

How to Improve Teaching and Learning Strategies through Educational Research: An Experience of Peer Observation in Legal Education

L. Mortari, A. Bevilacqua, R. Silva

Abstract—The experience presented in this paper aims to understand how educational research can support the introduction and optimization of teaching innovations in legal education. In this increasingly complex context, a strong need to introduce paths aimed at acquiring not only professional knowledge and skills but also reflective, critical and problem-solving skills emerges. Through a peer observation intertwined with an analysis of discursive practices, researchers and the teacher worked together through a process of participatory and transformative accompaniment whose objective was to promote the active participation and engagement of students in learning processes, an element indispensable to work in the more specific direction of strengthening key competences. This reflective faculty development path led the teacher to activate metacognitive processes, becoming thus aware of the strengths and areas of improvement of his teaching innovation.

Keywords—Discursive analysis, faculty development, legal education, peer observation, teaching innovation.

I. INTRODUCTION

THE paper's objective consists in presenting the results of a faculty development program carried out at the University of Verona (Italy) to support the training of faculty members with innovative teaching and assessment strategies adopting peer observation and analysis of discursive practices as tools for educational research. The program, co-created by the Teaching and Learning Center (TaLC) and the Department of Legal Sciences, aimed to facilitate students' active participation in learning processes.

II. INNOVATING IN LEGAL EDUCATION: PRELIMINARY OBSERVATION

Technological change and the big data framework have opened new frontiers. This is also true in the world of Higher Education. Nowadays, technology allows us to systematically record entire cycles of lessons, gather together words, gestures, interactions, and even collect unintentional feedback (expressions, small gestures, etc.). From collecting these data, new possibilities for analysing university teaching arise, making it possible to identify new margins of intervention in faculty development. Thereby it is possible to improve students' learning experiences, as well as contemporary research perspectives [1]. The project originates in examining

these new possibilities, together with an awareness of the need for extensive innovation in teaching and learning in higher education in general. In particular, here, we focus on legal education. The phenomena mentioned above are related to the digital turn, while on the one hand, opened up new perspectives for in-depth analysis of higher education, on the other hand, have also profoundly changed professional practice in the field of legal sciences. The educational objectives and strategies implemented in universities are now required to consider these changes. University members will have to encourage the development of professional and transversal skills [2] necessary to face challenging scenarios with high degrees of complexity, such as those related to the exercise of the legal profession in contemporary contexts [3]-[6].

The scientific literature produced in legal education highlights how the considerations so far formulated are part of a long-term debate that aims to re-discuss educational practices in this disciplinary field, a discipline some authors consider to be particularly conservative in terms of its teaching approaches. Two milestones in this debate are represented by the American Bar Association's MacCrate Report [7] and by the more recent "Educating Lawyers: Preparation for the Profession of Law", better known as the "Carnegie Report" [8]. This last document, in particular, has raised a fruitful debate that cannot be easily ignored today [9]. Although some of the issues highlighted in these reports are strongly linked to the American context, it is worth dwelling on the considerations that emerged during this ten-year discussion. Many of the issues addressed are also significant in very different contexts, such as Europe in general and Italy, in particular. Even in countries whose legal system is based on civil law and not on common law, problems which are similar to those raised in the United States have emerged. On the one hand, in Italy today, there is a perception by faculty members of the traditional approach to teaching's low effectiveness; on the other hand, the young graduates' express widespread dissatisfaction with their performance skills in the world of work. However, these considerations have not been followed so far by an in-depth reflection on teaching innovation in legal education. Although a perception of conservatism is widespread, there is indeed a generalized difficulty in changing the traditional teaching approach (the so-called chalk and talk instruction) and undertaking an in-depth revision and

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modernization of pedagogy used [4]. Nevertheless, those who want to pursue educational innovation in legal education are not without guidance today. Many indications of good practices have emerged from the international debate on modernization of educational practices, starting with the promotion of those skills which could enable students to better enter the labour market [3]. In particular, there seem to be three areas of expertise where implementation appears crucial today: the first is characterized by the development of problem-solving skills; the second by the habit of critical thinking; the third is linked to the skills of interpersonal interaction, the so-called socio-relational skills. In the legal field, they become crucial because they:

- a. allow students to improve case analysis skills, taking a more active and innovative attitude when carrying out analysis [10].
- b. foster the attitude necessary to reach shared solutions in terms of legal action and mediation [11].
- c. facilitate broader development of reflective skills necessary in forensic practice and to successfully overcome phases of working life affected by professional frustration and dissatisfaction, which, unfortunately, are typical of an aggressive and scarcely receptive labour market such as the contemporary one [12].

Traditional teaching based on lectures proved to be unsuitable for developing such skills; in particular, such practices do not seem to favour a critical attitude and the ability to flexibly apply learning gains to complex and diversified work contexts [13], [14]. In this way, teaching innovation based on tailored programs is not an academic flight of fancy but a pressing need. A large amount of literature stresses the need, as a primary strategy for developing the skills mentioned above, for a change in the general approach of the teaching of legal disciplines such that it is no longer transmissive but rather student-oriented [15]-[17]. Such a change would favour both better students' learning outcomes and student motivation. Similarly, a student-centered teaching method would also increase two other relevant skills in students: autonomy and self-efficacy. For students to acquire all these skills, the transition to active teaching and learning strategies seems crucial. These allow students to develop those relational, reflective, and critical skills that will enable them to move effectively through increasingly new and complex content and concrete situations [3], [4], [13], [15].

III. THE RESEARCH-BASED FACULTY DEVELOPMENT PROGRAM

In the academic year 2019-2020, a professional development pathway to introduce teaching innovations was requested by the instructor of the course "Elements of Constitutional Law" within the Department of Legal Sciences of the University of Verona (Italy). The project was included in the "Idea in action" faculty development program, which has been co-designed by the Teaching and Learning Center (TaLC) and the Department of Legal Sciences to support the training of faculty members

with innovative teaching and assessment strategies through seminars, workshops, and individual mentoring programs.

To create effective faculty development pathways, i.e. with high impact and capable of translating into positive results and completing the course taken, we agree with Beach et al. [16] on the need to design and implement evidence-based teaching and learning experiences for staff. To this aim, structuring the accompanying pathway within the framework of educational evaluation [17] and transformative evaluation [18] was considered appropriate. From a methodological point of view, peer observation was opted for data collection [19], while analysis of discursive practices was used for data analysis [20] since the focus was on the conversations that teachers and students carry out in the classroom. The activities of the TaLC drew substance, from the theoretical point of view, from philosophy of language [21]-[23], as well as from the symbolic interactionism approach of Blumer [24] and Denzin [25].

The design cycle included a first phase of analysis of the instructor's needs. This article focuses on their need to facilitate students' active participation in learning processes among all the needs that were recognised. After an initial observation phase in the classroom, the classroom interactions were recorded, transcribed, and analysed using a coded analysis focused on discursive acts. The coding used was derived from previous research [20], [26] and has been redefined through a recursive process to make it consistent with the current specific research objective. This adaptation action is configured as a continuous process, consistent with an emergent and inductive approach to research [27]. The coding, which is still undergoing partial re-elaboration, is shown in Table I.

The analysis was also refined through continuous dialogue with the instructor to promote reflection starting from the results of analysing conversations. The design and proposal of an authentic legal case were then agreed with the instructor (specifically, the 'Savona case' was chosen) to implement a cooperative and argumentative approach. While carrying out this activity, the TaLC researchers carried out a second observation in class, and the analysis of the discursive acts was successively carried out.

IV. RESULTS OF THE MENTORING PROGRAM

A. An Excerpt before the Teaching Redesign

In this first excerpt (Table II) the instructor introduces the topic of the lesson, which is the real antinomy. He explains how the problem implicit in the real antinomy [the contradiction between two laws] seems to be insuperable with the procedures outlined up to that moment. The procedure to resolve the antinomy and make the judicial order coherent is to choose one of the two laws. This choice implies excluding the law that can no longer produce effects. He then asks the students how to proceed, but he gets no answer. He then encourages participation, makes jokes, and makes suggestions.

TABLE I
CODING OF DISCURSIVE ANALYSIS IN LEGAL EDUCATION

Macro-Categories	Micro-Categories	Labels	Macro-Categories	Micro-Categories	Labels	
Transmissive acts	Informative acts	asks for information/data	Opening acts	Developmental acts	highlights a given	
		provides information/data			launches a concept	
		provides a definition			rephrases a concept	
		exposes a legal concept			gives reasons	
		narrates the legal action			uses examples	
		narrates a case			expresses a conjecture	
		asks for procedure/an action strategy			expresses questions	
		describes a procedure/an action strategy			makes clear the implicit elements	
		refers to a source or an author			develops inferences	
		refers to teaching materials			makes clear the assumptions	
	reads a norm	illustrates a consequence				
	reads the case documentation	illustrates a possible action strategy				
	reports a norm	use questions to develop reasoning				
	reports a case documentation	highlights a given				
Explanatory acts		explains through a narration		Problematizing acts	asks for clarification	
		explains through an argumentation			introduces a doubt	
		interprets			raises a problem	
		uses an analogy/a metaphor/a comparison			details a problem	
Interactive acts	Assertive acts	declares agreement	Teaching acts	Framework acts	provides information about the topic of the lesson	
		declares disagreement			explains the teaching method	
		reiterates			explains the evaluation tool	
	Purposeful acts		specifies an intention		Direct teaching acts	exposes the reasons of the teaching action
			specifies a decision			communicates instructions
	Co-constructive acts		suggests a concrete action		Active Teaching acts	explains the role/posture of the teacher
			suggests a cognitive action			resumes previous teaching contents/actions
			proposes a teaching/learning action			anticipates subsequent teaching contents/actions
			completes other's speech			creates links with content presented in other courses
			invites to continue the reasoning			asks to resume previous teaching contents/actions
			completes other's reasoning			summarizes what was previously said
			asks for confirmation			proposes a "learning by doing" action
			confirm to have understood			proposes a role playing action
			confirm to have done an action			suggests a questioning learning strategy
			receives			illustrates a professional practice through action
	asks to start an action	proposes a brainstorming action				
	asks for operative indications	proposes a case analysis - or the analysis of a document				
	gives operative indications	encourages students to express an opinion/an analysis				
	Collaborative acts		invites to share with the classroom	Evaluation act		validates
			specifies other's language			highlights incorrect elements
			refers to other's actions			corrects/self-corrects/precises
			echoes			checks comprehension
			asks for/expresses availability to participate			checks students' previous knowledge
calls for a shared action			evaluates a product			
thinks			evaluates others' actions			
Relational acts		apologizes			verifies assigned tasks	
		reassures			suggests to evaluate teaching actions	
		encourages participation			ask for feedbacks (to students)	
Reflective and meta-reflective acts		analyses the teaching action	Regulatory acts		focuses attention	
		highlights a deficiency			regulates the flow of the speech	
		exposes his/her own logical processes			assigns/asks for the turn of speak	
		exposes others' logical processes			regulates interactions way	
		hypothesizes others' cognitive acts			asks for silence	
		wondering about others' cognitive acts				
		hypothesizes students' knowledge/skills				

TABLE II
EXCERPT BEFORE THE TEACHING REDESIGN (ACTS FROM 331 TO 353)

Unit of analysis	Instructor	Students
So (.) now we must start from the assumption that we are facing a real antinomy (.)	provides information about the topic of the lesson	
So we tried, we tried them all, we tried in every way (.) interpretation, specialty criteria (.) nothing	summarizes what was previously said	
No way. The antinomy is absolutely unsurpassable	raises a problem	
At this point, there is no alternative	makes clear the implicit elements	
To reach the goal we want, that is to make the judicial order coherent, which needs to be coherent	gives reasons	
We have, as the only alternative, to choose one of the two rules (.) and not only (.), but conclude that the other law can no longer produce effects (.) it must disappear from the judicial order	describes a procedure	
And how do we choose them?	asks for procedure	
(.)		
Heads or tails?	jokes	
What is your opinion? (.)	encourages participation	
Evidently not	jokes	
There must be criteria for choosing one over the other (.)	suggests a cognitive action	
How do you do it?	asks for procedure	
Do you have any ideas? (.)	encourages participation	
How would you do it? (.)	encourages participation	
Some elements could become apparent, thinking about what we have said in previous lessons, you might have it already (.)	suggests a cognitive action	
Well, for me, it is much easier, obviously	jokes	
But you could give me an idea on how to resolve this antinomy, that is, identify the third step to take to resolve the antinomy,	encourages participation	
At least the third	focuses attention	
There must be criteria for choosing one over the other (.)	evaluates a product	
You don't have enough elements. I'll have to help you	proposes a teaching action	
The thing you can do after understanding that the antinomy is undoubtedly real, is you can also guess it (.)	encourages participation	
A little help? (.)	encourages participation	

From the discourse analysis, it is clear that the instructor begins to illustrate the procedure in this excerpt and asks how the procedure can continue. Getting no answers from the students, he continues with evaluative ('jokes') and relational ('encourages participation') acts.

B. An Excerpt after the Teaching Redesign

In the passage that has been chosen after the teaching redesign (Table III), the instructor explains how the problem inherent in the Savona case (i.e., the disagreement between the President of the Republic and the Prime Minister in the choice of a Minister) has also occurred throughout history. The instructor asks the students the procedure for solving the problem, that is, whether the opinion of the President of the Republic or the President of the Council should prevail. He tries to ask the students to take a stand by raising their hands. Receiving no answer, he resorts to irony and reiterates the question. When asked by a student to speak, the teacher accepts and encourages her participation. The student emphasizes the priority position of the President of the Republic. The instructor, addressing the whole class, reflects on their point of view, takes up the assumptions from which they started, but explains how they do not thus overcome the problem. A student takes the opposite position arguing that the Prime Minister chooses the Minister. The instructor points out that the colleague in this case will disagree. Students converse by comparing their conflicting opinions. The instructor asks a student to share her position with the class and invites her to continue the reasoning. He proposes to the student the initial

problem again: who chooses the Minister in a case of disagreement. The student explains the assumptions of her logic. If the President of the Republic has given the task to the Prime Minister, the former will be superior to the latter. The instructor validates this interpretation.

In this excerpt after the teaching redesign, the instructor explains and asks for the procedure (informative acts). A student asks to intervene. When she hesitates, the instructor encourages her. The student expresses her position. The instructor reflects, explains the logic of the students' arguments, reflects on the statements, and problematizes them. Students take sides and debate (predominance of assertive acts). Once the instructor has identified a relevant passage, the student develops her thinking up to the conclusion (predominance of co-constructive and developmental acts). The instructor validates and explains.

V. CONCLUSIONS

The support that the TaLC of the University of Verona offers to the university's taught courses includes the design, analysis and evaluation of the implemented teaching programs.

The case study presented in this article is an example of an educational research approach that aims to analyse teaching activities to support the instructor in redesigning the course according to his/her needs. The analysis carried out shows how a heuristic perspective on the execution of the taught session allows participants to deduce elements useful for optimizing teaching processes. This combines a transformative approach with fidelity to real data. In this specific case, the scientific

evidence obtained from the analysis of the discursive acts stressed how the students used a greater number of assertive, co-constructive and developmental acts after working in groups to solve an authentic case. These elements are characteristic of a participatory teaching approach, in line with the instructor's objectives.

TABLE III
EXCERPT AFTER THE TEACHING REDESIGN (ACTS FROM 526 TO 582)

Unit of analysis	Instructor	Students
Guys consider that it has happened many times in history, whether it appeared in the newspapers or not, that the President of the Republic said to the Prime Minister, presented with a minister's proposal: "This is not good for me" (.) For several reasons	explains through a narration	
Right?	checks comprehension	
What usually happened?	uses questions to develop reasoning	
It happened that the Prime Minister said: "Okay, okay, I will propose another one". And if the President of the Republic said: "This is fine" then that's okay.	explains through a narration	
Right?	checks comprehension	
But be careful: in the Savona case, the Prime Minister said, "No, either this or nothing", because this is the person, he says, on whom the majority agrees and without whom the majority is not in agreement	details a problem	
What must happen?	asks for procedure	
Which of the two roles should prevail? (.)		
The President of the Republic or the Prime Minister? (.)		
Is the question clear?	checks comprehension	
Yes		confirm to have understood
Raise your hand if you say that the President of the Republic must prevail	asks for information	
(.)		
None (.) One (.)	receives	
Who says the Prime Minister must prevail?	asks for information	
(.)		
None (.)	receives	
<i>Laughs</i>		
Help (.) disaster (.)	jokes	
so how do we get out of it, though? (.) How do we get out of it? (.)	reiterates	
But::: can I?		asks for the turn to speak
sure you can	assigns the turn to speak	
Maybe maybe it doesn't matter		introduces a doubt
No, no, no, forget it	encourages participation	
But the President of the Republic is also motivated to refuse (.) That is, he implements a well-founded explanation also linked to:::		expresses a conjecture
So, according to you, the will of the President of the Republic prevails	echoes	
Yes of course		validates
You are faced with an alternative: it is white or black.	makes clear the implicit elements	
You have tried the third way, which is what usually happens then:::	exposes other's logical processes	
but if the two people do not agree and each stick to it	details a problem	
Keep in mind that the constitutional prerogatives are clearly outlined. They have their flexibility	makes clear the implicit elements	
but at a certain moment, you have to decide who expects to do what (.)	outlines a problem	
Is the President of the Republic or the Prime Minister to choose a Minister? This question must be answered	reiterates	
the Prime Minister chooses a Minister		provides information
Well then::: your colleague seems to deny this call. Your colleague says:::	refers to other's actions	
[But he proposes]		declares disagreement
He is nominated		reiterates
Guys:::	asks for silence	
Proposes [rather than nominates]		reiterates
proposes	receives	
he chooses him because:::		reformulates
But why? ::: say it into the microphone	invites to share with the classroom	
He chooses him because he is proposed		corrects / self-corrects / precisises
He chooses him because he is proposed	receives	
and he proposes him to the President of the Republic		completes other's reasoning
and the other one says :::	invites to continue the	

Unit of analysis	Instructor	Students
And he will name him and if the other one says no? But if there is a constitutional reason that does not:: And he says, "I don't care. This is what the majority of the government wants". And in any case, it is the President of the Republic who has given the task to the Prime Minister And so?	reasoning introduces a doubt details a problem	completes other's reasoning makes clear the assumptions makes clear the assumptions
So he is in a superior position compared to the other, for me He is in a superior position Do you agree? Guys, this is another topic that has appeared now	invites to continue the reasoning validates asks for confirmation analyses the teaching action	develops inference
the President of the Republic is in a higher position than that of the Prime Minister (.)	explains through an argumentation	

This approach owes a lot to the developmental evaluation framework, which conceives the evaluation process as fluid, oriented to change, bearing on reality through the gaze of the different actors involved in the process, all being aware of the complexity and the multidimensionality of the teaching experience [28]-[30]. However, for the analyses carried out to be fruitful, a second step must be carried out: it consists of turning a reflective gaze to the teaching practice and its analysis. To this end, the instructor must be involved in the research process and the reflective actions that accompany this. The reflective approach is essential for faculty members who want to take a critical look at teaching practice, as evaluative action is nourished by reflexivity and its profitable exchanges [31]. Therefore, the dialogue and the joint redesign of the course are configured as hetero-evaluative devices capable of promoting instructors' cognitive and metacognitive processes when these are aimed at acquiring greater awareness of their teaching practices [32], [33], as well as an improvement of the practices themselves. Furthermore, the concretization of the transformative intent implicit in the faculty development programs is also useful for facilitating the introduction and consolidation of teaching innovations sustainably for instructors [34].

Finally, these moments of dialogue and shared reflection are enriched by the interdisciplinary gaze that characterizes them: the collaboration between disciplinary instructors and pedagogists gives life to a process of mutual fertilization of thought, indispensable to carry out a truly transformative action and to reach real change.

AUTHORS' NOTE

For the academic evaluation paragraphs 1 and 4 is attributed to Luigina Mortari, paragraph 3 to Alessia Bevilacqua, paragraph 2 to Roberta Silva and paragraph 1. The reference list is instead equally divided.

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