

CRITICAL REFLECTION AND THE PRACTICE OF TEACHING LAW

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ABSTRACT

Recent shifts towards greater student diversity in legal education have had important consequences for the practice of teaching law. Law lecturers are no longer expected to serve as mere ‘repositories of legal knowledge’, but also as pro-active participants in their students’ learning processes. This paper highlights the importance of modern educational theories of learning to the practice of teaching law, because it is now widely accepted that the more engaging, student-centred teaching approaches can be used effectively to enhance the student learning experience. The author describes how a student-centred pedagogical approach works in practice by reference to recent teaching initiatives for junior academics at Victoria University Law School, which demonstrate the importance of practising ‘reflective thinking’ and the use of a range of modern learning design approaches.

I. INTRODUCTION

Increasing participation rates in higher education have had important consequences for the practice of teaching law.¹ Traditionally, law students represented an elite group of high-achieving school leavers who were extremely motivated and capable of learning well, regardless of lecturers’ ability to facilitate learning. Over the last twenty years, however, the number of universities offering law degrees in Australia has almost doubled (to more than 30),² with the result that many non-traditional students have gained access to legal education.³

With greater student diversity and the arrival of ‘less-academically inclined’ students, some universities have begun to place greater emphasis on lecturers’ ability to employ a variety of teaching approaches in their teaching practice.⁴ There is a growing awareness that the traditional ‘transmission’ methods of teaching law are inadequate⁵ and that more engaging, student-centred teaching approaches can be used effectively to bridge the gap between the high

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1 Council of Australian Law Deans (CALD), *Final Report: Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (2009), 51 <http://www.cald.asn.au/docs/altc_LawReport.pdf>.

2 Ibid 28 and 32. See also Joachim Dietrich, ‘Law Threshold Lowers the Bar’, *The Australian*, 30 March 2011 <<http://www.theaustralian.com.au/higher-education/opinion/law-threshold-lowers-the-bar/story-e6frgcko-1226030258554>>.

3 CALD, above n 1; Kylie Budge ‘The Diversification of Australian Higher Education: Is the Academy Prepared for the Challenge?’ in M Devlin, J Nagy and A Lichtenberg (eds), *Research and Development in Higher Education: Reshaping Higher Education*, (Higher Education Research and Development Society of Australasia Inc, 2010) 157; Alison Booth and Hiau Joo Kee, ‘The University Gender Gap in Australia: A Long-run Perspective’ (CEPR Discussion Papers, Australian National University, 2009); Hans Schuetze and Maria Slowey, ‘Participation and Exclusion: A Comparative Analysis of Non-traditional Students and Lifelong Learners in Higher Education’, 44 (3–4) (2002) *International Journal of Higher Education and Educational Planning* 309.

4 John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (Open University Press, 4th ed, 2009) 6 and 82.

5 Mary Keyes and Richard Johnstone, ‘Changing Legal Education: Rhetoric, Reality, and Prospects for the Future’ (2004) 26 *Sydney Law Review* 537; Sally Kift, ‘My Law School – Then and Now’ (2006) 9 *Newcastle Law Review* 1.

achievers and ‘other’ students (e.g. international students, students with disabilities, part-time students, students from non-English speaking backgrounds and students upgrading from TAFE courses).⁶

In this paper, I will describe how a student-centred teaching approach works in practice by reference to recent teaching initiatives for junior academics at Victoria University Law School. My aim is not to provoke another theoretical debate, but to demonstrate how modern learning theory concepts can be employed in practice to enhance student learning experience.⁷ To this end, the second part of this paper describes a series of ‘critical reflections’ from my teaching practice as a law lecturer. In particular, I will contextualise some of the key theoretical approaches to teaching and learning against the background of my own professional experiences.

The teaching episodes discussed in this paper also serve to illustrate that the chosen learning design questions and activities can be unrelated to the substantive subject-matter. Rather, they are often much more focused on the question ‘what the student will do’⁸ with a range of inputs and activities and how the student may construct knowledge based on the choice and manipulation of those inputs and activities.

The first teaching episode discusses the issues involved in the management of group activities in two Constitutional Law tutorials, while the second one concerns the application of student-centred lecturing and blended learning approaches in a subject called Legal Writing and Drafting. Each of the teaching episodes was recorded in a learning journal, which is regarded as an essential component of ‘reflective practice’.⁹

II. MASSIFICATION OF LEGAL EDUCATION AND CONSEQUENCES FOR TEACHING

In this part of the paper I will provide some background information about the recent shift towards ‘massification’ in higher education and its consequences for the practice of teaching law. Biggs and Tang have chronicled a ‘decade of changing scene’ in university teaching and pointed out that the increasing participation rates have affected the ‘main mission’ of higher education, as well as, in most disciplines, methods of delivery.¹⁰ One of the consequences of this situation, according to Biggs and Tang, is that universities are now offering more places to students who previously would not have considered tertiary education, with the result that there has been a gradual lowering of academic standards across most disciplines.¹¹

A recent study conducted on behalf of the Council of Australian Law Deans (‘CALD’) found that the overall trends towards ‘massification’ in the higher education sector are also prevalent in the legal education sector.¹² To illustrate this issue, CALD points out that there has been a ‘proliferation of law schools’ in Australia, which took place in three distinct waves. In the first two waves, between 1855 and 1987, only 12 law schools had been established across the country. In contrast, according to CALD, no fewer than 20 new law schools were established

6 See CALD, above n 1, 20 and 51–4. According to CALD, ‘there is pressure on legal academics to use more engaging approaches and to work demonstrably as facilitators of learning, scaffolding student experiences to provide opportunities for success that meet the needs of all the various groups of students’ (at 51). For a discussion of these issues from an educational theory perspective see generally Biggs and Tang, above n 4, 4–6.

7 The author has consistently received above-average positive feedback from students in annual student surveys. According to Victoria University Student Evaluation of Teaching Surveys published by the Survey and Evaluation Unit in Semester 2 2012 and Semester 1 2013, the author received 100 per cent positive feedback from students in the areas of ‘satisfaction with teacher’, ‘effective communication’, ‘knowledge of subject matter’ and ‘creation of effective learning environment’.

8 John Biggs ‘What the Student Does: Teaching for Enhanced Learning’ (1999) 18(1) *Higher Education Research and Development* 55–5.

9 Alison Shreeve, Shan Wareing and Linda Drew, ‘Key Aspects of Teaching and Learning in the Visual Arts’, in Heather Fry, Steve Ketteridge and Stephanie Marshall (eds), *A Handbook for Teaching and Learning in Higher Education: Enhancing Academic Practice* (3rd ed, Routledge, 2009) 345, 358.

10 Biggs and Tangs, above n 4, 3–4.

11 Ibid. See also Craig McInnis, *The Work Roles of Academics in Australian Universities* (Australian Government Publishing Service Canberra, 1999).

12 See generally CALD, above n 1.

during the third wave, which took place between 1987 and 2009.¹³ In fact, the third wave may still be underway, given that a number of new institutions have been established following the publication of the study, including RMIT and ACU Law Schools in Melbourne alone.

At 'first wave' law schools, students traditionally represented an elite group of high-achieving school leavers who were extremely motivated and capable of learning well, regardless of lecturers' ability to facilitate learning.¹⁴ In contrast, according to Armstrong and Sanson, a key characteristic of the 'third wave' law schools is that their students are largely drawn from the 'most culturally, religiously, linguistically and ethnically diverse and socio-economically disadvantaged areas of the city.'¹⁵ As a consequence, the authors contend that these students have very different cultural and academic 'capital' from students from the first wave law schools, and that they may be 'more vulnerable to experiencing difficulties and in need of greater support.'¹⁶

In support of their argument, Armstrong and Sanson cited studies that found non-traditional law students struggling with the workload and written assessments to a much greater extent than other law students.¹⁷ The studies also disclosed substantially higher levels of anxiety, uncertainty and disengagement among non-traditional law students when compared with law students who took part in national student surveys. This is remarkable, because there is credible evidence in the literature to suggest that the prevalence of stress and depression among law students is already much higher than among students from other academic disciplines or indeed the rest of the general population. According to the University of Sydney Brain and Mind Research Institute (BMRI), 35 per cent of law students reported high levels of stress, compared with 18 per cent of medical students and only 13 per cent in the general population.¹⁸

Similar findings have been reported by Tani and Vines, who found that law students in particular had a very low level of personal autonomy and a high degree of competitiveness, compared with medical students and students from other faculties.¹⁹ They point out that such personal attributes are considered in psychological literature to be key factors associated with depression. Furthermore, the authors noted that the prevalence of depression in the legal profession had been confirmed by numerous US studies, including one that showed that lawyers ranked *first* in depression out of 105 professions.²⁰

A. *Problems with the Traditional Methods of Teaching Law*

According to Tani and Vines, 'something about being in or choosing to be in law school [environment] may contribute to the likelihood of depression.'²¹ A recent report on the transitioning experiences of first year law students at the University of Western Australia characterises the law school learning environment as hostile, competitive, difficult and lonely, which the authors of the report attributed to the 'burdensome workload, distanced methods of teaching, a lack of understanding of academic expectations, a bell curved grading system inhibiting student success

13 Ibid 28.

14 CALD, above n 1, 51.

15 Susan Armstrong and Michelle Sanson, 'From Confusion to Confidence: Transitioning to Law School' (2012) 12 *Queensland University of Technology Law and Justice Journal* 21, 24.

16 Ibid 25. See also CALD, above n 1, 51. See also Stephen Ball, 'Inclusive Education in Universities: Why is it Important and How it Might be Achieved' (1999) 3(3) *International Journal of Inclusive Education* 195-224. The author refers to the issue of 'educational inheritance', which corresponds to the concept of 'academic capital'.

17 Ibid 31. It was reported that 33 per cent of surveyed students at the 'third wave' law school found it difficult or very difficult to comprehend the study materials, compared with only 19 per cent across the rest of the legal education sector.

18 Norm Kelk, Georgina Luscombe, Sharon Medlow and Ian Hickie, 'Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners' (BMRI Monograph 2009-1, University of Sydney: Brain & Mind Research Institute, 2009) 37.

19 Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (University of New South Wales Faculty of Law Research Series, 2009).

20 Ibid 2.

21 Ibid 3.

and the difficulty of adjusting to an independent self-directed learning style.²² Similarly, a report by the ANU Law School Law Committee identified a range of transitioning challenges for law students, including the personality traits of lawyers (perfectionism and pessimism), the high demands of the law degree, highly uncertain employment prospects, as well as – notably – the prevalence of the traditional teaching and assessment methods that relied heavily on ‘dry transmission of course materials and rote learning.’²³

What these and other studies have in common is the perception that there is a disconnect, or rather disengagement, of students from their learning environment, which may partly be attributed to the traditional methods of teaching law. This point is made explicit by Kift and Field, who recently completed a study that analysed the high levels of psychological distress in law students, following the publication of the BMRI report in 2009.²⁴ They reviewed the Australian and US literature and pointed to the possibility that the psychological distress experienced by law students may be a result of ‘the way the law and legal culture are taught’.²⁵

In an influential article published in *Sydney Law Review*, Johnstone and Keyes offered a damning assessment of the traditional model of legal education:²⁶

[T]here is a great deal of evidence about what constitutes good teaching in higher education. Almost every aspect of that evidence is at odds with the traditional model of legal education.

The authors point out that the traditional model of legal education is quintessentially teacher-centric.²⁷ First, it is almost exclusively concerned with the transmission of dry content knowledge in the form of legal rules and case-law, based on nineteenth-century common law categorisations. Secondly, legal textbooks are typically written in treatise style – a style that does not ‘engage the reader in any activity aside from reading’.²⁸ Thirdly, students are always taught the same type of material, regardless of the subject; it focuses on the transmission of a set of legal rules from an expert, with little cognitive progression between subjects or ‘recognition of students’ intellectual development’.²⁹ As a result, students are predominantly involved in the learning process as passive recipients of information, which is very much at odds with modern educational research.³⁰

B. *A Shift in Legal Education: Towards Teaching as Facilitation of Student Learning*

Commenting on the problems identified by Johnstone and Keyes, Kift declares that the traditional transmission model of legal education is ‘just not effective,’ especially for non-traditional students.³¹ According to Kift, educational research shows that this type of teaching does not involve or require much cognitive involvement on the part of the student. In contrast, she points out that modern learning theories place much more emphasis on ‘what the student

22 Krystal Ng and Jade Roberts, ‘The First Year Experience – What You See is Not Always What You Get: An Analysis of Student Transition Into Law School at the University of Western Australia’ (University of Western Australia Faculty of Law Undergraduate Learning and Teaching Internship Scheme, 2010) 3.

23 Annan Boag, Melanie Poole, Lucinda Shannon, Christopher Patz and Fern Cadman, ‘Breaking the Frozen Sea: The Case for Reforming Legal Education at the Australian National University’ (ANU Law School Reform Committee, 2010) ix.

24 Sally Kift and Rachael Field, ‘Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in the First Year Law Curriculum’ (2010) 1(1) *The International Journal of the First Year in Higher Education* 65, 67.

25 *Ibid.* In particular, the authors cite a key text by Roy Stuckey, *Best practices for legal education: a vision and a road map* (Clinical Legal Education Association, 2007). See also Sally Kift, ‘For Better or For Worse?: 21st Century Legal Education’ (Paper presented at the Lawasia Downunder Conference, Gold Coast, Queensland, 20–24 March 2005).

26 Keyes and Johnstone, above n 5, 547.

27 *Ibid.* 539.

28 *Ibid.* 540.

29 *Ibid.*

30 *Ibid.* 547.

31 Kift, above n 5, 11.

does³² with a range of information and resources that they have been given. Learning thus becomes a process of constructing rather than acquiring knowledge, in which teachers are involved as co-creators of knowledge and *designers of learning environments*.³³

It is widely accepted in the educational literature that the student-centred teaching approaches can be used effectively to narrow the gap between high-achieving students and non-traditional students.³⁴ Since the publication of the Pearce Report³⁵ in 1987, Australian Law schools have made slow but steady progress towards conceptualising teaching as the facilitation of student learning.³⁶ A report commissioned by the Australian Universities Teaching Committee identified a number of development milestones in legal education that ‘resulted from engagement with educational literature’.³⁷ These included a move towards small-group teaching, a trend towards student-focused teaching, improved curriculum and assessment design, widespread use of subject evaluation and more targeted institutional support for teaching academics.³⁸ According to Clarke, the strong emphasis on teaching support has been institutionalised through the work of dedicated bodies such as the Committee of Australian Law Deans, the Centre for Legal Education, the Australasian Law Teachers Association and state Law Foundations.³⁹ In addition, many universities have established specialised teaching courses for lecturers which aim to improve the quality of university teaching.

In the following Part, I will describe a series of critical reflections and observations arising from my experiences as a law lecturer at Victoria Law School and also as a student enrolled in a specialised teaching course for lecturers at Victoria University. In particular, I will reflect on the events that led me to contextualise some of the theoretical frameworks for teaching and learning that were covered in the course against the background of my own professional experiences and philosophies about learning and teaching as a law lecturer.

III. REFLECTIVE THINKING AND THE PRACTICE OF TEACHING LAW

Victoria University in many respects epitomises the modern higher education sector paradigm. A recent report by the VU Postsecondary Education Centre states that more than 40 per cent of VU students were the first members of their immediate family to attend university, while 35 per cent of students were from language backgrounds other than English.⁴⁰

In recognition of the challenges described above, Victoria Law School (VLS) has introduced a policy that all newly appointed law lecturers must complete a Graduate Certificate in Tertiary Education. This course offers a birds-eye vista of modern educational theories and an expansive array of techniques and strategies aimed at improving their teaching practice. One of the most significant outcomes of this policy is that VLS law lecturers are now in a much better position to utilise modern learning theory concepts such as ‘critical reflection’ and ‘instructional scaffolding’ in order to improve their practice of teaching law.

32 Ibid 14. Kift is borrowing terminology from the educational literature by John Biggs. See John Biggs ‘What the Student Does: Teaching for Enhanced Learning’ (1999) 18(1) *Higher Education Research and Development* 55–75.

33 Ibid. See also Biggs, above n 32. According to Biggs, the teacher’s task is ‘to organise the teaching and learning context so that all students are more likely to use the higher order learning processes which [the high achieving] students use spontaneously.’

34 Fry, Ketteridge and Marshall (eds), above n 9, 7. See also Biggs and Tang, above n 4, 5–6. The authors note that the teaching methodology is considered to be one of the key strategies for bridging the gap between different student cohorts, together with curriculum and assessment design.

35 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) (‘Pearce Report’).

36 Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Australian Universities Teaching Committee, 2003) 292; Kift above n 5, 17.

37 Ibid 319.

38 Ibid 423.

39 Eugene Clark, ‘Australian Legal Education After the Pearce Report: A Review of McInnis, C and Marginson, S, Australian Law Schools After the 1987 Pearce Report’ (1997) 8(2) *Legal Education Review* 213, 217.

40 Lisa Milne and Roger Gabb, ‘Transition into Higher Education at Victoria University: A Student View’ (VU Postcompulsory Education Centre, 2007) 3–4.

The following sections of this paper describe three separate episodes that demonstrate how this approach works in practice. The first episode discusses the sense of ‘perplexity and doubt’ that I experienced when I was invited to critically evaluate my own teaching philosophy and facilitation methods. This episode is important, because it highlights the relevance of theories about *how* students learn to the practice of teaching law. The second and third episodes describe two recent teaching sessions from my teaching practice. These two teaching sessions demonstrate how the processes of learning design (‘instructional scaffolding’) and critical reflection may be utilised to improve one’s teaching practices. The first teaching session involves the management of group activities in tutorials, while the second one concerns the application of student-centred lecturing and blended learning approaches in a lecture.

A. *Constructing Learning: a Critical Reflection*

The educational literature tells us that the ability to critically reflect upon one’s own teaching practice and methodology is one of the most important professional skills practiced by lecturers and other educators. Educational theorists and philosophers, such as John Dewey⁴¹ and Donald Schön,⁴² emphasised the need for the lecturer to be alert to changes in the learning environment and to reflect, on a systematic basis, upon the problems, challenges and other significant developments that are observed in their teaching practice. The practical importance of ‘reflective thinking’, according to these theorists, lies in the fact that it allows the lecturer to develop more considered and contextual approaches to their practice of teaching and learning. In other words, when reflective practice becomes a habit, it allows the lecturer to ‘turn their experience into learning’.⁴³

When I enrolled into the Graduate Certificate in Tertiary Education (GCTE) at Victoria University I was invited to reflect upon and re-assess my own teaching values and practices as a law lecturer. Importantly, my *legal* expertise was not to be the focus of my critical introspection, but rather my approaches to facilitating learning. After all, it had been assumed that I had the necessary academic credentials, which were evidenced by several years of experience as a law lecturer and more than ten years of experience as a legal practitioner, as well as publication of articles in leading Australian and international law journals. But was I also an effective mentor and a good facilitator of learning?

This line of enquiry was somewhat disconcerting, despite the fact that I had recently received very positive feedback from more than 70 students in my course, without a single negative piece of feedback. *What if it were all a mere coincidence? Do I really need to deconstruct and reconstruct my approaches to teaching? Why should I do it?* These were some of the questions that I kept asking myself at the beginning of the enquiry.

Another confronting aspect was the unfamiliar teaching environment, in which *I* was a student. I found it very challenging to commit to study unfamiliar teaching philosophies that were supposed to provide an ‘epistemological’ assessment of my own teaching practices. I slowly began to realise that I was that hesitant student in the back rows who was unable or unwilling to move on to the next stage of knowledge.

According to the empirical studies conducted by Perry⁴⁴ and Belenky et al,⁴⁵ there are several different stages of knowledge that students can journey through in their processes of learning and development. The attitude towards knowledge slowly changes as students move from simplistic, or indeed hesitant, approaches to learning (‘black v white’ or ‘teacher knows what is best’), towards more creative (‘expansive’) learning, which involves a personal commitment

41 John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process* (DC Heath and Co, 1933).

42 Donald Schön, ‘Reflection in action’, in *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983).

43 Fry, Ketteridge and Marshall, above n 9, 16.

44 William Perry, *Forms of Intellectual and Ethical Development in the College Years: A Scheme* (Holt, Reinhart and Winston, 1970).

45 Mary Belenky, Blythe Clinchy, Nancy Goldberger and Jill Tarule, *Women’s Ways of Knowing: The Development of Self, Voice and Mind* (Basic Books, 1997).

to recontextualising knowledge and seeking truth as part of an ongoing process.⁴⁶ Against this background, I realised that my initial lack of commitment to re-examining my own teaching practices was one of the causes of the perplexity and doubt that I experienced as a student in the GCTE course. This made me reassess my goals and accept that it would be beneficial for my own teaching practice to gain a deeper understanding of the educational theories and ‘ways of knowing’ that were discussed in the course. This is important because, as Fry, Ketteridge and Marshall point out, many academics teach students without having any theoretical knowledge about *how* students learn.⁴⁷

To the extent that I had been unaware of the cognitivist and constructivist learning theories, I was certainly a part of the problem. The constructivist theories, for example, explain how students construct their knowledge based on their experiences and observation of peers in a group setting.⁴⁸ Of particular importance to the construction of knowledge is the learning design process, which is also called ‘scaffolding’. Scaffolding, as the name suggests, refers to the supporting learning strategies chosen by the lecturer, which are specifically designed to facilitate the construction of knowledge by students.

According to Kift, the types of questions that an educator should ask in approaching his or her task as a ‘facilitator of student learning’ should include the following:⁴⁹

How do my students interact with the *inputs* with which they are provided [...] to construct their own new knowledge? What is it that they are required to do with those resources and how can I support student knowledge construction by directing utilisation and/or *manipulation of the various inputs*? How can I *design what I deliver* to students in my courses/subjects so that they will be challenged by and engaged in their learning? [emphases added]

What is remarkable about the passage cited above is that the learning design questions highlighted by Kift are not exclusively, or even primarily, concerned with subject-matter expertise (e.g. constitutional law). Rather, they are much more focused on the process of ‘what the student will do’ with a range of ‘inputs’ provided, and how they may construct knowledge based on the choice and manipulation of those inputs and activities. Indeed, as the following teaching episodes will demonstrate, the learning design process takes into account a range of relevant factors that are often entirely unrelated to the subject matter itself – such as the choice of group activities, class size or even the architectural layout of the venue used in the instructional process.

B. Teaching Episode 1: Small-Group Learning Activities and the Importance of ‘Learning Spaces’

The use of informal team-building activities in small-group settings can accomplish a number of important motivational and learning objectives. According to Newstrom and Scannell, small-group activities can provide a ‘powerful teaching tool for driving home a key idea’.⁵⁰ Such activities can assist members of the group to learn to trust each other and may also provide ‘opportunities for sharing insights feelings and experiences’ or even reinforce desired behaviour.⁵¹

I have often employed team-building exercises, buzz groups and brainstorming activities in appropriate settings to stimulate class discussion and generate student interaction. In this section of the paper, I will reflect on a number of issues that arose in two Constitutional Law tutorials that I delivered in February 2013 to two groups of 25 students in each session.

In most aspects, the student cohorts and the planned activities for the two tutorials were identical, with a mixture of school leavers and mature age students coming from different

46 William Rapaport, *William Perry’s Scheme of Intellectual and Ethical Development* (26 September 2013) <<http://www.cse.buffalo.edu/~rapaport/perry-positions.html>>.

47 Fry, Ketteridge and Marshall, above n 9, 9. See also Fiona Crownie, ‘Twining, Teachers of Law and Law Teaching’ (2011) 18(1–2) *International Journal of the Legal Profession* 121, 122.

48 Ibid 21.

49 Kift, above n 5, 13.

50 John Newstrom and Edward Scannell, *The Big Book of Team Building Games* (John Wiley and Sons, 1998), xiv.

51 Ibid.

educational backgrounds. I structured the tutorial activities into roughly three 15–20 minute blocks, starting with a ‘people bingo’ activity that was designed to serve as an ‘ice-breaker’, which then led to a group discussion based on a questionnaire that students had been asked to complete prior to attending the tutorials. That activity was then followed by a discussion of the key Constitutional law concepts that were going to be covered in the rest of the course.

Students in each group responded very well to the initial activities, particularly the bingo game, which I had used with great success in previous years. The activity requires students to collect missing information from other students in order to complete the exercise. This activity essentially forces students to talk to each other in order to complete the bingo information sheet. Due to the informal nature of the activity, students who complete the exercise usually continue to discuss the answers afterwards, allowing the lecturer to seamlessly transition from that activity to a more substantive learning activity in a friendly and engaging atmosphere.

Upon the completion of the activity, the first group of students remained visibly enthusiastic for the remainder of the tutorial. They were very comfortable in expressing their opinions on various legal issues that were covered in the questionnaire and the lecture. Most importantly, I could see that the students had not only enjoyed the experience, but also found the follow-up activities useful. Many different opinions were canvassed, and multiple students volunteered to answer my questions. I also had no trouble securing four volunteers to lead a ‘panel discussion’ for the next class, based on the prescribed reading materials.

In contrast, the experience involving the second tutorial group, which immediately followed the first one (albeit in a different venue) could not have been more different. Despite the fact that the planned activities had been identical, there was a marked difference in student responses to the second part of the tutorial (which was substantively the most important activity, as it required students to express opinions on constitutional law concepts from the required reading). While the second group also responded well to the initial exercise, once that activity had finished, they went back to their seats and did not continue to interact with each another. In response to my prompting and questioning, they were much more circumspect, and I felt that I could not easily break the communication barrier on this occasion.

On reflection, the key difference appears to have been the physical layout of the venue itself: the second tutorial was held in a large lecture theatre, with around 200 seats, whereas the earlier tutorial had been held in a small, flat-floored classroom with approximately 40–50 seats, which made it particularly well suited to a tutorial involving a small group of students.

This explanation is consistent with a number of recent studies. Griffiths described a range of small-group management techniques and highlighted environmental factors that can impact on the effectiveness of learning in small-group settings.⁵² She points out that one of the key concerns is the architectural layout of the premises and the extent to which building design or other aspects of the physical setting can affect the student learning experience.⁵³ Similarly, Dickens and Arlett highlighted the importance of ‘learning spaces’ and noted that small-group delivery methods have moved towards more ‘student-centred practices that require flat-floored, well resourced flexible spaces’.⁵⁴

Against this background, it can be argued that the first tutorial was essentially a ‘packed’ classroom – to the point that I was concerned that there would not be sufficient seats available for all the students who were enrolled in that tutorial. The setting itself made the room feel ‘cosy’ and therefore it felt like an attractive learning environment. Importantly, students were facing not only the lecturer, but were also able to see, and *interact directly with, other students*.

In contrast, the large lecture theatre felt like an empty stadium from the very beginning, with students taking their seats in rows that were perhaps 30 metres wide, in comparison with just 6–7 narrow rows in the first tutorial room. I immediately realised that this setting represented a substantial communication barrier and invited students to take their seats closer to the lectern and the whiteboard. However, despite the adjustments, the height and the angle from which

52 Sandra Griffiths, ‘Teaching and Learning in Small Groups’, in Fry, Ketteridge and Marshall, above n 9, 72, 77–8.

53 Ibid.

54 John Dickens and Carol Arlett, ‘Key Aspects of Teaching and Learning in Engineering’, in Fry, Ketteridge and Marshall, above n 9, 264, 272.

students were looking down at me was such that it felt like a lecture, rather than a tutorial. Furthermore, the fact that the students were looking down and over each other's shoulders made it impossible for them to effectively interact with 'peers.'

In conclusion, it can be said that the physical layout of the lecture theatre had conditioned the students to remain passive. I was unable to initiate an effective exchange of ideas between the students, for they would only volunteer answers to questions following persistent prompting on my part. As a consequence, I realised that I needed to vary the teaching methodology and concluded the tutorial with a lecture-style presentation. Afterwards, I contacted the facilities department and requested a change of venue for future tutorials on the basis that this venue did not provide an appropriate learning environment for a small group of students and therefore did not facilitate small-group learning.

C. Teaching Episode 2: Student-centred Lecturing and Use of Blended Learning Approaches

In this section, I will reflect on the application of 'blended' learning approaches in a first year law subject called Legal Writing and Drafting. Given the smaller size of the student cohort in 2013 (65 students, compared with 135 in the previous year), I structured the introductory lecture in such a way as to more actively promote student interaction and participation. This approach to small-group lecturing is firmly grounded in educational theory and practice, as there is strong evidence that students benefit from being engaged when they are involved as both learners and collaborators in small group settings.⁵⁵

In the introductory session, I invited students to tell me what type of work they wanted to do once they completed their law degree. This enquiry led to a lively discussion about the types of legal careers that were available on the 'job market', such as for solicitors, barristers, government lawyers, business lawyers, academics, parliamentary officers, ministerial staff, etc. Next, I invited students to identify the types of legal documents that they would be expected to produce in each of the identified roles, which was designed to make them aware of the different contexts in which they could be utilising their written communication skills. This then drew their attention to the types of legal documents that would be covered in the subject, such as contracts, affidavits, pleadings, letters etc.

In my experience, the use of the questioning techniques can serve a number of important purposes. First, as Griffiths point out, students' confidence can be boosted through preparation of key and incisive questions that are relevant to the topic in question.⁵⁶ Secondly, lecturers are able to establish good rapport with students early in the session, and this allows them to guide students through the rest of the materials in a more stimulating fashion. Thirdly, it is also a useful strategy to obtain information about students' academic backgrounds and learning needs. This allows the lecturer to contextualise students' existing knowledge and experiences in an informative and engaging manner. For example, one of the students told me that she had completed a law degree in Canada, so I invited her to talk about the way in which laws were drafted there, which was relevant to the topics that I was going to cover in class.

I then proceeded to deliver the remainder of the lecture with the aid of a PowerPoint presentation, which included many examples of poor legal drafting. Each 'bad' example was followed by class discussion and an outline of the relevant principles and strategies how to avoid such problems in appropriate contexts. Notably, in this session I also decided to trial an innovative online learning system called 'Socratic.com', which allows lecturers to upload questions relating to lecture materials to the Internet, as well as to record student votes and responses, in 'real time.'

The use of online response systems is becoming more common in the higher education sector. A recent study cited by Hughes and Overton found that many of these systems can be used effectively to 'promote peer-instruction and test students' understanding of key points

⁵⁵ Griffiths, above n 52, 74.

⁵⁶ Ibid 81.

from material covered in the class'.⁵⁷ Against this background, it can be hypothesized that the technology is capable of being used as a 'scaffolding' tool, provided that the underlying activity is tailored to the different learning needs of the students.⁵⁸

With these aims in mind, I invited students to vote on the best-drafted provision in an Act of Parliament, out of three available options (a key provision was taken from the English *Copyright Act*, followed by the equivalent sections translated from the French and German *Copyright Acts*). Each of the three options was briefly elaborated upon in class and displayed on the overhead projector, together with detailed instructions on how to access and use the online system.

The reaction from students was overwhelmingly positive. A colleague from the law faculty who had been invited to observe the lecture noted that the 'use of the electronic voting website was engaging, fun and innovative'. He also felt that it 'allowed engaging discussion' and that the 'lecturer had managed it well'. Remarkably, however, despite the positive feedback, the system did not actually work as intended, because the results could not be projected, even though most students reported that the system had worked for them and that their votes had been 'registered'. Nevertheless, having completed the exercise on this occasion, I recognise the added value of employing this type of activity in the future, because students responded to it with great enthusiasm and remained fully engaged with the substantive learning activity. When I informed them that the voting system had failed to produce a poll count, they requested a 'manual recount,' which strongly suggests that they were immersed in the underlying learning activity.

The apparent success of the exercise can perhaps be attributed to the fact that most of the (Generation Y) students were intuitively familiar with all kinds of computer programs and web-based applications. The fact that they also showed interest in a complex and relatively uninspiring legal drafting exercise suggests that their interest in and familiarity with information technologies may also have elicited their interest in the substantive learning activity. Indeed, as Varnava and Webb point out, students are not 'blank slates'. Encouraging them to utilise their existing knowledge and interests 'helps to contextualise and embed new learning'.⁵⁹

I conclude, therefore, that the online response system has been used successfully as a 'scaffolding tool' on this occasion, despite the failure of the technology.

IV. CONCLUSION

The shift towards conceptualising teaching as the facilitation of student learning has had important consequences for the practice of teaching law in Australia. Law lecturers are no longer expected to serve only as 'repositories of knowledge',⁶⁰ but also as pro-active participants in their students' learning processes.

The teaching episodes described in this paper highlight the practical importance of modern educational theories of learning to the practice of teaching law, because they can assist lecturers to devise more effective learning support ('scaffolding') for their students. This is important, because it is now widely accepted that the more engaged, student-centred teaching methods can be used effectively to enhance student learning experience.

The teaching episodes also demonstrate that the learning design processes and chosen activities are often unrelated to the substantive subject-matter. Rather, they are often much more focused on the questions 'what the student will do' with a range of 'inputs and activities' and how the student may construct knowledge based on the choice and manipulation of those inputs and activities.

57 Ian Hughes and Tina Overton, 'Key Aspects of Learning and Teaching in Experimental Sciences', in Fry, Ketteridge and Marshall (eds), above n 9, 226, 231.

58 Adam Feather and Heather Fry, 'Key Aspects of Teaching and Learning in Medicine and Dentistry', in Fry, Ketteridge and Marshall (eds), above n 9, 424, 439.

59 Tracey Varnava and Julian Webb, 'Key Aspects of Teaching and Learning: Enhancing Learning in Legal Education', in Fry, Ketteridge and Marshall (eds), above n 9, 363, 370.

60 Biggs and Tang, above n 4, 82.