

Teaching Casuistry of Criminal Law at the VU University Amsterdam

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The Method of the Criminal Law

In the legal course “Criminal Liability” at the Law Faculty of the VU University Amsterdam, second year law students and criminology students study the General Part of the Criminal Law. They have to learn the principles and precedents of legal subjects like Acts and Omissions, Causation, Self Defense, Duress, Complicity and Attempt. In the course, special attention is paid to the analysis of new cases, derived from decisions of Dutch Criminal Law Courts or moot cases, invented by the teachers of the course. One of the teachers, Klaas Rozemond, has written a course book, *The Method of Criminal Law* (in Dutch: *De methode van het materiële strafrecht*), in which the most important precedents of the Dutch Supreme Court in Criminal Law Cases are explained in such a way that a student can use those precedents to solve new cases.

The method of solving a case, explained in the book, starts with the concepts of the General Part of the Criminal Law, such as perpetration, causation, intention, recklessness, conspiracy, preparation, attempt, incitement and complicity. The Dutch Criminal Code does not give any further definitions of these concepts. Therefore, in its judgments, the Dutch Supreme Court has formulated criteria to explain the general concepts of Criminal Law. These criteria have been applied in a range of later cases in which the Supreme Court gave a final judgment on the way the lower courts applied concepts and criteria of the Criminal Law to the facts of these cases. Students have to compare a new case with the facts of the relevant precedents and they have to explain how concepts and criteria can be applied to the new case. During the course, the teacher explains the Criminal Law Method and leading legal precedent in general lectures. The lecturer also applies this method to new cases from recent decisions of the Supreme and lower Courts and he discusses the way Criminal Law Judges argue to substantiate their written decisions. The students practice in small groups with real cases from the Criminal Courts and fictitious cases which have to be compared with the relevant precedents of the Dutch Supreme Court.

The study of cases in small groups fits with the vision of the VU University Amsterdam of learning by research. According to this vision, students should be able to participate in the scientific research of teachers and they also should be able to learn methods of research with which they can actively participate in society. The training of students in

solving new cases tries to prepare them for a role in society as solicitor, prosecutor or judge. At the same time, they participate in the scientific research of the teachers in which decision making by Criminal Law Judges is analyzed from a theoretical point of view. The aim is to form 'communities of learners' in which students and teachers participate in scientific research and social practices of problem solving.

A Research into Case Solving Abilities

In May and June 2007, the law students and criminology students themselves became the object of scientific research. Two criminology students, Elisa Hoving and Jolien Terpstra, studied the way students learned to solve cases with the Method of the Criminal Law. Hoving and Terpstra started their research with an analysis of the teaching vision of the VU University and the Criminal Law Method described by Klaas Rozemond. After this analysis, they executed an empirical research into the knowledge and ability of students to solve a case. At the 7th lecture of the Criminal Liability Course, they handed out a questionnaire on the way students solve cases and they presented a new case, written by Klaas Rozemond, which focused on the question whether a suspect acted in self defense while wounding a presumed attacker with a broken bottle. Students had to answer general questions on the method to solve a case en specific questions on the case presented in the questionnaire. The aim of the empirical research was to acquire knowledge on the insight of students in the Method of the Criminal Law and the ability of students to solve a specific case.

Hoving and Terpstra also executed an experiment in two small groups of students. One group held a usual meeting in which a case was discussed. As usual, the students had to prepare answers to legal questions about causation in relation to a case in which a suspect knifed a victim after which the victim died of an infection, although the victim was released from hospital as cured from the knife wound. The meeting in the second group was organized as a trial in which a student played the role of the prosecutor at a trial and another student played the part of council for the defense. They had to argue a solution to a case from the perspective of the prosecution and the defense. After the meeting, the students of both groups had to answer a questionnaire and they had to solve a new case on causation.

With the results of their research, Hoving and Terpstra tried to answer the question what the general knowledge of students was to solve cases and what their specific ability was to solve a specific case. The outcome was that most students generally know what the method is to solve a case, but that they have difficulties in answering legal questions on a specific case. Part of the explanation of these difficulties is that most students did not bring their case book and the text of the Criminal Code to the lecture where the research questionnaire was handed out. Students participating in the small study groups scored better on the case questions. They were more experienced in solving cases (not all the students attending the general lectures participate in a small study group, because participation in a small group is not obligatory). A lot of students participating in the small groups hold the view that they do not learn much from general lectures, as these

lectures give overviews of the subjects which are also studied in small groups. These small groups therefore seem to offer a better way of learning to apply the Method of the Criminal Law to specific cases. The research did not show relevant differences between the experimental group in which the discussion was held in the form of a trial and the other group which discussed the case in the usual way. The research did show that students who only attended the general lectures were less able to answer legal questions on a specific case than students participating in the small groups, although students who only attended the general lecture do have general knowledge on the way the method should be applied to a specific case.

In their research report, Hoving and Terpstra made recommendations to improve the course on Criminal Liability. They could not recommend the experimental way of discussing a case in the form of a trial with a prosecutor and a counsel for the defense, because of the limited validity of just one experiment, but they suggested further experimentation with this way of discussing cases in small groups. They also recommended a more active form of general lecturing. Students should be stimulated to bring their case book and the Criminal Code to the lecture. The teacher should explain the relevant subjects in the week before these subjects are discussed in small groups and not in the same week the groups handle the subject.

Motivating Large Groups of Students

A problem in teaching the Method of the Criminal Law is the passivity of students in large groups, for instance during general lectures with 200 students or more. The research by Hoving and Terpstra showed that students attend these lectures without the expectation to actively participate in discussions or in solving specific cases. Students do not bring their case book to the lecture and they just wait what the lecturer has to tell without preparation in the form of reading the relevant chapters from the book on the Method of the Criminal Law. During the course of 2007, the lecturer as an experiment did present new cases to the students, then he explained the relevant concepts and precedents and finally he asked a student to answer questions on the legal problems of the presented case. The evaluation of the course showed that students did not like this way of lecturing, because they found it hard to speak publicly in a group of 200 students and they also did not like to listen to a student who tried to answer legal questions in public, because the students who tried to answer legal questions during a lecture did not succeed in presenting a clear solution to the case.

Similar problems occur in small study groups. Students have to write answers to legal questions in relation to a specific case, they also have to prepare analyses of decisions by the Supreme Court and the lower Courts, and they have to search new decisions by Criminal Law Judges on hard cases concerning the General Part of the Criminal Law. Students can only attend a small study group after they have submitted their written answers and analyses to the teacher of the group. In practice, most students submit short answers, written within a few hours, without taking the time to fully apply the Method of the Criminal Law to the legal questions of the case. Students prefer teachers who give

ample explanations before the discussion of the case in a small group. A consequence of ample explanations by the teacher, however, is that students do not really try to find the answers themselves, because they anticipate the fact that the teacher will give them the full answer. Only a few students are really motivated to study the relevant literature and precedents, to look up new decisions by the Criminal Courts, and to argue their own solution to a case with legal arguments, fully applying the Method of the Criminal Law.

The Law Faculty of the VU University Amsterdam is trying to find different solutions to the problem of motivating students to participate in discussions at lectures and small groups. The selection of students during the first year of the study has become stricter. Student who do not finish all their exams of the first year within two years lose all their results. Plans are being developed to introduce a binding advice to stop the study when a student fails most of his exams during the first year. Training of legal thinking and study skills in the first year has been improved by introducing special training courses. There are plans to introduce honor classes for students with the best study results and with special motivation to participate in scientific research. The idea behind all these plans and measures is that better selection and training of students will create a 'community of learners' in which student and teachers study the scientific and social aspects of the law. The aim of this community is to form students with scientific and social capabilities. With these capabilities they can study the theoretical and practical problems of the law and use their knowledge in science and society.

Literature

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