

whether the students could transfer the skills gained from the program to a legal exercise. Across groups, there was evidence of deliberate organisation to make the best use of a team, to assess what was practical or possible given the time constraints, to make use of individual strengths and weaknesses, to assess knowledge or lack of knowledge of individuals, to divide the task into manageable units, to undertake peer tutoring where appropriate, and so on. In reviewing how their team had operated, there was evidence of taking seriously messages from the group skills training.

The challenge for tutors is to create the circumstances and the ethos wherein individual students feel they can contribute fully towards meeting the group's learning objectives. Throughout this process, the group needs to be supported by the tutors, many of whom are used to more didactic teaching methods, rather than facilitative, interactive and student-centred ways of working. Such a change in role is not easy to achieve effectively, even when tutors are enthusiastic. However, a major hurdle remains in persuading academics across the university that this is an appropriate way of working with students.

Personal transferable skills are inherently difficult to assess in that processes of learning are difficult to monitor and outcomes, especially of individuals within teams, are difficult to judge. Students will be asked to discuss, at regular intervals, the entries in their log books with their personal tutors, in order to monitor success in meeting their aims. This system has the potential benefit of improving communication between staff and students and of increasing the student's responsibility for learning and progress.

Although the feedback from the initial program was very positive, it is necessary to continue emphasising the benefits of teamwork, since transfer of such learning cannot be assumed. Much is dependent on whether the ethos of the department sufficiently encompasses experiential learning methods and whether the students are motivated by assessment of groupwork abilities. It is likely, however, that formal assessment of group skills will reinforce their importance, since students make it clear that they value most, and tend to put most effort into, what is assessed.

There was no attempt to turn law lecturers and tutors into 'skills trainers'. The aim was to suggest how incorporating systems developed in industry can help to enhance the learning experience in order to enlighten and make exciting traditional educational methods. Personal transferable skills now play a vital part in management and employment training and recruitment. Thought needs to be given to how to support and encourage industrial initiatives such as this, so that employers are attracted towards financing, and providing motivation and impetus for, similar educational projects in the future.

Mainstream courses and workshops for the year following on from the team development course had not been re-planned or re-developed, since it was not possible to predict the outcomes of the program and hence know what would need to be adapted. What became evident, however, was that changes in teaching did take place. It was easier for tutors to require students to work together, and for students to achieve this, since groups developed their own ways of working. They had, for example, appointed co-ordinators who could liaise with staff as group representatives. The major hurdle of asking students to work together,

rather than merely come together as a group of individuals, had been overcome.

**Confronting adversarial attitudes to negotiation: what the red/blue exercise can teach us and our students**  
C Maughan, M Maughan & A Thornhill  
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Interest in the processes of negotiation has developed in the last 20 years or so in a number of disciplines, including law. Although writers on negotiation differ in their descriptions and terminology, from these it is possible to identify four negotiating outcomes: win/win, win/lose, win some/lose some, and lose/lose.

Law students find the win/win orientation problematic in practice. The lose/lose outcome arises as the unintended and unexpected result of a win/lose orientation. Both sides come out significantly worse off than they might have done because of an unwillingness to concede or compromise. Our experience of the Red/Blue exercise demonstrates that students will often adopt this orientation in the mistaken belief that it represents a low risk strategy for them. Although the lose/lose outcome is unintended, the strategy which leads to it is conscious and deliberate.

Red/Blue is used not as a model of how to do negotiations but rather as a means of analysing behaviour in negotiating situations. For the last four years the authors have used it at a later stage in the program, after students have had the opportunity to internalise the fundamental elements of negotiation theory through simulated negotiation exercises. Running the exercise at this later point has demonstrated that the majority of students take a win/lose approach to the negotiation and that this approach can be so deeply ingrained that many are not aware of it and so more often than not it leads to a lose/lose outcome.

Our findings after many uses of the exercise show that the vast majority of players opt for the 'logic of defection'. This is a negative-defensive strategy which starts by seeing the interaction as a competitive one in which not losing is its principal interest. The overriding strategy adopted by the authors' groups, no matter where on the program the exercise was used, was negative-defensive. That is, groups opted to adopt a strategy which gave them the highest possible positive score or the lowest possible negative score.

It does not take participants long to realise that without cooperation between both teams, there is no realistic possibility of either ending up with a positive score. Why, then, does the strategy of defection continue throughout the exercise, in spite of any agreements to co-operate that might have been reached at the negotiation points? Why do teams persist with a 'lose-lose' strategy, when they have previously discussed and reflected on the value of mutual cooperation? Moreover, why does it persist when it is clearly consistent with the team's self interest to cooperate?

A cooperative approach to negotiating over the long term affords a positive aggregate result for the lawyer and the clients. The risk for the lawyer is that this overall outcome is premised on a 'win some/lose some' approach. Few individual clients would consider it in their interests to be among the 'lose some' group. The risk for the lawyer over her negotiating career is similar to that in the Red/Blue exercise. Each time she opts to cooperate, she is taking the risk that the other side may defect, leaving her client with a very unsatisfactory settlement. The gains of cooperating, however, in any individual case may well be less than could have been obtained by being uncooperative. On the other hand, being

uncooperative from the outset could, in the right circumstances, deliver a highly satisfactory result for her client, while if both sides refuse to cooperate, the negative outcome might be tolerable.

This poses a dilemma for lawyers. They recognise the professional, practical and commercial benefits of co-operating over the aggregate of a bargaining career and, by implication, the dangers of non-cooperation. The dilemma is brought about because of the lawyer's perception that clients want an aggressive advocacy of their case which maximises benefit to them. What is apparent here is that the anti-cooperative theory of action is present as far as the needs of the individual client are concerned, whilst the lawyer has come to understand that her professional success is premised on the notion of cooperation with co-professionals over the long term. Consequently, lawyers experience a conflict of interest: their own against the perceived interest of the client.

The lawyer's theory of action is that she must behave competitively because the client expects it of her. Her own interest, however, is probably to act cooperatively. This signals a ritualised war dance between adversaries, beneath which lies a desire to maintain profitable long-term relationships and aggregate client satisfaction whilst giving the impression of going for a win at all costs.

The Red/Blue exercise is a powerful experiential exercise which the authors have used for a number of years on negotiation programs. Its use is primarily to bring to the surface theories of action that students use in potentially conflictual negotiating situations. These theories of action can then be discussed and evaluated against the evidence we have of lawyer bargaining behaviour.

The authors' experience of using Red/Blue demonstrates, first of all, that participants are quick to behave according to an adversarial theory of action, and secondly, that the theory of action required to reach a satisfactory outcome to the exercise is significantly different from this. Students quite readily espouse a variety of negotiating strategies including bargaining co-operatively. Their experience shows that there is a discrepancy between the espoused theory and the theories they are actually able to call upon.

#### **The problem-based education approach at the Maastricht law school**

J H C Moust

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The necessary instructional models for educating our future professionals in law-related domains must have two aims: to prepare students for continuing education and to help them become effective problem-solvers. Although the case method of legal education is a very useful instructional approach to teach students legal reasoning, how to analyse appellate opinions and synthesise legal areas, it fails to teach them to come up with solutions of their own. Advocates of the problem method in legal education have written repeatedly on how to present this approach to law students and on the advantages and disadvantages of this method. Problem-solving seems more relevant to lawyers than ever before and is the single intellectual skill on which all legal practice is based.

Students are not trained to solve problems. In spite of the fact that the case method has its advantages over such didactic approaches as lecturing, it does not lend itself to teaching students all the skills needed in legal practice. There are four advantages for the problem method: it is an adequate