge. He comments further that Foucault's primary concern was with the subjugation by various groups who claim "to know", or to be in possession of "the truth" - especially about who we are as human selves'. Among the examples that he refers to are the disciplines of medicine and education. These disciplinary regimes (which were discussed earlier) 'generate languages of description and explanation - classifications of selves as healthy or unhealthy, normal or abnormal, upper or lower class, intelligent or unintelligent - along with explanations as to why they are so'. He avers that there are various research procedures which are utilized by these regimes, which 'scrutinize and classify' individuals in their terms. In offering ourselves for examination (from medical to college board assessments), Gergen says that 'we are giving ourselves over to the disciplinary regimes, to be labelled and explained in their terms'. He suggests that in carrying these terminologies into our daily lives, speaking to others of our cholesterol level, our depression or academic grades, we are engaging in power relations'. In

¹²³ Stephen J Ball 'Introducing Monsieur Foucault' In: *Foucault and Education : Disciplines and Knowledge* (1990) 2.

¹²⁴ Supra note 7 at 1.

¹²⁵ Ibid.

¹²⁶ Ball op cit 5.

¹²⁷ Stewart, R Clegg *Frameworks of power*. (1989) 154.

¹²⁸ Clegg op cit 155.

so doing, the control of the disciplinary regimes are being extended. Thus, says Gergen, individuals ultimately participate in their own subjugation.¹²⁹

Having examined Foucault's concepts of disciplinary power and the manner in which discourses structure particular power relations, I want to use the framework outlined by Foucault to investigate the university as a disciplinary institution.

¹²⁹

This paragraph has been drawn from pages 38-39 of *An Invitation to Social Construction* by Kenneth Gergen (1999).

THE UNIVERSITY AS A DISCIPLINARY INSTITUTION

My interest in discussing power and then discourse above, is to consider the power relations that operate within the university itself and more specifically within teaching framework . Secondly, I want to examine the discourse which constitutes these power relations. My reason for doing so is to expose the negative power relations that are inherent in relations between students and lecturers. Thus, I want to engage in a 'Foucauldian perspective of the university as a disciplinary block'.¹³⁰ Grant explains that for Foucault, 'a disciplinary block is formed when three types of relationships - relations of power, of communication, and of objective capacities - establish themselves in a regulated and concerted system'.¹³¹ Foucault gives the example of an educational institution :

Take for example, an educational institution : the disposal of its space, the meticulous regulations which govern its internal life, the different activities which are organized there, the diverse persons who live and meet one another, each with his own function, his well-defined character - all these constitute a block of capacity-community-power. The activity which ensures apprenticeship and the acquisition of aptitudes or types of behaviour is developed there by means of a whole ensemble of regulated communications (lessons, questions and answers, orders, exhortations, coded signs of obedience, differentiation marks of the "value" of each person and of the levels of knowledge) and by a means of a whole series of power processes (enclosure, surveillance, reward and punishment, the pyramidal hierarchy).¹³²

In considering the power relations, I want to examine the university as a disciplinary institution in terms of the disciplinary techniques outlined above.

1. The division, distribution and arrangement of bodies

Earlier on, I referred to Foucault's comment that discipline proceeds from the distribution

¹³⁰ Barbara Grant 'Disciplining Students : The Construction of Student Subjectivities' In: *Foucault : The Legacy* (Ed.) Clare O' Farrell (1997) Quoting Grant B. (1993) *Making university students: The construction of student subjectivities*. The University of Auckland : Unpublished Masters Thesis. 674.

¹³¹ Grant, B 'Disciplining Students : The Construction of Student Subjectivities' In: *Foucault : The Legacy* (Ed.) Clare O' Farrell. (1997) 674.

¹³² Michel Foucault 'The Subject and Power' In an Afterword to *Michel Foucault: Beyond Structuralism and Hermeneutics* (1982) 218.

of individuals in space thus requiring a specific enclosure of space.¹³³ Foucault names the school amongst the proliferation of functional monuments that accompanied the spread of disciplinary techniques. These enclosed spaces (in our case the university campus, more specifically the lecture theatre), ensured the distribution and supervision of individuals. Grant in referring to the above comments by Foucault, says that in the physical arrangement of lecture theatres, we find the 'disposal of space that he speaks of'.¹³⁴ The 'dominant teaching process used at the university is the lecture, where tight controls are exerted over spatial arrangements'.¹³⁵ Indeed the constitution of the lecture theatres ensure that the lecturer is situated at the front (in a dominant position) with students facing him (in a subordinate position). This rigid set-up enforces upon both students and lecturers a particular power relation. It 'guarantees the obedience of individuals'.¹³⁶ The lecturer is seen as being in control. Keogh says that 'teachers are positioned as institutional agents of regulatory power'.¹³⁷ I submit that the placement of the lecturer and the students inculcates between these parties a certain 'distance'. Further, this distance may also be linked to students' feelings of alienation from the lecturer. The lecturer him/herself may feel detached from students.

Foucault also says that discipline is the art of rank. From my experiences, in a class where I felt intimidated, I would attempt to sit in a place that was invisible or least likely to draw the attention of the lecturer. On the other hand, I would notice that those students who were confident about the class, would sit anywhere. I have also noticed (in the short while that I taught on the Commercial Law One course - which has large group lectures), that those students who generally performed well and were confident to approach the lecturer, usually sat directly in the line of the lecturer's vision. Those who were less interested or more intimidated/uncomfortable with approaching the lecturer would sit at the back of the class or on the sides of the room. Not only does this have implications for power relations between students and lecturers, but also for power relations between students themselves. This kind of seating

¹³³ Supra note 54 at 10.

¹³⁴ Grant op cit 675.

¹³⁵ Ibid.

¹³⁶ Supra note 60 at 11.

¹³⁷ J. Keogh 'Beyond The Panopticon; Accounting For Behaviour In Parent-Teacher Communications' In: *Foucault : The Legacy* (Ed.) Clare O' Farrell (1997) 666.

inculcates a sense of alienation between the students themselves, who begin to classify themselves (forming groups) according to where they sit in this disciplinary space which circulates them 'in a network of relations'. In such a lecture theatre, the spacial distribution of students provides distinctions according to students level of comfort with the course and the lecturer.¹³⁸

2. A detailed prescription of activities

The timetable positions students within time by virtue of 'minutely detailed timetables'.¹³⁹ The timetable 'institutes rhythms, allocates activities (lectures, tutorials, tests and examinations) to the slices of time and regulates cycles of repetition'.¹⁴⁰ There are specific times when lectures and tutorials are conducted. For example, during examination sessions, students are required to produce student cards, leave all bags in a certain area, remain seated in the last half hour and so forth. Registration occurs on particular dates which are set according to the degree applied for. Faculties set up consultation times. Assignments are expected to follow a certain format and often a particular line of reasoning. Each aspect of the activity is detailed.¹⁴¹

3. The division of time into periods and the establishment of links between them, and a sketch of the path of evolution over time

'Implicit in educational divisions...is the path of evolution from elementary to more advanced stages'.¹⁴² Grant comments that the assigning of students to particular cohorts (first year, second year, etc) depending upon prior achievement is a classification process that controls students and is yet another dominative technology.¹⁴³

4. The establishment of a network of links between the arranged bodies and their respective activities

¹³⁸ Supra note 63 at 11.

¹³⁹ Grant op cit 676.

¹⁴⁰ Supra note 65 at 12.

¹⁴¹ Other techniques include specifying exactly how an activity is to be carried out. See page 7.

¹⁴² Supra note 67 at 12.

¹⁴³ Grant op cit 678-9.

'Discipline is ...an art...of composing forces in order to obtain an efficient machine'.¹⁴⁴ 'Power/knowledge - which we call the disciplines - is developed by the exercise of power and used in turn to legitimate further exercises of power.'¹⁴⁵ This power, Grant says, is exercised through disciplinary institutions like the university. Disciplinary power works through the objectification of the body 'which it seeks to normalize, rendering obedient, teachable, governable without recourse to outright coercion....'. The objective of the exercise of disciplinary power is to define and control the conduct of individuals so that they 'lead useful, docile and practical lives'.¹⁴⁶ In addition to lecturers ensuring that students attend lectures and sit for tests and examinations (thus defining and controlling students' behaviour with the aim that students in successfully completing their university degrees, would lead 'useful, docile and practical lives'), lecturers and tutors (generally older students) contribute to this goal by attempting to ensure that students attend tutorials and that those who transgress in anyway are soon brought into line. One of the primary functions of the university is to operate as 'a machine of learning', in which each student at each level and at each moment, if correctly combined, would be utilized in the general process of teaching.¹⁴⁷

Discipline is also said to operate through a combination of hierarchical observation and normalizing judgement which combine into a central technique of disciplinary power : the examination. I want also to discuss these three techniques in terms of the university teaching system.

Hierarchical observation

Foucault has said that a central means by which individuals are linked together in a disciplinary space, is through the act of looking over and being looked over.¹⁴⁸ In our case the disciplinary space is the university (the lecture theatres, lecturers' offices, the buildings as a

¹⁴⁴ Supra note 68 at 12.

¹⁴⁵ Grant op cit 678 quoting Marshall, J.D. 'Foucault's technologies of power : Implications for education'. The University of Auckland : Unpublished paper. (1989) 15.

¹⁴⁶ This paragraph has been drawn from page 678 of 'Disciplining Students : The Construction of Student Subjectivities' by Grant, B in Foucault : The Legacy. (Ed.) Clare O' Farrell. (1997)

¹⁴⁷ Supra note 69 at 13.

¹⁴⁸ Supra note 75 at 13.

whole). Earlier Foucault is also seen to have said that the structure of these buildings (he mentions the school as an example), allows for the surveillance of each individual and the creation of hierarchies.¹⁴⁹ The lecture theatres are structured such that the students sit facing the lecturer. This setting, as I mentioned above, places the lecturer in the position of all-knowing, while students are the passive recipients of whatever knowledge the lecturer has to impart. This clearly creates hierarchies between lecturers and students. In the lecture theatre, it is not only the lecturer who engages in a surveillance of the students to ensure conformity to the 'correct' behaviour. Students themselves also are constantly observing the conduct of the lecturer, thus ensuring that the lecturer behaves in the manner set out for him by the university. Students also undertake a surveillance of each other in their classes. This kind of observation also contributes to students conforming to set patterns of conduct. Another method of surveillance that Grant mentions is the regular assessment of coursework.¹⁵⁰ In addition to constituting surveillance by lecturers, students soon learn which students are at the top of the class. This knowledge immediately creates hierarchies between the students themselves. Duncan Kennedy makes the following apt comment when writing about student evaluation :

The system generates a rank ordering of students based on grades, and students learn that there is little or nothing they can do to change their place in that ordering, or to change the ways the way the school generates it. Grading as practiced teaches the inevitability and also the justice of hierarchy'.¹⁵¹

Hierarchical observation is further reinforced by the employment of the more senior students who work as tutors for the university. I refer to the comment made above about tutors ensuring that students under their supervision comply with the regulations. Grant describes fixed tutorial groups as contributing to the degree of surveillance of students at universities.¹⁵² Furthermore, the tutors are in turn answerable to the lecturers in whose course they tutor. In these ways, discipline 'makes possible the operation of a relational power that sustains itself by its own

¹⁴⁹ Supra note 77 at 14.

¹⁵⁰ Grant op cit 679.

¹⁵¹ Duncan Kennedy 'Legal Education As Training For Hierarchy' (1982) 50-1 *JLE*

¹⁵² Grant op cit 679.

mechanism'.¹⁵³

Normalizing judgement

Students' conduct at the university is regulated by norms of conduct and procedures are instituted to rectify deviations.¹⁵⁴ Students are expected to behave in certain ways at lectures, tutorials, tests and examinations. For example, they are chastised for arriving late, there are penalties for late assignments, students who cheat are brought before the student disciplinary court. As regards student learning, Grant says that there is a 'culture of autonomy and individuality as the university' which 'constructs students who believe that success or failure lies with them'.¹⁵⁵ As a result of this, students feel that they are 'solely responsible for their academic success, they seek to take care of themselves, and in this way the institution takes care of itself'.¹⁵⁶ Kennedy also makes this point when he says that 'The system tells you that you learned as much as you were capable of learning, and that if you feel incompetent or that you could have become better at what you do, it is your own fault'.¹⁵⁷ This culture functions as a norm thus requiring all students, regardless of their educational needs, being treated in the same manner and thus attempting to conform to this norm. Thus, as Dreyfus and Rabinow have said, normalizing judgment 'proceeds from an initial premise of formal equality among individuals'.¹⁵⁸ This has great implications given the diversity (gender, race and culture) of students who attend the law school. As this norm operates among students, students (depending on how well they adjust to the norm) begin to be classified and classify themselves in terms of the norm. Thus, 'there is a finer and finer differentiation and individuation, which objectively separates and ranks individuals'.¹⁵⁹

The examination

According to Foucault, the examination places individuals in a field of surveillance and

¹⁵³ Supra note 77 at 14.

¹⁵⁴ Supra note 78 at 14.

¹⁵⁵ Grant op cit 680.

¹⁵⁶ Ibid.

¹⁵⁷ Kennedy op cit 51.

¹⁵⁸ Supra note 81 at 14.

¹⁵⁹ Ibid.

situates them in a network of writing. Dossiers which are compiled make each individual a case to be known.¹⁶⁰ At the university, records are kept of students' academic performance as well their conduct. These details make of each student a 'case', (each student is allocated a student number) and constitute the student as 'an object for a branch of knowledge'.¹⁶¹ Academic records are used in the procurement of scholarships while good conduct (for example instances of cheating or copying during examinations constitutes bad conduct) is required for employment purposes. These records function to make the student's individuality describable and as 'a document for possible use'.¹⁶² In other words, details about the student's life are compiled to be used for different purposes. Thus, this information also functions as 'a hold for the branch of power'.¹⁶³

Foucault says that examinations at schools were used to measure, judge and compare students.¹⁶⁴ In discussing hierarchical observation above, I referred to Kennedy who wrote of the institution of rank by the grading of students.¹⁶⁵ Those students who perform well are usually quite comfortable when approaching staff, as they expect to be received favourably. Alternatively, those students who perform poorly, might be hesitant in approaching lecturers as they may fear some sort of condemnation or ridicule. Grant refers to a comment from *Discipline and Punish* regarding the examination : it is a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them.¹⁶⁶ Among students themselves, as I have said before, those students who are successful in conforming to the norm are usually more assertive in class and conduct themselves with a great deal more confidence than those who struggle to get good grades. Thus the examination allows for the 'calculation of gaps between individuals' by allowing students to be 'classified' (according to their grades), 'thus distinguishing among

¹⁶⁰ Supra note 86 at 15.

¹⁶¹ Supra note 90 at 16.

¹⁶² Supra note 91 at 16.

¹⁶³ Ibid.

¹⁶⁴ Supra note 83 at 15.

¹⁶⁵ Supra note 151 at 28.

¹⁶⁶ Grant op cit 679.

individual students'.¹⁶⁷ Kennedy explains that one kind of vulnerability of students has to do with their own competence. He says further that :

Law school wields frightening instruments of judgment, including not only the grading system, but also the more subtle systems of teacher approval in class, reputation among fellow students, and out-of-class faculty contact and respect.¹⁶⁸

¹⁶⁷ Grant op cit 679 quoting Howley, A and Hartnett, R. 'Pastoral power and the contemporary university : A Foucauldian analysis' (1992) *Educational Theory*, Summer, 42(3).

¹⁶⁸ Kennedy op cit 54.

THE UNIVERSITY AS EXEMPLIFYING PANOPTICISM

Earlier, it was mentioned that the purpose of the Panopticon was the 'constant surveillance of its inhabitants' and that it functions to increase control.¹⁶⁹ Grant describes the ways in which the structure of the university induces effects similar to the Panopticon, some of which I have referred to above. Foucault's description of an educational institution refers.¹⁷⁰ Foucault mentions the disposal of space, the meticulous regulations governing university life, the activities organized there and the people who populate the university. Grant begins by mentioning the tight control exerted over the spacial arrangements at lectures and the 'time frame' which 'entails regulation and surveillance' of students. Secondly, she refers to the classification practices which she says 'control students by assigning them' to particular levels of study (first year etc.), by allocating them to 'fixed tutorial groups' together with the 'regular assessment of coursework'. She describes the examination as a classificatory procedure, although it only permits inferences about student performance.¹⁷¹ She states that by regulating access to particular spaces on campus, for example the marking of staff-only spaces (this would include the staff lounge, lecturers offices and parking spaces, administrative offices - such distinctions distinguish between students, lecturers and administrative assistants) further control and classification is established. 'The payment of fees, permissions to hand in late work, to sit for examinations at irregular times, to withdraw from courses, to receive recognition for disability', are the 'complex, bureaucratic procedures which regulate many aspects' of student life. These practices, she explains, control the behaviour of students. She says that while students are aware of being subject to surveillance 'through regular assessment, the filling out of institutional and departmental forms etc. they are never quite sure how much is known about them, nor why they have to provide particular information (such as ethnicity, age, nationality, gender, dependents, income)'. She says further that students are uncertain about their own access to such information as well as the identity of others who have access to it nor do they know how it is transmitted through the different departments. She suggests that this 'continuous

¹⁶⁹ Supra note 99 at 18.

¹⁷⁰ Supra note 131 at 24.

¹⁷¹ Grant citing Howley, A and Hartnett, R. 'Pastoral power and the contemporary university : A Foucauldian analysis' *Educational Theory*, Summer (1992) 42(3):271-83.

surveillance of the ubiquitous unseen watcher that brings students to normalize themselves through self-discipline...'.¹⁷²

My particular interest in considering panopticism is to see how the practices employed by lecturers and students both within and outside the lecture theatre conform to the Panopticon's purposes of surveillance and control. Through this surveillance and control, I want to consider the 'power relations in terms of the everyday life' of students and lecturers. Previously, I mentioned the rigid physical setting of lecture theatres. This setting I suggested, created a distance between lecturers and students. In addition, it must be noted that students themselves are distanced from each other, since they do not face each other. This distance ensures that hierarchical power relations remain in force in the lecture theatre. The lecturer maintains control of the class by virtue of being positioned at the front. This position allows him/her to have the attention of all the students at once. Furthermore, the lecturer is able to observe each student at will. Since the students do not know where the lecturer is focusing his/her attention, they are bound to conform to the behaviour required of them. Even when they are not being observed by the lecturer students will regulate their conduct and thus 'police their own behaviour' or become their own guardians. Students remain in 'a state of objectivity, a permanent visibility'.¹⁷³ This disciplinary power is continuous, as students maintain these relations with lecturers and other students both in and out of class. The university teaching environment thus 'functions as a laboratory of power'.¹⁷⁴

More importantly however, surveillance maintains the obedience of the students as 'docile bodies', more relevantly passive bodies is acquired in this way. This kind of hierarchical power relation which is maintained by the surveillance aspect of the lecture theatre, is stultifying to the student, as it is usually accompanied by feelings of fear and intimidation. Students are afraid of acting incorrectly or giving the wrong answer. As a result of this fear, students tend to remain silent, leaving the lecturer with the task of merely presenting his knowledge. Besides listening

¹⁷² This paragraph has been drawn from page 679 of Grant's article.

¹⁷³ *Supra* note 100 at 19.

¹⁷⁴ *Supra* note 110 at 19.

to the lecturer, students hardly participate in the lecture. This silence induced by the operation of these power relations which limits students' participation, ultimately constricts the quantity as well as the quality of students' learning.

THE DISCOURSE OF STUDENTHOOD

As with madness, punishment or sexuality, which Foucault said are constituted by particular discursive fields, so too, is there a specific discursive field which constitutes the life at the university for all the parties who form part of its community. Of interest here is what Grant terms 'the discourse of studenthood'. Grant describes the 'good' student according to a nineteenth century vision of the liberal university. She explains that 'the good student was the raw material for the "educated man" who with proper guidance, is brought to apprehend :

the great outlines of knowledge, the principles on which it rests, the scale of its parts, its lights and shades...hence it is that his education is called 'Liberal'. A habit of mind is formed which lasts through life, of which the attributes are freedom, equitableness, calmness, moderation and wisdom...(Newman cited in Tristram 1952:30) ¹⁷⁵

Grant continues that the concept of the 'unique but universal individual - sometimes called the liberal humanist individual - is an enduring legacy of Enlightenment thought. 'This individual is a rational, authentic, unified being with an essential identity.' This being 'is the basic social unit in which freedom and rationality are located' whose nature is seen to be malleable. Seen as the 'sole author of his own beliefs and custom'¹⁷⁶, his rationality is privileged as the real basis of authority for regulating the affairs of daily life'.¹⁷⁷ Grant avers that in terms of this 'common sense perspective, students are in their very nature rational thinking individuals and the function of the university is ...to improve their nature'. In contrast to this view of the universal liberal humanist individual, Grant describes Foucault's concept of 'the constructed and contested'. This subject is positioned within many discourses, 'each of which produce a range of subject positions'. For Foucault, Grant explains, there is a double sense of the individual being subject to and subject of. This concept, Grant posits, breaks with the Enlightenment view of the autonomous individual. Grant makes the following interesting application :

¹⁷⁵ Grant op cit 675.

¹⁷⁶ Grant citing Cocks, J *The oppositional imagination: Feminism, critique and political theory* (1989) 128.

¹⁷⁷ Grant citing Bowers, C.A *Elements of a post-liberal theory of education* (1987) 2.

From this perspective the student is subject not only to the controls (regulations) of the institution but also to her or his own "conscience" which "knows" what it means to be a "good" student'. This conscience or self-knowledge is formed in the dominant liberal discourse of studenthood which is dynamically produced by the relations between the institution (in its beliefs and practices, in its rhetoric and its physical arrangements, ...the lecturers) and its student-subjects. Because of this self-understanding the student-subjects work to produce themselves as good students...¹⁷⁸

From Grant's explanations, the power relations inherent in the constitution of the student-subject are quite clear, as is the discourse of the autonomous individual which structures these relations, while itself being produced by these power relations.¹⁷⁹ In the above quote Grant says that the relations between the institution and the student produces the discourse of studenthood. We have already discussed the ways in which the physical arrangements engender power relations between lecturers and students and among students themselves. Grant also refers to the relations students have with lecturers. These relations I have said to be hierarchical. Further inculcation of power in the hands of the academic staff may be illustrated by reference to Weedon's point that 'the possibilities for meaning and for definition, are pre-empted through the social and institutional position held by those who use them'.¹⁸⁰ It is of course the lecturers who impart knowledge to students. The point I am making is that the lecturers decide what materials will be dealt with as well which aspects of those materials require greater attention by students. Further, in setting tests and examinations, they also determine the types and lines of reasoning that make acceptable answers. Students aiming to pass the course have to take heed of this. Students are thus in a position of subjugation to the lecturers who are 'in possession of the truth'.¹⁸¹ Those students who perform well and fit the mold of the autonomous, good student are classified accordingly. Alternatively, those students who do not are classified as poor performers or under-achievers. Thus 'languages of description and classification' are 'generated' and are used to 'scrutinize' students. Students are 'labelled and explained' in terms of their academic performance by lecturers, their fellow students, as well as by potential

¹⁷⁸ This paragraph has been drawn from page 676 of Grant's article.

¹⁷⁹ Supra note 129 at 23. Particular concepts of power should not be viewed simply as an effect of a particular discourse, but such discourses are a means by which a certain theorizing power itself is constituted.

¹⁸⁰ Supra note 125 at 22.

¹⁸¹ Supra note 130 at 24. Gergen mentions Foucault's concern with the subjugation by various groups who claim to know or to be in possession of the truth.

employers.¹⁸² The power relations in operation here are clearly evident as is the kind of discourse that structures them.

Grant finds the concept of the good student problematic for several reasons. She says that because 'we understand students' as rational, thinking individuals, whose nature is to be improved on, there are certain implications for our teaching practices. The first is that 'in the classroom we only have to attend to the minds of our students which can be separated from their bodies and emotions'. Because of this distinction, our teaching practices do not 'take these (lesser) dimensions into account. The second point she makes is that since the student is seen as 'fundamentally rational autonomous individual he can take care of himself; thus if he does not understand something he will ask' and 'if he needs help he will freely seek it'. However, she explains that the stories she has heard from students contradict this view. Instead, she says that she has heard that students are 'often too afraid or too shy to approach lecturers who, in the current context of hugely increasing numbers of undergraduate students, are becoming increasingly distant. She comments further that 'when students interact with lecturers mostly they do not do so as "equal" adults - as the liberal humanist discourse suggests - but occupy a multiplicity of positions, as child, as subordinate, as supplicant... in fact as anything but an equal'. She says further that those students who do approach lecturers as equals' with a strong sense of their own rights to be heard...to ask questions, or to disagree, are likely to be (mis?)read by lecturers as unduly stropy or even harassing'.¹⁸³

The second problem Grant identifies has to do with discourse. She mentions that in Foucault's view, (as mentioned extensively above), the human subject is placed in power relations. For students, this means that they are subject to the institution and that the choices they make are 'constrained by the dictates of the institution (for example subject choices, credit points for courses and timetable constraints) and by the relations of power which exist between them and the lecturers and administrators'. In this play of complex relations between individuals (such as between lecturer and student) or groups (such as between lecturer and students in a

¹⁸² Supra note 130 at 24. Gergen comments that disciplinary regimes generate languages of description and explanation - classification of selves as ...normal or abnormal...intelligent or unintelligent.

¹⁸³ This paragraph has been drawn from page 675-6 of Grant's article.

lecture theatre), 'the mode of action is the power to act on the action of others, to modify them. Quoting Foucault, Grant describes the exercise of power as :

a total structure of actions brought to bear upon possible actions: it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject or acting subjects by virtue of their acting or being capable of action.¹⁸⁴

Accordingly, Grant explains 'it is essential that for a power relation to exist the target of power is one who acts...and so there are, in principle, many possible responses/positions within a relation of power'. At this point discourse becomes relevant. The discursive context, Grant says, 'both enables and constrains ways of thinking, speaking and acting in systematic ways, some responses/positions are made more likely and more privileged than others and some people take up those positions more easily'. Grant then draws the following important conclusion:

Thus, for student-subjects, for a myriad of reasons experienced in their daily lives, while one student position is made more likely, other student positions are marginalized or in Foucault's words, made 'more difficult'. Thus it is easiest for the young (male), middle class, pakeha student to take up the position of the 'good' student because of the characteristics of this position sit most snugly with his other subject positions and interests.¹⁸⁵

It is my observation that the dominant student position at university is indeed that of the westernized middle class individual. It has also been my observation in the small group classes that I have taught, that these students are much more comfortable, confident and outspoken than those students who do not fit this description. Linked to this discourse is that of the Enlightenment autonomous individual into which mold such students are expected to and indeed which they attempt to fit. This has great relevance for South African universities, given the increasing diversity of students who register each year. A large sector of the student population

¹⁸⁴ Grant op cit 677 citing Foucault 'The subject and power' In : Wallis, B. (ed.) *Art after modernism : Rethinking representation* (1986) 427.

¹⁸⁵ This paragraph has been drawn from pages 677-8 of Grant's article.

comprises second language (primarily African) students. The greater percentage of them come from economically and educationally disadvantaged backgrounds and thus do not fit the middle class mold. Further, their culture inheritance varies immensely from students of a western culture background.

The concept of the rational, thinking, autonomous individual is one that takes into account a westernized upbringing. This means therefore that such students occupy marginal positions with regard to language, culture and economic backgrounds. The impact of their position is that they find it a great deal more difficult to cope at university than middle class westernized individuals. Fitting in and giving voice to their needs become problematic for many such students. This is exacerbated by the hierarchical relations between faculty and students and by the culture and economic class gaps between students themselves. Besides feeling unable to approach the lecturers, such students are also distanced from fellow students. Secondly, there is the language barrier, as many second language students are unable to effectively express themselves in English, while most lecturers and students who are first language English speakers do not speak any of the African languages. The unequal power relations that operate here are clearly evident, as are the detrimental and disempowering effects such barriers can have for students facing this dilemma.

The problems highlighted by Grant are relevant here as they operate as a link between the discussions above of power relations which are constituted through discourse and the next aspect of this work - The Introduction to Law course approach which is aimed at breaking down these negative power relations and constituting a more student-empowering discourse, for all students, but particularly for those students who are traditionally marginalized. Prior to discussing this approach, I want to outline both the old and new paradigms of teaching outlined by Johnson, Johnson and Smith.¹⁸⁶ My reason for doing so is that the Introduction to Law course teaching paradigm fits the new paradigm described by these authors. The new paradigm will clearly illustrate the shift in the hierarchical power relations amongst students themselves and

¹⁸⁶

D.W. Johnson, R.T. Johnson, & K.A. Smith *Active Learning : Cooperation in the College Classroom* (1991)

between lecturers and students. The description of the old paradigm provides an enlightening contrast (which the authors tabulate) and highlights its inherent negative power relations.

THE OLD PARADIGM OF COLLEGE TEACHING

The old paradigm of college teaching is based on John Locke's assumption that the untrained student mind is like a blank sheet of paper waiting for the instructor to write on it. Student minds are viewed as empty vessels into which instructors pour their wisdom.¹⁸⁷

Because of these and other assumptions, Johnson, Johnson & Smith¹⁸⁸ say that faculty think of teaching in terms of six principal activities:

1. Transferring knowledge from faculty to students

Faculty transmit information that students are expected to memorize and then recall.¹⁸⁹ In so doing, hierarchical power relations are instituted, in that the lecturer is seen as all-knowing while the students are 'empty vessels waiting to be filled'. It is the lecturer who decides what materials to cover and what kind of answers are appropriate for the tests and examinations that he or she sets. .

2. Filling passive empty vessels with knowledge

Students are passive recipients of knowledge. The faculty own the knowledge that students memorize and recall.¹⁹⁰ Thus, little regard is had for the contribution that students themselves can make toward the learning process. Lack of active student participation, once again, indicates the negative power relation in the learning atmosphere.

3. **Classifying students** by deciding who gets which grade and **sorting students into categories** by deciding who does and does not meet the requirements to be graduated, goes on to graduate school, and gets a good job.¹⁹¹ The classification and sorting of students and the impact of these procedures has been mentioned above under examinations.

¹⁸⁷ Johnson et al op cit 4.

¹⁸⁸ Supra note 186 at 39.

¹⁸⁹ Johnson et al op cit 6.

¹⁹⁰ Ibid.

¹⁹¹ Johnson et al op cit 7.

4. Conducting education within a context of impersonal relationships among students and between faculty and students.

Based on the Taylor model of industrial organizations, students and faculty are perceived to be interchangeable and replaceable parts in the 'education machine'.¹⁹² Foucault speaks of discipline composing forces in order to obtain an efficient machine.¹⁹³

5. Maintaining a competitive organizational structure in which students work to outperform their classmates and faculty work to outperform their colleagues.¹⁹⁴

6. Assuming that anyone with expertise in their field can teach without training to do so. This is sometimes known as the content premise - if you have a PhD in the field, you can teach.

Johnson, Johnson & Smith summarize this approach as follows :

The old paradigm is to transfer the faculty's knowledge to a passive student so that the faculty can classify and sort students in a norm-referenced, competitive way. The assumption was that if you have content expertise, you can teach.¹⁹⁵

THE NEW PARADIGM OF COLLEGE TEACHING¹⁹⁶

College teaching is changing...Faculty ought to think of teaching in terms of several principal activities :

1. Knowledge is constructed, discovered, transformed, and extended by students

Faculty create the conditions within which students can construct meaning from the material

¹⁹² Ibid.

¹⁹³ Supra note 68 at 12.

¹⁹⁴ Ibid.

¹⁹⁵ This paragraph has been referenced from pages 6-7 of Johnson, Johnson & Smith.

¹⁹⁶ All information regarding this new paradigm has been referenced from pages 6-12 of Johnson, Johnson & Smith's *Active learning : Cooperation in the College Classroom*.

studied by processing it through existing cognitive structures and then retaining it in long-term memory where it remains open to further processing and possible reconstruction.

2. Students actively construct their own knowledge

Learning is seen as something that involves student participation, thus students are not passive learners. Instead they 'activate their existing cognitive structures or construct new ones to subsume input'. Johnson et al comment that college instruction is criticized for not involving students actively in the learning process, and for focusing on transmitting fixed bodies of information. Such instruction is seen to ignore 'the preparation of students to engage in a continuing acquisition of knowledge and understanding and the careful supervision of students reasoning about challenging problems'.

3. Faculty effort is aimed at developing students' competencies and talents

Johnson et al argue for the inculcation of a 'cultivate and develop philosophy' as opposed to the current 'select and weed out' philosophy practiced at universities. They advocate that student effort should be inspired and that colleges must 'add value by cultivating talent. They suggest that the old paradigm resulted in classifying and sorting students into categories which were more or less permanent, while the new paradigm emphasizes 'the development of student competencies and talents which are considered dynamic and always susceptible to change'. This links to an earlier point about the classification of students through grading which institutes rank and teaches the inevitability and justice of hierarchy.¹⁹⁷ With the new paradigm's emphasis on student development 'it is important for students to associate effort with achievement and intelligence'. Johnson et al says further that since the tendency is to admit only the best students and to weed out defective students, 'quality is managed in the admission process, not the education process'. They suggest that under the old paradigm 'little or no attention is given to developing human potential', thus 'Marginal students who, with a little development effort, could be transformed into superstars are ignored'. Secondly, in weeding out defective students, Johnson et al posit that educational practices that lead to failure are not questioned and only the student pays the penalty. The new paradigm provides for monitoring of student performance

¹⁹⁷

Supra note 150 at 28.

and 'when students falter, help and support is provided'. In addition, student failures lead to an examination of educational practices, which are then modified to prevent the recurrence of such failure. Johnson et provide the following comparison between the two paradigms :

The old paradigm classifies and sorts students into categories under the assumption that ability is fixed and unaffected by effort and education. The new paradigm develops students' competencies and talents under the assumption that with effort and education they can be improved. The old paradigm controls quality through emphasizing selection and weeding-out processes. The new paradigm controls quality through continually refining the educational process to cultivate and develop students' competencies and talents. Under the old paradigm colleges are holding grounds for carefully selected students. Under the new paradigm colleges add value by developing students' potential and transforming students into more knowledgeable and committed individuals.

4. Education is a personal transaction among students and between the faculty and students as they work together

Johnson et al aver that 'All education is a social process that cannot occur except through interpersonal interaction'. Learning , they suggest, 'is a personal but social process that results when individuals cooperate to construct shared understandings and knowledge'. The submit that faculty must be able to construct 'caring and committed relationships with each other'. According to the new paradigm, they posit that 'students work together to construct their knowledge and as they succeed in doing so, they become committed to and care about each other's learning and each other as people'. They comment that 'caring and committed relationships provide meaning and purpose to learning' and 'contribute to achievement and productivity, physical health, psychological health, and constructive management of stress'.

5. All of the above can only take place within a cooperative context

Interaction within a competitive context minimizes communication, leads to the communication of misleading and false information, the minimization of helping which is seen as cheating, and 'classmates and faculty tend to disliked and distrusted'. Johnson et al state further that the 'active construction of knowledge and the development of talent' is discouraged by 'competitive and individualistic learning situations'. Students are isolated and negative relationships are created among classmates and with instructors. Rather they, 'classmates and

instructors' should be seen as 'collaborators rather than obstacles to students' own academic and personal success'. In light of this, Johnson et al suggest that faculty should 'structure learning situations so that students work together cooperatively to maximize each other's achievement'. They cite extensive research that has shown that :

- ▶ students were more likely to acquire critical thinking skills and meta-cognitive learning strategies such as self-monitoring and learning-how-to-skills from discussions with groupmates;
- ▶ students who participated in active discussions of their ideas with classmates had fewer irrelevant or distracting thoughts and spent more time synthesizing and integrating concepts than students who listened to lectures;
- ▶ students tended to be more attentive, active, and thoughtful than during lectures;
- ▶ student discussion groups were more effective than lectures in promoting students' problem-solving abilities;
- ▶ student interaction is related to critical thinking outcomes and study habits characterized by more active thinking and less rote memorization.

6. Teaching is assumed to be a complex application of theory and research that requires considerable instructor training and continuous refinement of skills and procedures

'Becoming a good teacher takes at least one life time of continuous effort to improve'.

Table 1.1 Comparison of Old and New Paradigms of Teaching¹⁹⁸

	Old Paradigm	New Paradigm
Knowledge	Transferred From Faculty to Students	Jointly Constructed By Students and Faculty
Students	Passive Vessel To Be Filled By Faculty's Knowledge	Active Constructor, Discoverer, Transformer Of Own Knowledge
Faculty Purpose	Classify and Sort Students	Develop Students' Competencies and Talents
Relationships	Impersonal Relationships Among Students And Between Faculty and Students	Personal Transaction Among Students And Between Faculty And Students
Context	Competitive/ Individualistic	Cooperative Learning In Classroom And Cooperative Teams Among Faculty
Assumption	Any Expert Can Teach	Teaching Is Complex And Requires Considerable Training

¹⁹⁸

This table has been taken from page 7 of Johnson et al.

THE INTRODUCTION TO LAW TEACHING APPROACH

The Introduction to law course comprises of one large group lecture, tutorial and a double interactive lecture. Prior to commencement of the interactive lectures, a training workshop is held to prepare interactive lecturers. The workshop deals with multicultural and gender issues and with teaching methodology specifically designed for effective small group teaching (which would occur at the interactive lectures) and giving feedback to students. This workshop assists lecturers enormously because of the diversity of students that attend the course. There are great differences in students' background and levels of understanding. Furthermore, weekly preparation meetings are held for interactive lecturers to deal with the materials to be covered for each week and the possible ways of facilitating learning using the materials. This kind of specialized training follows the approach advocated by Johnson et al in the new paradigm : 'Teaching is assumed to be a complex application of theory and research that requires considerable instructor training and continuous refinement of skills and procedures'.¹⁹⁹

This type of training is the first step towards breaking down negative power relations. Students are not seen merely as 'docile bodies that may be subjected, used and transformed and improved'.²⁰⁰ I say this because the purpose of the workshop is to ensure that interactive lecturers teach effectively and work towards building interpersonal relationships with students. At the training workshops, faculty are repeatedly encouraged to avoid treating students as faceless members of the student population. In learning to deal with multicultural and diversity issues and learning specific small group teaching techniques, interactive lecturers are encouraged to have concern for the complete well-being of students. Thus, regard for students' well-being extends beyond the work for the course. The course trainers are anxious to avoid the traditional depersonalized teaching context of university life. Once more one sees a link with Johnson, Johnson & Smith's approach. They have suggested that education should be a personal transaction between faculty and students.²⁰¹ Foucault has said that discipline is an art

¹⁹⁹ Johnson et al op cit 12.

²⁰⁰ Supra note 44 at 9. Foucault is quoted by Dreyfus and Rabinow : the aim of disciplinary technology is to forge a docile body that may be subjected, used, transformed and improved.

²⁰¹ Johnson et al op cit 10.

of composing forces in order to obtain an efficient machine'.²⁰² Certainly, the foundation laid by the training workshop and the meetings held throughout the semester to consolidate this approach, depart from the impersonal connotations of 'composing forces (controlling student conduct through obedience) in order to obtain an efficient machine'.

This move away from impersonal relationships between faculty and students is consolidated through both one-on-one conferencing and individualized feedback given on students' assignments. Conferences are conducted to review feedback on written assignments and to deal with problems that students experience with the coursework. Extensive feedback is given on students' assignments and student's individual errors are dealt with specifically. Faculty invest a great deal of time assisting students individually. This kind of attention is evidence of the sincere concern that lecturers feel for students. Often, students use these times spent with the lecturer to discuss other problems they might be experiencing. Sometimes they just want to converse about everyday matters. Conversing with students informally assists in 'replacing names and faces with personalities and backgrounds'.²⁰³ Through such contact, interactive lecturers form personal but relationships with students within the constraints of the student-lecturer relationship. These relationships are a far cry from the usual alienated and distant communication between student and faculty. A concerted effort is made to reach the student at their level, thus doing away with hierarchical power relationships to a great extent. While students maintain respect for their interactive lecturers, they do not consider them as being on a pedestal, before which they have to kneel. Close contact of this sort with students reduces, to a large extent, the 'hierarchical observation'²⁰⁴ that prevails, where relationships between staff and students are limited to contact during lectures only. Indeed there is a relational power²⁰⁵ in operation when students and faculty meet individually. This close contact does allow lecturers the opportunity to 'keep an eye' (what Foucault would call surveillance) on

²⁰² Supra note 68 at 12. Foucault says : Discipline is no longer simply an art of distributing bodies, of extracting time from them and accumulating it, but of composing forces in order to obtain an efficient machine.

²⁰³ Catherine Hantzis 'Kingsfield and Kennedy : Reappraising the Male Models of Law School Teaching' (1988) 38 *JLE*.

²⁰⁴ Supra note 75 at 13. The act of looking over and being looked over will be a central means by which individuals are linked together in a disciplinary space.

²⁰⁵ Supra note 77 at 14. Foucault says that Discipline makes possible a relational power that sustains itself by its own mechanism.

students. However given the genuine concern that accompanies this personalized contact, I submit that this relational power is of a positive sort.

Student-faculty contact of this nature also means that lecturers do not automatically (and permanently) classify and sort students according to their grades. Through frequent contact with students, the interactive lecturer is able to understand each student's unique needs and work with students on that basis. Thus, in keeping with the new paradigm of college teaching, the Introduction to Law teaching approach 'emphasizes 'the development of student competencies and talents under the assumption that with effort and education they can be improved'.²⁰⁶ This is important in light of the large number of second language learners that who the law school. In addition to language problems, some students come from poor rural schools and lack basic reasoning skills. A number of them require special assistance, without which they would surely fail. Through one-on-one conferencing and intensive feedback on written work, interactive lectures aim to develop the potential of these students. Thus every attempt is made so that 'marginal students who, with a little development effort, could be transformed into superstars are' not 'ignored'.²⁰⁷ Working with students in this manner departs from the Enlightenment discourse of the rational autonomous individual who merely requires improvement. While at the university most courses are run with this concept of the student who manages his/her own learning, the Introduction to Law course does not accept this description as the "norm". Thus its approach to students does not 'proceed from an initial premise of formal equality among individuals'.²⁰⁸ Instead, an awareness is inculcated at the beginning of the year of the students' unique needs and these are catered for by the interactive lecturer. Students are certainly not all treated as if they are the same, nor are they made to feel that learning is solely their responsibility.²⁰⁹

There is another aspect to the Enlightenment discourse of autonomous student and the process of sorting and classification which Foucault deals with, which also bears mentioning.

²⁰⁶ Johnson et al op cit 9.

²⁰⁷ Johnson et al op cit 9.

²⁰⁸ Supra note 81 at 14. Dreyfus and Rabinow explain that the effect of normalizing judgement proceeds from an initial premise of formal equality among individuals.

²⁰⁹ Supra note 154 at 29. Grant says that there is a culture of autonomy and individuality at the university which constructs students who believe that success or failure lies with them.

Another area where intensive student-faculty contact proves invaluable is in relation to assessment. Rowntree, in an article on assessing students states that 'one ever-imminent side-effect of assessment' is the prejudicial use of stereotypes'.²¹⁰ He says that teachers have certain ideas 'relating to the potentialities of children of a certain sex, social class or race'.²¹¹ He mentions as example - 'when faced with a particular working class black girl' a teacher 'may tend to look for different qualities (at least at first) than they would from her white middle-class male classmate'.²¹² He says that some teachers use 'minimal stereotypes' which they quickly alter or abandon in establishing new relationships with students, while some 'work with very well defended stereotypes'²¹³ that do not take into account any 'contradictory messages' students may send out. He says :

Clearly, the more rigid the stereotype, that is, the more the teacher treats his pupils like a reach-me-down 'type' derived from the assessment of other pupils rather than seeking out what makes him unique, the less likely is the teaching to touch upon that pupils's needs. Instead the pupil may get whatever standard 'treatment' is generally assumed appropriate to children carrying his label - 'culturally deprived child', 'professional family background'...whatever.²¹⁴

Stereotypes of the sort Rowntree mentions are constructed by a particular discursive field - in this case the the discourse which structures a particular description of pupils. The meanings allocated to words like 'working class black girl' and 'white middle-class male' are constructed by 'historically specific discourses'. The prejudicial use of stereotypes is especially relevant to the South African context. African students have in the past and it may be cogently argued, still do receive a very poor quality school education. The label 'the African student' is constructed against this historical background and has very particular connotations. Linked to this term is the negative exercise of power relations between black and white people during the apartheid era, which contributed to the impoverished education of African people. Currently, it carries meanings like underprivileged and culturally disadvantaged. These are terms that are part of

²¹⁰ Derek Rowntree *Assessing Students: How shall we know them?* (1977) 36-37.

²¹¹ Rowntree op cit 37.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

the present, new discourse which is aimed at rectifying the deprivation Black students have historically suffered. A new form of power relations is in place which structures and is structured by a new discourse focusing on people's rights. These rights are articulated in the new Constitution in the Bill of Rights. As a new democracy, South Africa places immense emphasis on developing a culture of human rights. One of its aims is to redress the disparities among different race groups in education.

Thus, the prejudicial use of stereotypes is especially relevant in the South African context. An enormous obstacle to many African student's success at university is their inability to communicate effectively both orally and in their written work, in English. That is because they are classified as 'second language speakers'. This language gap may be attributed to the poor quality of instruction that they may have received in English at disadvantaged schools. In many ways, the classification 'second language learner' is a stereotype and is usually accompanied by the assumption that such a student will inevitably perform poorly, because of the language barrier. Lecturers who see students through the lens of 'second language learner' may view such students as a 'reach-me-down type' as they do not conform to the Enlightenment concept of the rational, autonomous individual. As a result the lecturer may apply a 'standard treatment', which s/he feels is suitable for 'second language speakers'. The individuality of each student is not taken into consideration nor are any 'contradictory messages' that students may send out.

In the explanatory discussion under "discourse", I referred to Weedon, who in interpreting Foucault, said that 'the possibilities for meaning and for definition, are pre-empted through the social and institutional position held by those who use them' and further that meanings arise from the institutional practices, from power relations, and not from language.²¹⁵ In labelling certain students 'second language speakers', faculty's 'social and institutional position' determines the possibilities for meaning. As said above, one meaning, in the academic context, is that students are bound to perform poorly. This description by faculty may be seen as an institutional practice, as it affects interaction between students and faculty. Further, this

²¹⁵ Supra note 123 at 22.

institutional practice embodies power relations, in that lecturers determine students' academic progress. In using such negative labelling, it is likely that their approach to such students and their problems will also be coloured by a negative attitude.

I also referred to Gergen earlier, who said that Foucault's primary concern was with the subjugation by various groups who claim "to know", or to be in possession of "the truth" - especially about who we are as human beings.²¹⁶ Faculty may be seen as claiming to be in possession of the truth with regard to students as they are educators. In using negative stereotyping, faculty place students in positions of subjugation. Gergen also notes that disciplinary regimes, such as education, 'generate languages of description and explanation - the classification of selves as intelligent and unintelligent'²¹⁷ and so on. The term 'second language speaker' is generated by a particular language of description and explanation - it stands in opposition to 'first language learner' and classifies students as having or not having competence in English. Thus students are 'labelled and explained'²¹⁸ in faculty's terms. 'Second language learner' is the current politically correct. Previously, other terms used to refer to African students' needs included 'educationally disadvantaged, academic support, supplemental instruction, bridging'. All these terms are politically correct as well, but more importantly form part of the 'deficit model'. According to this model, 'something is missing or deficient in the student.'²¹⁹ I want to suggest that labelling a learner as second language, places the spotlight on the learner as the one who should make attempts to improve. Simultaneously, this label which is imposed by faculty, draws attention away from most lecturers' inability to adequately assist such students, as most faculty are not fluent in any African languages. It should be also noted that this is the first language of most educators. Competence in English is thus a "norm" that must be complied with. Thus, the control of the university as a disciplinary regime is

²¹⁶ Supra note 128 at 22.

²¹⁷ Ibid.

²¹⁸ Ibid. Gergen says that in offering ourselves for examination, we give ourselves up to disciplinary regimes, to be labelled and explained in their terms.

²¹⁹ The term deficit model and the accompanying labels were contributed by Mrs Lesley Greenbaum, my supervisor.

extended through students' compliance.²²⁰

I want to suggest that this kind of stereotyping may be avoided through sufficient student-faculty contact (the kind of personal transaction between student and lecturer that Johnson et al say that education should be²²¹). Regular communication with students, as occurs between the interactive lecturers and their students in the Introduction to Law course, will allow lecturers to acquire an understanding of the unique needs of students and not deal with those needs within the framework of 'second language speaker' alone. Also, the discovery of students' unique needs means that lecturers may attempt different teaching methods, both in class and when working individually with students. Instead of being shielded by the label 'second language learner', lecturers can actively involve themselves in improving student learning. Further, a prejudicial stereotype will not form the basis of the lecturer's assessment of these students' work.

From my observations, prejudicial stereotyping affects both students and lecturers in an adverse way. The student is prejudiced because the assessments obtained are coloured by the lecturer's perception of him/her as a 'second language learner'. The lecturer is unable to establish sufficiently meaningful relationships with such students. S/He does not explore new methods of helping such students and thus hides behind the description 'second language learner'. In so doing, the lecturer's teaching loses effectiveness and s/he is deprived of the gratification of creating interpersonal relationships with students that are in dire need of such contact. Thus, in such a situation, a negative microphysics of power operates between students and lecturers, with each remaining in the traditional lecturer-student roles, and without proper solutions being found.

In addition to Johnson, Johnson and Smith, who advocate interpersonal interaction between students and lecturers, support for such contact is also voiced by Catherine Hantzis,

²²⁰ Ibid. Gergen explains that in carrying these terminologies into our everyday lives, we are engaging in power relations and in so doing, the control of disciplinary regimes is extended.

²²¹ Supra note 194 at 42.

who presents a female model of a law school teacher. She is not in favour of becoming best friends with students or part of their crowd, but suggests that in arriving early at class, a lecturer may spend some time discussing the material for class. This for her is one method of finding out students' levels of understanding. Other suggestions include having lunch with a friend or a colleague in the student lunchroom. This provides an environment for informal conversations with students. Informal conversations, she suggests makes communication more effective, as it leads to one replacing 'names and faces with personalities and backgrounds'. She also submits that 'informed conversations which reveal how much students have understood and what they find problematic assists in a more accurate assessment of the class'.²²² Susan Apel, who also argues for interpersonal contact between lecturers and students, cites Martin Buber:

The real function of the educator is to teach the subject matter and then move beyond it toward real personal contact... 'What is wanted is true reciprocity through the interchange of experiences between the matured mind and the mind that is in the process of formation... What is sought is a truly reciprocal conversation... {it} is the essential task of education - to gain the trust of the student that he learns to ask.'²²³

Hantzis' suggestion about the student lunchroom raises an important point with regard to disciplinary space. The setting of the venues in which the interactive lectures are held is also relevant and shares a link with regard to disciplinary space. Foucault says that 'discipline proceeds from the distribution of individuals in space' and 'it therefore requires a specific enclosure of space'.²²⁴ He says further that such 'enclosures function as a grid, permitting the sure distribution of individuals in addition to securing their supervision'. With the interactive lectures, there is a change in the nature of the disciplinary space. There is no longer the lecture theatre which functions as a 'grid' or an 'enclosure', thus ensuring a hierarchical power relation in place through the distribution and supervision of students. There are no 'tight controls exerted over spatial arrangements'.²²⁵ Instead, both lecturer and students sit in a circle, thus reducing

²²² Hantzis op cit 162.

²²³ Susan B. Apel 'Principle 1 : Good Practice Encourages Student-Faculty Contact' (1999) 49*JLE* 371.

²²⁴ Supra note 58 at 11.

²²⁵ Grant op cit 675. The dominant teaching process used at the university is the lecture, where tight controls are exerted over spatial arrangements.

the disparity of power engendered by the lecturer standing behind a podium at the front of the class. Patricia Cain lends her support to this kind of seating arrangement. In an article describing a class she taught, she expresses dissatisfaction that, 'The students were out there in their fixed desks and I was in front of them as the deliverer of knowledge, not part of them but apart of them'.²²⁶

Students are also on a first name basis with their interactive lecturers. This added informality means that the 'distance' between lecturers and students is not instituted as normal. In fact, I have found that quite the opposite is the case. At the interactive lectures, when there has been time to do so, the students and I have easily conversed about non-work related matters. These topics ranged from advice about their careers to sport. Other interactive lecturers have recounted similar experiences. While lecturers did not become 'best friends' with students or 'part of their crowd', students felt that they could approach their interactive lecturers easily, both in and out of class. This flexibility in the lecturer-student relationship meant that there was effective communication at an interpersonal level. Since students were comfortable in approaching their interactive lecturers for assistance, the lecturers in turn were better able to assess students' progress and to pinpoint problem areas. Lecturers did not think of students by that title alone but also as ordinary people with whom they could interact and help along. Thus, students were not merely 'bodies' to be 'subject to a precise and calculated training'.²²⁷

Besides contributing to a more relaxed kind of interaction between faculty and students at interactive lectures, this setting also improves the relationships between the students themselves. The informal setting allows them to look at each other when speaking, and thus to communicate more effectively. They begin to remember each other's faces and particular characteristics. Foucault has said that discipline is the art of rank. With this kind of setting, there is an attempt at eliminating distinctions between students by having them sit in positions of 'equality'. This is relevant in light of my comments earlier that those students who do not perform well on a course or are uncomfortable with a lecturer, attempt to place themselves in

²²⁶ Steve Pete Jurisprudence Manual. University of Natal, Durban (2000) 362B citing Patricia Cain. 'Feminism and the Limits of Equality' in Lloyd (1108-1110)

²²⁷ Supra note 47 at 9. Foucault submits that the body was seen as an object to be manipulated.

positions of invisibility. In placing themselves in positions of invisibility, they allow themselves to be 'distributed' and 'circulated' in a 'network' of negative power relations.²²⁸ The possibility of seeking assistance from the lecturer becomes all the more difficult. The physical distance although it might 'guarantee the obedience of individuals'²²⁹, comes to exemplify the communication gap between faculty and students. Sitting with students in a circle allows the lecturer to keep track of each student and to identify students who need assistance.

Grant in her article 'Disciplining Students : Constructing Student Subjectivities', (which has been extensively referenced in this work) sets out the ways in which the university conforms to the Panoptic schema.²³⁰ The purpose of the Panopticon is to increase surveillance and control of individuals. In the light of Grant's description of the university as continuously observing and controlling student behaviour, I submit that the variety of teaching techniques and methods of assessment employed in the Introduction to Law course allows for a reduction in the surveillance and control of student behaviour. The course consists one large group lecture, one double interactive lecture and one tutorial per week. Each of these is conducted by a different person and different teaching methods are used at each meeting. Further, while senior lecturers take large group lectures and interactive lectures, some junior lecturers and masters degree students also conduct interactive lectures. Tutorials are run by final year law students. For each class students attend at different venues. Further, there are a variety of assignments, each of which are assessed according to differing criteria. This rotation of teaching staff, teaching and assessment methods and venues, departs from the regularity of large group lectures which are generally taught by one lecturer and attendance is at the same lecture theatre for the duration of the semester. Raaheim et al support 'a greater variety of approaches to teaching even within the same subject of study' as one way of moderating academic learning anxiety at university.²³¹ As a result of this rotation, there is no continual surveillance by set lecturers at set venues. The disciplinary power is not continuous. Instead, students engage in a variety of power relations

²²⁸ Supra note 62 at 11. Foucault says that discipline distributes bodies and circulates them in a network of negative power relations.

²²⁹ Supra note 64 at 12. Foucault suggest that disciplinary spaces guarantee the obedience of individuals.

²³⁰ Supra note 172 at 33. The paragraph is referenced from page 679 of her article.

²³¹ Kjell Raaheim, Janek Wankowski and John Radford *Helping Students to Learn : Teaching, Counselling, Research* (1991) 65.

with the large group lecturers, the interactive lecturers and the tutors. Students are able to interact with their various instructors at differing levels of interpersonal communication. This is especially relevant with regard to the tutors who are usually only three years older than the first year students. Their conduct is still regulated, but it is no longer the kind of permanent visibility and formality associated with large group lectures. This decrease in surveillance and control is important as it reduces the feelings of intimidation and insecurity that students associate with large group lectures alone.

The informal setting of the interactive class is enhanced by the structure of the interactive lectures, which is aimed at promoting active student participation. In addition, the lecturer performs the role of facilitator and guides students' discussions. The interactive lecturer relinquishes much of the control normally exercised to the students who are motivated to actively create meaning for themselves through discussions. This approach departs from the usual passive learning that occurs in large group lectures. The students active involvements in manipulating the materials allows them to develop a better understanding than if the lecturer merely dispensed information to them. It is clear that these classes operate on a 'non-hierarchical'²³² basis, with a 'shared leadership'²³³, between the lecturer and the students as well as among the students themselves. From my own experience as an interactive lecturer, I have found that students engaged freely in the discussions when they realized that they were not under pressure to provide the right answer. In this non-threatening atmosphere, they felt secure to voice their views, which although not always correct, was valued because of the attempt that was made. There is certainly a 'microphysics of power'²³⁴ in operation at the interactive lectures. However, the way in which this disciplinary power 'invests students, is transmitted by them, and through them'²³⁵, differs from the usual power relations in the lecture theatre. Here students take responsibility (control of) for their learning. With the interactive lecturer only playing the role of a catalyst, students are involved in constructing new power relations with the lecturer and

²³² Carrie Menkel-Meadow 'The Fem-Crits Go To Law School' (1988) 38 *JLE* 61.

²³³ Menkel-Meadow *op cit* 77-78.

²³⁴ Foucault speaks of the operation of a microphysics of power - a capillary mode of power that operates on the body and deeply controls individuals and their knowledge about themselves.

²³⁵ *Supra* note 31 at 6. According to Foucault, power is not exercised as an obligation or prohibition on those who 'do not have it', but it invests them, is transmitted by them and through them.

amongst themselves.

Interactive lecturers are made very aware at the training workshop of women students who are silent in class²³⁶ in class and other students who remain silent due to a lack of confidence or because they were second language speakers. Interactive lecturers are persistent in ensuring that such students are included in the discussions. Often, a more confident student is paired with a reserved student, so that the first student could help the second in overcoming this barrier. Thus, there is no 'competition and ridicule' and a culture of support between students themselves and between the lecturer and student is inculcated. This approach falls in line with that advocated by Johnson et al, who favour cooperative learning situations.²³⁷ (Refer to the number five under 'The new paradigm of college teaching' above). They state that the active construction of knowledge and the development of talent is discouraged by competitive learning situations.²³⁸ I have listed the advantages that they cite regarding cooperative learning above.²³⁹ What is clear from the research they cite is that students develop problem-solving and critical thinking skills and are more attentive when they work together in small groups. Cooperative learning does not comply with the 'culture of individuality' that Grant suggests is in place at the university. This is in keeping with Foucault thinking on disciplinary power, which he said is characterized by an individualizing tactic.²⁴⁰ This individualizing tactic encourages competitive learning situations. The cooperative nature of the interactive lectures aims to break down such negative power relations between students.

In addition to encouraging cooperative learning among students, the course is structured so that there is collaboration among faculty. Each faculty member who teaches an interactive group attends weekly meetings. At these meetings, methods of dealing with the week's class are discussed. Lecturers are able to discuss methods they find useful. This kind of input results in cooperative learning among the lecturers themselves. In working together as a team, lecturers

²³⁶ Patricia Cain 'Feminist Legal Theory At Texas' (1988) 38 *JLE*.

²³⁷ Johnson et al op cit 11-12.

²³⁸ Johnson et al op cit 11.

²³⁹ Johnson et al op cit 12.

²⁴⁰ Supra note 15 at 3. Foucault states that an individualizing tactic characterized a series of powers - he includes education amongst the list he gives.

build better interpersonal relationships. Johnson et al support collaboration among faculty in saying that administrators should create a cooperative team-based organizational structure within which faculty work together to ensure each other's success.²⁴¹ As with the students, this approach detracts from the usually individualistic environment among faculty. This is yet another method of breaking down the 'individualizing' effect of disciplinary power that Foucault speaks of. Johnson et al comment that 'the organizational structure of colleges must change from competitive-individualistic to cooperative.'²⁴²

Another relevant aspect of the interactive lectures, is the methods that are used to stimulate student learning. There are a variety of techniques which are used to ensure student participation and active involvement. These include brainstorming, buzz groups, and snowballing. With brainstorming, a topic for discussion is introduced and responses from various members of the group are logged, initially uncritically and unexplored, on the board, before discussing the advantages and disadvantages of each. Buzz groups are small groups of two or three people sitting nearest each other in the room, who are asked to talk for about three to five minutes about a particular aspect of the topic or problem under discussion by the group. Snowballing requires students to work individually at first on a particular task, then they join up with a fellow student to form a pair to discuss their thoughts. Thereafter they 'test their thoughts within a group of four and finally they 'discuss the problem or topic within the whole group based on the previous preparatory phases'.²⁴³ Brown and Atkins approve of this variety of methods used in small group teaching, stating that 'it is the essence of effective teaching'.²⁴⁴ As a result of the variety of methods used, there is no 'detailed prescription of activities'²⁴⁵, which Foucault describes as one of the disciplinary techniques. While there is a degree of instruction in that students are told by the interactive lecturer what method will be used in the class, there

²⁴¹ Johnson et al op cit 11.

²⁴² Johnson et al op cit 13.

²⁴³ This paragraph has been referenced from Griffiths, S & Partington, P 'Enabling Active Learning in Small Groups' In: *Effective Learning and Teaching in Higher Education* Module 5(1). (1992) 41-42.

²⁴⁴ George Brown & Madeline Atkins *Effective Teaching in Higher Education* (1988) 80-81.

²⁴⁵ Supra note 65 at 12. Foucault comments that the disciplinary mechanism programmes activities by a variety of techniques. He lists the timetable as one of the most effective techniques.

is no specification as to exactly how the activity must be carried out.²⁴⁶ Students used various lines of reasoning to arrive at their answers and they to bring their discussions their unique perspectives when discussing the answer.

The Introduction to Law course is a skills based course. The course content might not be as extensive as other law courses, as skills are emphasized in preference to 'coverage' of contents.²⁴⁷ Students' analytical and analogical skills are developed. Anthony D'Amato confirms the traditional nature of university courses when he states, 'College students receive and store the lecture material, regurgitate it on exams and sign up for the next 'popular lecture course'.²⁴⁸

The Introduction to Law course certainly departs from this norm. Students are given writing assignments which require them to apply the skills they are learning to problem questions based on the materials they have been given. Students' answers are evaluated according to the kind of analysis that they engage in. Thus, students' answers were largely dependent on their own reasoning and the depth of their analysis. White verifies the positive nature of this kind of education :

the knowledge with which a true education is concerned is never repeatable data, but knowledge that entails a use or activity - a knowledge of practice that is a kind of action, including a kind of invention or creation.²⁴⁹

Johnson et al also argue in favour of student involvement in learning. The first two activities that they suggest faculty ought to consider is that 'knowledge is constructed, discovered, transformed, and extended by students' and that 'students actively construct their own knowledge'.²⁵⁰ It is evident that in this course students construct their knowledge to a certain extent. They actively create meaning for themselves through the independent thinking they engage in. This is certainly a departure from the traditional 'professor's reasoning' which provides the 'right answers', thereby depriving students of any control over the learning they are

²⁴⁶ Ibid. Other techniques specify exactly how an activity is to be carried out.

²⁴⁷ This is comment made by Mrs Lesley Greenbaum, one of the founders of the course, on a previous paper.

²⁴⁸ Ibid.

²⁴⁹ James Boyd White 'Doctrine In A Vacuum : Reflections On What A Law School Ought (And Ought Not) To Be (1986) 36 *JLE* 167.

²⁵⁰ Johnson et al op cit 6-7.

involved in. Allowing students a measure of control in the learning process, results in a shift in the hierarchical power relations normally present in class, where the lecturer provides a correct answer. The lecturer relinquishes a certain amount of control when students are allowed to create meaning independently.

The final point I want to make about the course and its relation to Foucault's concept of disciplinary power (particularly with regard to the examination), deals with the method of assessment used in the course. There is no final examination for the course. Instead continuous assessment is employed, which means that students work throughout the semester, with each assignment contributing towards a final mark. Foucault describes the examination as 'a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish'. He also says that it establishes over individuals a visibility through which one differentiates and judges individuals.²⁵¹ A final examination at the end of the semester is often not a true reflection of a student's abilities. For a variety of reasons capable students may perform poorly in examinations. These same results are used to differentiate among students (labelling some as achievers and others as under-achievers) and to judge them according to the marks attained. Students with good results often are more favourably received by faculty than those who perform poorly (a point made earlier on). This exercise of power (which is evidenced by the stress and anxiety students undergo) through examinations is detrimental to students who are unable to cope with final examinations. Continuous assessment ensures that students work throughout the semester, under less stressful conditions. Results obtained thus reflect a semester's work and not last-minute cramming, as is the case for many students. This system has positive implications, in that students can work towards achieving a good grade and can monitor their progress according to the results they receive for each assignment. Finally, the variety of assessments used for the different assignments are aimed at reflecting the different talents and abilities of students.²⁵²

²⁵¹ Supra note 65 at 12.

²⁵² This is a comment by Mrs Greenbaum who is one of the founders of the course.

PROBLEMS ENCOUNTERED WITH THE INTRODUCTION TO LAW TEACHING APPROACH

Clearly the interactive lectures require an enormous investment of time by faculty. From my experience, declaring one's availability results in a deluge of demands for one's time. This can become problematic, given the numerous other tasks one might have, including teaching other courses and dealing with students from those classes. In one way such demands may be viewed as students controlling lecturers' times. I say this because I have sometimes found myself working around the times that students come in for assistance. Usually, lecturers are the 'regulatory agents of disciplinary power'. In this instance, there may be a reversal of roles. Instead of the lecturer 'defining and controlling the conduct of individuals', the students' needs begin to dictate lecturers' plans for each day.²⁵³ Susan Apel provides some solutions to this problem. One can arrive early or stay after class to talk to students. 'Keeping regular office hours is one way to make sure that time is available to students.'²⁵⁴ A further option is to have lunch with students and use the time to discuss work. Alternatively, lecturers could communicate with students via electronic mail.²⁵⁵

Paul Teich advises that research on teaching should include a consideration of method cost:

Researchers should undertake to ascertain how methods vary in terms of required in-class instructional time, student time, and the cost of associated materials, equipment, facilities, and teaching personnel.²⁵⁶

The objective of interactive lectures is to provide students with more individualized attention by limiting classes to approximately fifteen students. Since classes are kept small, a large number of lecturers are required to teach on the course, in addition to the lecturers who conduct the

²⁵³ Supra note 145 at 27. Foucault states that the objective of the exercise of disciplinary power is to define and control the conduct of individuals so that they lead useful, docile and practical lives.

²⁵⁴ Susan B. Apel 'Principle 1: Good Practice Encourages Student-Faculty Contact' (1999) 49 *JLE* 383.

²⁵⁵ Ibid.

²⁵⁶ Paul F. Teich 'Research On American Law Teaching : Is There A Case Against The System?' (1986) 36 *JLE* 187.

large group lectures and the students who take the tutorials. Partington and Griffiths also raise this point, saying that

in discussing the value and aims of small group work and pointing out some deficiencies in large group teaching, it must be remembered that the latter is a very economical mode and the former is less cost-effective of staff time.²⁵⁷

They say further that 'all those involved in providing small group learning for students should be aware of its relatively high cost and should, therefore, ensure that what is being provided via that method is worth the level of cost incurred'.²⁵⁸ They advise that faculty should consider whether 'what is being done in small groups is qualitatively different from that which is carried out in the lectures; and whether the gains for the students of the small group justify the extra costs incurred'.²⁵⁹ The cost factor is problematic in terms of Foucault's description of disciplinary institutions. He says (a quote I have often referred to) that 'Discipline is...an art...of composing forces in order to obtain an efficient machine'. An efficient machine in terms of the university as a disciplinary institution would include a consideration of cost-effectiveness. Exorbitant costs would mean that the 'machine' is not operating cost-effectively. Thus, there is the possibility that courses which are not cost-efficient may be reviewed and possibly replaced.

Another concern I have is whether intensive student-faculty contact amounts to spoon feeding. Does this amount to a new kind of power relation between students and lecturers? Instead of the traditional distance between the parties, is there an overly intimate relationship with students becoming dependent on faculty? Such a situation signals a breakdown in student-faculty relationships. This problem is exacerbated by the fact that students only receive such assistance in their first year. The possibility is that students will flounder hopelessly in their second year, where they have to work entirely on their own. Foucault says that the 'aim of disciplinary technology is to forge a docile [body] that may be subjected, used, transformed and

²⁵⁷ Griffiths and Partington op cit 13.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

improved'.²⁶⁰ Both students and lecturers are the 'bodies' at the disciplinary institution - the university. One of the objectives at the university is that lecturers and students work together harmoniously. Inherent in this objective is the aim of disciplinary technology to 'subject, use, transform and improve' students and lecturers so that they fulfill their roles and in so doing 'are forged into docile bodies'. The breakdown in student-faculty relationships means that the 'mechanics of power' which ensures the effective functioning of students and lecturers has also been negatively affected. What must be achieved is the correct balance in the amount and the kind of assistance faculty should give to students. If this is not done, the breakdown in relations between students and lecturers may lead to the termination of the kind of interpersonal contact advocated by the Introduction to Law course.

²⁶⁰

Supra note 44 at 9.

CONCLUSION

For Foucault, power is everywhere. There is no 'power free zone'²⁶¹. He advocates that relations of power should be 'traced down to their actual material functioning'. If this is not done, then such power 'will continue to operate with unquestioned autonomy, maintaining the illusion that power is only applied by those at the top to those at the bottom'.²⁶² In examining the power relations in the university as a whole and then between lecturers and students, I have attempted to trace this power 'down to its actual material functioning'. It is clear that both students and lecturers are enmeshed in the operations of power that are present in the university as a disciplinary institution. Grant says that it is crucial that lecturers must 'see the process of normalization in action'. In other words, it is important that lecturers appreciate the power relations at play in their relationships with students. She comments that

lecturers have the power to act and as teachers, they are responsible for reflecting on the normative conception of the 'good student', for questioning their own practices in relation to it, as well as their practices towards particular concrete students.²⁶³

Grant's comment is extremely relevant in the light of the large number of students at the law school who do not fit this norm. I want to suggest that the teaching approach utilized in the Introduction to Law course, has indeed considered this concept of the 'good student'. As a result of this consideration, the course does not accept the 'good student' as its norm. While it caters for all students, it makes special provision for students needing extra assistance. The institution of the interactive lectures together with the interpersonal contact that is encouraged, is aimed at ensuring that marginalized students are able to cope with the course.

Foucault (1976) suggests that in revealing relations of power between subjects, we can try to hand back those relations to those who are involved in them so that they can act differently within them - for instance the power relations that exist between lecturer and student subjects can be re-examined and critically reconstructed.²⁶⁴

The training provided for faculty teaching on the course as well as the guidance given at weekly

261 Ibid.
262 Supra note 36 at 7.
263 Ibid.
264 Grant op cit 682.

meetings with regard to dealing with students is aimed at 'revealing relations of power' between lecturers and students. It is the awareness of these power relations that lead to the approach advocated by the Introduction to Law course. As a result of this awareness, faculty re-examine their conduct and focus on acting differently within existing power relations. In so doing, a new kind of power relation is created. From the discussions about the course above, it may be said that these power relations are structured so that students have more control over their learning.

Grant also speaks of confronting the microphysics of power within our institutions, and developing concrete forms of practice that interrupt the effects of power relations where they work against the interests of particular groups of students.²⁶⁵ The Introduction to Law course teaching methodology may be seen a 'concrete form of practice' that is aimed at 'interrupting the effects of power relations' where they work against the interest of second language learners as well as other marginalized groups of students.

In making the above comments, Grant suggests that 'we must remain within a Foucauldian cautiousness about the likelihood of achieving our desired ends'.²⁶⁶ She says that although we intend opposing negative power relations, the effect of our interruptions might perpetuate unjust practices.²⁶⁷ This is important in light of my discussion on stereotyping second language learners and the problem of spoonfeeding students. However, Grant makes the conclusory remark that despite possible problems, 'the work of marking out and interrupting discrimination and injustice in educational institutions' must continue.²⁶⁸ Therefore, despite the problems I have outlined earlier, it is imperative that the approach followed in the Introduction to Law course be strongly supported. This approach is aimed at breaking down negative power relations between faculty and students. It is of great value in light of the increasing number of students from educationally disadvantaged backgrounds attending the university.

²⁶⁵ Grant op cit 683.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

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