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PRACTICE ARTICLE

TEACHING ABOUT THE NEXUS
BETWEEN LAW AND SOCIETY:
FROM PEDAGOGY TO ANDRAGOGY

PATRICIA EASTEAL*

I INTRODUCTION

Lawyers need to know the substantive law in order to practise effectively, and much of legal education aims to provide them with that knowledge through ‘black letter’ law teaching. The focus is upon conveying specific domain knowledge to students.¹ However, effective legal practice also requires an understanding of the societal context in which the law is practised, and such an understanding is not easily imparted by the traditional approach to teaching law. This practice article describes a different pedagogical practice that has been developed to meet that requirement.² The key aim is to enable students to fully understand the simple, but nebulous, concept or threshold idea that there is a profound interplay between law and the social and cultural context in which it is practised — that the translation of law into justice is contingent on socio-cultural factors that affect people differentially, so that even the best laws do not ensure universal access to justice. Jan Meyer and Ray Land have described the notion of ‘threshold concepts’ as being ideas that are initially difficult for students to grasp but, once fully understood, substantially enable learning and improve professional practice.³ The notion is proving highly effective as a focus of learning in a number

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¹ Nick James, ‘Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine’ (2004) 8 *University of Western Sydney Law Review* 1, 1–2.

² This paper is an expanded version of a successful 2007 Carrick Citation application. It is written in the hope that some of the learning concepts will prove useful to other like-minded law lecturers who have similar teaching goals. The writer would like to thank the two anonymous reviewers for their valuable suggestions.

³ Jan Meyer and Ray Land, ‘Threshold Concepts and Troublesome Knowledge: Linkages to Ways of Thinking and Practising within the Disciplines’ (2003) [Occasional Paper 4] <<http://www.etl.tla.ed.ac.uk/docs/ETLreport4.pdf>> at 8 December 2008, 1.

of other disciplines, and in this paper its application to legal education is described. The intention is to use this method to complement the more formal components of the legal education curriculum.

Although the transmission of academic content through the usual lecture/tutorial/examination strategy is no doubt conducive to a specific and constrained type of intellectual engagement,⁴ it does not evoke the tools and self-confidence that promote lifelong independent learning. Ironically, the opposite may be engendered even in classes that actually aim to challenge students to question the ‘Conventional Wisdom of the Dominant Group (COWDUNG)’⁵ by paradoxically spending much time *telling* the students *how* to do it.

There are, however, other less conventional learning models in education that are based on learner-centredness, or ‘andragogy’,⁶ as well as social and situational approaches.⁷ Instead of lecturing on the subject and expecting students to be ‘passive learners’, andragogy involves allowing the students ‘to drive the material and to process it in a problem-solving way’.⁸ The focus is on self-direction and a humanist philosophy, and is better suited to querying the COWDUNG, which in legal education includes the (alleged) neutrality of key legal constructs such as ‘reasonable’, ‘relevant’ and ‘objective’.

Sheridan describes andragogy as:

... an interactive student-driven classroom in which content is embedded in activities designed to engage students cognitively, emotionally, and socially.⁹

She states that it is more of a methodological concept than a theoretical one, and one which recognises that because adults have different attributes to children (they are more self-directed problem solvers) they need to be taught differently.

It should be noted that the term ‘andragogy’ is used somewhat interchangeably in education scholarship with ‘collaborative learning’ and ‘democratic classroom’. I have not seen ‘andragogy’ or ‘threshold concept’ referred to in the legal education literature. However, there has certainly been recognition in legal education theory over the last few decades that ‘deep’ learning in law, as with

⁴ This is the functionalist model of education described in Paul Ramsden, *Learning to Teach in Higher Education* (1992).

⁵ Coined in Conrad Waddington, *Tools for Thought* (1977) 16.

⁶ Malcolm Knowles, *The Adult Learner: A Neglected Species* (4th ed. 1990), uses the term ‘andragogy’ to describe learner-centred and self-directed learning approaches.

⁷ Mark Smith, ‘Learning Theory’ (1999) *The Encyclopaedia of Informal Education* <<http://www.infed.org/biblio/b-learn.htm>> at 8 December 2008.

⁸ *Ibid.*

⁹ Jean Sheridan, ‘Lifelong Learning in a Postmodern Age: Looking Back to the Future through the Lens of Adult Education’ (2007) 2(Fall) *The Lifelong Learning Institute Review* 4 <<http://www.usm.maine.edu/olli/national/pdf/LLI-Review-2007.pdf>> at 8 December 2008.

any subject matter, does result from a student-centred approach to teaching.

Thus learning in law is not simply the transmission of content or the facilitation of learning ... If we wish to help students become skilled lifelong learners who seek a transformative approach to their learning, then we must model a transformative approach in our teaching. We must set up a learning context in which students may challenge our conceptions and their own: one in which they construct their own knowledge frameworks.¹⁰

Although the need for a different sort of learning experience is a recurrent theme in the literature, it has been found that within legal academia, actual 'change has been uneven, often temporary, and has struggled entirely to transcend the traditional model of legal education'.¹¹ Part of the problem may be that there are few actual descriptive examples given of *how* to do so in teaching law. There are some exceptions. Tracey Booth explains how she encouraged more interactive learning with reading guides, an online discussion forum and weekly seminars.¹² One can also read about a small group-learning project for Property Law students at Monash.¹³ And Alison Greig describes how, in Torts, she has had student teams take control of teaching with creative seminars. Her underlying assumption is similar to mine: 'That learning is an active process and students only really learn in constructing knowledge in ways that are meaningful to them.'¹⁴

This article describes *how* Employment Discrimination and the Law, Family Law and Gender and the Australian Legal System classes were designed to be conducive to such active and lifelong learning through enabling the students to challenge their conceptions about law and justice. The principal steps are:

1. creating a learning environment in which students develop the confidence and skills needed to challenge accepted views and norms;
2. ensuring that students are introduced to appropriate levels of formal material; and
3. developing an assessment method that is able to measure the extent to which the students have successfully internalised the threshold idea.

¹⁰ Carol Bond and Marlene Le Brun, 'Promoting Learning in Law' (1996) 7(1) *Legal Education Review* 1, 28.

¹¹ Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537.

¹² Tracey Booth, 'Learning Environments, Economic Rationalism and Criminal Law: Towards Quality Teaching and Learning Outcomes' (2001) 4 *UTS Law Review*.

¹³ Adiva Sifris and Elspeth McNeil, 'Small Group Learning in Real Property Law' (2002) 13(2) *Legal Education Review* 189.

¹⁴ Alison Greig, 'Student-Led Classes and Group Work: A Methodology for Developing Generic Skills' (2000) 11(1) *Legal Education Review* 81, 85.

This approach to teaching law necessitates significant changes to the curriculum, subject delivery and assessment. An ‘action-learning’ approach by the lecturer facilitates its development. Action-learning is a dynamic process that includes planning and implementing new classroom activities and assessment, observing the resulting classroom dynamics and the students’ written work, noting both formal university-driven and informal student feedback, reflecting on which approaches were most conducive to independent inquiry (and student epiphany), and recording one’s impressions as a basis for further improvement cycles.¹⁵

II CREATING A SUPPORTIVE LEARNING ENVIRONMENT

The teaching style described in this section can be used with a class of any size *if* access to a room with enough desks that are portable is possible.¹⁶ Aside from these requirements, a certain ethos needs to be generated at a social and emotional level in the physical space. The goal is to make the class an enjoyable and cooperative experience: an ‘active space’ conducive to group work.¹⁷

Respect is modelled and demonstrated by the teacher, which contributes to creating a supportive social setting.¹⁸ Students need to feel comfortable to explore their own thinking process and to articulate their thoughts.¹⁹ As a student has commented:

One never feels intimidated about sharing their point of view ... the classes were so welcoming, I knew I was never going to feel intimidated, put down, or ridiculed for stating my opinion.²⁰

¹⁵ Keith Trigwell, Elaine Martin, Joan Benjamin and Michael Prosser, ‘Scholarship of Teaching: A Model’ (2000) 19 (2) *Higher Education Research and Development* 155, describe how an action-learning cycle is at the core of scholarship in teaching.

¹⁶ The author has used this type of teaching/learning in classes with between 20 and 75 students.

¹⁷ Ronald Barnett, *Higher Education: A Critical Business* (1997).

¹⁸ Graham Badley’s claim, in ‘Developing Globally-Competent University Teachers’ (2000) 37 *Innovations in Education and Training International* 244, 248 that ‘[i]f teachers or trainers demonstrate openness and authenticity in their own behaviour, this will be a model that learners will want to adopt’ is applicable here.

¹⁹ According to Malcolm Knowles, ‘Adult Learning: Theory and Practice’ in Leonard and Zeace Nadler (eds) *The Handbook of Human Resource Development* (1990), a climate of openness, trust, supportiveness and respect is essential to successful andragogy.

²⁰ This quote and the others in the remainder of the paper are provided as evidence that innovative approaches in teaching about the link between law, society and justice can be both effective in achieving goals and well received by the students. The student comments come from two sources: some quotes are extracts from ten letters written by graduates to the university supporting the lecturer for a university teaching award. They are representative of the students who do undergo a transformative experience with this learning method. Other quotes are from university teaching and learning evaluation surveys gathered over a six year period. They are distributed in the absence of the lecturer and are completed by all class members in attendance on that day. The comments included reflect the

The idea of pooling expertise is discussed in the first week's class session in the context of contributing to the individual learning journey. Treating students courteously and as collaborators in learning fosters this classroom culture: student emails are replied to within a few hours, assessments are returned with feedback within a week, and unanswered questions and the need for clarification are followed up by email or via the electronic discussion board as soon as possible after class. A respectful 'good for the group' environment is nurtured by the lecturer learning and using students' names (including nicknames), even in large-sized classes, and engaging in pastoral work out of class. Thus, student participation in class is encouraged in a way that is sensitive to cultural and personal differences. International students are asked if they would like to share how a particular law 'fits' within their homeland(s), the relevant professional expertise of class members is called upon, and each student is encouraged to provide input about their own relevant life experiences. Student input is nurtured with follow-up thoughts by email and in subsequent classes, acknowledging student insights that have contributed to the teacher's own learning.

Social time is included in the three-hour class period, with a roster for students to supply some food for communal consumption. Many choose to make homemade 'goodies' and bring in a variety of items from mini quiches to strawberries dipped in chocolate. Such offerings contribute to, and are the result of, group identity and cohesion.

There is one other ingredient that seems to be essential in creating the relaxed and open type of environment conducive to active learning: humour. Including cartoons and jokes that are relevant to the week's topic in the formal instruction can be challenging but well worth the effort.

III ENCOURAGING LEARNING IN THE CLASSROOM

The three-hour class format integrates an entertaining and instructive mixture of formal instruction using visual aids interspersed with two to four 'buzzes' (small group discussions during which the students reflect upon and answer one or more questions). This format has evolved over a number of years, and student feedback indicates that such a combination encourages intellectual curiosity, independent learning and critical thinking. As a former student comments:

Another beneficial aspect of [the lecturer's] teaching style was the variety of methods in which we learnt. [The lecturer] used a combination

general tone of the survey results received. They may however not be reflective of the entire class as students who do not like the style of teaching may be less likely to attend.

of educative techniques to make the class educative and stimulating ... students worked both as individuals and in groups for certain in-class exercises, guest presenters brought important dynamics to the classroom.

A *Formal Instruction*

The lecturer's presentations can serve as a useful template for students to think about the contextual nature, and varied interpretations, of the law. The 'voices' of Aborigines, migrants, people with disabilities, victims of violence and 'others' are provided through the lecturer's empirical research findings, thus putting 'faces to the cases'.²¹ These increase the sense of relevance, currency and real-world significance of the issues. Student interest is potentially engaged both cognitively and at an emotional level, as two recent graduates have confirmed:

[In Family Law], [r]ather than simple repetition of core concepts, [the lecturer] wanted us to develop an understanding of the field in context. Once again, a subject that could easily have seemed sterile was transformed into an engaging, even shocking learning experience.

Never just stating one side of the issue, [the lecturer's] classes always encouraged me to 'look outside the square' and consider how such issues affect individuals and social groups from many walks of life.

B *Buzzing*²²

Small group discussions are the 'flagship' method of andragogy. A cooperative ethos is generated as students work in teams.²³

While there was independent work required, I feel the class work made classes enjoyable, and without even realising it, for these classes I did the most work — I didn't want to let my classmates down, and was enjoying it so much! (Extract from a graduate's letter to the university)

The guiding conceptual basis behind this model is that buzzes, through the careful design of the questions, can facilitate a deeper understanding of a threshold concept and are thus an impetus to thinking. According to Jan Meyer and Ray Land:

A threshold concept can be considered as akin to a portal, opening up a new and previously inaccessible way of thinking about something. It represents a transformed way of understanding, or interpreting, or viewing something without which the learner cannot progress. As a consequence

²¹ Students seem most responsive to guests from the 'real world' and case studies or narratives from the lecturer's own research.

²² Richard Johnstone, 'Rethinking the Teaching of Law' (1992) 3(1) *Legal Education Review* 28 identifies buzz groups as promoting active learning. Each subject has between 30 to 35 buzz sessions over the semester.

²³ The creation of an active space conducive to group work is described above.

of comprehending a threshold concept there may thus be a transformed internal view of subject matter, subject landscape, or even world view.²⁴

Cognitive science research has looked at how people learn, identifying that learning is enhanced through methods that lead students to make cognitive, social and experiential neurological connections.²⁵ Problem-based, inquiry-based, situation-based, research-based and case-based learning, particularly ‘in the context of a compelling problem’, have been found to be most conducive to critical thinking, problem solving and team work.²⁶

Buzz questions are constructed to generate such learning and to trigger a variety of cognitive ‘connections’. Through the careful wording of the questions, critical thinking about the nexus between law and society is encouraged. Their efficacy in doing so is evaluated through student comments on the subject evaluation form and also by identifying critical thinking and the absorption of the threshold concept in the students’ chronicles. Therefore, question design is critical to the success of the buzz sessions. This necessitates the lecturer spending extensive time in the lead-up to each semester (re)formulating questions, guided by reflection on what did and did not ‘work’ the previous year.²⁷

Buzz on Sexual Harassment Law: You have selected a case to read and have answered the following questions for your case: 1. What is a ‘reasonable’ victim? 2. Does the immediate reporting of a victim’s behaviour at the time of the harassment and how she gives her evidence continue to affect the decision makers’ view of a woman’s credibility? 3. Does a woman’s credibility continue to be constructed through her age, her relationship with the alleged harasser, whether she has ‘expert’ evidence to support her and whether she has any evidence to support her allegation(s)? Form groups of five and share your case analysis, making a table with the five cases and the seven variables. Draw conclusions.

In this exercise, through merging information on five cases, the students are compelled to recognise that credibility is a nebulous construct, thus helping them to think critically about the translation of law into practice.

The following two buzzes promote the threshold concept since (at least some) students, through the small group discussion, grasp an understanding of the systemic biases operating in legal practice and in academia. Their achievement of this ‘eureka moment’ is evident in

²⁴ Meyer and Land, above n 3.

²⁵ K Patricia Cross, ‘Learning is about connections’, *The Cross Papers, No. 3* (1999) Education Resources Information Center <http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/17/a6/54.pdf> at 8 December 2008.

²⁶ Claire Major and Betsy Palmer, ‘Assessing the Effectiveness of Problem-Based Learning in Higher Education: Lessons from the Literature’ (2001) 5(1) *Academic Exchange Quarterly* <<http://rapidintellect.com/AEQweb/mop4spr01.htm>> at 8 December 2008.

²⁷ The examples provided next have passed these tests.

their imaginative and creative responses, which could ameliorate the existing socio-cultural and legal barriers in both arenas.

Buzz on Women and the Judiciary: You are working for the Commonwealth Attorney-General and have been asked to draft a protocol and selection criteria for judicial officers in order to produce a more 'inclusive' judiciary.

Buzz on Women at Law School: As a consultant hired by a Law School, critique the gender equity status of the School (both staff and student issues). Give a rating, explain and generate 10 suggestions for improving the score.

However, it is not just the questions that are an impetus to such transformative learning. The actual process in completing buzz work can also play an important role. Class time sometimes includes skits. For instance, students may be asked to enact an outworker's actual isolation from laws that, in theory, protect her. In another skit, a conflict between parents seeking to have their daughter, who has an intellectual disability, sterilised is acted out. In other buzzes, the students hold mock courts or parliaments presenting the different perspectives on issues such as same-sex marriage or torts and gendered harm. Or a buzz may involve role-plays like the following:

Buzz on Gender in Family Law: It is the year 2020 — you are old, but gender and society are the same as in 2007. You are a lawyer advising your male client that he can expect a 30:70 property division. There are two children aged two and six who live with Mum. The client becomes upset and threatens you. You go back in your memory to week three of Family Law and explain to him holistically the cultural variables that contribute to his partner needing 70% of the property.

Buzz on New Sections of the Family Law Act (FLA): You've done the reading and listened to the information presented today. Imagine a family in which Mum alleges that her ex-partner has been violent. Look at the changes in the FLA relevant to violence (e.g. definition, false allegations, mandatory mediation, shared parenting responsibility, equal time). Describe the changes, name the relevant sections and *then give the view of Mum, Dad and the child by composing a comment from each of the three for each change.*

Through their dialogue, the students learn not just cognitively but quasi-experientially how a myriad of cultural factors affect the practise of the law. Role-playing in the two preceding examples enables students to see, at a number of levels, how legislative reform can differentially impact on individuals. Such breakthrough thinking is discernible in their written work.

Part of the definition of a threshold concept is that it is 'irreversible' — once the learner has a eureka moment and sees the world (in this

case the relationship between law and society) differently, there is no going back. It is truly ‘transformative’ and shifts the learner’s perception of the subject.²⁸ In each of the subjects, students may experience more than one such eureka moment through buzzes such as these.

Because it is a threshold concept, it is ‘integrative’ and ‘illuminates the underlying inter-relatedness of aspects of the subject.’²⁹ Thus, a threshold concept, by its very definition and occurrence, evokes further analysis and theoretical examination. One example is the section of the course entitled ‘Gender and the Australian Legal System’ in which students learn about the way in which mythology concerning sexuality and rape and the nature of substantive law may interact to affect the implementation of reform and result in the continuing re-victimisation of victim witnesses in the courtroom. I have observed students undergo a transformative experience as their beliefs about the neutrality and objectivity of the law are challenged through this learning process. They see the diversity of judicial interpretation of evidentiary ‘relevance’, sometimes becoming distressed. The distress is momentary, however, since they are guided to see that they can effectuate change and translate their eureka moment into practice, as illustrated in the ‘judiciary’ and ‘law school’ buzzes above and the following practical but creative exercise:

Buzz on Domestic Violence: You are a lawyer. You have a client seeking a parenting order. You suspect she has survived domestic violence. You remember this class: all the types of abuse and the denial, secrecy and shame. You remember how ‘the bizarre becomes normal’. Pick a partner. *Role-play and generate five to ten questions that you think might reveal what she has actually experienced.* In other words, you’re constructing a screen for domestic violence. Explain why you think they’d be effective. Don’t be too indirect but be careful of the words that you use. Be sure to try to identify the variety of manifestations of violence.

Consequently, it is evident from their buzz discussions and chronicles (described below) that they have left nihilistic thinking behind and proceeded to empowerment by further analysis and through application of their newly constructed knowledge. Signs of engagement are the number of suggestions generated and the depth of underpinning critical analysis, which generally far exceed the requirements.

²⁸ Erik Meyer and Ray Land develop these ideas in ‘Threshold Concepts and Troublesome Knowledge’, above n 24.

²⁹ *Ibid.*

IV ASSESSMENT AND FEEDBACK THAT FOSTER INDEPENDENT LEARNING

The assessment scheme that has emerged after years of trial, error and contemplation is not traditional fare in legal education and challenges students to think critically and creatively about legal issues.³⁰ There is no examination. Instead, over the semester students submit three learning chronicles, which are based largely upon the weekly buzz query responses.

Patricia Kelly has shown that reflective journals (chronicles) can result in transformative learning, which is, in turn, conducive to producing critical thinking and socially responsible global professionals. Using this form of assessment with large cohorts of engineering students, she found empirical evidence of such change through pre and post surveys including matched responses, detailed examination of the journals, and ‘Sense-Making’ interviews to identify what was bringing about the observed changes.³¹ This reinforced other work relating to the benefits of well-supported reflective activities in a variety of disciplines.³²

The formats offered for translating buzz work into chronicles can be crucial in engaging students intellectually and emotionally. For instance, writing personal diary-type entries in response to the buzz below compels the students not only to understand legal processes but also to discover what actions may constitute discrimination and how the person experiencing it might feel.

Buzz on Sexual Discrimination: You are a mum with two kids and you work part-time. Write a diary entry or two (not to exceed one page) in which you describe your life and discuss at least four experiences of indirect discrimination you have had or will experience.

Similarly, in drafting a script for the following Family Law buzz, students have to see the legal system through the eyes of a variety of stakeholders.

Buzz on Parenting Leave Entitlements: Using the reading and the PowerPoints thus far, write a script between an employee and an employer

³⁰ Carole McCartney, ‘Liberating Legal Education? Innocence Projects in the US and Australia’ (2006) 3 *Web Journal of Current Legal Issues*, discusses the need for legal academics to apply innovation in assessment <<http://webjcli.ncl.ac.uk/2006/issue3/mccartney3.html>> at 8 December 2008.

³¹ Patricia Kelly, *Towards Globo Sapiens: Transforming Learners in Higher Education* (2008), Ch 5.

³² Amelia El-Hindi, ‘Connecting Reading and Writing: College Learners’ Metacognitive Awareness’ (1997) 2(1) *Journal of Developmental Education* 10; Delores Gallo, ‘Educating for Empathy, Reason, and Imagination’ in Kerry S Walters (ed), *Re-thinking Reason: New Perspectives in Critical Thinking* (1994) 43; Veronica Burrows, Barry McNeil, Norma Hubele and Lynn Bellamy ‘Statistical Evidence for Enhanced Learning of Content through Reflective Journal Writing’ (2001) *Journal of Engineering Education*, October, 661.

in which the employee seeks paid parenting leave. Again, if you work as a pair, you can role-play. Make sure that the script (which cannot exceed two pages) answers the following: (1) Why is there a greater need for paid parenting leave now? Discuss the changing contextual variables. (2) Describe the (in)adequacy of current arrangements.

In addition to buzz responses, the first two chronicles require a written piece that cannot exceed 2000 words.³³ Both the substance and the required format of the lengthy pieces are thought-provoking: students are compelled to examine the topic from more than one viewpoint. They are generally given the choice of writing a traditional research essay or a creative option. The latter includes scripts, short stories, ministerial briefs and judgements. The Subject Outline instructs students who are doing ‘creatives’ to make their assignment ‘academic’ by footnoting required reading, additional research and relevant formal instruction material.

For instance, a Family Law student may choose to write a judgement, post 2006 amendments, in which a woman is alleging that domestic violence has taken place. The judgement has to include material from relevant PowerPoints about the nature of domestic violence, and the specific legislative changes in the *Family Law Act 1975* (FLA) pertaining to children’s matters and to violence. Required reading includes the relevant chapter in the Family Law textbook, Part VII of the FLA, and two articles in the ‘reading brick’:³⁴ a speech by Faulks³⁵ that looks at the impact of the 2006 reforms and case law, and critical parts of an Australian Institute of Family Studies report on allegations of violence.³⁶ The student must also look at a few post-2006 relevant cases and additional academic articles that have explored the impact of the reforms and/or the issue of violence and family law.

In drafting the family law judgement (or a sexual assault, self-defence, discrimination on the grounds of family responsibilities, or sexual harassment judgement in other units) the student is compelled

³³ If a buzz session has three questions, then the usual length of the response for the buzz is two thirds of a page per question or two pages for the buzz. With three buzzes in one class session, the entry for that week will be about six pages.

³⁴ Before each semester, a number of topical and current articles are compiled into a ‘brick’, which is required reading for students.

³⁵ John Faulks, ‘In the Best Interests of the Children: A Perspective of the 2006 Amendments to the Family Law Act,’ (Paper presented at Shared Parental Responsibility in Australian Family Law and the Impact on Children Seminar, Adelaide, South Australia 13–15 April 2008) <http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Media_Centre/Speeches/FCOA_mc_sp_Best_Interests_Children_Apr_08> at 8 December 2008.

³⁶ Lawrie Moloney, Bruce Smyth, Ruth Weston, Nicholas Richardson, Lixia Qu and Matthew Gray, *Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings: a Pre-reform Exploratory Study* (2007) Australian Institute of Family Studies <<http://aifs.org.au/institute/pubs/resreport15/main.html>> at 8 December 2008.

to recognise the indeterminacy of the law and the absence of neutrality in key legal concepts. According to two graduates:

For the first time in my studies I actually found that I was seeking further knowledge on topics, not to complete an assignment, but due to a genuine interest in the topics.

By allowing students to submit responses to legal problems in assignments outside the traditional essay form, [the lecturer] has enabled me to use political satire to examine the social dimensions and practical effects of cases and legislation. [The lecturer] has also encouraged me to question the legal system, and look for avenues for reform.

Indeed, in all lengthy pieces, mere regurgitation of facts is not an option, as students are required to look at issues from a variety of perspectives.

Sample: Domestic violence and family law (not child abuse — this is later in the subject): There has been a change in government. To better meet the needs of domestic violence victims, you are redrafting the parts of the FLA that were changed in 2006. For each (sub)section that you redraft, cite the relevant literature, law, cases and lecture material to explain to the new Attorney-General why they need to be amended.

Sample: It is a new government and you are the ‘right-hand staff person’ for the new Attorney-General. Brief the Attorney about the Shared Parenting Amendment to the FLA. Focus on shared parenting issues and include discussion of (allegations of) child abuse. Be sure to look at all sides of the various issues in as neutral a way as possible but make some recommendations to the Attorney about the FLA.

Sample: Family Responsibilities and Paid Work (Im)Balance: the Context and the Legal Response. A briefing paper for your Minister entitled, ‘Parenting Leave Entitlements: Gendered in So Many Ways’. Discuss the legislation, entitlements and their usage. Be sure to include discussion of cultural variables/context.

With scripts and creative short stories, like the role-plays in classroom work, students are encouraged to experience what the substance and process of the law feel like for the different players in a legal matter:

Sample: Write a script between a lawyer and client that identifies issues of gender in offending and/or sentencing.

Sample: Write a creative piece (for example a short story with academic footnotes) that overviews issues for women in prison and then focuses on one issue for the last half of the piece.

Sample: Domestic violence and the gendered legal response or sexual assault and gendered legal response. Write a conventional research essay that focuses on one aspect of the topic (for example, for domestic violence, police response; for sexual assault, consent) or write a creative

piece such as a short story about a woman's experiences, with footnoting of relevant literature, laws, cases, etc, or compose a transcript from a trial with the woman/victim being cross-examined by defence counsel.

Sample: Produce a pamphlet, to be distributed in your workplace, about either sexual harassment or bullying. You are informing employees (and employers) about what behaviours constitute the offence and what the legal remedies are. (Make sure to use footnotes, unlike your average pamphlet!).

Timely feedback enables students to improve their performance. Chronicles are consistently returned the week following submission and, as the following student indicates, constructive feedback is provided on how to improve research, writing, reasoning and case/legal citation.

[The lecturer's] interest and enthusiasm is reflected in the way [the lecturer] provides feedback and advice... [The lecturer's] feedback has always been constructive and informative as well as based on a sound knowledge of [the lecturer's] subject.

A new pedagogy requires a new dimension in assessment evaluation because the learning aims are different: 'Instructors should begin by knowing what they want their students to achieve and how they want students to get there'.³⁷ The criteria against which the learning chronicles are therefore assessed include evidence that the student has experienced the threshold concept and is able to illustrate that such learning has taken place, as well as evidence that they have understood the theoretical framework enough to apply the concept to other areas or to make suggestions for change that are indicative of such an understanding. Specifically, for students to prove they have met the criteria, they should: write well; demonstrate an understanding of relevant law and cases; demonstrate understanding of relevant theory and other literature; develop a clear and convincing (contextual) holistic presentation; use appropriate illustrations/examples; develop original arguments/offer an original insight; and demonstrate initiative in research.

V CONCLUSION: COSTS AND BENEFITS

A mature-aged former student who had completed both an undergraduate degree and postgraduate diploma made the following observation in a support letter to the university:

Because [the lecturer] expects (and gets) a high work rate from [the lecturer's] students, [the lecturer's] workload is far greater than most lecturers I have observed.

³⁷ Major and Palmer, above n 26.

Without a doubt there are additional costs associated with ‘andragogy’, principally in terms of the individual lecturer’s time and labour. This is despite the time saved in actual face-to-face teaching: the model outlined above uses a three-hour block, regardless of the number of students. There are no tutorials. However, many more than those ‘freed-up’ hours are consumed in added preparation time and in marking.³⁸

Action-learning does require extensive thought and an ongoing inner discourse about what has generated student engagement in the past and how it could be improved. Identifying what looked like a great idea at the time but actually ‘fizzled’ and how it could be modified to better engage student interest and enthusiasm, as well as the revamping of all teaching material and buzz questions to include recent legislative changes and/or sociopolitical debate is all extremely time consuming.

Further, the marking of learning chronicles can be a monumental task. Being faced with a large quantity of assignments, each of which usually exceeds 25 pages, can be daunting, especially given one’s commitment to a speedy return and in-depth qualitative commentary. However, in the midst of ‘marking land’ are oases of joy: buzz answers and/or lengthy pieces that are indicative of an actual cerebral and emotional connection with the material, and of original thought.

Indeed, the benefits far outweigh the costs, with students such as those below consistently reporting that these classes have laid the foundations for lifelong learning through engendering enthusiasm and interest, challenging their ideas, allowing them to write creatively, voice their own ideas and gain insights into themselves and the positive effect they can have in the real world.

Inspirational... [the lecturer’s] classes have impacted upon my goals and ambitions to a higher degree than other classes I have completed.

I credit [the lecturer] with single-handedly reviving my interest in studying the law ... I discovered areas of the law that interested me in a professional sense, and addressed my social justice concerns. Through [the lecturer’s] innovative and flexible approach to teaching, in which [the lecturer] examines the social and political context of legal processes, I believe that [the lecturer] has helped me to become an expert, creative and socially useful professional...

The results may be profound. Students develop a sense of the significance of what they are learning, as well as an enhanced commitment to their professional development that goes well beyond the specific content of the classes:

³⁸ As Peter Spiller, ‘The Journey of a Law Teacher’ (2004) 14 (2) *Legal Education Review* 239, 254, writes, ‘a student-centred approach to legal education requires a considerable time commitment for academic staff’.

Rather than only looking at the abstract theory of law, [the lecturer] infused the lessons with perspectives from the 'real world'. The course became not only the law governing the breakdown of family relationships, but the effect that law has on the people subjected to it. Rather than simple repetition of core concepts, [the lecturer] wanted us to develop an understanding of the field in context. We were encouraged to undertake original research and to analyse existing concepts from new perspectives.

It really opened my mind to some rather unsettling but honest truths regarding discrimination. I liked how it made me reassess certain lifestyles and attitudes.

But [the lecturer] gave me back something that I never thought I would discover again. This was my thirst for knowledge.

Many of [the lecturer's] students realised probably for the first time, that the law is a living thing, set in a dynamic society and not just a collection of rules and traditions to be unquestionably memorized.

Thus, the skills and confidence that are prerequisites to thinking independently about the connections that exist between law, society and justice can be successfully implemented using less orthodox teaching methods. Why is that an important outcome for future legal practitioners? An LLB graduate working in the court system explains why such a contextual understanding of the law is a necessary prerequisite for working in the 'real world' of legal practice as follows:

Judges do not sit back and ponder abstract theory, but deal with real people with real lives. Traditional legal theory takes no account of the grief of parents who have lost a child, or the quiet courage of a man rendered paraplegic by someone else's negligence. Yet these are factors which not only justice but law demands must be taken into account. To reject the 'human' factors in favour of a disembodied logic would be to pervert the justice system into something cold and monstrous. Moreover, much of the work of the courts is dependent upon a broader social perspective... Many graduates find the transition from university to this sociological world of law difficult. The contrast between the sanitised legal paradigms of law school to the reality is stark. However, I found that [the lecturer's] classes had left me well prepared for the transition.³⁹

³⁹ Extract from a 15 September 2006 letter of support for a teaching award.