

# READING LAW: MOTIVATING DIGITAL NATIVES TO ‘DO THE READING’

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Every writer in this field remarks upon the notorious inclination of lawyers to adhere to their old ways; the cultural resistance of the legal profession to changes of things considered fundamental; the psychological barrier which must be breached to raise the awareness of judges and lawyers of the technological engines of change and the imperative necessity to begin the process in law schools where new generations must learn the discipline of law with their hands on keyboards and their minds engaged with concepts of law and justice and not just a mass of data.

— Justice Michael Kirby, speech to High Court of Bombay<sup>1</sup>

## I INTRODUCTION

Students, or at least most students,<sup>2</sup> do not come to classes having read the set passages of textbooks and other reading material allocated as preparatory reading for that class.<sup>3</sup> Part II of this article considers whether and why reading is important for the ‘digital native’ generation of law students; Part III canvasses the question whether it is the job of the law academic to motivate law students to do their reading; Part IV explores the reasons for student non-compliance with set reading; and Part V suggests ways in which law teachers can reconcile intergenerational differences on the value of

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Hon Michael Kirby, ‘The Future of Courts — Do They Have One?’, speech to High Court of Bombay, Mumbai, 21 December 1999 at <[http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj\\_future.htm](http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_future.htm)>

<sup>2</sup> Eric Hobson, ‘Getting Students to Read: Fourteen Tips’ (2004) (Idea Paper #40) 1 <[http://www.theideacenter.org/sites/default/files/Idea\\_Paper\\_40.pdf](http://www.theideacenter.org/sites/default/files/Idea_Paper_40.pdf)>, 1-2; see also Rob Weir, ‘They Don’t Read!’ (2009) Instant Mentor *Insider Higher Ed* <[http://www.insidehighered.com/advice/instant\\_mentor/weir16](http://www.insidehighered.com/advice/instant_mentor/weir16)>.

<sup>3</sup> This coincides with student self-reporting as to their lack of pre-reading for classes: see Naomi White, ‘Tertiary Education in the Noughties: The Student Perspective’ (2006) 25(3) *Higher Education Research and Development* 231, 239; Richard James, Kerri-Lee Krause and Clare Jennings, ‘The First Year Experience in Australian Universities: Findings from 1994 to 2009’ (Centre for the Study of Higher Education, 2010) <[http://www.cshe.unimelb.edu.au/research/experience/docs/FYE\\_Report\\_1994\\_to\\_2009.pdf](http://www.cshe.unimelb.edu.au/research/experience/docs/FYE_Report_1994_to_2009.pdf)> at 2, 43 and 55.

prescribed law school reading, using specific motivational strategies to initiate and sustain a ‘virtuous circle’ of reading behaviour.

A common conversational theme in any gathering of law teachers is the problem of students who do not do preparatory reading.<sup>4</sup> This complaint is not limited to law teachers.<sup>5</sup> An article by Spencer (reporting on a modest quantitative and qualitative survey of first-year law students) identified assertions made in the literature as to the causes and cures of law students who do not ‘do the reading’.<sup>6</sup> These assertions, in summary, are: that law teachers who want students to comply with set reading loads have to make sure that those loads are realistic both in size and difficulty; that it is properly part of the role of the law teacher to catalyse student motivation to read; and that while intrinsic motivation to read is a desirable end goal of the study of law, there is a place for the timely and judicious use of extrinsic motivational strategies to train students in the habit of ‘doing the reading’. The results of Spencer’s survey tended to confirm these claims from the literature as to why students do not read, and how lecturers might address this.

The current crop of law students are, in large part, drawn from the generation variously labelled the ‘digital native’,<sup>7</sup> ‘net’, ‘Google’ or ‘millennial’ generation.<sup>8</sup> This generation comprises those born after 1980<sup>9</sup> — which describes the majority of law students in most Australian law schools. Digital natives, because of their lifelong immersion in technology, are claimed to learn differently from ‘digital immigrants’ or those born before 1980. Of course those born before 1980 include the majority of law lecturers. Digital natives, whose ‘brains might already be different’,<sup>10</sup> prefer to receive information fast, to parallel process, and to multi-task.<sup>11</sup> None of these characteristics can be found in the traditional process of reading

<sup>4</sup> Cassandra Hill, ‘The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn’ (2012) 56(2) *Howard Law Journal* 447, 456; Liesel Spencer, ‘Motivating Law Students to ‘Do the Reading’ Before Class: Appropriate Extrinsic and Intrinsic Motivational Tools’ (2012) 5(1–2) *Journal of the Australasian Law Teachers’ Association* 189, 189.

<sup>5</sup> Maryellen Weimer, *Learner-Centred Teaching: Five Key Changes to Practice* (Jossey-Bass, 2002) 105; Wilbert McKeachie, in Wilbert McKeachie (ed), *Teaching Tips: Strategies, Research and Theory for College and University Teachers* (Houghton Mifflin, 11<sup>th</sup> ed, 2002) 182.

<sup>6</sup> Spencer, above n 4, 203.

<sup>7</sup> Marc Prensky, ‘Digital Natives, Digital Immigrants’ (2001) 9(5) *On the Horizon* 1, 1; see also Marc Prensky, *Don’t Bother me Mom — I’m Learning* (Paragon House, 2006).

<sup>8</sup> Barbara Iverson, quoted in Natalie Moore, ‘Rule of Thumbs: Love in the Time of Texting’, *The Washington Post*, 16 September 2007 at B1, cited in Joan Catherine Bohl, ‘Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation’ (2008) 54 *Loyola Law Review* 1, 3.

<sup>9</sup> Prensky, ‘Digital Natives, Digital Immigrants’, above n 7, 3.

<sup>10</sup> *Ibid.*, 4.

<sup>11</sup> *Ibid.*, 3.

law textbooks, cases or articles, which requires focused, sustained reading with few if any distractions.

Teaching university students who do not do the reading before class is not a new problem for lecturers.<sup>12</sup> This article considers barriers to reading and remedial motivational strategies specific to law students of the 'digital native' generation. Although there is some debate as to the actual extent to which the digital native generation does learn differently,<sup>13</sup> this article does not seek to engage in discussions of cognitive psychology. Rather, the purpose is to demonstrate that there are tools, with which the digital generation as a rule are already familiar, which may be utilised by the academic in the task of motivating students to do the reading.

Many of this generation are comfortable with information presented via technology,<sup>14</sup> but combine this with a lack of a realistic assessment of their ability to 'read like a lawyer' and '[evaluate] the relevance, accuracy or authority of the information'.<sup>15</sup> Many are time-poor, compounding the challenge of motivating them to complete law school reading.<sup>16</sup> The compensatory behaviours of lecturers further undermine student motivation to choose to devote time to reading. Students perceive that they can pass a unit without reading, and that doing the reading is a thankless task when lecturer behaviour and class content and assessment do not explicitly reward a choice to do the reading. This choice by students not to do the reading might be colloquially described as setting up a 'vicious circle'.

Reluctance to read is also partly driven by the gap between student confidence and competence.<sup>17</sup> Digital familiarity does not automatically translate to information literacy,<sup>18</sup> and this cohort of students is liable to an 'over-assessment of ability ... usually partnered with an inability to accurately identify how that deficiency might be addressed, and a negative view of the need for library/resource instruction'.<sup>19</sup> Capitalising on 'digital familiarity' to engage this

<sup>12</sup> David Robertson, 'Some Suggestions on Student Boredom in English and American Law Schools' (1968) 20 *Journal of Legal Education* 278, 282.

<sup>13</sup> See for example Sue Bennett, Karl Maton and Lisa Kervin, 'The "Digital Natives" Debate: A Critical Review of the Evidence' (2008) 35 *British Journal of Education Technology* 775

<sup>14</sup> Bohl, above n 8, 3.

<sup>15</sup> Daniel Bates, 'Are "Digital Natives" Equipped to Conquer the Legal Landscape?' (Working Paper 26/2013, Legal Studies Research Paper Series, University of Cambridge Faculty of Law, August 2013), 2 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2313115](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2313115)>.

<sup>16</sup> John Tarrant, 'Teaching Time-Savvy Law Students' (2006) 13 *James Cook University Law Review* 64, 71 citing the Australian Vice-Chancellors' Committee (now Universities Australia) statistic that students worked an average 14.8 hours/week in 2006; Paula Baron, 'Thriving in the Legal Academy' (2007) 17 *Legal Education Review* 27, 39.

<sup>17</sup> Bates, above n 15, 3.

<sup>18</sup> Bennett, Maton and Kervin, above n 13, 779.

<sup>19</sup> Bates above n 15, 3

generation of students and develop their reading skill will require the law teacher to go further in presentation of reading materials than merely prescribing digitised pages.

A generationally tailored approach to motivating law student reading should focus on rigorous review of the content and format of compulsory reading, and how it is integrated with teaching and assessment, followed by the implementation of appropriate strategies to motivate students to read. The hypothesis of this article is that a self-reinforcing ‘virtuous circle’ can be achieved if we set a reading load in a format and content compatible with the students’ learning preferences, check they have read it, align set reading with teaching and assessment, reward students for doing the reading, and impose consequences for not doing the reading.

## II THE PEDAGOGICAL, PROFESSIONAL AND INSTITUTIONAL IMPORTANCE OF READING FOR LAW STUDENTS

If teaching academics are going to expend thought, energy and time on encouraging law students to read, we first have to be certain that reading, in the ‘digital age’, is still important. Reading is given a place of importance on the premise that it has multiple roles: in the process of *learning* at university; and in the development of a law graduate with the professional skills and knowledge to be ready for employment. Australian law schools also have to consider the importance of student reading skills to the attainment by students of Threshold Learning Outcomes for Australian Law Schools (and in some law schools, to the attainment of graduate attributes), and to the standing of law degree programs under the Australian Qualifications Framework.

### *A The Pedagogical Importance of Reading — a Prerequisite to Learning*

The first impulse of an academic on being asked to consider whether reading is still important may be outrage — what, after all, is a university for if not to produce widely read, well-educated men and women? ‘Widely read’ and ‘well-educated’ are synonymous in most academic minds. Academics generally adhere to an ‘ingrained assumption’<sup>20</sup> that the ‘old ways’<sup>21</sup> of paper-based textbook and casebook reading, as a means for the acquisition of knowledge and skills, are still indispensable. It is not enough, however, to lead an ‘unexamined teaching life’ and justify continuing adherence to

<sup>20</sup> Hobson, above n 2, 2.

<sup>21</sup> Kirby, above n 1.

traditional content and format of law school reading loads simply because it is 'the way it has always been done'. Law academics may be merely imposing their own values as a measure of success without evaluating contemporary pedagogical relevance, unless we critically interrogate the relevance of the skill and habit of 'book-learning' to the current generation of law students.

This current generation, the 'digital natives', has some specific learning preferences, styles and characteristics. Prensky's assertion is that their 'brains might already be different'<sup>22</sup> and that they prefer to receive information fast, to parallel process, and to multi-task.<sup>23</sup> Our task as law teachers for this generation is to reconcile the traditional style of law school reading with the realities of our current crop of law students.

If curriculum design does not integrate technology into the 'reading list' and classroom practice, this generation of students is less likely to undertake some or all of the reading. A student who does not, or perhaps will not, read will therefore rely on lectures<sup>24</sup> and scraps of information and ideas scavenged from tutorial conversations. Prior to digital education technology, many law students also 'scavenged' the outline of a subject, relying on 'nutshell' or cram/summary books. The effect of this scavenger approach to learning without reading is two-fold. From a content perspective the full background and context of the subject area will not be grasped. Reading before a lecture enables the student, familiar with the basic structure and content, to progress to the next level of understanding — for example moving from the acquisition of building-block facts (knowledge) to application of those facts to other contexts.<sup>25</sup> The quality of engagement in tutorial discussions similarly depends on whether the student has done the set reading beforehand.<sup>26</sup> A community of inquiry, so valued in teaching pedagogy as a means to facilitate deeper understanding, is difficult to establish if the community has only two-thirds of the requisite core attributes: that is, having the social and teaching presence but insufficient cognitive presence.<sup>27</sup>

<sup>22</sup> Prensky, 'Digital Natives, Digital Immigrants' above n 7, 4.

<sup>23</sup> *Ibid.*, 3.

<sup>24</sup> Terry Doyle, *Helping Students Learn in a Learner-Centred Environment: A Guide to Facilitating Learning in Higher Education* (Stylus Publishing, 2008) 67.

<sup>25</sup> Filip Dochy, Catherine deRijdt and Walter Dyck, 'Cognitive Prerequisites and Learning: How Far Have We Progressed Since Bloom?' (2002) 3(3) *Active Learning in Higher Education* 265, 266.

<sup>26</sup> David Karp and William Yoels, 'The College Classroom: Some Observations on the Meanings of Student Participation' (1976) 60(4) *Sociology and Social Research* 421

<sup>27</sup> D Randy Garrison and Walter Archer, 'A Theory of Community of Inquiry' in Michael G Moore (ed), *Handbook of Distance Education* (Lawrence Erlbaum Associates, 2<sup>nd</sup> ed, 2007) 77, 78.

It is hard to engage in erudite discussion of material you have not read, or contrast the implications of theories with which you are not familiar.<sup>28</sup> Aside from participation and depth of learning in class, student performance in assessment is also adversely affected by a failure to do the course readings.<sup>29</sup>

Law students scavenging knowledge fail to acquire a sufficient depth of knowledge against which to assess, understand and apply the law, and fail to acquire the necessary skills to update their knowledge with disciplined and sustained reading and research. Reading at the level to gain entry to university is one thing; acquiring university-level, law-specific reading skills is another. These skills require continual practice for improvement, and this improvement is not obtained by gleaning fragments of information.

A further risk of the ‘scavenger’ approach to learning law is the risk that, from digital sources of unverified quality, students acquire only a ‘Wikipedia’ standard of uncritical, unreflective knowledge.<sup>30</sup> If law teachers are proactive in setting digital (technology-based, non-paper) content in readings, we control the quality of at least some of the digital legal sources students are learning from, and model discretion in selecting reliable sources and identifying and discarding inappropriate sources. This generation of students is comfortable using technology but lacks discretion in evaluating digital material,<sup>31</sup> therefore part of the role of the contemporary law academic is to nurture in our students the ability to be ‘discerning scavengers’ of digital sources. For example students researching for an assignment on Federal income tax might cite the New South Wales tax legislation if their underlying research paradigm is the ‘google’ approach. The law teacher’s critical role in this scenario is to teach students to evaluate the currency, quality and relevance of the results of research and the validity of the research methods, in place of the student’s tendency to view all search results as equal.

### *B Reading as a Prerequisite for the Legal Profession*

Rethinking our approach to motivating students to ‘read law’ is intended to create work-ready graduates. Work-ready graduates

<sup>28</sup> ‘Chutzpa aside, you can’t intelligently discuss what you haven’t read’: Neil Thomason, ‘Philosophy Discussions with Less B.S.’ (1995) 18(1) *Teaching Philosophy* 15, 15.

<sup>29</sup> This issue receives somewhat skimpy coverage in the literature, however what literature there is supports the assertion that reading/class preparation impacts upon student performance: Spencer, above n 4, 190–1; see also Hill, above n 4, 462–4

<sup>30</sup> Normann Witzleb, ‘Engaging with the World: Students of Comparative Law Write for Wikipedia’ (2009) 19(1) *Legal Education Review* 83, 84 discusses this fear, but the focus of the article is on using Wikipedia effectively.

<sup>31</sup> Bates above n 15, 4; see also Bohl, above n 8, 2.

require professional reading capabilities — recognising that while practising lawyers still have to undertake reading of depth, volume and complexity, the format of the reading is changing. Legal offices and courts<sup>32</sup> are increasingly 'paperless offices' to varying extents.<sup>33</sup> The Hon Michael Kirby, then of the High Court of Australia, noted as early as 1999 the 'increasing use of evidence in electronic form' in Australian courts. His Honour described Western Australian Full Court proceedings of 'an appeal concerning a negligence claim against a major accounting firm' wherein 'all the judges and barristers [were] robed and wigged in the traditional way ... [but were] all ... engrossed in video-screens controlled by keyboards and laptops that would have astonished Dickens, the articulated clerk of earlier times'.<sup>34</sup>

The 'cultural resistance of the legal profession' to technological change (per Justice Kirby's quotation at the start of this article), might equally be applied to the pedagogical resistance in some circles of the law teaching profession to embracing technology in the law curricula. This article does not suggest that reading at law school can or should be replaced; rather, that as law teachers we need to overcome our 'psychological barrier' and teach the discipline of law to a new generation of law students 'with their hands on keyboards' (or tablets). Use of technology should not be equated with 'dumbing down' of law school content, but with preparedness for the legal workplace.

Ongoing education or 'lifelong learning' is also part of professional practice.<sup>35</sup> Students will need to be able, with skill and discernment, to use legal text through whatever medium it is conveyed. They will in addition require an internally motivated habit of updating their own knowledge through various text types and media. Both law-specific reading skills and the intrinsic motivation to use these skills to update knowledge are relevant and necessary skills for a student's future professional life.

### *C The Institutional Importance of Reading*

The Threshold Learning Outcomes (TLOs) for law degrees in Australia are guidelines endorsed by the Council of Australian Law

<sup>32</sup> See for example the Federal Court of Australia 'E-Courtroom' online courtroom used by judges and registrars to assist with the management and hearing of some matters before the Federal Court of Australia or Federal Circuit Court of Australia <<http://www.fedcourt.gov.au/online-services/ecourtroom>>.

<sup>33</sup> Stephanie Quine, 'The Case for Legal Technology' (2012) *Lawyers Weekly* <<http://www.lawyersweekly.com.au/features/the-case-for-legal-technology>>.

<sup>34</sup> Michael Kirby, above n 1.

<sup>35</sup> For example, mandatory continuing legal education is a condition of maintaining a current Practising Certificate as a solicitor in New South Wales: <<http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/mclecpd/index.htm>>.

Deans. Australian law schools have to adhere to the regulatory and quality assurance policy of the Australian Qualifications Framework (AQF):<sup>36</sup> ‘in the language of the Australian Qualifications Framework (AQF), the TLOs represent what a Bachelor of Laws graduate is expected ‘to know, understand and be able to do as a result of learning’.<sup>37</sup> The TLOs are intended to take the general principles and criteria for relevant qualification levels (for example Level 7 Bachelor degrees) of AQF, and articulate these into individual disciplines.<sup>38</sup> The Learning and Academic Standards Project for the Bachelor of Laws Project 2010<sup>39</sup> set out the TLOs for the LLB (further updated March 2013). The TLOs had to be drafted to ‘meet concurrent requirements from the Australian Government, the Council of Australian Law Deans, the relevant law admitting authority and [individual] institutions’.<sup>40</sup> It is therefore instructive to consider whether and how reading skills, and motivation to complete reading, are incorporated into the TLOs, as they reflect a consensus as to the importance of reading as a skill for law graduates.

While there is inevitably a relationship between students being motivated and skilled readers and the acquisition of all the TLOs, TLOs 3, 4 and 6 are of particular relevance. Also relevant are the ‘Notes’ attached to the TLOs document, which provide guidance as to how to interpret the TLOs.

*TLO 3: Thinking Skills* prescribes that LLB graduates will be able to (a) identify and articulate legal issues; (b) apply legal reasoning and research to generate appropriate responses to legal issues; (c) engage in critical analysis and make a reasoned choice amongst alternatives; and (d) think creatively in approaching legal issues and generating appropriate responses. The Notes to TLO 3 state:

Law graduates should be able to examine a text and/or a scenario (for example, a set of facts, a legal document, a legal narrative, a statute, a case report, or a law reform report), find the key issues (for example, unresolved disputes, ambiguities, or uncertainties), and articulate those issues clearly as a necessary precursor to analysing and generating appropriate responses to the issues.<sup>41</sup>

The Notes further state that the LLB graduate will be able to critically analyse, evaluate and respond to the legal material.

<sup>36</sup> Australian Qualifications Framework Council, Australian Qualifications Framework (January 2013) <<http://www.aqf.edu.au/wp-content/uploads/2013/05/AQF-2nd-Edition-January-2013.pdf>> 47.

<sup>37</sup> Sally Kift, Mark Israel and Rachel Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC, 2010).

<sup>38</sup> *Ibid.*, 3.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, 5.

<sup>41</sup> *Ibid.*, 17.

*TLO 4: Research skills* requires that 'graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.' The Notes elaborate on 'intellectual and practical skills' to include the 'ability to read, comprehend, and paraphrase a range of legal and non-legal documents'.

Together, TLO 3 and TLO 4 explicitly require that a law graduate be able to read, and read at a high level of skill, many different legal text types. This high-level, discipline-specific skillset requires sustained reading practice over the course of the LLB.

*TLO 6: Self-management* requires that 'graduates of the Bachelor of Laws will be able to: learn and work independently, and reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development'. The Notes reference an ability to 'manage their study and time autonomously and effectively' and to 'reflect critically on the extent of their learning'. This demonstrates the imperative for law teachers to develop in students the intrinsic motivation to read, and the self-directed habit of updating their own knowledge.

At the level of the individual university, reading skill may be expressly listed as a *graduate attribute* of the graduates of that institution. Many universities now have a generic set of 'graduate attributes', with individual degree programs adding specific attributes. The University of Western Sydney, for example, lists among its generic graduate attributes 'communicates effectively through reading, listening, speaking and writing in diverse contexts',<sup>42</sup> while the School of Law attributes add to this a law-specific graduate attribute, 'Communicates effectively, persuasively and appropriately through reading, listening, speaking and writing, especially in professional legal contexts'. (Email from Dr Susan Armstrong to Liesel Spencer, 15 October 2013.)

Reading skills and the motivation to read are, therefore, imperative for successful learning, future professional life, and for complying with institutional and regulatory requirements such as TLOs. The study of law was referred to for centuries as 'reading law' for a reason. The student of law was expected to learn largely by ingesting case reports and statutes. Addressing prospective law students in 1919, Allen advised, 'the following characteristics are of decided advantage in the law ... [the] nature of a student, to keep in touch with the progress of the common law, with changes in the statutes, and with decisions of the courts, along with one's own special practice'.<sup>43</sup> Despite the modern focus on other skills required of law

<sup>42</sup> University of Western Sydney, 'Graduate Attributes Policy' <<http://policies.uws.edu.au/download.php?id=189&i=00158&v=2>>.

<sup>43</sup> Frederick Allen, *The Law as a Vocation* (Harvard University, 1919) 24.

graduates (such as *TLO 5: Communication and Collaboration*), the study of law still requires reading and the acquisition of legal knowledge (*TLO 1: Knowledge*). Law teachers have a complex job to do. Our students still have to acquire the traditional skill of reading legal materials. They also have to acquire more modern skill priorities, for example collaboration and teamwork. The law teacher in all likelihood attended university in a more traditional format. Our law students now, the ‘digital generation’, are cohorts with a different set of characteristics. Law teachers therefore have to devise ways in which to motivate students to read, taking into account the fact that modern students are visual and multimedia inclined,<sup>44</sup> while still producing law graduates with legal knowledge and legal reading skills.

### III IS IT OUR JOB TO MOTIVATE STUDENTS TO DO THE READING?

University law teachers might understandably question whether *motivating* students to complete readings in preparation for classes is properly to be considered as part of the role of an adult educator. The traditional view was that it was the lecturers’ role as experts in their field to impart as much relevant, up-to-date content as they could in a two-hour lecture to a passive audience of students.<sup>45</sup> It is tempting to take a ‘minimalist approach’<sup>46</sup> and see student motivation as being neither the job nor the problem of teaching staff.<sup>47</sup> This temptation is compounded by the popular consensus that an academic career focused on teaching and learning, rather than, or at the expense of, focus on research activity, is ‘not the easy or guaranteed way to promotion and tenure’,<sup>48</sup> and that expending time and effort on strategies to motivate students to complete reading is against self-interest. University is voluntary — students who do not find their subjects sufficiently interesting to address themselves to set reading tasks might be better advised to reconsider their choice and ‘take up something else’.<sup>49</sup> If students choose not to complete assigned

<sup>44</sup> Sarah Moore, Claire Armstrong and Jill Pearson, ‘Lecture Absenteeism Among Students in Higher Education: A Valuable Route to Understanding Student Motivation’ (2008) 30(1) *Journal of Higher Education Policy and Management* 15, 23.

<sup>45</sup> Lisa Westcott and Mandy Shircore, ‘The Experience of a Small Regional Law School in Preparing Students for a Journey through Law’ (2006) 5 *James Cook University Law Review* 81, 82.

<sup>46</sup> Doyle, above n 24, 30.

<sup>47</sup> Maryellen Weimer, *Enhancing Scholarly Work on Teaching and Learning: Professional Literature That Makes a Difference* (Jossey-Bass, 2006) 176; see also Noel Entwistle, *Styles of Learning and Teaching* (David Fulton Publishers, 1988) 266

<sup>48</sup> Weimer, above n 5, 176.

<sup>49</sup> Kenneth Eble, *The Craft of Teaching: A Guide to Mastering the Professor’s Art* (Jossey-Bass, 2<sup>nd</sup> ed, 1988) 189.

reading, should university teachers take on the responsibility of trying to alter that choice, or step back and allow students to learn the importance of reading via the experience of failure?<sup>50</sup>

There are practical and personal matters to consider. Motivated, prepared students improve job satisfaction for the teacher.<sup>51</sup> Walking into a classroom with the knowledge that attempts to initiate a stimulating discussion, based on the set readings, will be greeted by 'blank stares',<sup>52</sup> is not a recipe for a satisfying teaching career.<sup>53</sup>

It may be posited that some teachers in this position are making a default choice because their teaching skill-set does not include adequate tools for motivating students.<sup>54</sup> These motivational skills may be lacking because the teacher does not see it as within his or her role to be concerned with student motivation, and therefore to acquire motivational skills or because the teacher never acquired them as part of their early-career mentoring and induction process as a junior teaching academic. Motivational strategies, which require adaptation to the use of technology in the classroom and in the reading list, might be traumatic for an academic from the 'digital immigrant' generation.

University teachers, therefore, face classrooms full of 'increasingly less mature and more dependent learners'<sup>55</sup> while themselves often lacking either the will or the ability to initiate positive change in student motivation and preparedness. It is not an attractive prospect to contemplate a career spent teaching in these conditions. For reasons of self-preservation and job satisfaction, then, it is argued that university teachers should make it their business to be armed with and use tools for motivating students to read and prepare — to 'step up' and bridge the gap between the real and ideal<sup>56</sup> student. Doyle describes the outcome of this approach: 'my own frustrations as a teacher were greatly reduced years ago, when I accepted that my job was to teach the students who were sitting in my class, not those I wished were sitting there'.<sup>57</sup>

<sup>50</sup> Susan Armstrong and Michelle Sanson, 'From Confusion to Confidence: Transitioning to Law School' (2012) 12(1) *QUT Law and Justice Journal* 21

<sup>51</sup> Barbara Hofer, 'Motivation in the College Classroom' in Wilbert McKeachie (ed), *Teaching Tips: Strategies, Research, and Theory for College and University Teachers* (Houghton Mifflin, 11<sup>th</sup> ed, 2002) 119.

<sup>52</sup> Sara Coffman, 'How to Get Your Students to Read What's Assigned' (2009) 23(6) *The Teaching Professor* 3, 3.

<sup>53</sup> Lillian Corbin, Kylie Burns and April Chrzanowski, 'If You Teach It, Will They Come? Law Students, Class Attendance and Student Engagement' (2010) 20 *Legal Education Review* 13, 13.

<sup>54</sup> John Borkowski et al, 'Self-Regulated Cognition: Interdependence of Metacognition, Attributions, and Self-Esteem' in Beau Fly-Jones and Lorna Idol (eds), *Dimensions of Thinking and Critical Instruction* (Lawrence Erlbaum Associates, 1990) 83.

<sup>55</sup> Weimer, *Learner Centred Teaching* above n 5, 96.

<sup>56</sup> Doyle, above n 24, 84.

<sup>57</sup> *Ibid.*

First-year students, in particular those coming straight from school, do not arrive in our classrooms (with the odd exception) equipped with self-motivation or a fully developed sense of identity and purpose.<sup>58</sup> School leavers are still developing their identities, trying on ‘possible selves’,<sup>59</sup> looking for role models and seeking a valid basis for self-respect and self-esteem.<sup>60</sup> They have not, for the most part, been out into the professional workforce and have not therefore had the chance to make properly informed career choices. It is part of the ‘work’ of university, for students to acquire an internalised sense of purpose, vocation and identity.<sup>61</sup> Ideally graduates will then go out into the professional workforce able to take responsibility for their own workload and time management, as self-motivated adults.

If this view of the broader business of university study is accepted, it alters the ‘job description’ of the university teacher. The teacher is a medium for developing a set of skills broader than the knowledge-base of their particular subject. The quotation (popularly attributed to Yeats), ‘education is not the filling of a pail, but the lighting of a fire’, embodies this ‘big picture’ concept of the role of the university teacher<sup>62</sup> embodies this ‘big picture’ concept of the role of the university teacher. Knowledge specific to particular professions goes ‘out of date’ fast, in some instances before our students even graduate. Legal content is subject to frequent small changes, with new cases and legislation, and the occasional seismic shift where whole areas of the law are extensively changed.<sup>63</sup> In many areas of practice, the doctrinal law learnt at law schools rapidly ceases to be current, perhaps even before graduation. This context of rapid change has driven law schools’ shift from teaching content to teaching law students requisite legal skills.<sup>64</sup> ‘Filling the pail’ of student knowledge cannot be the only role we perform if the pail is (excusing the dubious metaphor) leaking, or we make ourselves obsolete and redundant.

How, then, is the university teacher to set students on the path to being independent and self-motivated? How can we ‘light the fire’ of intrinsic motivation? It is useful to view the teacher as

<sup>58</sup> Bette Erickson, Calvin Peters and Diane Strommer, *Teaching First-Year College Students* (Jossey-Bass, 2006) 119.

<sup>59</sup> Borkowski et al, above n 54, 84.

<sup>60</sup> Donald Bligh, *What's the Use of Lectures?* (Jossey-Bass, 2000) 64.

<sup>61</sup> Erickson, Peters and Strommer, above n 58, 119.

<sup>62</sup> The quotation is popularly, but perhaps mistakenly attributed to Yeats: Robert Strong, ‘Advice on Lighting Fires’, *The Huffington Post* (online), 13 September 2012 <[http://www.huffingtonpost.com/robert-strong/advice-on-lighting-fires\\_b\\_1882075.html](http://www.huffingtonpost.com/robert-strong/advice-on-lighting-fires_b_1882075.html)>.

<sup>63</sup> The impact of the *Civil Liability Act 2002* (NSW) (and equivalent acts in other jurisdictions) illustrates one such ‘seismic shift’, in torts law.

<sup>64</sup> Sally Kift, ‘21<sup>st</sup> Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1, 2.

a catalyst for student motivation, with motivation the 'product of good teaching, not its prerequisite'.<sup>65</sup> In the context of our 'job description' as teaching academics, 'good teaching' means we are, among other things, the initiators of the habit of pre-reading. Writing on procrastination in doctoral students, Kearns and Gardiner note the 'procrastinator's assumption' that 'motivation leads to action', when in fact 'action leads to motivation leads to action'.<sup>66</sup> Translated to motivating students to complete university reading assignments, the role of the teacher is to catalyse the action of pre-reading in the students so that the 'virtuous circle', or chain reaction of 'action, motivation, action' is set off. The logical catalyst to set off this chain reaction in the 'digital native' student population is to set reading that meets them on familiar technological turf.

#### IV WHY DON'T STUDENTS DO THE READING?

If reading is central to the study of law, and it is part of the role of the law academic to motivate students to complete set reading, the next issue to consider is *why* so many students don't do their reading.

The literature points to two broad categories of explanation for why students don't read assigned material and prepare for classes. The first category might be described as 'competing activities and priorities', the second as 'perceived lack of value in reading and lack of consequences for non-reading'. This discussion will focus on the latter category — the perceived lack of value in undertaking reading (which is presented in a traditional law school content and format), and the lack of consequences for non-reading. Lack of perceived value and lack of consequences propagate the 'vicious circle' of student non-reading.

##### *A The Perceived Lack of Value in Reading*

For digital native students the transition from multimedia to text-based information can be a challenge.<sup>67</sup> Students today are less accepting of the authority of lecturers, and less likely to trust that the set reading material is relevant.<sup>68</sup> Faced with a large volume of textbook pages to read, and a lack of trust that the reading is relevant, law students struggle to be motivated to complete set pre-reading. If they are school leavers, they have also just been delivered

<sup>65</sup> John Biggs, *Teaching for Quality Learning at University* (Open University Press, 2<sup>nd</sup> ed, 2003) 13.

<sup>66</sup> Hugh Kearns and Maria Gardiner, *Time for Research: Time Management for PhD Students* (Flinders Press, 2006) 8; see also Bligh, above n 60, 57–9.

<sup>67</sup> Bohl, above n 8, 775.

<sup>68</sup> Tracy McGaugh, 'Generation X in Law School: The Dying of the Light or the Dawn of a New Day?' (2003) 9 *The Journal of the Legal Writing Institute* 119, 137

unprecedented responsibility and autonomy for their own study schedules.<sup>69</sup> For some of these students, appropriate scaffolding into legal thinking and the discipline of regular reading will be required to support the development of sophisticated reading skills. If a student does not attain a passable level of self-mastery in these areas, underperformance or failure is the likely result.<sup>70</sup> (A colleague observed on this point that the failure itself is sometimes a motivator for more diligent reading in subsequent attempts at the failed subject.)<sup>71</sup> Where students do not fail outright but manage to scrape a passing grade, it is still questionable whether they are properly equipped for professional life after graduation.<sup>72</sup>

Reading loads which, in content or style, are not compatible with the learning preferences of the ‘digital native’ law students, can act to predispose students to fail to complete the reading. Setting students up to be predisposed to failure with a traditional law school reading list decreases students’ intrinsic motivation — failure undermines the sense of ‘autonomy, competence and relatedness’ that is vital to student psychological wellbeing.<sup>73</sup> Success is motivating;<sup>74</sup> conversely, failure is demotivating. Viewed within the context of self-determination theory, a reading load that does not value the digital generation’s learning approach, can result in ‘amotivated’ students.<sup>75</sup> Students who are ‘amotivated ... go through the motions, lacking intentionality because they do not value an activity, feel competent to complete it satisfactorily, or believe it will yield the desired outcome’.<sup>76</sup>

<sup>69</sup> Tamsin Haggis and Mireille Pouget, ‘Trying to be Motivated: Perspectives on Learning From Younger Students Accessing Higher Education’ (2002) 7(3) *Teaching In Higher Education* 323, 328.

<sup>70</sup> Richard Arum and Josipa Roska, *Academically Adrift: Limited Learning on College Campuses* (University of Chicago Press, 2011) 20 and 98, cited in Hill, above n 4, 466.

<sup>71</sup> Conversation with Dr Michelle Sanson, then Senior Lecturer, School of Law, University of Western Sydney.

<sup>72</sup> See for example the discussion on the realities of legal professional life in The Law Society of New South Wales Young Lawyers, ‘*How to Survive and Thrive in Your First Year of Law: A Realistic Guide to the Study and Practice of Law*’ <<http://www.lawsociety.com.au/cs/groups/public/documents/internetyounglawyers/446985.pdf>> 48.

<sup>73</sup> Wendy Larcombe, Ian Malkin and Pip Nicholson, ‘Law Students’ Motivation, Expectations and Levels of Psychological Distress: Evidence of Connections’ (2012) 22 *Legal Education Review* 71, 73–4.

<sup>74</sup> Kearns and Gardiner, above n 66.

<sup>75</sup> Larcombe, Malkin and Nicholson, above n 73, 80.

<sup>76</sup> *Ibid.*

### B *Lack of Consequences for Non-reading, or the Cycle of Dependency and Irresponsibility*

The literature points to lack of consequences for non-reading<sup>77</sup> a significant influence on student motivation and reading. Doyle used student consultation to confirm suspicions as to why students were not doing reading and preparation, and was informed by one student that they 'feel confident the teacher will always review the important points in the textbook during lectures'<sup>78</sup> and by another student that lecturers would 'discuss any important information included in the reading during class lectures'.<sup>79</sup> Erickson et al attribute this in part to academics having resorted to emulating the style of high school teachers, because (particularly in first year) students have become accustomed to relying on 'instructors' oral text', class handouts, or 'gloss of assigned readings'.<sup>80</sup> Weimer is equally blunt: 'the main reason students come to class unprepared is that they don't see what difference it makes'.<sup>81</sup> Students perceive that they will be able to do passably well in the subject without spending their valuable time reading and studying the texts, relying instead on attending classes and perusing lecturers' summary notes.<sup>82</sup> The response of lecturers to students who have not done the reading can be to summarise the main points for students, or to give students time to scan the reading for themselves, but this is reinforcement of the undesirable behaviour — 'if used often, such strategies may discourage out-of-class preparation'.<sup>83</sup> According to Robertson, writing in 1968, this 'spoon-feeding' had resulted in 'student passivity', even at Oxford and Cambridge.<sup>84</sup> Thus law students can obtain at least passing grades without acquiring learning outcomes related to reading and intrinsic motivation. This passivity is the opposite of what Kirby calls for in the opening quotation: students with 'their minds engaged with concepts of law and justice and not just a mass of data'. Law teachers can accidentally create passivity in students, a 'spoon-feeding' mentality, with our response to student reading or non-reading.

Weimer calls this inadvertent behavioural conditioning a 'cycle of dependency and irresponsibility' which can be stopped with 'predictable logical consequences *and* with consistent coherence between faculty words and deeds'.<sup>85</sup> Despite being told that 'they

<sup>77</sup> Weimer, above n 5, 105.

<sup>78</sup> Doyle, above n 24, 67.

<sup>79</sup> *Ibid.*

<sup>80</sup> Erickson, Peters and Strommer, above n 58, 122.

<sup>81</sup> Wilbert McKeachie, in McKeachie (ed) above n 51, 182.

<sup>82</sup> Sherrie Nist and Katie Kirby, 'The Text Marking Patterns of College Students' (1989) 10(4) *Reading Psychology: An International Quarterly* 321

<sup>83</sup> McKeachie, above n 81, 46.

<sup>84</sup> Robertson, above n 12, 282.

<sup>85</sup> Weimer, above n 5, 107.

will understand more if they come to class prepared' students still arrive in class unprepared, because 'in all too many classes, there are absolutely no consequences that students experience when they come to class not having done the reading'.<sup>86</sup> These observations are a logical extension of other aspects of the leadership role of the lecturer. Students detect inconsistencies between lecturer's stated expectations and what is actually asked of them, and in most instances choose the less onerous option. Thomason also refers to academics' inadvertent reinforcement of non-reading as a 'cycle' fostered by a genuine desire to do one's job well and nurture students: 'professors must often substitute their strong reading skills for the students' inadequate ones ... this produces a vicious cycle: inadequate student preparation, commendable professorial clarification, even less student preparation'.<sup>87</sup>

An informed approach to catalysing the habit of reading in law students therefore has to demonstrate to students the value of reading, and to impose consequences for non-reading.

#### V TOOLKIT FOR LAW TEACHERS SUGGESTED STRATEGIES TO MOTIVATE STUDENT READING BY INCORPORATING DIGITAL TECHNOLOGY

A law teacher of the 'digital immigrant' generation, reconciled to the need to incorporate non-traditional text and digital content into the reading list, will benefit from practical guidance and suggestions on how to achieve this. This part of the article offers such suggestions to catalyse student reading habits, together with reflections on teaching behaviours that sustain student motivation to read. The methodology underlying this section is a hybrid of literature review, personal experience, and suggestions derived from the professional development training undertaken by the authors, in implementing 'blended learning' materials into the law curriculum at our institution, the University of Western Sydney.<sup>88</sup> Each teacher of law is the best-placed expert as to their own teaching context, to select which motivational tool is best suited to their topic, cohort and teaching style. As with any teaching innovation, the laboratory of the classroom will provide feedback. It is suggested that law teachers experiment for themselves with one or two motivational strategies at a time to see what is most effective in their teaching context.

<sup>86</sup> Ibid, 105.

<sup>87</sup> Thomason, above n 28, 16.

<sup>88</sup> In this context what is meant by 'blended learning' is the partially online delivery of teaching and assessment.

### *A Social Interaction as a Motivator*

Students are motivated by social interaction, and the traditional study group has value for meeting social needs<sup>89</sup> in addition to the need for reading, discussion and revision of university work. Beyond study groups, socialising can be used to motivate reading through integrating social media technology into the curriculum, such as through the use of well-moderated online discussion forums,<sup>90</sup> Twitter hashtags and other forms of 'microblogging'.<sup>91</sup> One of the authors of this article has experimented with 'live Tweeting' by students during classes (almost all students now have 'smart phones' enabling them to participate in this activity), with the responses able to be displayed live via a data projector. This technique was quite successful in fostering engagement, discussion and debate. Ongoing engagement after class with topics can also be achieved by use of social media interactivity. A lecturer can act as a digital curator linking through social media sites articles, including mainstream media articles, on real life examples of issues being studied in class, and rewarding students with recognition and praise if they do the same. A colleague is experimenting with the use of 'Instagram' in the teaching of an elective. Students take photographs of examples of the subject matter for a particular week, tagging their uploads onto Instagram. The experiment has resulted in reportedly high rates of student enthusiasm and engagement with the elective. This is not a replacement for doing the prescribed reading, but a motivational strategy to engage students and excite curiosity about the content of the subject.

### *B The Reading Load: Content and Format*

Constructing a reading load requires a determination as to what content is critical, and decisions as to how best to present that content. An example of using this process to making reading content suitable for 'digital natives' is to reconsider the cases prescribed for reading, and to pick out cases that lend themselves better to the dynamic properties of digital teaching tools. It is surely a given that not all information needs to be read in order to be understood. Many of us are familiar with the concepts of different learning styles; some people are visual, others are aural or kinaesthetic learners, or some

<sup>89</sup> Megan Tones et al, 'Supporting Mature-Aged Students From a Low Socioeconomic Background' (2009) 58 *Higher Education* 505, 509 and 527.

<sup>90</sup> Kristoffer Greaves and Julianne Lynch, 'Is the Lecturer in the Room? A Study of Student Satisfaction with Online Discussions in Practical Legal Training' (2012) 22 *Legal Education Review* 147, 174.

<sup>91</sup> Kate Galloway, Kristoffer Greaves and Melissa Castan, 'Interconnectedness, Multiplexity and the Global Student: The Role of Blogging and Micro Blogging in Opening Students' Horizons' (2012) 5 *Journal of the Australasian Teachers Association* 177, 180

combination of the three, depending on content and circumstance.<sup>92</sup> A study by DeVito indicates that first-year students in particular learn better when exposition (traditional lecturing or textbook) is supplemented with images,<sup>93</sup> and show further improvements in learning when exposition is supplemented with stories.

Consider one of the most familiar cases, *Carlill v Carbolic Smoke Ball Company*<sup>94</sup> It is often one of the first cases law students read at law school, and remembered by many lawyers long after leaving law school.<sup>95</sup> It has many of the dynamic properties that enhance student engagement. The visual and aural elements of the case are strong. The name of the case is arresting and easy to recall. Many textbooks and/or lecturers have shown law students the iconic advertisement from the case. The concept of a smoke ball is visually memorable irrespective of life experience, as is the purported cure of the smoke ball. All these aspects come together to create a memorable case and memorable outcome of a binding unilateral offer. Although the case may be a standout among cases, it does demonstrate visual, image-and-story based learning in a way many students first encounter and long remember, but are perhaps ‘cheated of’ thereafter. After the excellent introductory visuals of carbolic smoke balls, for many students there is no follow-up act — only slabs of printed cases and legislation.

Content can be presented in a range of modes. Law teachers can create vodcasts and podcasts<sup>96</sup> that capture the essence of a case or principle. Vodcasting can provide a visual narrative through the use of animated flowcharts, or even stick people characters through simple, inexpensive software such as Explain Everything app. One aim might be to create visual hooks to draw the student deeper into the story of the case and provide memorable imagery, as *Carbolic Smokeball* does. Each area of law will have cases or principles that lend themselves to digital re-imagining, and the academic need not be gifted in art or technology. For example the universality of the difficulty of resolving the capital/revenue distinction can be

<sup>92</sup> Sheila Scutter, Leva Stupans, Tim Sawyer and Sharron King, ‘How do students use podcasts to support learning?’ (2010) 26 (2) *Australasian Journal of Educational Technology* 180, 181–3; Maged Boulos, Inocencio Maramba and Steve Wheeler, ‘Wikis, Blogs and podcasts: a new generation of Web-based tools for virtual collaborative clinical practice and education’ (2006) 6 *BioMed Central Medical Education* 41

<sup>93</sup> Scott DeVito, ‘The Power of Stories and Images in Law School Teaching’ (1 Jan 2013) <<http://ssrn.com/abstract=2220399> or <http://dx.doi.org/10.2139/ssrn.2220399>>

<sup>94</sup> [1892] EWCA Civ 1.

<sup>95</sup> There is a website that styles itself as ‘carbolicSmokeballco: Lawyer gifts’ that is testimony to the enduring affection for this case <<https://www.carbolicSmokeball.com>>

<sup>96</sup> Jennifer Ireland, ‘Blended Learning in Intellectual Property: The Best of Both Worlds’ (2008) 18 *Legal Education Review* 139

effectively illustrated by two overlapping circles, one of orange, and one of red.<sup>97</sup>

Another approach is to set up, and allow students to participate in, online discussion forums, whether embedded in university online learning platforms<sup>98</sup> or an external social media platform such as Twitter, Tumblr or blogs. A well-crafted reading load can use these as a means of integrating core content in a style compatible with the digital natives' preferred learning style. To give an example, a student reading a case, whether from a PDF online, or a more traditional casebook, may still 'parallel process' if the tools are available. A student can immediately pose questions based on their readings on targeted online discussion forums. This latter format of teaching has been shown to be pedagogically useful if well moderated.<sup>99</sup> To be successful, moderation by a lecturer need not be concurrent but must be consistent, predictable and appropriate. It is useful to arrange discussion forums by topic or teaching week rather than simply open one forum and expect students to participate on a wide range of topics. First-year students may need higher levels of lecturer participation, but later-year students may value and enjoy the process of answering other students' queries. These digital tools are not suggested as a replacement for reading the cases, but rather as an introduction to, and motivational catalyst for, doing and continuing with the reading.

Much of the core law school content is still in written form, whether that written form is in a paper book or an electronic book. Indeed, while increasingly scholarly literature including books, journals, and case and statute law is moving online in electronic forms,<sup>100</sup> much of it is still only a digital rendering of the traditional printed page, at best offering a limited number of hyperlinks to other related parts. Therefore, if we assume a digital native has the characteristics suggested by Prensky, offering an e-book that recreates the written (and multiple) words of cases, legislation and journal articles onto a screen will not increase student commitment to doing the reading.

<sup>97</sup> Lord Denning MR *Heather (Inspector of Taxes) v P E Consulting Group* [1973] Ch 189, 216 likened the distinction to 'the difference between red and orange where everyone can tell the difference except in the marginal cases and then everyone is in doubt'.

<sup>98</sup> See further on the use of online discussion to facilitate engagement Greaves and Lynch, above n 90.

<sup>99</sup> *Ibid.* While peer participation in discussion forums is valuable, it is the view of the authors that teacher moderation is also important as a form of quality control and to avoid the situation of 'the blind leading the blind'.

<sup>100</sup> Christine L Borgman, *Scholarship in the Digital Age: Information, Infrastructure and the Internet* (MIT Press, 2007). Statutes and case law are found in particular through free platforms such as the Australasian Legal Information Institute <<http://www.austlii.edu.au/>> and its equivalent sites in jurisdictions overseas, but also through proprietary databases.

What is required to engage this generation of students is to go further in presentation of reading materials than merely digitised pages.

Technology incorporated into the set reading list offers more innovative content than a PDF of a case, but it can be hard for ‘digital immigrant’ academics to consider these innovations as anything more than ‘technology for technology’s sake’. Academics might also fear that the digital presentation of reading will facilitate shallow student engagement with the core content — that it will be a showy substitute for cases, legislation and secondary materials. The alternative mindset a law academic might adopt is to consider a hyperlink to a video, a flowchart or graphic, or a cartoon<sup>101</sup> valuable addition to the reading list — a *supplement rather than a replacement*. These tools fit in with this generation’s preference for parallel processing and multitasking, thus keeping them engaged. The second function of these tools is as a genuine explanatory tool of the content — this is more than a ‘gloss’ or introductory hook. This approach recognises the value of visual teaching aids, which research has shown to be a powerful pedagogical tool, particularly for early-stage law students.<sup>102</sup>

### *C Making Connections Between Preparatory Reading, Teaching and Assessment*

Students may fail to undertake reading because they do not see the value or relevance of the reading,<sup>103</sup> and the connection of the reading to their classes.<sup>104</sup> Lowman observes that ‘motivating students to complete homework problems before class is easier than with reading assignments because the work is so clearly connected to class content, and what students know they will be asked to do in exams’<sup>105</sup> If we set reading without clearly communicated objectives for doing so,<sup>106</sup> then do not refer to the reading in classes (or only refer to it obliquely) students may feel cheated. The meaningless ‘busywork’ often inflicted on students in primary school, and to a lesser extent high school, has made students understandably suspicious. If we fail to demonstrate the value of what has been read, through incorporation into teaching and assessment,<sup>107</sup> we have confirmed these suspicions that it was just ‘reading for reading’s sake’, and the content not ‘worth learning’.<sup>108</sup> This is not an issue

<sup>101</sup> Scott DeVito, above n 93.

<sup>102</sup> Ibid.

<sup>103</sup> Doyle, above n 24, 42.

<sup>104</sup> Joseph Lowman, *Mastering the Techniques of Teaching* (Jossey-Bass, 1995) 228

<sup>105</sup> Ibid, 239.

<sup>106</sup> Ibid, 241-242.

<sup>107</sup> Doyle, above n 24, 67.

<sup>108</sup> Borkowski et al, above n 54, 81.

limited to the current generation of students, but is part of an overall picture of building and sustaining law students' motivation to read.

#### *D Vocational Relevance as a Motivational Tool*

Technology integrated into the classroom encourages students to practise the real-life skills of finding legal solutions through the devices they use every day, showing them that these devices are not just for entertainment but can also be an educative and professional tool. This is more than 'clicking on links', but involves the use of, for example, the AustLII app for 'smart devices' to locate relevant legislation. Practitioners increasingly access online relevant cases, legislation, and forms, subscribe to news feeds, and receive information relevant to their matter in PDF and HTML form. Educational technology allows students with the characteristics described by Prensky to read multiple legal sources in parallel — skipping between content as attention is drawn to different parts of the law. This can further facilitate understanding of the interconnectedness of different aspects of the law and the realities of legal practice, wherein client's problems are seldom confined neatly to a single issue in one area of the law. Vocational relevance also attaches to teaching students to update their knowledge of the law via technology. Content (and demonstrated understanding of content) is only part of the reason reading is important. The current generation of law students needs to be able to use screen-based technology to find, update and apply the law in order to be employable after graduation. One of the authors of this article has found that students may be motivated by this form of active reading, using technology to search for, refine and apply current law, as a vocational skill. Academics might consider deliberately referring in class material to a superseded legislative provision, then modelling the process of discovery, correction and comment on significance of changes such as grandfathering provisions in tax legislation.

#### *E Consistency and Follow-through to Sustain Motivation*

If a lecturer has reviewed the reading list and embraced digital teaching tools to facilitate student engagement, is that then enough? Will student motivation to read, once catalysed or initiated, be sustained regardless of what the lecturer does next? The trap here is a variation of the 'Carbolic Smokeball' situation referred to above — enticing content with inadequate follow-through. Compounding the situation, a lecturer may (with the best of intentions) 'rescue' students from the consequences of not doing the reading, as discussed above.

Bligh prescribes ‘contingency plans’ in the event that students do not do the reading, as otherwise ‘the lecture will fail’.<sup>109</sup> Perhaps, however, the lecture should be allowed to fail. If the lecturer has fulfilled their side of the preparation responsibility, but the students have not, then having a ‘contingency plan’ just reinforces the students’ decision not to do the reading. Lecturers will otherwise be trapped in Weimer’s ‘cycle of dependency and irresponsibility’.<sup>110</sup>

Academics may balk at the idea of allowing a lecture or seminar to ‘fail’ in circumstances where students have failed to do the reading. They may worry that students will see a failed lecture as a reward (time off, or a holiday) rather than a ‘punishment’ or consequence of not reading, and continue in the same vein until they fail an assessment task. Moreover, most universities measure the teaching quality of their staff through formal student feedback.<sup>111</sup> Students dissatisfied with the ‘failed lecture’ approach may mark the lecturer harshly, particularly in circumstances leading to student failure, or cast aspersions on the academic’s teaching skills. Negative feedback can have direct consequences for the work security and promotion prospects, as well as work satisfaction, of the academic.

Another option for consistently responding to student reading behaviour is to set problem questions prior to seminars or tutorials. Students who are able to demonstrate that they have attempted the set problems before class (ascertained by sighting the homework) are immediately rewarded by being permitted to stay in the class and receive the opportunity to further build upon their knowledge. Students who have not completed the set problems are encouraged to leave the classroom and use the allocated time to complete the homework, whereupon they may return to the class. This method has been effective in encouraging student reading, allowing for increased class participation and avoiding the temptation to summarise the key reading.<sup>112</sup> It also offers the academic an opportunity, when sighting homework completion, to spot systemic misunderstandings of specific topics and focus class time on the topic.

### F *The Lecturer as Translator or Mediator of Text: a Healthier Paradigm*

‘Rescuing’ or shielding students from the consequences of the undesirable behaviour of failing to do their reading, can take the form

<sup>109</sup> Bligh, above n 60.

<sup>110</sup> Weimer, above n 5, 107.

<sup>111</sup> Some of the difficulties this presents for academics were analysed in Elfriede Sangkuhl, ‘The Use of Student Feedback on Teaching to Evaluate Academics’ Teaching in Higher Education in Australia’ (2012) 18(5) *International Journal of Learning* 95, 95.

<sup>112</sup> Per conversation with Dr Elfriede Sangkuhl, School of Law, University of Western Sydney, regarding teaching techniques used in Taxation Law, 20 July 2012.

of the lecturer diligently extracting and condensing into digestible form the salient points of the reading during face to face time. This role for the lecturer as a mediator or translator of the reading<sup>113</sup> is of itself not necessarily inappropriate, unless undertaken in conjunction with a lack of consequences for students who do not fulfil their role and responsibilities in the learning process. What the literature and experience bears out is that, like an overzealous parent, lecturers can effectively 'do the homework' for students and in so doing, condition students not to expend their time and energy on doing it for themselves.<sup>114</sup>

A more appropriate place for the role of translator of readings might be the lecturer posting a targeted discussion board question. This prompts students to ask questions on the prescribed reading topic as it occurs to them, rather than later on, when they may have forgotten they even had a question. It is important to note that lecturers are not necessarily required to answer questions immediately as they are posted on discussion boards, and other students should be encouraged to put forward their own responses to posted questions — whether a further question or attempted answer.

Lecturers may use class time to answer any unanswered discussion board queries, whether as a springboard for the lecturer's own consideration of the topic or as a source of group work. The lecturer can address the posted questions in class. The authors of this article have used this as an opportunity to demonstrate research techniques, using a data projector to show students how to find the answers to their questions via AustLII or library-based commercial e-resources. Student feedback on these live research demonstrations is uniformly positive, perhaps because of the engagement generated by contextual learning of research skills.

Alternatively or in conjunction with the discussion board, a short podcast that provides guidance to students as to what might be expected in a particular topic, or which acts as an overview for a topic, may be used. A mini-lecture style podcast can be used to free up the lecturer in-class to focus on applying, expanding or consolidating the basic knowledge the student brings to class.

The discussion board activity or podcasts prior to class are a healthier form of 'translation' by the law teacher, than having unprepared students turn up and passively absorb a lecture. Ideally the discussion board and/or podcasts catalyse interest and provide a scaffolded introduction to the week's reading, to motivate students to complete the full set reading prior to class.

<sup>113</sup> Carlos Gonzalez, 'Extending Research on 'Conceptions of Teaching': Commonalities and Differences in Recent Investigations' (2011) 16(1) *Teaching in Higher Education* 65, 73.

<sup>114</sup> Spencer, above n 4, 195.

## VI CONCLUSION

Motivating our law students to ‘do the reading’ is of pedagogical, professional and institutional importance. It is hard to justify continuing dogged adherence to the traditional style and content of the set reading load in the face of a radical generational shift in learning styles, coupled with the perennial problem that a significant proportion of students don’t do the set reading. Lecturers (often the same people who set the reading load in the first place) then compensate for this lack of reading by condensing the vital points during teaching time and supplying comprehensive lecture notes as a ‘gloss’ on the reading. These compensatory behaviours allow students not to develop the habit and skills of law school reading. The students proceed either to fail altogether or to pass their subjects without having done the reading or acquiring necessary professional skills and learning outcomes. In later-year subjects, they treat with understandable contempt the description of set readings as ‘compulsory’, and so the vicious cycle continues.

Academics ought to seize an opportunity created by technology to take, not an axe, but a magnifying glass to the reading list and also to their own (perhaps unexamined) assumptions about compulsory reading lists. To continue in the established model, practising self-deception, lacks authenticity.<sup>115</sup> Most importantly, the reading load has to be made accessible for the ‘digital native’ generation of law students, via the considered incorporation of technology into law school pedagogy and curriculum. Teaching academics armed with a revised reading load can then apply motivational strategies to jog students from their reading avoidance, followed by the careful incorporation of reading and digital technology into classes and assessment. This order of operations is important, as we lose credibility as teachers if we communicate to students that the reading is (really) compulsory, motivate them to do the reading, and then deliver the course in the same format that convinced prior cohorts that compulsory reading material could be safely dispensed with. The reward for this is a more satisfactory teaching experience facilitated by increased student engagement and positive teaching evaluations, via the initiation of a ‘virtuous circle’.

<sup>115</sup> ‘Authenticity’ is here meant in the sense of ‘doing what is necessary in the important interest of learners’; see Caroline Kreber, Velda McCune and Monika Klampfleitner, ‘Formal and Implicit Conceptions of Authenticity in Teaching’ (2010) 15(4) *Teaching In Higher Education* 383, 393.