ARTICLE

Critical Thinking in Academic Legal Education

A Liberal Conception*

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Abstract

Critical thinking is generally considered to be one of the central goals – if not the ultimate goal – of education. Critical thinking, as part of liberal learning, is done primarily for its own sake, for the sheer pleasure of thinking against the grain, exploring new ideas and thereby contributing to the development of scientific knowledge. The liberal conception of critical thinking is under threat, since education is nowadays turned into some form of social engagement. Increasingly, academic education is conceived in instrumental terms as a means to achieve some non-academic end: to create responsible 'academic citizens', who are committed to the values of diversity and inclusion and who are engaged in solving contemporary social problems. Against this tendency, this article defends a liberal conception of critical thinking in academic legal education and addresses three questions: (i) what is critical thinking? (ii) why do we need critical thinking? and (iii) how can we, as teachers, promote critical thinking in our students? Finally, it raises the question of whether a liberal conception of critical thinking rules out any kind of social engagement as pursued by universities in the present day.

Keywords: critical thinking, academic legal education, legal skills training, social engagement.

1. Critical Thinking as a Vocation

Critical thinking is generally considered to be one of the central goals – if not the ultimate goal – of education. Ever since the Enlightenment, education is seen as an important instrument to promote and develop the student's ability to think for herself. As is well known, Kant defined Enlightenment, as 'man's release from his self-incurred tutelage through the exercise of his own understanding' (Kant, 1992,

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p. 90). According to him, education was indispensable in realizing the human 'propensity and vocation to free thinking'.[1] In the classical *Bildung* conception, critical thinking is one of the key elements of education, next to creative thinking and social responsibility. In the present time, the interest in critical thinking was rekindled, at least in the Anglo-Saxon world, by the publication of the article 'A Concept of Critical Thinking' by Robert H. Ennis (1962). Subsequently, with the rise of the criticality movement and the critical pedagogy movement later on, critical thinking became connected to a progressive political agenda which supported political activism (Davies & Barnett, 2015, p. 6).

Legal scholarship, which tends to be more conservative or moderate,[2] followed this trend hesitantly. In 1974, the Dutch journal *Recht en kritiek* (*Law and critique*) was established, which existed for 23 years. Initially, the journal offered a critique of the current legal system from a Marxist perspective. Subsequently, it developed a more general and, arguably, less ideological notion of critical legal scholarship:

> critical legal scholarship is distinguished primarily by the constant questioning of what is self-evident and [it assumes] that the pursuit of a more just society must be at the heart of critical analysis of legal rules, premises and policies.[3]

In the late 1970s, starting in the USA and the UK, critical legal scholars (or 'crits') began to debunk political biases underlying the legal system and question its claim to neutrality and impartiality. In a famous pamphlet, entitled 'Legal Education and the Reproduction of Hierarchy', Duncan Kennedy criticized (what he perceived as) the hierarchical and conservative character of legal education in US law schools. In his view, legal education, as it was practiced by conservative and liberal teachers, consisted of 'ideological training for willing service in the hierarchies of the corporate welfare state'.[4]

In the course of its conceptual history, the notion of critique – along with related concepts such as 'criticism', 'critical' and 'critical thinking' – was increasingly associated with legal scholars with a radical political, left-wing approach to legal scholarship and legal education. At the same time, a more 'neutral' or less (overtly) politicized or ideological concept of critical thinking, connected to the *Bildung* ideal, remained current. According to Appleby, Burdon and Reilly (2013, p. 347), there is a common core in the many definitions available: 'At its most basic, critical thinking is the "art of analysing and evaluating thinking with the view of improving it".'[5] Fruehwald (2020, p. 14) defines critical thinking as 'a mental activity that is a subset of three types of thinking: reasoning, making judgments and decisions, and problem solving'. This conception of critical thinking, which I would characterize as

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1   As discussed in Biesta and Stams (2001, p. 58).
2   See my inaugural lecture (Van Klink, 2010).
3   The quote is taken from http://durieux.eu/content/recht-en-kritiek, Retrieved 28 June 2023 (my translation).
4   Kennedy (2004, p. 15, originally published in 1983). For a critical discussion of Kennedy's critique, see Van Klink (2013).
5   The quote is taken from the website of the Critical Thinkers Community (Appleby, Burdon and Reilly, 2013, 347 fn.).

'liberal',[6] is under threat, since education is nowadays turned into some form of social engagement. Increasingly, academic education is conceived in instrumental terms as a means to achieve some non-academic end: to create responsible 'academic citizens', who are committed to the values of diversity and inclusion and who are engaged in solving contemporary social problems. As appears from the mission statements of various universities and faculties of law in the Netherlands, knowledge has first and foremost to be practical, applicable and socially relevant. For instance, Utrecht University describes its mission and vision as follows:

> We are working towards a better world. We do this by researching complex issues beyond the borders of disciplines. We put thinkers in contact with doers, so new insights can be applied. We give students the space to develop themselves. In so doing, we make substantial contributions to society, both now and in the future.[7]

In addition, the Utrecht Faculty of Law, Economics and Governance commits itself to a progressive political agenda as it 'fully embraces and promotes a culture of equality, diversity and inclusion, for all students and staff'. The Erasmus School of Law aims 'to conduct innovative research on the function of law in its economic and social context'. As a consequence, the research has 'a strong social and business-driven orientation'. According to the VU's Institution Plan (Instellingsplan), the aim of Vrije Universiteit Amsterdam is to produce students with 'A Broader Mind'.[8] As individuals, they are expected to be able, among other things, 'to think critically and from different points of view' and 'to see, think and work "outside the box"'.[9] Students are trained to become 'responsible, critical and engaged academics who are always trying to broaden their horizons'.[10] However, the student's individual development is presented primarily as a societal value:

> Our educational activities emphasise the societal value and relevance of academic questions. We offer our students the opportunity to develop fully, from an academic, personal and societal perspective. This equips them for success in the workplace and society, and helps them to find meaningful roles in those contexts.[11]

Against this tendency, I want to make a case for the more neutral or liberal notion of critical thinking as one of the building blocks of *Bildung*. I do not mean to reject right away the non-academic goals that are nowadays connected to higher education, but I do not commit myself in advance to a particular social, ethical or political aim. In my view, critical thinking in academic legal education should be

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6   On the meaning of 'liberal', see below.
7   Retrieved 28 June 2023, from www.uu.nl/en/organisation/profile/mission-and-strategy.
8   Strategy 2020-2025, p. 12, Retrieved 28 June 2023, from https://vu.nl/en/about-vu/more-about/strategy.
9   *Ibid.*
10   *Ibid.*, p. 38.
11   *Ibid.*, p. 40.

pursued primarily for its own sake. Below, I present my conception of critical thinking in academic legal education by means of three questions: what is critical thinking? (section 2); why do we need critical thinking? (section 3); and how can we, as teachers, promote critical thinking in our students? (section 4). Finally, I discuss the question of whether my liberal conception of critical thinking rules out any kind of social engagement as pursued by universities in the present day (section 5).

2. What Is Critical Thinking?

In my view, critical thinking in an academic setting does not serve any external, non-academic goal, such as raising 'responsible, critical and engaged academics' or promoting 'a culture of equality, diversity and inclusion'. It is connected to what Oakeshott calls 'liberal learning'. Learning takes place in a separate sphere, far from our daily cares and concerns. Therefore, Oakeshott (2001, p. 15) characterizes learning as liberal, not in the political sense but in the existential sense of 'liberated' or 'freed': at least for a few years, learners do not have to worry too much about 'satisfying contingent wants'. What the university offers is 'the gift of an interval' (Oakeshott, 2001, p. 114). Learning does not follow a pre-established plan and has no final destination. It is an adventure with an uncertain and unpredictable outcome:

> This engagement is an adventure in a precise sense. It has no preordained course to follow: with every thought and action a human being lets go a mooring and puts out to sea on a self-chosen but largely unforeseen course. (Oakeshott, 2001, p. 11)

According to Oakeshott, universities should be free spaces of learning, where learners acquire knowledge mainly for its own sake. However, as he fears, liberal learning is increasingly replaced by instrumental learning, which aims at socializing students and preparing them for certain tasks in society.[12]

Critical thinking, as part of liberal learning, is done primarily for its own sake, for the sheer pleasure of thinking against the grain, exploring new ideas and thereby contributing to the development of scientific knowledge. In my view, critical thinking, in a general sense, involves the forming of a judgment and ultimately results in an opinion. During the process of judgment formation, something is evaluated on the basis of a specific normative framework. This normative framework provides the standards by which something – such as a certain state of affairs – is evaluated. For instance, the gender pay gap can be assessed by means of the principle of equality, derived from the normative framework of the rule of law. After a careful examination of the relevant sources of information, an opinion is stated. An opinion is an evaluative statement in which a judgment is rendered based on the standard at hand, for example: 'The existing

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12 In Van Klink (2013), I discuss Oakeshott's view on education more extensively.

gender pay gap is unjust.' To substantiate this opinion arguments are provided that are based on one or more standards derived from a specific normative framework. For instance: The existing pay gap is unjust, because it violates the principle of equality. Following the equality principle, men and women should receive the same amount of money for the same or similar type of work. As several empirical studies show, men and women do not get the same salary for the same or similar type of work. So the existing pay gap is unjust.

Critical thinking in the field of law results in a judgment about a legally relevant object, such as a court decision or a legislative proposal. In this judgment, actions of legal and political authorities – among whom judges, legal officials and members of Parliament – are evaluated and possibly criticized. Criticism can be put forward in various ways, with variations in intensity and weight. These modes of criticism can be put on a scale, ranging from relatively mild criticism to heavy moral condemnation. In Van Klink and Francot (2019, pp. 4-5), we distinguish five modes: problematization, questioning, challenging, denial and rejection. It is a sliding scale; the distinction between the different modes is not always clear in actual practice.

Typically, critical thinking puts into question the mainstream understanding of a certain topic. In other words, it challenges *idées reçues* about this topic that are accepted uncritically by (large parts of) the academic community and/or, more generally, by most people in society. In the academic world, it is customary to present one's ideas as new and innovative, but they do not need to be; they may just be repeating some conventional insight that is accepted by many scholars. For instance, when Griffiths gave his inaugural lecture (Griffiths 1978), his message that law is not as important as many legal scholars and practitioners believe, may have been revealing and refreshing. Now, it has become a truism or cliché, readily repeated in socio-legal circles. Interestingly, Malsch (2021) defended in her inaugural lecture the contrary thesis that 'law is too important to leave to lawyers'. As soon as new ideas springing from critical thinking are generally accepted, they become part of the mainstream understanding, which, in their turn, are prone to be challenged by other ideas from some other perspective. Truly critical thinking generates ideas that, at first sight, seem strange, inconvenient and implausible.

Here, I have summarized my conception of critical thinking, both in a general sense and applied to legal education.

In a general sense, critical thinking is the ability:

i   to evaluate a certain object (state of affairs, action, opinion, theory) from a specific normative framework, using relevant sources of information;

ii   to express one's own opinion about it which deviates from the mainstream understanding; and

iii   to substantiate this opinion with good arguments based on standards derived from this specific normative framework.

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Applied to law, critical thinking is the ability:

i   to evaluate a legally relevant object* from a specific legal-doctrinal, legal-empirical or legal-theoretical normative framework, using relevant (legal and other) sources of information.

   * A legally relevant object can be: a) the existing law (legislation, court decisions, treaties and so on), b) the legal and political system (including, for instance, the legislature, the administration and the judiciary), c) current legal opinions or theories about the law and the legal and political system (such as legal positivism or ELS) or d) actions from legal and political authorities (such as the police) or citizens;

ii   to express one's own opinion about it which deviates from the mainstream understanding; and

iii to substantiate this opinion with good arguments based on standards derived from this specific framework.

As is apparent, this definition itself consists of some normative standards: the information sources have to be *relevant*, the object to be evaluated has to be *legally relevant* and the arguments given have to be *good* arguments. To establish whether this is the case, there are no a priori or prescribed standards. This has to be established in the academic forum within which the opinion is expressed. That is, the community of scholars towards which the opinion is directed has to determine whether the opinion is based on relevant sources of information, the object is legally relevant and the arguments given are sound and, consequently, whether it can count as an instance of critical thinking or not. Here a challenge presents itself for critical thinking: critical thinking often is (and should be) critical towards established ideas which are taken for granted within a certain community of scholars. However, it is the same community that has to evaluate whether the opinion is acceptable or at least defendable from the viewpoint of a certain conceptual and normative framework. As Marquard argues, 'the burden of proof is on the one who changes something'.[13] So if someone presents a critical view that departs from generally accepted opinions, she has to build – hermeneutically speaking – on the existing reservoir of arguments and sources already accepted.

According to Hamby (2015, p. 82), the end of critical thinking is 'reasoned judgment, reached through a process of critical inquiry'.[14] To achieve this end, students have to acquire various skills or abilities: 'What makes critical thinking skills special? They are those particular abilities that contribute to the process of critical inquiry, and to achieving its end, which is reasoned judgment' (p. 78). In his view, an important skill is the ability to analyse the structure of an argument or

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13   Marquard (2003, p. 154; my translation).
14   See also Bailin and Battersby (2015, pp. 123 and 126).

'argument interpretation' (*ibid*.), that is, to identify the conclusion and its supporting reason or reasons. Other critical thinking skills which he mentions are argument evaluation, clarifying meanings of terms and statements, evaluating authorities and sources and examining plausible alternatives. Hitchcock (2022) provides a list of eight critical thinking abilities, including emotional, questioning, imaginative, inferential, experimental, consulting, argument analysis abilities and judging and deciding skills.

Besides these skills, students need to have certain dispositions, in the sense of mental habits or attitudes that make them motivated to use these skills. Hamby calls these dispositions 'critical thinking virtues', that is,

> those cultivated excellences of a person's character that consistently guide her in the skilful process of critical inquiry. They are the motivations, values, dispositions, goals, and other habits of mind that, being connected to purposeful abilities, lead a thinker to be the kind of person who engages appropriately in the interpretive and evaluative process of critical inquiry. (*ibid*., p. 79)

According to him, the key critical thinking virtue is the willingness to inquire, i.e., 'an internal motivation to employ my skills appropriately, aiming toward reasoned judgment' (*ibid*., p. 82). Hitchcock (2022) makes a distinction between *initiating dispositions* which are needed to start the process of critical thinking and *internal critical thinking dispositions* which contribute to carrying out this process in a good way once it has started. Initial dispositions are, among others, attentiveness, a habit of inquiry, self-confidence, courage, open-mindedness, willingness to suspend judgment, trust in reason, wanting evidence for one's beliefs and seeking the truth. Internal critical thinking dispositions include some of the initial dispositions which are required throughout the whole process of critical inquiry, such as open-mindedness and the willingness to suspend judgment. Moreover, it includes, for instance, the willingness to persist in a complex task and the willingness to abandon non-productive strategies in an attempt to self-correct.

Critical thinking presupposes knowledge but does not coincide with it. It is not a general skill that can be applied universally to any domain of knowledge; it is always directed to a specific domain and must be adapted to this domain. In other words, critical thinking always takes place within an academic discipline, building on the intellectual resources available within this discipline. So one has to have at least some basic knowledge of a certain discipline – including its concepts, methods and core values – before one can think critically about its epistemic and evaluative claims. Epistemic (or knowledge) claims are statements about facts (what is the case), whereas evaluative (normative) claims concern norms and values (what ought to be). Applied to law, one can, for instance, raise the factual question (the *is* of *ought*): is it true, legally speaking, that museums in Western Europe have the duty to return looted art objects to African countries? An additional normative (ought) question would be: irrespective of what the law says, is it desirable, ethically speaking, that these objects are returned to their country of origin? In my view, the training of critical thinking skills necessarily goes hand in hand with knowledge

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acquisition and cannot be trained separately. Critical thinking is a specific manner in which the acquisition of knowledge takes place, that is, in a critical way. Critical thinking presupposes that scientific (epistemic and evaluative) claims are inevitably fallible and must always be tested, both empirically and normatively.

The liberal conception of critical thinking that I defend differs from two other current conceptions of critical thinking: first, a very general and neutral conception which equates critical thinking with the ability to reason and reflect and, second, a more specific, normative conception which connects critical thinking with promoting social, ethical and/or political values. Ennis, who revived the interest in critical thinking in the early 1960s, offers a well-known example of the first, general conception. He defines it as 'reasonable reflective thinking that is focused on deciding what to do or believe'.[15] Although it is a compact definition, I have some difficulties with it. Firstly, critical thinking is equated with 'reasonable reflective thinking'. In my view, reflective thinking (reasonable or not) is a broader, more general category than critical thinking. Reflective thinking I conceive as a mental activity in which a topic is thought over seriously. In the Oxford dictionary, 'reflection' is described as 'careful thought about something, sometimes over a long period of time'.[16] In my view, critical thinking does require reflective thinking, in the sense of serious or careful thought, but it involves more than that. And what this 'more' exactly is, secondly, is not captured fully in the adjective 'reasonable'. 'Reasonable' serves to limit the scope of what counts as critical thinking: only reflective thinking that conforms to some standard of reasonableness may be considered critical. Usually, 'reasonable' refers to what is generally or commonly believed to be either practical, fair and sensible or acceptable and appropriate.[17] In my conception of critical thinking, I would also like to include instances of critical thinking that, *prima facie*, do not seem to be reasonable (according to a particular standard). Critical thinking often involves precisely the questioning of what is generally taken to be self-evident (for which, of course, reasons must be given).[18] Thirdly, critical thinking is focused, according to Ennis, on 'deciding what to do or what to believe'. According to me, critical thinking is not about *deciding*; it is about forming a judgment and expressing an opinion. Nor is it about deciding *what to do*. As a specific form of *thinking*, critical thinking is located in the sphere of thought, not action. So it does not concern (at least not primarily) what we should do but rather how we should assess or evaluate something. On the basis of this evaluation, we may decide to take some action; for instance, if we deem a certain situation undesirable, we may decide to try to change it. Fourthly, I do not believe that critical thinking is focused on *deciding what to believe*, which seems an odd phrase anyway, as if believing – always and essentially – is the outcome of a conscious decision. Its primary focus is making up one's mind and forming an opinion about

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15   Ennis (2015, p. 31). It is an amendment of his earlier (and even less helpful) definition of critical thinking as 'the correct assessment of statements', provided in Ennis (1962, p. 83).
16   Retrieved 28 June 2023, from www.oxfordlearnersdictionaries.com/definition/english/reflection?q=reflection.
17   Retrieved 28 June 2023, from www.oxfordlearnersdictionaries.com/definition/english/reasonable?q=reasonable.
18   As the journal *Recht en kritiek* put it in its mission statement (as quoted earlier).

something. Essentially, my main problem with the general conception of critical thinking, in the line of Ennis, is that it is *too* general: it focuses primarily on the thinking part of critical thinking, but it fails to explain why this thinking can be considered *critical*. What makes critical thinking critical, in my view, is that it challenges generally accepted beliefs and presents a new, strange and estranging way of looking at a given topic.

My conception of critical thinking also differs from the more specific normative conception that links critical thinking with some ethical, social or political goal. Wendland, Robinson and Williams (2015), for instance, promote a method of 'thick critical thinking', which is inspired by Geertz's notion of 'thick description' and pedagogical and feminist theories. It aims to make students politically sensitive and reflective. Thick critical thinking is concerned with power, that is, 'the ways that current debates over any issue, whether moral panics, hot topics, or crises, represent struggles over meaning and representation in society in a larger sense' (Wendland et al., 2015, p. 160). In the field of legal education, pleas can be found for socially active and engaged lawyers, who are engaged in solving today's social problems. According to Leering, twenty-first-century legal professionals need an integrated reflective legal education that, among other things, fosters the aptitude for problem-solving and tackling 'wicked problems' in society. As an 'integrated reflective practitioner', a legal professional is someone

> who integrates theory and practice, critically reflects on practice (what one does), and theory (what one knows), and what one believes as a self-directed life-long learner, and then takes action based on that reflection to improve their practice. (Leering, 2017, p. 49)

What I find problematic with this conception is that it reduces education to what Oakeshott calls 'instrumental learning' (see above). Applied science is favoured over fundamental science. Law students are trained to become social engineers, who are engaged in solving social problems and tackling 'wicked problems'. Subsequently, the normative conception seems to presuppose a fixed set of shared (social, ethical or political) values. However, academic freedom entails that – to a large extent – scholars should be free to choose their own values (see further below). More fundamentally, while this conception does explain, from a specific normative perspective, what makes critical thinking critical, it fails to do justice to *thinking* as an intellectual engagement. As an academic activity, critical thinking should in my view not be required to accept beforehand some non-academic values (however laudable perhaps), nor should it bother itself too much with practical concerns.

3.   Critical Thinking: What Is It Good for?

Critical thinking is generally considered to be a key value in academic legal education. As Ahsmann (2016, p. 11) argues,

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> The aim is indeed to produce critical and world-conscious students who have an insight into the relation between law and the social context as well as the morality of law, in order to arrive at a good judgement.[19]

As discussed earlier, two related developments threaten the academic core of legal education: on the one side, an *instrumentalization* of legal education which reduces it to a kind of vocational training which prepares law students to fulfil useful tasks in society; and, on the other side, a *moralization* of legal education which aims to turn law students into responsible 'academic citizens' by promoting some (usually progressive) social, ethical or political values. Empirical research seems to indicate that the quality of higher-order thinking skills (including critical thinking) among students has diminished from the 1970s and onwards (Fruehwald, 2020, p. 2). According to Stolker (2014, p. 137), 'we may have lost sight of what should be the main academic duty: teaching students to think critically'. Why do students need critical thinking anyway? And why should we as lecturers promote it? In my view, at least three reasons can be given on three different levels: the level of (i) the individual student, (ii) the university as a knowledge institution and (iii) society writ large.

Firstly, on an *individual* level, critical thinking gives students the tools to develop themselves intellectually, to broaden their minds so to speak, and to reflect critically on their own learning process. As is stressed in many educational studies, metacognitive skills are essential for learning.[20] Critical thinking is not something that is performed just for some specific tasks or during the study period only but, ideally, it is part of a lifelong process of learning (Green, 2015). It is a vocation for life which is fuelled, in the words of Hamby, by the 'willingness to inquire' (as quoted earlier). As Ashwin (2020) argues, university education should bring students into a transformative relationship with a structured body of knowledge, by which they may be changed themselves and also change the existing knowledge. This can also be connected to the three functions that education, according to Biesta (2010), should fulfil: qualification (acquisition of knowledge, skills and an academic attitude), socialization (initiation in existing practices and traditions) and subjectification (development of one's individual identity).

Secondly, on an *academic* level, critical thinking contributes to the development of knowledge and innovation. In Popper's theory of critical rationalism, criticism plays a central role: scientific theories should constantly be put to critical tests in order to improve them or replace them with better theories (Popper, 2002). According to Gadamer, understanding always starts with a question. He calls this the hermeneutic 'priority of the question' (see Gadamer, 1989, pp. 362-379). It would, however, be more appropriate to use the gerund 'questioning' instead of the noun 'question' in order to stress that is an ongoing process of raising questions (Eberhard, 2011, pp. 290-291). Questioning, however, is not an end in itself; it is done for the sake of understanding, that is, to acquire knowledge. Moreover, not everything can be questioned at the same time. To be able to question some things,

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19 My translation.
20 As discussed in, among others, Davies and Barnett (2015, p. 12).

we must take other things for granted. So we can only be – as Marquard (2007, p. 17) puts it – partially critical (*partialkritisch*), not completely (*totalkritisch*).[21]

Thirdly, on a *societal* level, critical thinking may have many benefits. Lawyers who are able to think critically will probably be better legal professionals, because they will always look for opportunities to amend their own work and to correct and improve the work of others. Moreover, as critical thinkers, they are better equipped to take good decisions, since they are able to see a case from various perspectives, to explore different scenarios, to gather relevant information and to assess it critically. In the strategic agenda for higher education and research, the Ministry of Education, Culture and Science states:

> Digitisation and robotisation of work make it increasingly important, in addition to specific vocationally-oriented knowledge and skills, more broad skills (such as *critical thinking*, problem-solving thinking and acting, and cooperation) to be maintained.[22]

At the same time, it acknowledges that higher education not just has to accommodate 'current social and labour market oriented expectations', but is also expected, 'in the light of its academic freedom, to question these expectations critically and sometimes change them'.[23] Legal academic education that promotes critical thinking, does not provide, as Kennedy put it (as quoted above), an 'ideological training for willing service in the hierarchies of the corporate welfare state'. Instead, it encourages students to think for themselves, in the sense of thinking beyond the standard doctrinal study of law. In a time when fake news and conspiracy theories spread rapidly, these are essential qualities. However, I have to make an important caveat. In my view, these societal benefits are possible by-products of critical thinking and never its ultimate goal. Paradoxically, *these indirect effects can only be achieved if they are not directly pursued*. If critical thinking is done only or predominantly to achieve some higher social goal, it loses its critical distance to society, which is essential for its modus operandi. Following the liberal conception, critical thinking should be done primarily for its own sake, out of curiosity and as part of the never-ending quest for knowledge and truth.

4. How to Promote Critical Thinking?

The ultimate goal of critical thinking skills training is, as Van Rossum argues, that students become 'self-directed learners able of reasoning, communicating, researching and intellectual discipline'.[24] In Bloom's Revised taxonomy of

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21 This is also one the central points of Wittgenstein's study *Über Gewissheit* (Wittgenstein, 1969).
22 Ministerie van Onderwijs, Cultuur en Wetenschap, *Strategische agenda hoger onderwijs en onderzoek: Houdbaar voor de toekomst*, 2019, p. 26 (my translation; my italics), Retrieved 28 June 2023, from www.rijksoverheid.nl/documenten/publicaties/2019/12/02/strategische-agenda-hoger-onderwijs-en-onderzoek. Critical thinking is also included in the overview of general skills, *ibid.*, p. 72.
23 *Ibid.*, p. 71 (my translation).
24 Van Rossum (PhD thesis, chapter 3, not yet published).

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educational objectives, six levels are distinguished: (1) remember, (2) understand, (3) apply, (4) analyse, (5) evaluate and (6) create (Anderson & Krathwohl, 2001). Critical thinking can be located at the higher levels, at levels 5 and 6, I would argue. In the literature, there is discussion at which level or levels critical thinking should be located. According to some scholars (as discussed in Hitchcock, 2022), critical thinking starts directly after the first level with understanding and gradually builds up to the highest level of creating. In my view, the first four levels are necessary steps towards critical thinking but do not *in themselves* constitute critical thinking. According to Fruehwald (2020, p. 6) and Mathiasen and Andersen (2020, p. 44), critical thinking has to be located in particular or exclusively at the sixth and final level of creating. However, since evaluation is an essential part of my conception of critical thinking, I have included the fifth level as well.

To attain these levels of higher-order thinking, we, as lecturers, can offer students a great variety of exercises. In the training of critical thinking, I distinguish three different phases, building on the VU Mixed Classroom Educational Model, developed at LEARN! Academy by Siema Ramdas and her colleagues.[25] The VU Mixed Classroom Educational Model aims at improving

> our education at VU, in order to pursue our educational goals. First of all, as Vrije Universiteit Amsterdam, we want students to acquire competencies that will help them to navigate, understand and thrive in a world that is increasingly dynamic; as students, but also as academics, professionals and citizens.[26]

What is required in the first place, according to the model, is critical thinking:

> As future academics, students need *critical thinking skills*. At university, students learn to collect relevant data and information to make judgements using reflections on social, scientific or ethical issues, and to integrate knowledge and handle complexity.[27]

However, as a model for the *mixed* classroom, it ultimately serves a higher ethical or social goal, which can be characterized as dealing successfully with (cultural, religious and/or academic) diversity:

> The Vrije Universiteit ('vrij' translates as 'free') aims to be a sanctuary for dialogue between people with different values, world views and academic positions. To benefit from and contribute to this, students need to learn how

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25 This model is similar to the four-stage model for interdisciplinary research, developed at Utrecht University (based on the 10-step process of interdisciplinary research described by Repko). However, the four-stage process of this model aims at finding common ground and integrating perspectives, whereas in my view critical thinking should challenge exactly this common ground. For more information, see: www.uu.nl/onderwijs/onderwijsadvies-training/publicaties/kennisdossier-hoger-onderwijs/four-stage-model, Retrieved 28 June 2023.

26 Retrieved 28 June 2023 from https://assets.vu.nl/d8b6f1f5-816c-005b-1dc1-e363dd7ce9a5/d7847606-cfa2-482b-8cde-c6e7b1bb7e49/Mixed_Classroom_booklet_tcm270-935874.pdf, p. 5.

27 *Ibid.* (my italics).

perspectives that are dominant in their own field relate to other academic perspectives, and how to build upon them.[28]

The VU Mixed Classroom Educational Model consists of three phases:
– PHASE 1: SENSITIZING students to their own frame of reference and the existing diversity in the classroom and creating a safe learning environment to do so;
– PHASE 2: ENGAGING students to interact constructively with different perspectives present in the classroom;
– PHASE 3: OPTIMIZING every student's learning process by having them capitalize on different perspectives and approaches.[29]

Because I am interested primarily in the cognitive benefits of critical thinking (that is, what can be gained from it in terms of the acquisition and development of knowledge), I will adapt the model to fit this purpose. Moreover, in my view, the model is particularly suited to promoting academic critical thinking, and I consider 'dealing with diversity' a derivative outcome, which it addresses only indirectly by bringing together and exploring various perspectives and approaches.[30] Adapted to my conception of critical thinking, I suggest that the following three phases be distinguished:
– PHASE 1: SHARING learning experiences among students by asking them, for instance, how they think and how they experience studying at the university, while creating a safe learning environment for critical reflection and discussion;
– PHASE 2: EXPLORING the various perspectives and approaches in a given discussion and exposing hidden biases and underlying values in this discussion;
– PHASE 3: TAKING POSITION within this discussion, that is, to express one's opinion and to substantiate it with good arguments, building on one (or more) of the perspectives or approaches discussed.

Accordingly, in my view, the training of critical thinking skills is a three-step process. Firstly, students share their learning experiences so far with each other, in order to become aware of their various learning styles and study goals. This can only be done if students feel safe enough to share their experiences. Secondly, students are actively engaged in forming their judgment by means of exploring and confronting the various perspectives and approaches within a given discussion. Thirdly, a position is taken within this discussion, for which good arguments are given, building on the perspectives and approaches discussed. Ideally, this position does not merely repeat established ideas but offers a fresh perspective on the topic at hand. Since the last phase is arguably the most difficult one, I would suggest addressing this task later on in the curriculum, preferably at the end of the Bachelor, when writing the Bachelor thesis, and in the Master. Exploring various perspectives

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28   *Ibid.* (my italics). In the VU's Institution Plan (discussed in section 1), critical thinking is also linked directly to diversity and a multidisciplinary approach.
29   *Ibid.*, p. 9.
30   How diversity can be successfully dealt with, after the various perspectives and approaches have been gathered and explored (in phase 2), is not yet fully elaborated in the Mixed Classroom Model.

and approaches in a given discussion is something that can and should be done from the very beginning. It includes, among other things, the training of information skills (how to select and evaluate relevant information), argumentation skills (how to analyse an argumentation structure) and presentation skills (how to present one's findings in writing as well as orally).

The role of the teacher in training critical thinking skills is sometimes compared to that of a coach. According to Bowell and Kingsbury (2015, p. 244), '[p]erhaps the most important part of the job is to motivate the student to practice, by keeping both the value of critical thinking and the fact that it requires practice at the forefront of the student's mind.'

Or, as Green (2015, pp. 115-116) argues, we, as lecturers, should attempt to increase intrinsic motivation and reduce extrinsic motivation. Moreover, the teacher may act as a role model by demonstrating how in specific cases critical thinking could or should take place (see, e.g., Leering, 2017, p. 68; Mathiasen and Andersen, 2020, p. 45). Since the goal of critical thinking training is to make students think for themselves, I see the teacher primarily as a *moderator* whose main job is to keep the conversation going. As a moderator, she may add a new perspective to the discussion, call attention to an underexposed or neglected perspective or raise some pertinent questions, without herself taking a position.[31]

Regarding educational methods, four approaches can be taken: (i) a generic approach in which critical thinking skills are trained from a general perspective, independently of a specific subject matter and a specific disciplinary context; (ii) an infusion approach which trains critical thinking together with instruction in a subject matter, within a specific disciplinary context, based on explicit instructions for critical thinking, (iii) an immersion approach which also operates within a specific discipline but trains critical thinking implicitly, without any explicit instructions; and (iv) a mixed approach, combining the previous three approaches.[32] There is no empirical evidence showing which of these methods is the most effective. I have a personal preference for the infusion approach because, in my view, critical thinking is always directed to a specific domain of knowledge and must be adapted to this domain. Moreover, I believe it is better to give explicit instructions for critical thinking so students can more consciously use and develop their critical thinking skills and improve their metacognitive skills.[33] When it comes to assessment, essays, presentations or open questions, open-ended exam forms and formative assessment are often recommended (Fruehwald, 2020, p. 92). However, Mathiasen & Andersen (2020: 45) give an important warning: 'Learning critical thinking primarily focusing on exams and grades is a contradictory venture.' In their view, critical thinking cannot be measured fully, since it involves deep personal learning. They plead for an alternative, more holistic approach to assessment which encompasses the entire learning culture (*ibid*., p. 46).

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31 In Van Klink (2013) and Van Klink and De Vries (2013), I expound my view on the teacher's role in Skeptical Legal Education (SLE).

32 See the supplement 'Educational Methods to Critical thinking' in the Stanford Encyclopedia of Philosophy (Hitchcock, 2022).

33 See footnote #20.

A large number of critical thinking exercises can be found in the literature. Just to give an idea of the many possibilities, I have listed some short examples here. For many more examples, see, for instance, the Project Zero's Thinking Routines Toolbox, developed by the Harvard Graduate School of Education,[34] and the analysis and critical thinking student engagement techniques (SETs), offered by Barkley (2010, pp. 186-217).[35]

- **Argumentation analysis**: reconstructing the argumentation structure (the relation between conclusion and supporting arguments) in texts by means of various models (Andrews, 2015);
- **Art encounters**: reading a literary novel, watching movies and theatre plays, visiting museums and discussing the artworks (Dumitru, 2019);
- **Cicero's method of *controversia***: a dialogical testing of propositions, adapted from the antithetical method used in the courtroom (Heidlebaugh, 2001, p. 112);
- **Cognitive biases**: making students aware of flawed patterns of responses to judgment and decision problems (Kahneman, 2011).
- **Debate**: discussing a controversial topic from two (or more) opposing positions (Llano, 2015);
- **Deconstruction**: revealing binary oppositions in texts and reversing their hierarchical relation (similar to thick critical thinking, see below) (for a general introduction, see Biesta & Stams, 2001; for an application to gender and difference issues, see Thayer-Bacon, 2000, pp. 113-124);
- **Ethical dilemmas**: revealing and discussing conflicting ethical principles underlying a certain dilemma (Sandel, 2010). For an example, see Sandel's discussion of the famous Trolley Cart case: www.youtube.com/watch?v=TSH-m5GtrzE;
- **Method of commonplace or 'commonplacing',** developed by the Sophists in order to find common ground in a controversy (as part of the rhetorical *inventio*; Neidlebaugh, 2001, p. 54 ff.)
- **Poetry assignment**: reflecting on a (legal or political) philosophical text by means of a poem (De Vries, 2018);
- **Socratic dialogue**: in a dialogue between teachers and students the teacher continuously raises probing questions in order to reveal the students' underlying beliefs (Fruehwald, 2020, p. 108 ff.);
- **Thick critical thinking**, consisting of the following four steps: (i) identifying a debate, (ii) listing the standard pro/con arguments for both sides, (iii) complicating the binary oppositions by fleshing out the stakes on both sides and (iv) attempting to render the complexity of the debate in some assessable form (Wendland, Robinson & Williams, 2015, p. 160);

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34   Retrieved 28 June 2023, from https://pz.harvard.edu/thinking-routines.
35   I owe these references to Van Rossum (not yet published).

- **Thinking Hat Method (original version)**, as introduced by De Bono (1999): discussing a problem from six different perspectives or 'thinking hats' (the blue 'conductor's hat', the green 'creative hat', the red 'hat for the heart', the yellow 'optimist's hat' and the black 'judge's hat');
- **Thinking Hat Method (revised version)**, as adapted by Sokhi-Bulley (2013) for legal education: discussing an urgent social matter through various theoretical lenses (such as legal positivism, Critical Legal Studies, feminist theory and critical race theory).

5. Critical Thinking and Social Engagement

In this article, I have presented a liberal conception of critical thinking that is freed from any practical or social concerns. Basically, it promotes critical thinking for its own sake, that is, for the sake of thinking and thus the development of knowledge. Does that rule out any kind of social engagement as is pursued by universities nowadays? In my view, critical thinking can be connected to a specific aim, as long as it is done in a critical way. Critical thinking is *a mode or style of thinking* which can be applied to various contents. It stands in an *adverbial relation* to the verbs that make up the daily activities of lawyers: analysing cases, presenting a plea, commenting on court decisions, evaluating legislative proposals, drafting a bill and so on. All this and more can be done – and should be done, as I have argued – in a critical manner. So if a university wants to promote academic citizenship, for instance, it should be prepared to have an open discussion about what academic citizenship is, what it entails concretely, how it should be promoted and, more fundamentally, whether that is something a university should promote at all. My point here is not that academic citizenship should be dismissed as a valuable goal but only that critical thinking never stops raising questions.

This constant questioning, however, does not come from nowhere. As Marquard puts it (see above), it is impossible to be completely critical, that is, to criticize or reject everything at the same time. In common parlance, critical thinking is often associated with independent or 'free' thinking or thinking for oneself, as in, for instance, Kant's famous description of Enlightenment (as quoted earlier). With reference to Fiona Cownie, Appleby et al. (2013, p. 348) claim:

> In a legal education, students should learn not only how to think like a lawyer, but also how to think in different frames outside of the law so that they have 'the capacity to form their own independent judgements on ... matters'.

If 'independent' in this context means that students must be able to do research and form their own judgment without the support (or only limited support) of the teacher, I can only subscribe to that. But if 'independent' is taken in the stronger sense of being autonomous and fully free of any external influence, I disagree. In my view, there is no such thing as independent thinking in this stronger sense:

thinking is always dependent on a specific conceptual and normative framework offered by a scientific discipline or theory, which enables a certain way of understanding and evaluating an object.[36] So what independent or supposedly 'free' thinking actually refers to, in my conception, is a kind of thinking that depends either on a different framework than the mainstream or standard framework used in a discipline or on a different interpretation of this standard framework. It may be considered an exercise in 'thinking outside the box', as long as one acknowledges that the thinking takes place either within another box or from another position in the same box.

As a consequence, critical thinking is only possible if one accepts – critically or uncritically – some values on the basis of which something is critically assessed. So one could, for instance, criticize the notion 'academic citizenship' from a liberal political point of view by arguing that citizenship is a private matter and that universities should only be concerned with the intellectual development of their students. I personally believe that these two things do not necessarily exclude each other, as long as one does not take certain values for granted and leaves room for an open discussion. As free spaces of learning, universities offer the ideal location for critical thinking to flourish.

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36   I build here on the hermeneutic theory of understanding developed by, among others, Gadamer (1989).

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