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Lecturing (and not Lecturing) Using the Web: Developing a Teaching Strategy for Web-based Lectures

(Flexible Delivery in a First Year Law Subject, Part I)

Lawrence McNamara*

Introduction

It is less than a decade since Le Brun and Johnstone sought so effectively to improve law students' learning by bridging "the perceived gulf between educational theory and practice so that our work as [law] teachers is more informed, reflective, critical and, thus, improved in practice".¹ In documenting and building upon theoretical and practical connections, they both identified and accelerated the "quiet revolution"

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This paper and its companion Part II article (which follows in this same issue) are based on a project funded by and undertaken at the University of Western Sydney, Macarthur in 1999. The articles were written and submitted to *Legal Education Review* with the aim of presenting to the wider academic community the experiences and outcomes of the project, and in doing so to make some critical arguments about the place of technology in law teaching. Although the bulk of the material was later included in the author's report to the funding body, which has since been published as L McNamara, *Starting Out: An Introduction to Law and An Introduction to Flexible Delivery - Final report on a project funded by the Centre for Enhancement of Teaching and Learning, UWS Macarthur* (Sydney: CELT - UWS, 2000), the articles in this journal locate the material within an analytical and argumentative framework that aims to make the discussion relevant well beyond the specific place and context in which the project was undertaken. I am indebted to the two anonymous referees and to the *Review's* editors for the extensive comment and criticism which has challenged many of my earlier views and subsequently added a greater depth and rigour to both pieces since the original submissions were made. In addition, I would especially like to thank Andrew Lynch who took the time to share with me great quantities of coffee, to discuss so many of the issues and ideas as this paper developed, and to comment on drafts throughout the process of writing and revision. The flaws are, of course, my responsibility alone.

1 M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994) xi-xii.

which has been making our classrooms, at their best, places where active, student-centred learning involves critical dialogue on law and justice. In the meantime, however, there has been another revolution fermenting in the academy. But this time it may undermine the developments in law teaching because in many instances the classroom will no longer be the principal site of teaching. The new revolution is one of "flexible delivery".

For many law teachers the move to flexible delivery is not a voluntary one. The continuing shift has been (and is still being) driven by two primary objectives, which apply at both institutional and departmental levels. First, there is constant pressure to reduce the cost of running programs and subjects – in short, there is a widespread need to do more with less.² Secondly, the joint factors of budget and marketing necessities have required universities and departments to capture a greater share of the education "market".³ Where minimal or no attendance on campus is required, a program may attract students who would not otherwise study at all, or may draw students who would otherwise attend another institution. The concomitant globalisation of higher education is also associated with this trend as previously localised programs are increasingly able to compete in an international market.⁴ With speedy access to large quantities of information at low cost and interactive communication, the Internet is fast becoming the principal vehicle for flexible delivery in higher education.⁵

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- 2 R Oliver & A Omari, Using online technologies to support problem based learning: Learners' responses and perceptions (1999) 15(1) *Aust Jnl of Educ Tech* 58, at 59; M Freeman, Flexibility in access, interaction and assessment: the case for web-based teaching programs (1997) 13(1) *Aust Jnl of Educ Tech* 23, at 24, 38. Mark Freeman notes both student and staff dissatisfaction with this trend: M Freeman, The role of the Internet in teaching large undergraduate classes (1996) 1(1) *Flexible Online Learning* <<http://www.lib.uts.edu.au/folp/article/sample2.htm>> (17 February 2000).
 - 3 G Hart, Creating an Online Teaching Space (1996) 12(2) *Aust Jnl of Educ Tech* 79, at 91-92.
 - 4 D Laurillard & D Margetson, *Introducing a Flexible Learning Methodology: Discussion Paper (Occasional Paper No 7)* (Brisbane: Griffiths Institute for Higher Education, 1997) at 1-2; R Mason, Anatomy of the Virtual University, paper presented at the Symposium *The Virtual University?*, University of Melbourne, 21-22 November 1996. For a critical perspective see ACL Zelmer, Flexible Learning: the New World Order and NTEU (1999) 3(6) *Advocate: Journal of the National Tertiary Education Union* 28.
 - 5 Flexible delivery should not, however, be equated simply with web-based delivery or computer-based instruction, but includes a variety of factors such as audio or video resources, administrative flexibility

Anecdotal evidence from the University of Western Sydney Macarthur and other universities would suggest that many law staff are facing the requirement that they make use of the Internet (and especially the World Wide Web) either to replace other modes of subject delivery or to complement them. The problems that arise centre not merely around technology issues – that is, what if one does not know how to put a subject on-line – but also around educational objectives; how does the web differ as a medium for subject delivery, and how should teachers deal with such difference? The potential of the Internet as an educational tool should not be underestimated nor lightly dismissed; it offers genuine opportunities for educational advancement in terms of new teaching and learning potentials.⁶ Unfortunately, these possible benefits seem frequently to exist more as a reaction to the institutional and management demands than as a developmental philosophy underpinning flexible delivery; educational benefits seem at times to arise more in spite of the push to flexible delivery rather than as a perceived reason for moving in that direction. While there is no question that for many academics the move to technology is educationally driven, the identification by Hart of “two camps of interest, one interested in the pedagogy of the technology and the other interested in the pragmatics” seems to be accurate.⁷

and flexibility within degree programs. Laurillard & Margetson, *supra* note 4; I Nikolava & B Collis, Flexible learning and design of instruction (1998) 29(1) *Br Jnl of Educ Tech* 59, at 61.

- 6 For instance, T Greening, WWW support of student learning: A case study (1998) 14(1) *Aust Jnl of Educ Tech* 49, at 54; M Wild & C Quinn, Implications of educational theory for the design of instructional multimedia (1998) 29(1) *Br Jnl of Educ Tech* 73; R Oliver, A Omari & J Herrington, Investigating implementation strategies for WWW-based learning environments (1998) 25(2) *Int'l Jnl of Instructional Media* 121.
- 7 G Hart, *supra* note 3, at 91. The trend towards flexibility in education should be treated with care with regard to both institutional and governmental contexts; the objectives involved could be interpreted far more broadly than identified here, but more worrying and less visible are the implications for the constitution of knowledge within universities. K Nicoll, 'Fixing' the 'facts': flexible learning as policy invention (1998) 17(3) *HERD* 291 presents an interesting (if somewhat convoluted) Foucauldian analysis of the emergence of the notion of flexibility in education policy as being a “discursive invention.” She argues that the value of knowledge has been changed as institutions are compelled to reorient and restructure themselves to environments and practices of flexible learning in a climate of economic rationalism. The suggestion is that the buzzword of “flexibility” is not a benign policy term to be used in the ways that academics and institutions might consider it appropriate with regard to objectives regarding the pursuit and passing on of knowledge, but is a value-laden term

As a result of these changes, existing strategies for teaching and learning will need re-thinking if the educational dialogue is to be effectively (re)constituted in the unfamiliar and impersonal contexts which are dictated by institutional imperatives to deliver legal education in a flexible manner. By explaining the development of a teaching strategy for mixed-mode flexible delivery in a first year law subject, this article seeks to explore critically the possibility of achieving educational objectives when lectures are delivered over the web. The aim is to explore the educational literature and apply it to the demands of flexible delivery so that even in the absence of great technical expertise or an abundance of resources, web-based delivery might still be educationally valuable and administratively manageable. My intention is not to prescribe a method of using the web, but to suggest that a departure from the classroom need not be a bad thing; the critical and reflexive approach to law teaching which dominates the best of contemporary practices in the classroom should similarly inspire our excursions into cyberspace.

The article begins by outlining the project background and rationale. Section Two looks at the context of a shift to web-based lecturing; it discusses approaches to learning, learning objectives and ways in which traditional lecturing seeks to achieve them. The third section turns to the development of a web-based lecturing approach for *Introduction to Law*, identifying with examples and reasons the strategies adopted for the web-lectures. A brief conclusion draws together the rationales for flexible delivery and the objectives of teaching, suggesting that teaching using the Internet

which pushes universities in particular directions. The result, she argues (at 300-01), is that contrary to the professed objectives of much flexible learning, "rather than becoming free, learners are subjected to more diverse and multiple relations of power involving, in many cases, an intensification of the authority of the employer in learning." By this she seems to mean that institutional structures are actually less flexible because they are geared more to the production of graduates and the demand for particular professional skills in the market. An example of a paper which would be an appropriate subject of Nicoll's criticisms, is R Lewis, The role of technology in learning: managing to achieve a vision (1999) 30(2) *Br Jnl of Educ Tech* 141. On the other hand, Nicoll also acknowledges and argues that, power being discursive, the meaning of flexibility is contestable; (at 302-03) she sees her own paper as a contribution to contesting meaning. To locate this article within Nicoll's understanding of the policy dynamics of flexible delivery, I am seeking if not to contest the meaning of flexibility at an institutional level then at least to contribute to the development of practices which might improve learning in spite of the policy invention she identifies.

requires, like any mode of teaching, a critical, creative and reflective approach if learning objectives are to be effectively met. On the web, this entails a fundamental reconsideration of the very idea of lecturing.

An evaluation and review of the mixed-mode project is the subject of the "Part Two" article which follows in this issue of the journal.⁸ Together, the two articles examine some of the ways in which the challenges of flexible delivery might not only be made manageable but may even become a catalyst for constructive change. It will be argued that while there are numerous reasons to exercise caution, there are good reasons to consider creative but simple web-based delivery as a positive alternative to large group lecturing, carrying significant potential for deep, holistic, student-centred learning.

The Starting Out Project

Introduction to Law is the foundation subject in the Bachelor of Laws degree at the University of Western Sydney Macarthur. In autumn semester 1999, the project *Starting Out: An Introduction to Law and An Introduction to Flexible Delivery* set about replacing the weekly face-to-face one hour lecture with a weekly web-based lecture which could be accessed by students at the time and place of their choice.⁹ The rationale of the project was threefold, addressing first the administrative pressures of timetabling and lecture/tutorial structure for the first year cohort, secondly fitting in with the university objectives for increasing flexibility in program and course delivery, and thirdly raising the possibility of significant developmental benefits, including an introduction to flexible learning in a foundation subject at the beginning of students' university education. Familiarity with and acceptance of web-based teaching could only assist in establishing a culture of learning in which the face-to-face lecture is no longer seen as essential, yet learning is not reduced to a seminar alone. A weekly two-hour seminar class still represented a substantial face-to-face component.

8 L McNamara, Why teaching matters and technology doesn't: An evaluation and review of web-based lectures (Flexible delivery in a first year law subject, Part II), this issue.

9 The project was funded principally by the UWS Macarthur Flexlearn grants scheme with support from the UWS Macarthur Faculty of Law (now the UWS School of Law). The grant applicants were myself (as project leader) and the Dean of the Faculty, Professor Robin Woellner.

A consultant with experience in web design for flexible delivery in university subjects was engaged to design and build the web page in consultation with the subject coordinator. The web page was intended to be simple to use and to contain few graphics or features which would slow the download process.¹⁰ The *Introduction to Law* web page would provide access to all substantive and administrative aspects of the course which might normally be dealt with in lectures. The web-lectures were posted on the Monday evening of each week. The material covered in each lecture would be the subject of the readings and tutorial for the following week so that all students had access to the lectures at least six days prior to their tutorial classes. To facilitate student interaction and input, there would also be a "feedback" email link to the subject coordinator for questions and comments, hypertext links to relevant sites, including relevant news and current affairs, and a discussion page for student chat. Thus, the "electronic lecture" would not be a set of explanatory lecture notes, but rather an active engagement between the teacher and students designed to enhance not merely the flexibility, but also the quality, of learning.

The aim was not to remove the learning aspect of the lecture and leave only the seminar; rather, the aim was to re-define the learning process of the course as a whole. However, the content of the lecture and its relationship with the seminar classes developed and changed over the course of the semester. The most significant development was the gradual conceptual shift that emerged not so much out of thinking through the teaching strategy in advance, but out of *doing* it and *reflecting* upon it. It will be explained that what began as a substitute or replacement for the face-to-face lecture became a web-lecture based around questions asked of students, rather than explanation provided to them. But this came to occupy a different conceptual place to that of the traditional lecture. The title of this article is its point: the lecture was in the end not a lecture at all, but instead became – much more so in hindsight than at the outset – a qualitatively different resource for student learning. The following

10 The pace of technological development and expansion of flexible delivery across the University of Western Sydney would no longer require these steps to be taken. Staff will find increasingly that institutions adopt a uniform and supported program or programs through which flexible delivery can be conducted. My suggestion for anyone considering a similar project would be to make the most of technology supported by one's institution.

explanation of how the teaching strategy was developed is inevitably coloured by such hindsight and thus more complex than it was prior to the project, but it is hopefully richer for the reflection which informs it.

Developing a Teaching Strategy

Approaches to Learning

The literature on teaching and learning in higher education has over the last ten to 15 years focused on forms of deep and holistic student-centred learning in higher education.¹¹ The idea of “deep learning” underpins almost all the educational literature: it is the approach to learning that teachers in higher education would generally like their students to adopt and engage in.¹² The opposite approach is a surface approach to learning. Entwistle identifies the deep approach as

active involvement stemming from interest in the content which leads to an elaboration of the learning material in seeking personal understanding. In contrast, the surface approach suggests anxiety or extrinsic motivation driving routine memorisation intended to reproduce aspects of the subject matter.¹³

11 Most notably in the Australian context P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) on teaching generally, and Le Brun & Johnstone, *supra* note 1, on teaching law.

12 Ramsden, *supra* note 11, at 18-21 notes that there appears to be a general consensus among lecturers with regard to the aims of higher education. This is not to say that staff expectations of students are unified with regard to expectations of students; Akerlind & Jenkins discuss the need for communication among staff so as to have consistent, fair and realistic expectations about student performance and learning outcomes at different stages of a degree: G Akerlind & S Jenkins, Academics' views of the relative roles and responsibilities of teachers and learners in a first-year university course (1998) 17(3) *HERD* 277.

13 N Entwistle, Approaches to learning and forms of understanding, in B Dart & G Boulton-Lewis eds, *Teaching and Learning in Higher Education* (Melbourne: ACER Press, 1998) 73. See also Ramsden, *supra* note 11, at 46 and throughout. There is not the space in this paper to undertake a review of the basic issues, but good short reviews can be found, for instance, in M Israel, Teaching criminology through interview-based assignments (1997) 8(2) *Legal Educ Rev* 141; C Bond & M Le Brun, Promoting Learning in Law (1996) 7(1) *Legal Educ Rev* 1; R Johnstone & G Joughin, *Designing Print Materials for Flexible Teaching and Learning in Law* (Sydney: Cavendish, 1997). More substantial coverage is found in Le Brun & Johnstone, *supra* note 1, and

Learning outcomes associated with the deep and surface approaches are described by Ramsden:

Deep approaches generate high quality, well-structured, complex outcomes; they produce a sense of enjoyment in learning and commitment to the subject. Surface approaches lead at best to the ability to retain unrelated details, often for a short period. As they are artificial, so are their outcomes ephemeral.¹⁴

The distinction between deep and surface learning has been described by Goldring as it applies to the discipline of law:

Students taking a surface approach tend to learn by rote, not to question the assumptions that underpin the material nor to relate it to its context. Students with a deep approach examine the arguments critically, question the assumptions on which they are based and relate them to previous knowledge and understanding. ... Understanding of legal material, both from a perspective of internal consistency and structure, and of its relations to the social context, is essential to the making of sound professional judgments and evaluations.¹⁵

As suggested at the start of this article, Le Brun & Johnstone's book of 1994, *The Quiet (R)evolution*, was a theoretical, practical and exemplary excursion through the themes of the education literature at the time, applying it specifically to teaching in Australian law schools. Like Ramsden, however, their focus was on rethinking, revising and improving traditional teaching methods. Both works centred around rethinking the approach to traditional lecture and small group teaching rather than exploring the possibilities for effective and improved teaching which might lie within new media.

R Johnstone, *Printed Teaching Materials: A new approach for law teachers* (London: Cavendish, 1996). Note also the idea of holistic learning (for instance, see Ramsden, *supra* note 11, at 42-44) and the relationship of deep and holistic learning with strategic learning: Le Brun & Johnstone, *supra* note 1, at 59-63.

14 Ramsden, *supra* note 11, at 82. See also Johnstone (1996), *supra* note 13, at 11; Le Brun & Johnstone, *supra* note 1, at 59-60.

15 J Goldring, Coping with the virtual campus: Some hints and opportunities for legal education (1995) 6(1) *Legal Educ Rev* 91, at 107-08, referring to F Marton & R Saljo, On Qualitative Differences in Learning II: Outcomes as a function of the learner's conception of the risk (1976) 46 *Br Jnl of Educ Psych* 115.

The literature on web-based instruction in law, while not extensive, has gained some currency.¹⁶ Goldring canvassed the issues surrounding the “virtual campus” of the law school in an exploration of teaching law by distance education and, while not arguing for a removal of face-to-face teaching, took seriously and positively the potential of new technologies for a quality legal education.¹⁷ The preference and pressure within most law schools appears to be not, however, for total off-campus delivery but for a mixed mode of flexible and face-to-face delivery.¹⁸ Laurillard & Margetson¹⁹ look at mixed mode issues as they relate to institutional administrative and resource needs generally (more so than at the delivery of individual subjects), while Johnstone & Joughin²⁰ explore print-based flexible teaching in law which usually relies upon the production of hard-copy materials at the commencement of a subject rather than ongoing electronic delivery throughout a teaching period.

The Law Faculty at UWS Macarthur was founded in 1994 and took its first intake of students in 1995. The Faculty objectives reflect current themes in educational literature and are expressly stated in terms of deep, student-centred learning:

- “Students will be expected to bear a high level of responsibility for their own learning. The model assumes active

16 The subject has attracted some attention at conferences: C Clark, Making a start in internet resources to encourage student learning, paper presented at the annual conference of the Australasian Law Teachers’ Association 1998, University of Otago, Dunedin. <<http://www.otago.ac.nz/law/ALTA/ALTA%20Papers/Clark.html>> (17 February 2000); D Parker, Using the internet for class teaching: some further reflections, paper presented at the annual conference of the Australasian Law Teachers’ Association 1998, University of Otago, Dunedin. <<http://www.otago.ac.nz/law/ALTA/ALTA%20Papers/Parker.html>> (17 February 2000). The published Australian literature on law and the Internet in either law, education or technology journals is negligible. In the US, see M Geist, Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web (1997) 11 *Harv J of Law & Tech* 141.

17 Goldring, *supra* note 15, at 110, 115-16.

18 The balance is already changing; the post-LLB Practical Legal Training courses are widely offered in an on-line mode. The LLB program at Macquarie University has a substantial intake of external students. At the University of London, an LLB is offered completely on-line. Nova Southeastern University in Florida, USA, has technology and Internet delivery as its core focus in the Law program.

19 Laurillard & Margetson, *supra* note 4.

20 Johnstone & Joughin, *supra* note 13.

learning rather than passive instruction and rote learning...."²¹

- The teaching, learning and assessment processes identified aim to achieve such objectives include teaching "to develop deeper learning skills" and an "emphasis on understanding rather than rote learning."²²
- "An emphasis of student-focused, active learning, with students taking responsibility for their learning, rather than simply 'absorbing' knowledge dispensed by academic staff"²³
- "Encouragement of deep rather than shallow learning ..."²⁴

It is in this context that *Introduction to Law* is located as the foundation LLB subject. The challenge throughout is the pursuit and maintenance²⁵ of deep learning through a medium (computing) that is not traditionally seen as facilitating such outcomes.²⁶

The Possibility of Deep Learning Using Web-lectures

Laurillard has examined the use of technology in teaching in higher education generally, though there is little discussion of the World Wide Web.²⁷ Nevertheless, she reviews teaching in the context of effective use of technology. Teaching, she explains, is not merely the imparting of knowledge; it is the mediation of learning – the aim is to make learning possible.²⁸ Laurillard describes learning as a

21 *A Vision for the Faculty of Law, UWS Macarthur* (September 1996) at 1.

22 *Id* at 2, 3.

23 *UWS Macarthur Faculty of Law Course Documentation* (1995) at 10 (references omitted).

24 *Id*.

25 This presumes that current teaching does achieve deep learning outcomes. It is an assumption that the literature may not generally support.

26 For instance, Ramsden, *supra* note 11, at 159-60 is pessimistic, though Le Brun & Johnstone, *supra* note 1, at 244-45 were willing to allow for some positive vision. The rapid change in technology and content on the Internet during even the last five years is, however, suggestive of grounds for more optimism.

27 D Laurillard, *Rethinking University Teaching: A framework for the effective use of educational technology* (London: Routledge, 1993). The material is now 8 years old, but the critical discussion at 120-26 of hyper-text media (such as the web) is excellent. See also 167-71 on computer conferencing (which would now be identified as simple, threaded discussion groups).

28 *Id* at 13-29 [at 13, quoting Ramsden *supra* note 11, at 5]. Particularly relevant to the idea of law as imparting knowledge and what constitutes teaching, Robert Gordon argues that one's understanding of what law is might inform one's approach to teaching law: R Gordon,

conversation: "the learning process must be constituted as a dialogue between teacher and student" and as "a form of interaction between teacher and student."²⁹ Le Brun and Johnstone explain the importance of a student-centred approach to learning, and describe one interpretation of teaching as an "act of intervention in the students' construction of knowledge."³⁰ The conversational interpretation need not imply that face-to-face teaching is always necessary; rather, the intervention which constitutes teaching is one which in its totality represents a dialogue. Web-based teaching might thus form one dimension of that dialogue.

While the objective of deep learning permeates the literature on Internet-based teaching in other disciplines, this does not lead to a uniformity in teaching methods. This is unsurprising – traditionally, most subjects are taught in classrooms, but the approaches and activities which occur within those classrooms vary greatly. The use of the Internet can be broken down into two often overlapping approaches: teaching *through* the Internet, and teaching *with* the Internet. In the former approach, the technology is used as a vehicle for learning; students construct their knowledge through the use of the Internet as an interactive tool, working with discussion pages and web-based hypertext media in non-linear models of learning, taking control over the approach to and structure of their learning.³¹ The focus on interaction gives rise to substantial parallels with the theories and practice of problem

Critical Legal Studies as a Teaching Method, Against the Background of the Intellectual Politics of Modern Legal Education in the United States (1989) 1(1) *Legal Educ Rev* 59, at 76-83.

- 29 Laurillard, *supra* note 27, at 94, 95; generally 96ff.
- 30 Le Brun & Johnstone, *supra* note 1, at 71, 89-92. For an exploration of how law students see learning, see Bond & Le Brun, *supra* note 13, where the authors argue at 28-29 that "learning is not simply the transmission of content or the facilitation of learning. It involves our active intervention to help students learn." On the complexity of lecturers' perceptions of student learning and their own place in it, see S Burroughs-Lange, University lecturers concept of their role (1996) 15(1) *HERD* 29.
- 31 See for instance, Greening, *supra* note 6, at 49-54; A Brown, Designing for learning: What are the essential features of an effective online course? (1997) 13(2) *Aust Jnl of Educ Tech* 115, at 116-17; Oliver, Omari & Herrington, *supra* note 6; Wild & Quinn, *supra* note 6; and to a lesser extent R Cohen, Business Law in Cyberspace (1997) 15 *J of Legal Studies Educ* 169. Le Brun & Johnstone, *supra* note 1, at 243-48 address non-Internet forms of computer based instruction with similar goals. Neil Selwyn is less optimistic about the use of the web and places some caveats on the widespread enthusiasm: N Selwyn, Virtual concerns: restrictions of the Internet as a learning environment (1999) 30(1) *Br Jnl of Educ Tech* 69.

based learning (PBL).³² Teaching through the web in any given subject could for instance involve instruction and assessment dominated by a combination of problem-based learning which draws on the searching and retrieval of information through the web, contribution to discussion pages, and perhaps the building of a simple home page.

On the other hand, teaching *with* the Internet is characterised by the use of the Internet as a vehicle for more efficient course delivery, but in an essentially non-interactive and non-collaborative way. This approach would typically involve the delivery of course materials, and basic communication functions from lecturer to students, or student to lecturer. It is easily suited as a supplementary strategy for traditional teaching structures. It often overlaps with the first approach where discussion pages are included in otherwise non-interactive courses or course support web pages.³³

Is one of the two approaches to teaching better than the other? This, I would argue, depends on the teaching objectives, the resources available to students and staff,³⁴ and other aspects of course structure and design. While there is some lament at the under-utilisation of the technology and its potentials,³⁵ this seems to some extent to ignore the context of flexible delivery and more importantly to miss the point. First, highly interactive teaching strategies require time, money and (frequently) technological expertise – resources frequently unavailable or scarce in contemporary higher education. Secondly, if the point is to achieve teaching and learning objectives, then this should drive the use of technology; if the course as a whole does not demand using technology to its limits, then there seems little reason to do so.³⁶

32 Oliver & Omari, *supra* note 2; Greening, *supra* note 6.

33 For instance, this approach dominated the projects in G Hart, *supra* note 3 (a management statistics subject); M Freeman (1997), *supra* note 2 (business finance); Parker, *supra* note 16 (company law); C Clark, *supra* note 16 (company law and an Australian legal system course); and C Hotchkiss, The Internet as a Teaching Tool in Business Law: New Opportunities and New Resources (1997) 15 *J of Legal Studies Educ* 257 at 266-69 (intellectual property issues). Anecdotal evidence leaves no doubt that there are many law subjects throughout Australia & elsewhere which use the Internet significantly, though are not documented by publication.

34 Freeman (1997), *supra* note 2, at 26 identifies a range of problems that can occur where the teaching process is poorly resourced.

35 For instance, Greening, *supra* note 6, at 54; Oliver & Omari, *supra* note 2, at 59-60.

36 Greening, *supra* note 6, at 53-54; S Ehrmann, Asking the right questions: What does research tell us about technology and higher learning?

The use of the web in Introduction to Law was intended to replace the lectures. It was not intended to establish a distinct form of computer managed instruction, or the complete basis for course instruction and evaluation. The instructional purpose of the web-lectures bore a closer analogy to distance education or open learning than to interactive computer-based instruction.³⁷ The mixed-mode of teaching offered the opportunity to use different strategies from those employed in distance learning, and the web offered different possibilities than traditional print-based media. The implications for student workload (and the corresponding impact on learning outcomes) were also a consideration regarding the extent to which hypertext, information and interactivity should drive the web-lectures.³⁸ Hence, the approach to teaching was primarily to teach *with* the Internet, rather than *through* it.

Given this approach, the literature on distance learning is valuable as it provides an excellent guide to the ways in which lecturing over the web might be done creatively and with a view to deep and holistic processes of learning. Among the UK sources which offer general guidance on compiling

(1995) 27(2) *Change* 20, at 26-27. Generally, see R Owston, *The World Wide Web: A Technology to Enhance Teaching and Learning?* (1997) 26(2) *Educ Researcher* 27.

37 The web has become a significant medium for distance learning both in interactive and non-interactive ways. The most comprehensive exploration has been undertaken by the Open University in the UK where a series of articles examines the approaches and outcomes: P Thomas et al, *A holistic approach to supporting distance learning using the Internet: transformation, not translation* (1998) 29(2) *Br Jnl of Educ Tech* 149; L Carswell et al, *A holistic approach to supporting distance learning using the Internet: transformation, not translation* (2000) 31(1) *Br Jnl of Educ Tech* 29; other articles in the same journal are forthcoming. See also M Collins, *Comparing Web, Correspondence and Lecture versions of a second-year non-major Biology course* (2000) 31(1) *Br Jnl of Educ Tech* 21; R Thompson, J Winterfield & M Flanders, *Into the world of electronic classrooms: a passport to flexible learning* (1998) 29(2) *Br Jnl of Educ Tech* 177.

38 The unwieldy nature of information on the web was a reason to contain rather than expand the use of hypertext. While some links were included, this was generally not part of the subject content but peripheral or incidental to it. That is, the aim was to illustrate for students the potentials of the web, without requiring them to, as it were, climb all the trees in the forest at once. The significance of a manageable workload is noted by Ramsden, *supra* note 11, at 137-38; see also *infra* note 50 and accompanying text. The unknown computing competency would make a highly interactive subject inappropriate for first year students; the necessity for students to understand the medium in order to get the most out of it is noted by Thompson et al, *supra* note 37.

distance education material Race³⁹ and Rowntree⁴⁰ are both excellent, the latter making good use of a range of examples. For law teachers specifically, Johnstone's 1996 work *Printed Teaching Materials*⁴¹ provides a theoretical background and practical examples, while the later (1997) *Designing Print Materials* by Johnstone & Joughin⁴² is shorter and less theoretical, but still an excellent resource for considering ways in which web-based teaching might be undertaken. These four publications all have examples of how teaching materials may be designed for flexible or distance learning, but their real strength lies in facilitating reflection upon one's teaching.⁴³

With the teaching and learning objectives in mind, and having formulated an approach to the use of the web with the benefit of the literature on distance education, deep learning through web-lectures was seen as a real possibility, though the significance of a mixed mode of web and face-to-face teaching cannot be understated. The web-lectures were to be one aspect of a whole teaching process which aimed to facilitate deep learning; to draw on Laurillard's conversational interpretation, "the question now before us is the extent to which the educational media can support the conversational framework and thereby assist the learning process."⁴⁴

Learning Aims in Introduction to Law

The subject as a whole is designed first to require students to engage in critical analysis of a selection of issues related to the nature and operation of law, legal institutions and the legal process; and, second, to equip students with basic skills to undertake deep learning in other subjects.⁴⁵

39 P Race, *The Open Learning Handbook: Promoting quality in designing and delivering flexible learning* 2nd ed (London: Kogan Page, 1994) esp chs 1-3, 5, 10.

40 D Rowntree, *Teaching Through Self-Instruction: How to develop open learning materials* rev ed (London: Kogan Page, 1994).

41 Johnstone, *supra* note 13.

42 Johnstone & Joughin, *supra* note 13.

43 For a useful "top 10" list and commentary on references on teaching materials, see R Johnstone & M Le Brun, Our Top 10 Books on Education: For the 'Educationally-Curious' Bibliophile (1994) 5(1) *Legal Educ Rev* 105; to that list should be added their own book of that year, *The Quiet (R)evolution*: Le Brun & Johnstone, *supra* note 1.

44 Laurillard, *supra* note 27, at 105.

45 The relationship between course content and approach to learning is important with a view to establishing a foundation for future thinking

Introduction to Law is envisaged as a subject where students encounter, often for the first time, the processes of critical inquiry and analysis which characterise tertiary education. The focus of the subject has always been the course readings. The lectures and tutorials have been ways to draw students into inquisitive and analytical processes. Tutorial questions are very directly related to the course readings and students are required not merely to understand any one article or extract, but to be able to offer some critical reflection upon the readings. They are required to compare and contrast the readings, making judgments about what arguments are convincing, what arguments are flawed, what implications arise from the different arguments in the literature, what questions are raised, answered and unanswered. They are asked to consider how these matters impact upon what they do and the choices they make.

The assessment task related to the "Law, Justice and Jurisprudence" component covered in the lectures and seminars is an open-book final examination. This requires students to answer essay based questions which centre around critique and analysis. The questions usually require students to draw together and analyse different readings from the course; students are informed from the start of the course that it will not be sufficient simply to explain different readings – they must engage in analysis of the materials.

Achieving the Learning Aims Through Face-to-face Lecturing

While there is no shortage of critiques regarding the poverty of lecturing as a mode of instruction, there is also a good deal of material regarding how to lecture well and make the most of what is often a teaching framework academic staff are locked into as a matter of university or faculty administration.⁴⁶ Face-to-face lectures then become one part of the

about law and deep learning skills. Keyes & Orr note that legal theory is significant in first year because it enhances both student understanding of course content and student learning in future subjects. It builds a more sophisticated and holistic conception of law and of learning with "a respect for the different possibilities of law and legal knowledge." It is also consistent with "an educational process creating both an awareness of different ways of thinking and a flexible framework of knowledge." M Keyes & G Orr, Giving theory 'A Life': First Year Student Conceptions of Legal Theory (1996) 7(1) *Legal Educ Rev* 31, at 52.

⁴⁶ Le Brun & Johnstone, *supra* note 1, at 257-72 provide a good selection of damning criticisms as well as some guidance on how to avoid the

whole teaching strategy in a subject; they may not be the preferred or most effective way of contributing to deep learning by students, but still might serve explanatory⁴⁷ and thought provoking purposes,⁴⁸ especially when placed within a subject structure which also involves teaching in smaller groups.⁴⁹

The face-to-face lecture in *Introduction to Law* was used in previous semesters to explain materials as a way of enabling students to grasp the readings effectively, as a stimulus to read the materials critically with a view to encouraging the deep learning objectives, and as a guide to drawing students into the process of critical inquiry and analysis.⁵⁰

Teaching evaluations in previous semesters indicated that students in the past have found the explanatory aspect of the lectures very helpful. It offered a guide to themes and arguments, which was most useful when readings were difficult. Students were encouraged to listen and take notes where relevant (with the benefit of point-form overheads to structure the lecture and their approach to the materials). In 1998, students were provided with these overheads through the Law Library web-page.

The more sophisticated aspects of the lecture were concerned with analysis of the materials and the arguments. Questions were posed for students, attention was drawn to particular parts of the readings, and they were encouraged to consider how a consideration of specific passages and issues might assist them in answering broader and more thematic tutorial questions.

worst pitfalls. For criticism, see also Ramsden *supra* note 11, at 152-56, 165-70; Laurillard, *supra* note 27, at 107-09; A d'Amato, *The Decline and Fall of Law Teaching in the Age of Student Consumerism* (1987) 37 *J Legal Educ* 461, at 464-65. Race, *supra* note 39, at 182-94 provides a very constructive critique. D Bligh, *What's the use of lectures?* 5th ed (Exeter: Intellect, 1998) provides a qualified defence of lectures (see esp 24-25) and numerous strategies to improve them. R Cannon, *Lecturing* 2nd ed (Canberra: HERDSA, 1992) provides both critique and guidance.

47 Le Brun & Johnstone, *supra* note 1, at 263-64.

48 On promoting thought in lectures, see Bligh *supra* note 46 at 208-13.

49 It should be noted that small group teaching by no means guarantees effective student learning: Le Brun & Johnstone, *supra* note 1, at 272-91; Ramsden, *supra* note 11, at 156-59.

50 Cannon, *supra* note 46, at 31, discusses the process of moving from "telling" in lectures to that of learning and teaching: "The basic principle to keep in mind is that where [purposes other than presenting

The benefits of the face-to-face lecture lay particularly in its transient nature. Not reduced to a permanent form, lectures could include express explanations about the materials without fear of substituting for students completing the readings themselves. While students could later use their lecture notes to assist them in reading, comprehending and analysing the materials, the absence of any concrete notes from the lecturer meant that the focus remained on the course materials and readings.

Achieving the Learning Aims Through Web-based Lecturing

The prospect of a web-based lecture raised some difficult issues. How could a meaningful explanation of the readings be provided, especially for more difficult pieces, without that being merely a simplified and less voluminous precis of the materials?⁵¹ If the focus was to remain on the course readings as the object of study, how could the pitfalls of an approach centring around reading lecture notes be avoided?

Web-lectures as an Explanatory Tool: Some Concerns

If students are to understand the materials and the point of the course, they need to read and comprehend those materials in a sophisticated manner. Simplified explanations in permanent form may detract from such a project, hence my reluctance in the web-lectures to provide written explanations of the readings.

There are assumptions implicit within this position. The most important of these is that students attach more significance to the written word than to the spoken word. This assumption can be justified to some extent on three different grounds. First, the discipline of law turns on words: they are the tools of lawyers and it is in the written form that law in the Western tradition comes into existence. Within such a discipline the leaning towards the written word will (and arguably should) be the focus of study. Second, *Introduction to Law* was centred around such a premise: the course materials and readings are the focus of inquiry and analysis. Third, students are instructed in legal writing that the best

information about a subject] is the purpose, students must be placed in a situation where they have to think..."

51 There was also the need to ensure that the lectures did not increase student workload, especially by simply increasing the readings. On

support for their arguments comes from written sources. Moreover, it is frequently difficult to impress upon students the degrees of authoritativeness associated with different works. All law teachers will be familiar with the (depressing) tendency of students to take the “easier” options of reading headnotes rather than judgments, textbooks rather than casebooks, commentary rather than cases, “nutshells” rather than texts, lecture notes rather than course readings.⁵²

It was one of the principal aims of the “Starting Out” project not to offer students yet another alternative to reduce their readings. This would defeat the entire purpose of the Faculty and subject objectives. The lecture as an explanatory tool needed to be different in a web-based format. The transient nature of face-to-face instruction can facilitate a reflective and interpretive student-centred approach, but this evaporates when explanation in lecturing shifts to written form. If the integrity and value of the educational process is to be maintained, written explanation of readings (while still necessary at times) cannot be permitted to drive web-based delivery.⁵³ An alternative approach may be to use the multi-media aspects of the Internet more substantially (including, for instance, video or sound), but this would require a great deal more time, expertise and resources than many academic staff or departments have.

Web-lectures as an Explanatory Tool: A Guide to the Readings

The objectives of the Faculty and the subject underpinned the web-lectures. The web-based lectures were a guide to the readings (just as the face-to-face lectures were also a guide to the readings) with a great deal of specificity, premised upon student centred learning as the most effective way to achieve the subject and Faculty objectives. The lectures sought to take students through the readings very closely, posing questions and directing them to those particular passages in the

the detrimental effect of heavy student workload, especially that driven by content, see Ramsden, *supra* note 11, at 137-38.

52 The reflections by D’Amato *supra* note 46, at 465-66 [note 9] identify the worrying nature of this trend with regard to the absence of meaningful critique and analysis, and perhaps even the absence of the possibility of such meaningful engagement.

53 I would argue that similar concerns are raised when print-based lecture materials are used. If the objectives are those of ‘deep learning’, it seems difficult to identify the processes by which such learning occurs if explanatory material dominates the educational process. The

readings which best explained the article or extract at hand and drew their attention to the issues which were the focus of the questions.

Web-based lectures in this way still serve the explanatory purpose of lectures. Arguably, they enhance some aspects of the learning process because they allow students to work through the material at their own pace.⁵⁴ They enable a lecturer to direct students comprehensively through an argument, focusing on the crucial issues, showing students how to read a complicated piece of work. Such instruction simply cannot be done in a face-to-face lecture.

Some extracts of the lectures follow.

NATURAL LAW

Example 1

The first point Davies [at 61] makes about natural law concerns its source: "it is not created by any person or culture, but [has] an existence independent of the individual or collective will. Natural law is something which is said to exist whether or not any person, judge or legislature has ordained what the law is."

How does the quote from Cicero demonstrate this point? (Hint: Use the four issues which Davies raised at 61-2.)

INTERNATIONAL LAW & THE ACQUISITION
OF SOVEREIGNTY

Example 2

What is sovereignty? If you are not sure, get out a dictionary and look it up before you move on. The British acquired sovereignty over Australia under the rules of International law. International law is a body of law established by custom and by agreement and which regulates the relationships between nations. Among the relevant aspects of such law in the 18th century were rules about how countries (of Europe) could acquire new lands anywhere in the world. There were three ways identified:

- 1 Cession (which involved treaties)
- 2 Conquest
- 3 Occupation of land that was terra nullius.

If Britain, for instance, acquired land by any of these methods, international law recognised that such an acquisition would be valid. The correctness of such an acquisition could not be adjudicated in British courts; it was the prerogative of the Crown.

open-learning literature is similarly 'un-explanatory' favouring an active participation by students in the learning process.

54 Richard Clark notes that the ability to work at one's own pace was the most common reason given for preferring self-directed study: R Clark, Student Opinion of Flexible Teaching and Learning in Higher

While the acquisition itself could not be adjudicated in the British courts (the municipal courts as they are referred to in the judgment), what was an issue for the courts was the system of law to be applied in the new colony. That is, the acquisition of sovereignty is not justiciable, but the consequences of such an acquisition are justiciable. For instance, the question might be whether British law applies immediately? Or does the existing law of the land continue? Or is it some other arrangement that occurs?

Now, under which of these three modes of acquisition was sovereignty acquired over Australia?

The acquisition of sovereignty

What do the three ideas mean? First, cession refers to the making of treaties. Conquest – well, that almost speaks for itself. But the “occupation of land that was terra nullius” – what does that mean?

In short, it means that there was nobody on the land at all. This method of acquisition referred to “desert uninhabited countries” which were then occupied and became the property of Britain. This doctrine – the doctrine of terra nullius – was, however, expanded beyond such empty lands to include some inhabited lands.

- What were the characteristics, as the British perceived them of such lands – “countries already peopled” – to which the “expanded doctrine of terra nullius” applied?
- Why would treaty or conquest not be applicable, in British eyes, to the “occupation” of such lands?
- Does this mean there are four or three categories under which land might have been acquired by a foreign power?

Explanation Through Questions: Avoiding Surface Learning

Adopting a question-based strategy was not without its problems. Ramsden describes one set of teaching materials where students were prompted with questions about the readings:

When the Gothenburg researchers tried to give students hints about how to take a deep approach to reading a text – by inserting questions that encouraged students to relate the various parts – a curious thing happened. The students in question actually adopted a rather extreme form of surface learning. They “invented” a way of answering the inserted questions without engaging with the text. The research team’s questions, which were intended to be a means of helping students to understand what they were reading, were perceived by the students as ends in themselves. And

in order to answer them expeditiously, the students adopted a superficial approach to reading, focused on being able to mention the parts of the text.⁵⁵

The point he draws out is that student learning processes are dependent upon their perceptions of what is required; there is no point in helping students develop deep learning skills “if the educational environment is giving them the message that surface ones are rewarded.”⁵⁶ Unfortunately Ramsden offers little further commentary or insight on what appears to be a significant point; that is, it would seem to warrant more investigation how such outcomes might be avoided, especially when the techniques seem directed at the enhancement of a fundamental skill and learning process.⁵⁷

Rather than dispose of a question-based approach, the focus of the web-lectures and the subject as a whole was the development and application of critical and analytical skills so as to compare, contrast and critique the readings once they had been understood. The web-lectures in *Introduction to Law* sought to avoid the surface learning outcomes by expressly presenting complex questions which were then the focus of seminars. As the following section explains, the key questions to be answered (the seminar questions) could not be sufficiently addressed with only the surface or rote knowledge which might be acquired from the questions which centred on the content of the readings.

Web-based Lectures as a Critical Tool: Inquiry and Analysis of the Readings

How can processes of critical analysis be introduced and taught to students using web-based lectures? The strategy employed built on the question-based explanatory approach.

Students were frequently asked to compare and contrast materials or particular arguments and themes from different readings. In doing this, they were often reminded expressly of the analytical objectives of the course. It was pointed out to students that these were the types of questions which would feature in the examination; that is, they would be required in exams to reflect upon the arguments and themes

Education, in W Wade et al eds, *Flexible Learning in Higher Education* (London: Kogan Page, 1994) 137.

55 Ramsden, *supra* note 11, at 63; he also identifies – though does not elaborate on – a similar outcome in Australia.

56 Ramsden, *supra* note 11, at 54.

in the readings, making an argument in response to a question and supporting their answer with appropriate reference to the course readings.

For instance, where some questions referred students to page references and the content of the materials, others required students to use the answers to the questions regarding content in order to compare and contrast different parts of the materials. In example 3 below, the first three questions refer to the content of the materials, while the last attaches to the critical and thematic issues which arise:

Example 3

If the political association flows from human nature, does it matter who Aristotle included in the political community?

- Or who was excluded from the community?
- And, importantly, does this mean that the law is “natural”, or does it perhaps mean something different?
- How might this relate to the point raised earlier: what if the “natural” is not natural at all, but something socially constructed?

Socratic Possibilities

The web-lectures hold within them the possibility of something approaching a Socratic style of teaching, at least insofar as they enable the posing of questions to a student with a view to establishing that a proposition is understood (the content based questions) and then posing questions about that proposition as it relates to other propositions also understood correctly (the critical and analytical questions). The objective is to raise the possibility of contradiction,⁵⁸ or of understanding the possibility of relationships between the propositions that students may not have considered beforehand.⁵⁹ The web-based form of this teaching strategy⁶⁰ may

57 On critical reading, see D du Boulay, *Argument in reading: what does it involve and how can students become better critical readers* (1999) 4(2) *Teaching in Higher Educ* 147.

58 See Le Brun & Johnstone, *supra* note 1, at 282-83 regarding Socratic method as propositions and contradictions.

59 On Socratic method, see also D’Amato, *supra* note 46, at 466; A Stone, *Legal Education on the Couch* (1971) 85 *Harv LR* 392 at 406-08.

60 One suggestion put to me was to refer to it as techno-Socratic, though while this captures the technological aspects, it echoes too much of the lawyer as technician (precisely what I wish to avoid). Another option might be “cyber-Socratic.” On the other hand, maybe such a la-

hold great possibilities because it enables students to travel at their own pace, and for each student to engage in the dialogue individually.⁶¹

The dialogue in a web-based format is more significant than in, for instance, a pre-written study guide because it takes account of feedback, understandings (or misunderstandings), or developments which occur from week to week. The conversation which constitutes teaching occurs not just within the web-lecture, but within the subject as a whole.

The relationship between the web-based lectures, the seminars and the exam

The critical and comparative questions (such as the fourth question in example 3) form the heart of the seminars so that the web-lecture constitutes a part of the critical apparatus for deep learning, but is closely connected to the seminars. Students are required to use the knowledge they acquire through the readings and lectures in order to understand more complex issues.

The web-based lectures and the final examination are both written in such a way as to provide students with a solid grounding in both the content of the course and the analytical skills they will need to demonstrate to answer the examination questions. On the other hand, they are also designed to avoid students merely reciting the lecture notes. The examination is intended to contribute to and be reflective of the Faculty and subject objectives of deep learning and critical analysis.

Web-based Lectures and Communication

Among the most significant challenges faced in developing a teaching strategy was the issue of communication in the web-based lectures. Two facets of the communicative process were of particular concern: the degree of formality of the lectures and the de-personalisation of teaching and learning.

bel should be avoided as it does not take seriously enough the skill and sophistication of good Socratic teaching and overstates the interactive nature of what is a static use of the web.

61 I am unsure of the extent to which it may address some of the concerns identified by Morgan regarding the "hesitant student" and issues of gender, such as the silencing of women in the classroom through Socratic teaching: J Morgan, *The Socratic method: Silencing cooperation* (1989) 1(2) *Legal Educ Rev* 151. On the one hand, it would seem prima facie to address the silencing of women in the classroom

The Question of Formality

The question of formality is significant in the teaching process, be it face-to-face lecturing, seminar teaching or web-based learning. The style chosen by any teacher is generally that with which they are most comfortable. The web-lectures were approached on this basis, and I wanted them to be informal and at times conversational.⁶² The desire was to distinguish them from other written materials students use and to infuse them with the character of the individual lecturer in order to personalise the learning process at least to some extent.

The problem which arises most pressingly, especially in a first year subject, is that students are expected to write their essays in a formal and scholarly manner. Would a less than formal written presentation mislead students as to the expectations of their own written work? To prevent this problem students were expressly instructed in the first web-lecture that the lectures served a different communicative purpose than an essay, thus the style and tone was informal; essays were to be presented as a formal, scholarly piece of work.

During semester there were no queries nor problems with written expression being informal. There is no way of knowing whether the instruction in the first web-lecture was responsible for this. My impression is that it acted as a clarification; students seemed to understand that formal written expression and correct legal citation would always be required in essays.⁶³

The De-personalisation of Learning and Teaching

When face-to-face lecturing is abandoned, students are deprived of the presence of an academic. As a matter of information, this may make little difference. As noted above, it may even improve the student's grasp of the materials. Teaching, however, is not only about information and explanation, but about communication. If one role of the academic is to foster an intellectual culture, then this can perhaps be

(by virtue of removing the classroom), but on the other hand an increased sense of engagement in web-lectures may serve to illuminate exclusion in seminar classes.

62 This approach is recommended by Rowntree, *supra* note 40, at 155, 207-11; Johnstone, *supra* note 13, at 80; Race, *supra* note 39, at 105-31, esp 106-10, 129-31.

undertaken through the imparting of the desire for knowledge by example. It is difficult to convey one's passion for learning through a non-personal medium. In every student's life they have stumbled across good teachers and bad, inspiring and uninspiring ones. Race describes the benefits of attending a lecture as including the value of a shared experience and the whetting of the appetite to learn – "creating the want."⁶⁴ The shift to web-based delivery is one which needs to be balanced carefully with the significance of such communication and with the possibility that a Faculty might lose its intellectual constituency.

Such an issue is compounded by the casualisation of teaching in academic programs everywhere. If a full-time staff member is to coordinate and lecture in the subject, and those lectures are run across the web, it is quite possible that students could go for a number of semesters before being taught face-to-face by a full-time member of academic staff.⁶⁵

This problem was addressed at least to some extent by "personalising" the lectures through the use of an informal style, the subject coordinator/lecturer attending each tutorial class in the first two weeks so as to at least identify himself to the class, weekly consultation hours when the lecturer was available to all students in the subject, and by maintaining face-to-face seminar classes. Nevertheless, web-based delivery of lectures is undoubtedly accompanied by de-personalisation of teaching.⁶⁶

Conclusion

The teaching strategy implemented in *Introduction to Law* was designed with the aim of achieving the objectives of the

63 Race, *id* at 130, argues that conversational lectures, including the use of contractions (see also Rowntree, *id* at 208-09) will not impact negatively on student writing but, if anything, favourably as it encourages them to write in a simple and straightforward manner.

64 Race, *supra* note 39, at 184.

65 This is problematic not because casual staff are not good teachers (often students would claim they are better!), but because of the structural impediments they face. Casual staff – while often excellent (and those who taught in *Introduction to Law* while the project ran were all excellent) – do not generally have the same opportunities for staff training and development, nor funding or opportunities to participate in law teaching workshops or the like, nor the continuity in teaching the same subjects regularly which enables more substantial reflection on the relationship between course content and teaching and learning. On the importance of course content vis à vis teaching and learning see Ramsden, *supra* note 11, at 124-37 (esp 124-25), 167.

UWS Macarthur Faculty of Law LLB program and the objectives of the subject. The *Introduction to Law* web page and the web-lectures were characterised by the use of a closely directed guide to readings which posed questions to students. While there was a limited amount of explanation which enabled some overview, summaries and contextual material to be provided, students were required to complete the course readings in order to adequately grasp the arguments and themes addressed in the subject. The goals of critical and comparative analysis were similarly addressed by posing questions to students, which required them to reflect on the merits of different readings and the implications of different arguments.

The development of the strategy thus represents not so much an excursion forward into the brave new world of Internet technology – the use of technology should not of itself be seen to represent “progress” in teaching. Instead, it is a reflection on what we do, looking back to the rationales and objectives of teaching and learning in higher education. The use of the web was thus not conceived of as a step “beyond” lecturing, but rather as a reconstitution of it in a different medium. The fundamental and conceptual nature of these distinctions became clearer throughout the semester and is considered more thoroughly in the project review.⁶⁷

As Biggs reminds us, there is “no single best method of teaching, some methods are better than others. Better teaching methods are those that are more effective in getting the learner to engage in productive learning activities.”⁶⁸ The aim here has been to contribute to the development of what might be a better way to use the web for teaching not only with regard in part to content and method, but also with respect to the process of thinking about teaching and course development. The development of teaching strategies for web-lecturing (or any form of web-based teaching) is, to some extent, no different from other forms of course development: a critical, creative and reflective approach should enhance the experience and outcomes for students and staff alike. It is crucial to remember that teaching on the web is a different form of teaching and as such the teaching strategy employed requires a substantial reconsideration. Lecturing over the web is, in the end, not lecturing at all.

66 There is arguably also some concern that web-based delivery removes interaction between students. This was not such a concern in *Introduction to Law* because of the mixed-mode of teaching which re-

Why Teaching Matters and Technology Doesn't: An Evaluation and Review of Web-based Lectures

(Flexible Delivery in a First Year Law Subject, Part II)

Lawrence McNamara*

Introduction

The development of Australian law teaching in recent years has been characterised by critical and reflective approaches to educational theory and practice. These developments have transformed teaching through a critical consideration of what happens in law school classrooms. As institutional moves towards flexible delivery alter the landscape of higher education, the classroom-based focus of law teaching is under challenge; it has become increasingly necessary for law teachers to explore non-traditional modes of course delivery, including teaching using the Internet.

In a 1999 project called *Starting Out: An Introduction to Law and An Introduction to Flexible Delivery*, I sought to explore the ways in which law teaching might be carried from the classroom to the World Wide Web.¹ The project replaced the weekly face-to-face lecture in a first year Bachelor of Laws subject with a 'web-lecture' delivered over the Internet. A core facet of the change was the development of a web-based teaching strategy from the ground up, inspired by the

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1 The project was funded through the UWS Macarthur "Flexlearn" grants scheme with support from the UWS Macarthur Faculty of Law (now the UWS School of Law). The grant applicants were myself (as project coordinator) and Professor Robin Woellner, Dean of the Faculty of Law at UWS Macarthur.

developments in traditional law teaching and looking to fundamental educational objectives as the starting point. The strategy employed in the web-lectures used questions to guide students through the readings, rather than transposing lecture notes from a face-to-face context onto a web page. It relied upon a combination of explanation and questioning, through which it was hoped that students would be both compelled and inspired to engage with the course materials and themes in a meaningful way. The rationale for this strategy was grounded in educational objectives of deep, holistic and student-centred learning. In an earlier article, I documented in detail the development of the teaching strategy.²

This paper – a companion to the first – is an evaluation and review of the web-lectures and the teaching strategy which was applied. Student responses to the web-based format and to the specific teaching strategy are addressed in sections two and three. In section four, the project review turns to the educational objectives and examines how the student responses might inform course design with a view to enhancing student learning approaches and outcomes.

My aim in this article is not only to describe and analyse the experience during autumn semester 1999, but also to extrapolate from the project and the literature to identify some problems and potentials in the shift to web-based flexible learning. The evaluation is placed in the context of the theoretical and evaluative literature on teaching, learning and flexible delivery with a view to offering a constructive critique of teaching practices, new technologies and the relationships between these and the contemporary administration of higher education.

The arguments advanced are both specific and general. With regard to the former, it will be argued that where web-lectures are employed the key implication for course design and structure is the need to reconceptualise (rather than replace) the lecture and establish the web as a teaching and learning resource within a broader student-centred framework for inquiry. There is, however, a more significant and more broadly conceived argument which drives the paper: in the push for increased flexible delivery, the core concern should not be technology but the objectives and

2 L McNamara, *Lecturing (and not Lecturing) over the Web: Developing a Teaching Strategy for Web-based Lectures (Flexible Delivery in a First Year Law Subject, Part I)* *Legal Educ Rev.*

practices of teaching. The point, it will be suggested, is to make the technology work for teaching, not the other way around. The project review and the conclusion offer some critical and cautionary thoughts on the possible relationships between pedagogy and the Internet in a climate of higher education management where good teaching all too frequently appears to occur in spite of – rather than because of – the drive towards flexible delivery.³

Evaluation strategies

The main evaluation mechanism was a survey completed by students in the last tutorial class of semester where 15 to 20 minutes were set aside specifically for this purpose. A total of 133 surveys were completed; this constituted 73.9% of the total cohort of 180 students in *Introduction to Law*. Additional strategies for evaluation included student focus groups⁴ and the lecturer's journal. The student surveys are the principal source of data in the analysis which follows. The focus group discussions are less frequently referred to because the comments made in those groups often related to organisational issues and service-provision specific to the university.

Identifying the issues

Comments in the surveys fell into five broad categories:

- (i) technology
- (ii) communication through the web
- (iii) staffing
- (iv) the web-based format of teaching
- (v) lecture content

No significant themes emerged from the first three of these categories.⁵ Student comments were for the most part

3 On the rationales for flexible delivery, see *id.*

4 Two student focus groups were run at the conclusion of semester, though prior to the final examination. Four students participated in each group. The facilitator was a Faculty staff member who had taught the subject in previous years but had been on leave all semester and had not taught any of the students in *Introduction Law* or in any other subjects. Each focus group discussed the *Introduction to Law* web-lectures for approximately 30 minutes.

5 Computing problems (of which there were a number concerning browser compatibility at the start of semester) rated only nine responses, which was the highest of any of the various comments made across these three categories.

concerned with the web-based format of teaching⁶ and the content of the lectures.⁷ In discussing the web-based format I have also addressed the issues of Internet access and use which from a teaching and administrative viewpoint were crucial in ensuring that students were *able* to access and use the teaching medium, and important for course design with regard to *how* they used the medium. The latter category is addressed in section four. The comments on lecture content raised issues that were directly relevant to the teaching strategy, offering the most useful material for insight into student learning experiences in a self-directed and web-based context.⁸

Teaching and Learning with a Web-based Format

Overview of Student Satisfaction with the Web-based Lecture Program

The level of student satisfaction was on the whole quite high. Approximately one third of the respondents thought the web-based lecture delivery was very good or excellent, while 60.9% of students thought it was good, very good or excellent. Just 5% of students were not satisfied, with another 12% approving but finding significant drawbacks.

<i>Table 1</i> Overall Satisfaction	
<i>Under the heading "overall", students were asked to circle one of the following responses to the question, "How satisfied were you with the web-based lectures in Introduction to Law?"</i>	
<i>133 respondents answered this question.</i>	
	<i>% of responses</i>
Not satisfied at all	2.3
Not satisfied in important respects	3.0

6 The web-based format attracted 38.6% of the 303 total positive comments and 32.3% of the total 161 negative comments (the high degree of concern here was consistent with the direction of the survey as a whole).

7 Lecture content attracted 36.3% of the total positive comments and 46.5% of the total negative comments.

8 The survey did not use the expression "teaching strategy", nor was it expressly used in lectures. The results that follow in this section nevertheless relate quite clearly to the teaching strategy employed in the subject.

	<i>% of responses</i>
OK, but there were significant drawbacks	12.0
Generally it was OK	16.5
Generally it was good	24.1
Generally it was very good	22.5
Generally it was excellent	14.3
No answer/incorrect reponse	5.3

The degree and distribution of positive and negative comments, and the comparison of the web-based lectures against face-to-face lectures in other subjects are consistent with the overall ratings. Approximately two-thirds of the total 464 comments provided were positive. The distribution of those comments reveals 57% of surveys to have offered three or more positive comments, while only 15.8% of surveys offered three or more negative comments. 67.7% of surveys offered either no negative comments or just one negative comment.

<i>Table 2</i>			
All Positive and Negative Comments: By Distribution			
The percentage of the 133 surveys which carried 0, 1, 2 or 3 comments (positive and negative):			
<i>No of positive comments</i>	%	%	<i>No of negative comments</i>
0	10.5	28.6	0
1	17.3	39.1	1
2	15.1	16.5	2
3	57.1	15.8	3

Comparison with Face-to-face Lectures

By way of comparison with other subjects using face-to-face lectures, the student feedback was very positive: of the 181 comparative comments offered, 72.4% were positive with regard to the web-based program in *Introduction to Law* in comparison to the face-to-face lectures in other subjects. Overall, the web-based lectures compared very favourably: 69.1% of the 55 respondents who made a direct comparison indicated the lectures were either good and compared well, or very good and better than face-to-face lectures in other subjects.⁹

⁹ The student comments were open ended but have been categorised in the analysis. In the focus groups, the web-lectures were generally

	<i>Number of comments</i>	<i>% (of 55 direct comparisons)</i>
Not as good	4	7.3
No different	1	1.8
Not much different	1	1.8
OK	10	18.2
Good/compared well	15	27.3
Very good/better	23	41.8
Excellent/far superior	2	3.6

Why Did Students Like or Dislike the Web-based Format?

Table 4, on the following page, shows student opinions on the web-based lecture format. The figures in the first three columns are drawn from responses to questions asking students to identify positive and negative features of the web-based lectures in *Introduction to Law*. The column on the far right denotes responses to the question asking students to compare the web-lectures in *Introduction to Law* with face-to-face lectures in other subjects; where responses offered meaningful parallels, they have been included, though the right-hand column is not exhaustive.

The positive comments overwhelmingly expressed a liking for the convenience of the web-based lecture, including the ability to work at one's own pace and the ability to access the lectures from home. This was reflected in the focus groups where, for instance, the following view expressed by one student was strongly supported by others: "I loved the idea of the lectures on the Internet because, to be honest, I didn't have to stay back for a lecture and I could do it whenever I liked at home."

The negative comments showed a substantial number of responses – 10% of the total negative comments – favouring face-to-face teaching and finding web-based delivery too impersonal. This was emphasised more in the comparative questions, which revealed a range of concerns on this issue. The far right-hand column shows that the main comments

Table 4
Web-based Delivery of Lectures: Positives and Negatives

	<i>Number of comments</i>	<i>% of total positive comments</i>	<i>% of total negative comments</i>	<i>Number of comparative comments</i>
<ul style="list-style-type: none"> • <i>Positive comments</i> 				
Convenience (include work at own pace and access from home)	66	22.5		52
Can refer back to notes anytime	12	4.1		8
'Ready made notes'	12	4.1		29
Allows concentration on content and avoids preoccupation with note-taking	9	3.1		
Ability to get lecture in advance	9	3.1		
Modern style of teaching	5	1.7		
Equality for slow note-takers	4	1.4		
<ul style="list-style-type: none"> • <i>Negative comments</i> 				
Too impersonal/ prefer face-to-face	16		10.0	27
Notes not available far enough in advance	14		8.7	
Improvement is necessary	6		3.7	
All material not on one page	6		3.7	
Does not facilitate student-student interaction	2		1.2	
Lecture notes only available over the Web	1		0.6	

regarding the strengths and weaknesses of the lecture program were generally consistent with those which emerged when students were asked to compare the web-lectures with face-to-face teaching in other subjects.

Face-to-face Teaching Versus Web-based Teaching

The value of face-to-face teaching in the subject was clear from student responses which overwhelmingly indicated that the cohort found the weekly seminar classes to be the most helpful part of the course.

<i>Table 5</i>			
<i>Lectures, Seminars and Materials</i>			
<i>Students were asked: "In undertaking the subject Introduction to Law, how helpful were the following?" 133 students responded. All figures are in percentages.</i>			
	<i>Web-lectures</i>	<i>Seminars</i>	<i>Materials</i>
Not very helpful at all	5.3	0	0
A bit helpful	6.0	1.5	3.7
OK	25.5	9.0	27.8
Helpful	33.1	30.1	39.9
Very helpful	29.3	58.6	27.8

The table should not be seen as indicating a simple preference for face-to-face teaching; the open-ended and comparative comments make it clear that the absence of face-to-face teaching was clearly picked up by students for a range of reasons. These issues are discussed further below.

Internet Access

Student Computing Competency

Student computing competency was both a pre-requisite and an objective of the web-based lectures. As a pre-requisite, almost all students commenced the course with adequate skills; less than a dozen students attended the instructional classes

regarded as better than face-to-face lectures in other subjects, though the reasons varied from convenience alone to more substantive comments such as, "It *ties in* the readings with the actual lecture material. Other lectures are just general principles and then you have to go and do the readings. I wouldn't say it was a disadvantage at all doing it [over the web]."

at the beginning of semester.¹⁰ By the end of semester, computing competency had increased: half the cohort could use the Internet with confidence at the start of semester, and two-thirds were confident by the end of semester. 93.2% of respondents stated that they were at least comfortable with basic use of the Internet by the end of semester, up from 77.4% at the beginning of the year.

It is perhaps worth noting that some students had difficulty in accessing Adobe PDF files if the Adobe Acrobat reader was not already on their computer. This was raised as an issue in focus groups where students working from home said they had difficulty downloading the Adobe Reader software and had to use the university's computing labs in order to access the few PDF files that were used on the web site.

Accessing the Web Page

Access questions are relevant not only to the viability and utility of teaching across the web but also to equity concerns.

<i>Table 6</i> Point of Access			
<i>Point of access to subject web page. Figures represent the percentage of survey respondents.</i>			
	<i>University computing labs</i>	<i>Law library computing labs</i>	<i>Home</i>
0-2 times during semester	44.3	38.1	26.3
3-7 times during semester	20.3	25.5	10.5
8 times or more during semester	33.1	33.1	60.2

¹⁰ The last three years have seen a dramatic increase in student computing competency at the commencement of the course. The low numbers of students attending such classes would have been unthinkable with even the 1997 or 1998 intakes. The competency figures on entering the course are markedly higher than those described by Mark Freeman in 1997: M Freeman, Flexibility in access, interaction and assessment: the case for web-based teaching programs (1997) 13(1) *Aust Jnl of Educ Tech* 23, at 28. At the commencement of their subject 61% of Freeman's students had little or # experience using the WWW, while at the start of semester in *Introduction to Law* only 20.3% of students had never used the web or were not confident at the start of

The results show that just over 60% of students were accessing the site predominantly from home, with a further 10% accessing the site from home on a regular basis.¹¹ While this no doubt prompted a deal of positive feedback concerning the convenience of web-based lectures, it cannot be permitted to overshadow the significant use of university computing facilities. Any shift towards more comprehensive web-based teaching cannot occur without adequate resourcing and monitoring of institutional computing facilities lest web-based components of courses become a resource only for those who can afford computing and Internet access from home.¹²

Using the Lectures

Students should ideally have accessed the lectures at least once weekly, or perhaps more often if the lectures were read and printed at different times. The surveys indicated that 91.4% of respondents accessed the lectures at least once weekly. This is in contrast to approximately a 70-80% lecture attendance for *Introduction to Law* in previous years.¹³ It

semester. Thompson et al express a concern that entry-level students will not possess the requisite competencies and argue that the literature supports their fears: R Thompson, J Winterfield & M Flanders, Into the world of electronic classrooms: a passport to flexible learning (1998) 29(2) *Br Jnl of Educ Tech* 177, at 177-79. The experience in *Introduction to Law* does not fully support that fear; perhaps the rate of change with regard to fairly straightforward Internet use is changing rapidly.

- 11 Freeman (1997), *id*, again provides a point of comparison. In June 1997, 10% of his students had Internet access from home. Of the survey respondents in *Introduction to Law*, it appears that approximately 70% had access from home, with that access being suitably convenient for 60% of the respondents to make it their principal point of access. While the increase is rapid and substantial, it cannot be presumed that it will continue to rise at this rate, nor can it be assumed that students will all wish to use their home access (factors working against home access as a preference could include the quality of printing at home).
- 12 For instance, when printing through university systems, students will often pay up to 20 cents per page, which over a semester may add up to \$30 extra (per subject) to student costs after lecture notes and assignment questions are printed from a web page. This, in addition to often expensive law texts, represents a substantial increase in costs for students. This may be particularly so where the web page is in addition to rather than in substitution for face-to-face teaching and thus there are no associated savings (for example reduced transport costs to university because students need to attend campus on fewer days than would otherwise be the case).
- 13 It may be wise to be a little sceptical of this result. It is possible that the 47 students who did not attend the seminar classes in the final week (or at least not in the first 15 minutes when the surveys were completed) also did not access the page as regularly as those who did attend the final tutorials.

appeared from tutorial participation that students had generally read the lectures prior to their seminar classes; some of the focus group participants indicated that students in *Introduction to Law* seminars appeared slightly better prepared than in other subjects.

Printing and On-line Use

The substitution of face-to-face lectures with a web-based lecture was not intended to be interactive but was at least intended to encourage students to make use of the HTML format and move between links within the *Introduction to Law* site as well as to explore sites beyond that by providing links in web-lectures.

<i>Table 7</i> Lectures: Printing and On-line Use	
Usually just printed the lectures and read them later	51.9%
Usually just read them briefly on-line and then printed them	39.7%
Usually read them thoroughly on-line and then printed them	2.3%

The pattern of web use shown in table 7 suggests that students did not work on-line but tended to consider the *Introduction to Law* site as a medium for convenient access to a static course component. The lecture format lent itself to this and so the result is not surprising. On the other hand, the lectures often contained links to other pages which students would most likely wish to print (eg, assignment questions, or a self-assessment marking guide); it would have made the most sense for students to at least read through the lecture prior to printing so that they could ascertain whether other pages needed to be accessed. Nonetheless, 24% of students accessed the lectures more than once weekly, possibly indicating that students would print the lectures out and then return to them later to move through links and other sites. The improvement in computing competencies also indicates that students may have utilised the web-format more than the printing figures suggest.

It will be suggested below that in light of the teaching strategy in *Introduction to Law*, the student preference for printing the notes immediately does not at all detract from the value of the lectures as an educational tool.

A Success?

The web-based format appears to have been for the most part a success with regard to student responses. For a pilot program with a teaching strategy and delivery format that departed substantially from traditional teaching methods, the results suggest a program that has proved to be a viable and successful mode of delivery for the lecture component of the subject. While the “convenience factor” appears to be the key motivator for student satisfaction, the responses to the teaching strategy are indicative of a more complex reaction to the project.

Student Responses to the Teaching Strategy

Comments on the Web-lectures

The most striking feature of the comments on the lecture content is the polarisation of student responses to the teaching strategy. Of 185 comments, 110 (59.5%) were positive and 75 (40%) were negative. The breakdown of the types of comments made shows the divisions more clearly (table 8 on next page).

Of the comments regarding the lectures as a source of explanation, 54 were positive and 36 negative (60% to 40%). The comments concerning the use of questions showed approximately the same ratio: 28 to 22 (56% to 44%). The polarisation of student opinion is apparent from the comparison of conflicting views on the quantity and quality of explanation. For instance, 15 respondents regarded the notes as comprehensive and 13 respondents considered the notes to be a good summary, while 12 expressed the view that more content or quantity was needed; 24 students indicated that the lectures provided a clear explanation, while 13 thought there needed to be either more or clearer explanation.

From a teaching perspective, it is pleasing that a reasonable number of students found the lectures to be a good source of explanation – particularly since in many cases students were required to reach the core of the explanation by themselves. It indicates at least a degree of success with regard to the self-direction students needed to employ and the assistance they derived from the web-lectures in doing so.

The use of questions and references to the readings prompted an even more significant division of opinion, but supports the success of the teaching strategy in a manner consistent with the above analysis. Once again, approximately half of the students who addressed this issue considered the

questions to have been useful. In the focus groups the use of questions was generally well received, though students noted that when there were too many questions they tended to ignore them and pass over the points. These comments highlight the need for careful structuring of the material.

<i>Table 8</i> Lecture Content: Positive and Negative Comments (breakdown)			
	<i>Number of comments</i>	<i>Total positive comments</i>	<i>Total negative comments</i>
• <i>Content and Explanation</i>		54	36
(+) Clear explanation of material	24		
(+) Each lecture a good summary	13		
(+) Comprehensive notes	15		
(+) Pleased with content	2		
(-) <i>Clearer/more explanation needed</i>	13		
(-) <i>More content/quantity needed</i>	12		
(-) <i>Notes too lengthy/too specific</i>	3		
(-) <i>Too much legal jargon</i>	3		
(-) <i>Notes unhelpful</i>	2		
(-) <i>Did not highlight important points</i>	3		
• <i>Use of Questions and References</i>		28	22
(+) References to readings helpful/ useful; it put the readings in context	18		
(+) Questions encourage meaningful thought	10		
(-) <i>Use fewer questions – more statements and information needed</i>	18		
(-) <i>Supply more information rather than references to readings</i>	4		
• <i>Appearance of Lectures</i>		18	0
(+) positive aesthetics of notes (headings, font, etc)	18		

Explaining the Polarisation

The surveys do not offer any immediately apparent explanation of the polarisation of student opinion with regard to the lecture content, but there are numerous comments in the comparison with face-to-face lectures in other subjects which suggest that the negative responses regarding the lectures may perhaps be explained at least in part by the demands which arise from the self-learning emphasis which underpinned the teaching strategy.

Learning and Self-learning

A number of comments concerned the degree of self-learning required of students. Self-learning for some students was generally perceived as a negative aspect of *Introduction to Law*, its perceived absence presumably being a positive feature of other subjects.¹⁴ The negative attitudes with regard to the self-learning process supported by the web-lectures and students' expectation or desire for information alone is perhaps the most likely catalyst for the negative comments with regard to the lecture content.

<i>Table 9</i>		
Comparative Comments: Learning and Self-learning		
<i>The question of comparison yielded 69 negative comments. From these, the following opinions can be discerned:</i>		
	<i>No of comments</i>	<i>% (of 69)</i>
With web-based lectures the onus is on the student to work. This can lead to laziness. Face-to-face "forces" a student to work.	9	13.0
Web-based lectures made learning more difficult - too many questions without answers.	5	7.2
Web-based lectures involve more self-learning [the comments indicate this was a negative notion]	2	2.9
Web-based lectures cannot explain concepts as well as face-to-face. This encompasses both basic and complex issues.	13	18.8

¹⁴ This is particularly worrying in flexible delivery where, as Nikolova & Collis note, "the active learner assumption is axiomatic." I

The positive and negative comments on the lecture content, combined with the comparative comments, are suggestive of the following explanation of the survey results. The web-lectures guided students through the materials quite closely; in order to understand the lectures, students were required to read the materials in more depth than they otherwise might have – that is, to engage in a self-learning process to a greater degree than in traditional lectures. The benefits were that they should have attained a more thorough grasp of the readings, as well as building analytical and critical reading skills. The positive responses in the surveys might then have been provided from students who read the materials thoroughly (and who would possibly read the materials thoroughly whatever the format of teaching). The lectures would be of most benefit to these students. On the other hand, the high degree of close reading and self-directed learning required would mitigate against those who rely primarily on lectures (rather than readings) as their source of knowledge in the course. For these students the lectures would be lacking in explanation or content. This may prompt the negative responses to the survey questions regarding the content of the lectures.¹⁵

Insights from the Literature

It appears from the literature that for a range of reasons an emphasis on self-learning does not always prompt the enthusiastic student response which might be desired by teaching staff; Le Brun and Johnstone note that

many students are not as self-directing or responsible as much of the educational literature on teaching adults assumes. ... [M]any take direction easily, seek cues on what is important, have low motivation and self-esteem, and feel helpless. They prefer passivity and direction from others over self-direction. ... Furthermore, some may have very specific expectations about the type of education they wish to receive which is not within the mission of the university, the program of the law school, or the goals, aims and objectives of our courses.¹⁶

Nikolova & B Collis, Flexible learning and design of instruction (1998) 29 *Br Jnl of Educ Tech* 59, at 60.

15 A second area of possible correlation may relate to the academic standing of the particular respondent. The survey did not ask respondents to identify their anticipated grade in the subject and so # conclusions can be drawn in this respect.

16 M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994) 89-90. See P Candy,

Three samples of student responses to self-learning strategies are documented by Clark,¹⁷ Jones and Jones¹⁸ and Scott, Buchanan and Haigh.¹⁹ A polarisation not dissimilar to that found in the *Introduction to Law* evaluation is apparent in these reports: “nearly half” the students in the Jones’ study preferred conventional lecturing²⁰ and while Clark does not provide a figure, he clearly identifies streams of satisfaction and dissatisfaction with a self-directed approach.²¹

Clark’s study points to several reasons for negative feedback regarding self learning. First, the reasons for dislike of student-centred self-learning approaches lie most frequently in the area of learner confidence, with many students uncertain as to whether they are “learning the right thing” and even enthusiastic students feeling that they had not accomplished what they might have in a conventional mode.²² Learner confidence also related to the flexibility which students feared would allow them to miss out on important information.²³ In the evaluation of the *Introduction to Law* project, these concerns arose in one of the focus groups when a student expressed a desire for at least some face-to-face lecturing. When asked why, the response was an emphatic, “We want *assurance* from the lecturer himself. That we’ve understood the right thing, what he means us to understand.”²⁴

Evolution, Revolution or Devolution: Increasing Learner Control in the Instructional Setting, in D Boud & V Griffin, *Appreciating Adults Learning from the Learners’ Perspective* (London: Kogan Page, 1993) 162-63.

- 17 R Clark, Student Opinion of Flexible Teaching and Learning in Higher Education, in W Wade et al eds, *Flexible Learning in Higher Education* (London: Kogan Page, 1994) 137-38, notes numerous positives, including the ability to work at one’s own pace, the opportunity for students to gauge their own starting level depending on prior experience, and the refreshing experience of a different and student-centred approach to learning.
- 18 A Jones & D Jones, Student orientations to independent learning (1996) 15(1) *HERD* 83.
- 19 J Scott, J Buchanan & N Haigh, Reflections on student-centred learning in a large class setting (1997) 28 *Br Jnl of Educ Tech* 19.
- 20 Jones & Jones, *supra* note 18. They note, however, the complexity in identifying correlations between learning and teaching strategies and learning outcomes.
- 21 Clark, *supra* note 17.
- 22 *Id* at 142, quoting a student comment.
- 23 *Id* at 143.
- 24 Oliver & Omari also highlight the value students in their study placed on the face-to-face component of teaching: R Oliver & A Omari, Using online technologies to support problem based learning: Learners’ responses and perceptions (1999) 15 *Aust Jnl of Educ Tech* 58, at 77.

Secondly, Clark found that the context of the self-learning approach mattered; students' reactions depended on their experiences of teaching and learning in higher education.²⁵ This is consistent with the conclusions of Scott, Buchanan and Haigh with regard to student experience in both prior and parallel courses compared with the student-centred focus in the researchers' course at the University of Waikato:

There are no parallels to this course in the programmes that most of our students undertake during their first few years at university. Across the university as a whole, the teaching and learning culture is relatively conservative. In many courses, the purpose of university education is not discussed with students, there is no explicit reference to process learning objectives, activities intended to help students develop specific learning skills are rare and there are relatively few opportunities for students to (learn to) take responsibility for aspects of their own learning. The learning experiences that our students encounter tend not to be reinforced in other courses. It is understandable, then, that some students respond negatively to our approach – expressing a disinterest in the processes of learning and a wish to be “filled up” with ideas and skills that they can use as recipes for responding to situations in the future.²⁶

The third factor identified by Clark was that the impact of the change itself was seen by some students as too demanding; “plunging into the deep end” is not appropriate and it appears students need not only guidance but also to be made aware of the motives and strategies for new forms of teaching and learning.²⁷ Fourth, there was a perception by some students that they were being asked to do the work; students perceived it not as empowerment but as “a denigration of their educational experience”.²⁸ Finally, the issue of student priorities appeared to underpin some of the negative opinion; if students are empowered in their learning, they may have numerous reasons (including the demands of other subjects) for rejecting a self-learning emphasis.²⁹

25 Clark, *supra* note 17, at 144-45.

26 Scott, Buchanan & Haigh, *supra* note 19, at 27-28.

27 Clark, *supra* note 17, at 145. On preparing students, see also T Greening, WWW support of student learning: A case study (1998) 14 *Aust Jnl of Educ Tech* 49, at 55-56.

28 Clark, *supra* note 17, at 145.

29 *Id* at 146.

Jones and Jones found that students who preferred conventional learning “enjoyed the lecturer providing them with the information and felt that the presence of a lecturer stimulated their interest to learn”.³⁰ Such students also stated that the explanation from a lecturer encouraged students to think critically, and lecturer enthusiasm stimulated learning interest, though many acknowledged that lectures could be uninteresting.³¹ External commitments such as part-time work also affected the ability of students to devote adequate time to a self-learning strategy.

Scott, Buchanan and Haigh also identified the vocational orientation of younger students as dominating their understanding of what employers seek and do not seek in graduates. As a result, they value generic attitudes and skills rather than processes of learning.³²

The results of these reports are not used here to explain the survey results in *Starting Out*, but do suggest that the polarisation is not out of the ordinary. They go some way towards explaining possible reasons for student dissatisfaction and are suggestive of issues which might be considered in remedying the concerns about negative attitudes. At the very least, they indicate concerns which might be expressly addressed in future projects. A significant aspect of the project review turns on the ways in which course structure and materials might be altered so as to enable students to better manage a self-directed unit; this theme is taken up in part four.

Feedback

The web site included a ‘feedback’ link which could be accessed from any screen on the site. It allowed students to make comments or ask questions directly of myself as subject coordinator. They could do so anonymously if they wished, and could request that I respond or not respond. The feedback link represents one of the most troublesome issues in the evaluation. I discuss it under the heading of student responses to the teaching strategy because, like the reflections on the lecture content, it offers some insight into the extent to which students actively engaged with the course itself. Accessing and use of the link was generally very poor, but the reasons for this are difficult to establish.

30 Jones & Jones, *supra* note 18, at 92.

31 *Id* at 92, 93.

32 Scott, Buchanan & Haigh, *supra* note 19, at 28.

<i>Table 10</i> Feedback Link: Access and Use			
<i>Figures represent percentage of total survey respondents.</i>			
	<i>Regularly (once a fortnight or more)</i>	<i>1-4 times during semester</i>	<i>Never</i>
Looked at feedback link	15.5	33.8	50.3
Contacted lecturer using feedback link	9.5	28.6	63.1

The feedback link was at least to some extent a positive feature of the web site. Approximately 50% of respondents looked at the link, and 36% of respondents used the feedback link at least once during semester, though only about six comments offered feedback on the substance or style of teaching. The use of the feedback link is more problematic, however, in the *lack* of access and use.

The Absence of Feedback

A negative spin on the statistics shows that the feedback link on the web page was never even accessed by 50% of the survey respondents. This seems a very high figure, especially in light of the fact that 77% of students at the beginning of semester and 93% by the conclusion of semester were comfortable with at least basic use of the web, meaning that the lack of accessing the feedback link cannot be attributed to a lack of ability to do so.

The lack of interest remained even when the following was included in the week six lecture with a view to eliciting at least some feedback from students:

Evaluation of Web Lectures

The shift into web-based delivery of classes is occurring across the university and will play an increasing role in higher education. This is the first time that a law subject at Macarthur has used the Internet to replace the delivery of face-to-face lectures, but it will certainly not be the last. One of the aims of the project evaluation is to find out what students think of the lectures.

- What is good?
- What is not so good?

- Are there things that are good and should not be taken out?
- Are there things that are good but need to be improved?
- Are there things that are no use at all, or perhaps something that is not there at all but you think would be helpful?
- How does it compare with other subjects which are using the web to offer some form of lecture notes to support the face-to-face lectures?
- Would it be better to have a face-to-face lecture? Why or why not?
- Does it matter in any case? ("I don't care either way" is a response we are still interested in if that is what you think!)

Your input into the evaluation process is important because the feedback from this subject will be written up to offer a guide as to how web-based delivery might be used in other subjects (which you will have to do in future years).

Please use the [feedback](#) link to let me know what you think.

Thanks,
Lawrence

Not one student responded with feedback of any kind, through any medium.

Explaining the Lack of Comment

While it was a positive sign that there were not streams of negative feedback flowing in, it was disappointing that there was not more interest in it. How might this be explained? I will advance six possible factors which may have contributed, though I am reluctant to claim that any of the following hypotheses are adequate explanations for the absence of feedback. The issue is important because it is suggestive of lack of student involvement in the constitution of their learning context.³³

First, the notion that the feedback link is on-line is a little illusory given that approximately half the students just printed the notes and read them later, thus when reading the request for feedback generally not being on-line at the time. Nevertheless, around 40% of students read the notes briefly on line, and around 10% read them more thoroughly on-line. In addition, the high number of students with Internet access at home (roughly 60%) means that for many students it is not demanding to convey feedback through the web page even if they have printed the pages earlier. The printing of

33 See P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 62-63; Le Brun & Johnstone, *supra* note 16, at 100-12.

notes may be one factor which contributes to the lack of feedback but would not of itself appear to be a satisfactory explanation.

A second potential explanation is that the web-based nature of the lectures de-personalises the subject coordinator. The survey responses indicating a dislike of the impersonal nature of web-based teaching may also indicate a reluctance to engage with it. Perhaps it seemed that there was no-one to respond to. This, however, also seems an inadequate explanation. I was on campus regularly, taught one seminar group, and my office was directly opposite the teaching room where four of the other seven seminars were held. In addition, I had been to all seminar groups twice in the first two weeks of semester.

A third explanation might be that these are students in their first year at UWS Macarthur and they may have the impression that this is simply how the subjects run. This, however, is inconsistent with the enrolment structure under which at least 60 students were also completing three other LLB subjects, some of which had no web materials, while others (in addition to face-to-face lectures) had lecture notes on a subject web page. That is, at least 60 students were aware that there was a great difference between subjects with regard to the delivery of web-based materials, but still no students responded.

A fourth possible explanation is that students are simply too busy getting themselves through the degree to engage in the construction of teaching and learning. The issue of external commitments was identified in the Jones and Jones study as a factor contributing to negative views of self-directed learning.³⁴

Fifth, it is possible that students simply did not care how the web page ran, at least insofar as if it was adequate, they had nothing to say. While this may appear inconsistent with the degree of effort that students put into responding to the survey, the survey was administered in the final seminar classes with 10 to 15 minutes set aside specifically for that purpose.

A sixth explanation might be that students, for whatever reason, saw no point in responding to the requests for feedback. There is nothing to indicate that this is the reason, and on the contrary the wording of the request suggests there is

34 Jones & Jones, *supra* note 18.

indeed a point to responding, but the possibility needs nonetheless to be raised.³⁵

Project Review: Re-thinking the Framework for Student Inquiry

Reflections on Internet Use and the Teaching Strategy

The evaluation of the *Starting Out* project suggests that on the whole it was viewed by students as a very successful move into flexible web-based delivery of the lecture component of *Introduction to Law* with regard to technology as well as teaching and learning. It is also clear that the technology used for on-line delivery needs to be simple and straightforward, easily accessible and economically viable for students. For all this, the results of the student survey are frequently suggestive not of great shifts in student learning or a newfound enthusiasm for Internet-based teaching, but rather of a desire for little more than the convenience of accessing lectures at the time and place of one's own choosing. In this light, can it be said that the project was successful in terms of teaching and learning?

The measure of success is difficult to define. I have no evidence that students either individually or as a cohort performed better when the lectures were web-based than in previous years of face-to-face lecturing, but there was certainly nothing to suggest that performance was worse. It was my impression at times that students seemed to have a better grasp of the readings with the web-based lectures, and it was suggested in the focus groups that students in *Introduction to Law* were better prepared and engaged in more meaningful discussion of the readings than was the case in other subjects with face-to-face lectures. On the other hand, this did not necessarily translate into improved examination results over the entire cohort.

The measure of success I would like to employ is whether students engaged in deep learning, or at least whether *Introduction to Law* impacted positively on students' approaches to learning which will develop further as they progress through

³⁵ One reviewer of this article suggested that in spite of the request for response, "students are seldom altruistic and will only do what will ultimately help them get 'better marks.'" While there is nothing in the evaluation to suggest that this was the case in *Introduction to Law*, it would be consistent with the recognition that student approaches to learning are strongly driven by assessment, and thus by marks.

their degrees. Ultimately, I do not know. The evaluation suggests, however, that the use of the web in no way detracts from that possibility and, more positively, the Internet appears to be a medium which holds the potential to impact significantly on student approaches to learning. But this impact will not be the result of technology: if the key themes of the evaluation were to be drawn together in one sentence, the *Starting Out* project points to the core conclusion that the most fundamental questions of web-based instruction concern not the technology but the practice of teaching.³⁶ It is not the medium that matters, but how one teaches within both the opportunities for adventurous teaching that the web provides and the constraints of the technology which removes us from the classroom.³⁷

With this in mind, the somewhat polarised student responses to the teaching strategy are reasons to further develop and rework the project, not reasons for dismantling it or retreating from the challenges of teaching an LLB program which fosters deep and lifelong learning while using the Internet as a medium for partial flexible delivery of law subjects. There should not be a rejection or watering down of a self-learning emphasis, but nor can resistance and dissatisfaction simply be ignored – there were, it seems, a number of survey respondents who did not consider that they had learned effectively through the web-lectures in *Introduction to Law*.

How might *all* students in the course – those satisfied and those dissatisfied – be able to learn more effectively using the

36 This is consistent with the Open University's research findings that "the real key to the successful application of technology is good teaching." P Thomas et al, A holistic approach to supporting distance learning using the Internet: transformation, not translation (1998) 29 *Br Jnl of Educ Tech* 149, at 161. The research by Nowaczyk, Santos & Patton takes an approach, which starts from the significance of technology, looking at "the effectiveness of multi-media as a positive influence in the learning process" (at 367). They explore student perceptions of video and graphics but do so from a technological and psychological viewpoint. The outcomes they describe (at 378-81) are nevertheless framed in students' perceptions of the ways in which the *materials and their content* – not the media itself – influence the student learning process. The authors prefer, however, to discuss their conclusions in terms of the media: R Nowaczyk, L Santos & C Patton, Student perception of multimedia in the undergraduate classroom (1998) 25 *Int'l Jnl of Instructional Media* 367.

37 This is one of Owston's three key themes in his discussion of the Internet as it might be used in primary, secondary and higher education: R Owston, The World Wide Web: A Technology to Enhance Teaching and Learning? (1997) 26(2) *Educ Researcher* 27, at 29-30.

web-based program, and to more successfully undertake a course where they engage in a meaningful and rich introduction to the law? Moreover, might it be the case that a web-based component in a course could facilitate – more effectively than conventional teaching formats – a process of deep learning? Drawing on the experience of the *Starting Out* project, this review both identifies and represents a fundamental shift in the orientation of flexible delivery in *Introduction to Law*. Where the project aims at the outset consisted of the *substitution* of face-to-face lectures with web-based lectures, the review argues for the complete *discarding* (or *reconceiving*) of the concept of a lecture in the subject.

A Self-learning Orientation

A self-learning orientation needs to remain at the heart of any subject which endeavours to have students engaging in deep learning and to instill in students a desire and capacity for lifelong learning. This is axiomatic in a constructivist understanding of learning: that the most meaningful forms of learning – learning as the abstraction of meaning and learning as an interpretive process aimed at understanding an outside reality – can be undertaken by the learner her or himself.³⁸ Candy explains that in the constructivist paradigm knowledge is not “something external to be ‘mastered’” but is “an internal construction or an attempt to impose meaning and significance on events and ideas.”³⁹ Hence, learners

are not passive beings who respond to “stimuli”, and learning is not merely the appropriation of previously devised labels and categories. Instead, learning is an active process of constructing meaning and transforming understandings.⁴⁰

Deep learning will accordingly occur best through strategies which involve student-centred learning. The point is to:

enable students to shift from a “dependent mode” of education, which characterises many students’ experiences at

38 P Candy, *Self-Direction for Lifelong Learning* (San Francisco: Jossey Bass, 1991) 250-51, drawing on R Saljo, *Learning in the Learner's Perspective II: Differences in Awareness Report of the Institute of Education* (Goteborg, Sweden: Institute of Education, University of Goteborg, 1979) # 77, at 19.

39 *Id* at 251.

40 *Id* at 250-51. Candy draws on the conceptions of learning identified by Saljo of which the most sophisticated are learning as the abstraction of meaning and learning as an interpretive process aimed at understanding reality.

secondary school to different modes of learning, which may include both the 'interdependent' and the "independent".⁴¹

This developmental approach is the focus of Clark's conclusions:

the rigours of developing innovative teaching place parallel demands upon those responsible for the learning. ... The problem of developing teacher innovation within a more traditional institution is that the projects are clearly fixed, from the student perspective, within a wider context of conventional teaching and learning. This conventional context is of paramount status due to its longevity and its commonality, and does not provide students with the necessary skills and breadth of experience to meet new teaching and learning requirements. ... We need to be more proactive in empowering our students and equipping them with the skills necessary to take full and confident responsibility for their learning.⁴²

In this light, two revisions to *Introduction to Law* can be envisaged, which might go some way towards countering the negative reaction and simultaneously improve the pedagogical aspects of the subject.⁴³

Teaching Students About Learning

First, the self-learning emphasis could be made more explicit. That is, there needs to be a clearer and more frequent explanation to students *why* there "are too many questions without answers,"⁴⁴ and *why* the web-lectures differ from the lecture process in other subjects. This could be done by compiling a short package of materials consisting of extracts from the teaching literature in order to make clear the learning process which students are expected to undertake and to offer them guidance as to how they can go about it. Such a package would ideally be referable to the degree program as a whole so that students might, in the words of Le Brun

41 Le Brun & Johnstone, *supra* note 16, at 90 (footnotes omitted). See further at 90-97.

42 Clark, *supra* note 17, at 147.

43 The difficulties for many students go # doubt beyond what can be countered by such general strategies, or even within the academic environment alone. For a discussion of motivation and emotional aspects of learning and their impact on self-learning aims, see Ann Brown, *Motivation to Learn and Understand: On Taking Charge of One's Own Learning* (1988) 5 *Cognition and Instruction* 311.

44 A comment on a student survey in *Introduction to Law*.

and Johnstone, “understand what is (or could be) happening in their classrooms.”⁴⁵ Taylor argues that

there may be considerable benefit for ... participation and learning if all courses included a significant attempt to ... help students increase their self-awareness of context appropriate approaches to learning, and their awareness of and skills in becoming co-constructors of their learning environments.⁴⁶

The learning materials then become a part of the process by which the course content is learned, making clear the rationale for different processes of teaching and assessment. In short, an express statement of self-learning strategies may make the process more reflective for the participating students.⁴⁷ This reflectivity may enhance and enrich their learning processes.

Restructuring Course Design for Mixed Mode Teaching

Second, if the self-learning emphasis is shifted from the periphery to the centre of course design, *Introduction to Law* becomes as much about the learning process as about the course content. Further, the content of the course can possibly be driven by and derived from the learning process itself.

In order to shift deep learning and self-learning emphases to the centre of course design, the entire course structure and emphasis needs to change, not just the web component. The question then becomes not how to replace face-to-face

45 Le Brun & Johnstone, *supra* note 16, at 47 state that they wrote not only for law teachers but also for law students.

46 P Taylor, Reflections on students' conceptions of learning and perceptions of learning environments (1996) 15(2) *HERD* 223, at 235. The last phrase is especially pertinent given the absence of feedback through the web-lectures. See also B McCombs & R Marzano, Putting the Self-Self-Regulated Learning: The Self as Agent in Integrating Will and Skill (1990) 25 *Educ Psychologist* 51.

47 There is perhaps an implicit assumption here that this process will continue after the foundation subject. Mark Israel, Teaching criminology through interview-based assignments (1997) 8(2) *Legal Educ Rev* 141, at 144, notes that the literature suggests academics often encounter resistance from colleagues in pursuing such projects. This is to some extent inherent given the necessary freedom of academia. There is perhaps also the research-driven selection and promotion criteria; I suspect that few law academics would disagree with the proposition that in spite of the rhetoric about how much teaching matters, what really matters within the academy is research (especially due to the funding implications) and this is never clearer than at the point of promotion and recruitment. With the pressure to research so strong, teaching innovation or change is often bound to take second place.

lectures with web-lectures, but what one does with *all* of the teaching and learning processes in the subject. The first step in a restructure is to dispose of the lecture as a teaching process. The substance of what was called in the *Starting Out* project a “web-lecture” should be renamed as, for instance, a web-guide. The web-guide would not take up administrative functions, but act as a guide to the course readings, interspersed with questions. In part it would function as a map, assisting students to navigate their way through the readings, in part as a set of roads, requiring students to put them together so as to form a map or framework within which they can locate each of the course themes and readings.

There would need to be some explanatory content within the web-guide to enable students to make sense of the readings and to emphasise the key themes and issues. But this would not make it a set of lecture notes. The web-guide, like the web-lectures in 1999, would remain a weekly instalment, enabling the teaching dialogue to build on queries, issues and current developments as they arise. It would not be a pre-written study guide. It would enable the subject coordinator (presumably the author) to monitor students’ grasp of issues and engage with students on a regular basis.

The removal of the lecture would occur in both name and concept. The nomenclature of components is important because it aims to remove a sense of loss, which may be associated with web-based teaching. That is, the seminar would be expressly re-established as the point of face-to-face shared experience and human community in teaching and learning. The second change to the course, an express restatement and re-structuring of the learning project itself, would make this more than an illusory re-naming of a teaching component.

Achieving a Unity of Teacher and Student Perceptions

The re-worked model turns on a framework for student inquiry, which pulls student-centred learning from the periphery to the centre of course design, structure and content. The teaching components have previously been a guide to the readings with a view to understanding the course themes. The reliance by students on the teaching components for their knowledge rather than on the readings has been problematic. The web-lecture sought on the one hand to avoid any further shift toward this tendency and on the other to develop self and deep learning.

The most significant aim of the suggested re-structure would be to provide a course which would give students a

reason to perceive learning approaches and requirements differently: to perceive the course as a process which facilitates and requires deep, holistic and active student-centred learning. Ramsden identifies the perceptions of students as being crucial in the process of learning:

The educational environment or context of learning is created through our students' experience of our curricula, teaching methods, and assessment procedures. Remember that we are dealing here with the students' own *perceptions* of assessment, teaching, and courses, and not with 'objective' characteristics such as the division of teaching methods into tutorials, practicals and lectures or assessment methods into examinations and assignments. ... [It is important] to understand that the effects of different teaching methods on students are – from their teachers' point of view – often unpredictable. Students respond to the situation *they* perceive, and it is not necessarily the same situation that we have defined.⁴⁸

To this end, the framework revised as suggested here would aim to achieve a mutual understanding of what constitutes learning with regard to the content of the course and the development of foundational legal and study skills.

A Proposed Framework for Inquiry

The proposed framework would shift the course content towards student inquiry by stating the entire course not as a set of topics about which questions will be asked at the end, but as a set of four to six broad and thematic questions stated at the outset. The project for students over the 13 weeks of semester would be to be able to answer these questions. The final examination, worth 50% of the subject mark, would consist of questions derived directly and closely from each of the thematic questions.

Students would be told that it is their responsibility to work out how to answer the questions, but that to assist them in their own endeavours, the teaching staff will provide a selection of resources for teaching and learning: course readings, a weekly two-hour seminar, a weekly Internet web-guide, threaded discussion groups through the web page,⁴⁹ and a set of materials on higher education learning and teaching.

48 Ramsden, *supra* note 33, at 62-63 (emphasis in original); for an illustration of the significance of perceptions in a reading task, see 41-42.

49 A discussion page would be threaded by the subject coordinator, but not contributed to by staff. It would provide a forum for students to

There is concern that confronted with a set of questions, students may engage in surface rather than deep learning.⁵⁰ The holistic approach and the express requirements of the course would hopefully address this possibility. In addition, the thematic course questions would be framed so that they would not allow for a surface learning of the materials. The use in the seminar classes of reflective exercises on the relationship between the different questions would also hopefully avoid a tendency toward surface approaches.

Assessment

It is well established that the driving force behind learning is assessment to the extent that "the form and nature of assessment often swamps the effect of any other aspect of the curriculum."⁵¹ Assessment methods – both what is assessed and how it is assessed – "tell ... students what we think is important."⁵²

The close, if somewhat unorthodox, relationship between the course structure and the main assessment task is directly aimed at integrating the processes of teaching, learning and assessment, removing the idea of assessment as a threat. Instead, a constructive and open assessment task which is inherently linked to the course objectives sets out to make positive use of student perceptions of the significance of assessment. In this revised course design, rather than being merely a method of grading and certification, the course structure and assessment task together form a strategy for teaching.⁵³

How the Inquiry Framework Addresses the Evaluation Concerns

Such a revised framework for student inquiry would address the evaluation concerns in several respects:⁵⁴ First, the loss

learn from each other. Allison Brown provides an excellent analysis of collaborative learning through discussion pages: A Brown, Designing for learning: What are the essential features of an effective online course? (1997) 13(2) *Aust Jnl of Educ Tech* 115, at 118-22.

50 Such an outcome may parallel the situation described by Ramsden, *supra* note 33, at 63-64. See also the discussion in part I of this article, McNamara, *supra* note 2.

51 D Boud, Assessment and the Promotion of Academic Values (1990) 15 *Studies in Higher Educ* 101, at 103.

52 J Barnes, The Functions of Assessment: A re-examination (1990-91) 2 *Legal Educ Rev* 177, at 181.

53 On assessment as a teaching strategy, see *id* at 180-98, 212.

54 The benefits listed are concerned with teaching and learning. Other benefits would also arise; for instance, printing costs for students are

associated with the replacement of face-to-face teaching would at least to some extent be alleviated by re-centering the seminar class as the contact point for students. The re-naming of the web-guide and concomitant restructuring of the inquiry framework would not place the absence of a lecture as a loss. Rather, the lecture would be extinct as an entity.

Second, while students might still be reluctant to engage in self-learning, the process of learning in this way should become more manageable as a result of being more expressly stated and more reflective throughout. With students able to see the point of the subject structure and increasing their ability to answer the course questions as they proceed through the teaching components, the self-learning emphasis would hopefully have noticeable gains for them.

Third, the cohesiveness of the course as a whole and the links between materials, seminars and the web-guide should become more apparent as students focus their attention on the various aspects and draw them together themselves. This more directed focus should hopefully address student concerns that the web-lectures were not sufficiently explanatory; in effect, it would remove the point of the question because of the shift in emphasis towards student-centred learning. The more appropriate survey questions to ask would be along the following lines:

- did the web-guide effectively assist you in understanding the readings and answering the course questions?⁵⁵
- after working through the course materials with the web-guide, were you able to answer the seminar questions for each week?

Fourth, while the discussion groups would be threaded by the teacher to ensure that a question is clearly identified, the discussion between students would enhance the student-centred nature of the learning tasks. The weekly web-guide would review the discussion of these questions. This may address in part the concerns of learner confidence which were raised in the evaluation, providing both direction for students and dialogue with them.

In line with the above points, the proposed model would build on the strengths of the *Starting Out* project and address the key concerns identified in the evaluation.

reduced by removing the administrative aspects of the lecture from the web-guide and into a different section of the subject web page. Most administrative matters would not require printing. This would go at least some way to addressing equity issues and cost.

55 This should have perhaps been the question asked in the survey for *Starting Out*.

Conclusion

In closing I will draw from the *Starting Out* project and the review in section four some themes and conclusions which might be considered in flexible teaching and learning projects beyond that in *Introduction to Law* and perhaps beyond law teaching generally. With regard to the specifics of subject structure and design, the argument advanced has been predominantly one of reflection rather than prescription; the suggestion has not been that the *Starting Out* project presents either the best or the only way to approach flexible delivery of lectures. The point has been rather that reflection upon teaching objectives, strategies and practices both in flexible delivery and a course or subject as a whole might enrich the teaching and learning process such that a move into flexible delivery can act as a catalyst for constructive change. It is hoped that the project and review explore in a meaningful way some of the processes through which this might occur.

The claim was made at the outset that it is teaching and not technology which matters. While that observation may at first blush seem a little trite, I would argue that for two reasons this is not so. The first reason is that the attempt in this article has been to give some concrete form to what might otherwise remain an abstract point and in doing so to illustrate the rationale for developing a course in a particular way. Hopefully the paper provides food for thought in the development of subjects which may – or must – be flexibly delivered. The emergence of the Internet as a teaching tool is not always welcomed by academics (or is perhaps welcomed by some for the wrong reasons), but the experience in *Starting Out* suggests that it need not be to the detriment of teaching or learning. The need for reflective teaching exists regardless of the media employed; teaching over the Internet should not be considered a mere extension of another medium but is better conceived of as a different way of teaching and learning. The web does not make lecturing more or less difficult, but it makes lecturing different.

The second reason why it is important to stress that it is teaching that matters rather than technology lies in the very fact that the rapid shift to flexible delivery appears all too frequently to be driven by concerns of budgets, technology and marketing – rather than by teaching.⁵⁶ The implications of this incongruity form a defence of teaching in a budgetary

56 See McNamara, *supra* note 2.

climate where little more than lip-service is paid to the constitution and passing on of knowledge by any means other than research.⁵⁷

A defence of teaching in flexible delivery operates in different ways depending on one's predisposition to and motivation for the use of new technologies. For those reluctant to let the Internet into the teaching process, there is a need to realise that it provides genuine opportunities for teaching and learning, many of which require little technical skill and can still foster positive learning outcomes. There is a need also to realise that where staff have (or have access to) substantial technical expertise, new and creative use of interactive or pioneering technology might well be combined with pedagogical objectives such that the outcome is an excellent form of Internet-based learning. Such projects will, however, require adequate resources and time.

At the other end of the spectrum, where flexible delivery is defined in terms of cost efficiency or pure technological advance, there is a need to recognise that pedagogically valuable use of Internet technology may not necessarily be interactive, and may not necessarily utilise the very limits of computing capacities. It may instead seek to develop better ways of using the now established media of the web or discussion pages. Where teachers draw on technology for flexible delivery, the provision of financial or other resource support should not always be dependent upon the extent to which any flexible delivery project will advance the frontiers of interactive media; the focus should be on the relationship between a flexible delivery project and the development of effective and meaningful teaching and learning strategies.

The Internet is a tool which holds great potential for teaching and learning in higher education, but only if teaching and learning remain the fundamental objectives. The questions which need to be asked do not turn on the capacity of the Internet to perform different functions at ever-increasing speed and volume, but on what we as teachers might best be able to do with the wide range of capabilities new technologies offer.

57 This should not be taken as acquiescence to the present quantum or distribution of research funding in higher education, nor agreement with the mechanisms for the determination of such funding.

Graduate Attributes and Legal Skills: Integration or Disintegration?

Sharon Christensen & Sally Kift**†*

Introduction

Graduate attributes may be broadly defined as the qualities, capabilities and understandings of a graduate which a university community agrees students should develop during their time at the institution, both for their future professions and to make a contribution as ordinary citizens.¹ This article examines the benefits and disadvantages of an integrated and incremental approach to developing these attributes, and to teaching the generic and legally specific skills that underpin them in an undergraduate law program. The progress toward the integration of both generic and lawyering skills within the undergraduate law program at the Queensland University of Technology (QUT) will be used as the exemplar for this article.

Legal Education to Date: National and International Perspectives

Traditionally, educators of undergraduate lawyers-in-training have approached curriculum planning from the perspective of what law graduates “need to know”. This approach will usually lead to graduates having very good technical skills but lacking some of the necessary generic skills desired by employers. The Australian Law Reform Commission in its recent report *Managing Justice – A Review of the Federal Civil*

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† The authors wish to thank other members of the QUT Law Faculty Teaching and Learning Large Grant Project Team for their contributions, in particular Natalie Cuffe, the Project’s Consultant Librarian; and Annette Marfording for her detailed and helpful comments.

1 For this definition, we have drawn on J Bowden et al, *Generic Capabilities of ATN University Graduates* ATN Report (Sydney: Teaching and Learning Committee, Australian Technology Network, 2000) <<http://www.clt.uts.edu.au/ATN.grad.cap.project.index.html>>.

*Justice System*² cited the American report *Legal Education and Professional Development – An Educational Continuum*,³ and concluded that legal education should be orientated around “what lawyers need to be able to do”.⁴ This also reflects feedback from employers and graduates. Nevertheless, the mainstream Australian educational focus remains anchored in outmoded notions of “what lawyers need to know”.

Both the report released in 1987 by the Pearce Committee, which examined legal education in Australia’s then law schools,⁵ and the subsequent report by Craig McInnis and Simon Marginson⁶ noted that movement toward skills development within law schools has been slow and that, crucially, there was no blueprint or taxonomy for the development of skills programs. Educators generally have recognised that skills training must be embedded within the process and content of learning to ensure that learning objectives are met. Educational commentators have also identified the desirability of developing teaching and learning approaches and assessment methods in an authentic learning environment.⁷ The imperative to produce legal graduates with readily transferable skills has been recognised at an international level, both in the United States and in England.

The MacCrate Report examined and reviewed the status of legal education in the United States. It formulated the following list of fundamental lawyering skills and professional values

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- 2 Australian Law Reform Commission, *Managing Justice – A Review of the Federal Civil Justice System* Report No 89 (Canberra: AGPS, 1999) [referred to as ALRC Report No 89] para 2.21.
 - 3 American Bar Association, *Legal Education and Professional Development – An Educational Continuum* (Chicago: ABA, 1992) (MacCrate Report) [referred to as MacCrate Report].
 - 4 ALRC Report No 89, *supra* note 2, at para 2.21. The relevant recommendation of the ALRC was: “Recommendation 2. In addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility”: *id* at para 2.89.
 - 5 Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987) (Pearce Report) [referred to as Pearce Report] 30-31, 90-91.
 - 6 C McInnis, S Marginson & A Morris, *Australian Law Schools After the 1987 Pearce Report* (Canberra: AGPS, 1994) 168-70, 387-91.
 - 7 G Hart, J Bowden and J Watters, Graduate Capabilities: A Framework for Assessing Course Quality (1999) 24(2) *Higher Education in Europe* 301-08. See also B de la Harpe et al, Quality and Generic (Professional) Skills, unpublished paper, Curtin University of Technology, 1999, at 3.

and recommended that all law schools aim to instil these within their graduates:

- problem solving
- legal analysis and reasoning
- legal research
- factual investigation
- communication
- counselling
- negotiation
- litigation and alternative dispute resolution
- organisation and management of legal work
- recognising and resolving ethical dilemmas.⁸

The MacCrate Report led a majority of US law schools to redesign their curricula to entrench a clinical legal education model for their law courses.⁹ An important element of each program is the focus on ethics as an integral element of each of the substantive law units, the emphasis being on exposure to real life problems and issues in which ethical dilemmas are a large component.

English universities have also been engaged in projects to integrate the development of graduate or professional attributes into undergraduate curricula in many disciplines, including law. The UK Centre for Legal Education has undertaken several projects of relevance to law. One is Benchmark Standards for Law,¹⁰ another is General Transferable Skills in the Law Curriculum.¹¹ In both cases, the projects are prefaced on the expectation that, in any discipline, students will go through several changes of career in their working lives. The emphasis in tertiary studies should therefore focus on developing students' ability to transfer skills from one context to another. The report on General Transferable Skills in the Law Curriculum concluded that formal curricula were not addressing various skills required by employers (for example, oral communication, teamwork, written communication, leadership, personal drive and commitment, and business

8 MacCrate Report, *supra* note 3, at 138-41.

9 For example, New York University, Berkeley, William and Mary College and Boston University.

10 National Centre for Legal Education, *Benchmark Standards for Law Degree in England, Wales and Northern Ireland* (Warwick: UK Centre for Legal Education, 1998) <<http://www.ukcle.ac.uk/news/lereports.html>>.

awareness).¹² Each of the universities within the United Kingdom networks has addressed the issue of attributes and skills by:

- 1 determining a university wide policy for the integration and development of graduate attributes
- 2 setting out a list of abilities, skills and personal transferable skills for each university
- 3 considering the issues surrounding universities to ensure that students achieve comparable experiences and standards of ability.¹³

The Benchmark Standards for Law report¹⁴ details the areas and levels of performance required of a law graduate, and identifies the nature of general transferable skills developed through and alongside specific legal skills to enable students to present their learning achievements more effectively and in a wider employment market.

Australian universities are likewise concerned with the issue of transferable graduate skills. The Australian Technology Network¹⁵ is currently involved in a large teaching and learning project aimed at designing a systematic and explicit strategy to cultivate and evaluate the development of relevant generic attributes. The project recognises that, while universities may generally view their graduates as having acquired certain implicit attributes, any structured development of those attributes is either non-existent or left to skills-based units divorced from the mainstream curriculum. The ATN Project suggests that generic attributes should be seen as inextricably linked with the learning of disciplinary content in an explicit rather than merely implicit manner.¹⁶

The Whole of University Approach

In the past, universities have considered themselves to be responsible only for the development of technical knowledge and the inculcation of the graduate's ability to be able to criticise, question and search for justifications. However, it is now apparent that universities should also be concerned to ensure that their graduates are equipped with the skills necessary

11 J Bell and J Johnstone, *General Transferable Skills in the Law Curriculum* (Warwick, UK Centre for Legal Education, 1998) <<http://www.ukcle.ac.uk/news/ldnreport.html>>.

12 *Id.*

13 *Id.*

14 *Supra* note 10.

to be able to use that technical knowledge effectively in order to succeed in a global and ever-changing workplace.

To a significant extent, the ability of individual courses to foster and develop transferable skills within their curricula will be affected by the commitment of the university as a whole to the concept. Where the university is committed to the explicit development of transferable generic skills within its curricula, individual faculties should find the transition to an explicit skills approach easier: the likelihood of funding for such changes increases and the university will, no doubt, have formulated a list of generic graduate attributes for faculties to adapt to their discipline context.¹⁷ Any categorical statement of an identified list of generic attributes will also signal the university's commitment to producing a certain kind of graduate to key stakeholders (employers, students, staff, government).

Both the Australian ATN Project and the university networks established in the United Kingdom encourage a systematic approach to skills teaching within a discipline at university level. Vital components of such an approach include:

- the identification of university-wide generic attributes
- the development of a framework for faculties to use to facilitate the adoption and incorporation of these attributes within their courses
- the provision of resources
- the provision of funding for faculties to make the transition.

Is Skills Integration Necessary in Law?

Overwhelmingly, contemporary educational thinking suggests that universities should not be content to provide students only with good technical knowledge: a university education should also inculcate the skills necessary to utilise that knowledge in an ever-changing global workplace. As the Australian Law Reform Commission recommended,

... properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise ... rather it should be fully informed by theory, devoted to the refinement of the high order intellectual

15 Involving the Queensland University of Technology, RMIT, University of Technology Sydney, University of South Australia, Curtin University [referred to as ATN Project].

skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility.¹⁸

The acceptance of this philosophy is becoming more widespread in the general university community, as evidenced, for example, by the ATN Project and the international initiatives outlined earlier. But the move to a broader vision for university education comes not only from within university hierarchies, it is also being vigorously promoted by employer groups and students.

Traditionally, lawyers and law teachers have been resistant to change, claiming either that skills "training" is already included within law courses or that specifically legal skills (legal reasoning and problem solving, legal research) are more important than generic skills (such as communication), which may be acquired in other contexts. The latter view is clearly neither held by the wider university community nor by employer groups. In 1998 Vignaendra¹⁹ identified the most frequently used skills by law graduates in *any* type of law-related employment as communication (both oral and written), time management, document management, and computer skills. Legally specific skills, while important to private professional practice, were not the most frequently used. The recent report *Employer Satisfaction with Graduate Skills* commissioned by the Department of Education, Training and Youth Affairs highlights skill deficiencies amongst graduates in the areas of creativity and flair, communication skills, and problem solving.²⁰

While not the particular concern of this article, it is of interest to note that Practical Legal Training (PLT) in Australia is also undergoing a significant review at a national level. The Australian Professional Legal Education Council (APLEC) and the Priestley Committee are currently reconsidering competency standards for pre-admission training. Skills considered necessary in this context include personal skills, client-relations, letter writing, drafting, interviewing and communication skills, negotiation and dispute resolution, problem solving, legal analysis, research, statutory interpretation, and

16 Bowden et al, *supra* note 1.

17 Prior to the ATN Project, Queensland University of Technology had already developed a set of generic attributes for all students graduating from the university: see the Appendix.

18 ALRC, *supra* note 2, at para 2.85.

19 S Vignaendra, *Australian Law Graduates Career Destinations* (Sydney: Centre for Legal Education, 1998) (Vignaendra Report) [referred to as Vignaendra Report] 39.

advocacy. The nature of the PLT competency standards is being influenced by a belief that the PLT curriculum should be designed to produce practitioners who are prepared to be lifelong learners, rather than merely competent in particular legal tasks at the time of admission to practice.²¹

All of this highlights the critical issue of the responsibility law courses should assume for teaching transferable generic skills. As mentioned, many legal academics would say that they already incorporate “skills” (whatever is meant by that term) within their curriculum. While it is true that specific skills training is incorporated to a generous extent within some law school curricula in *specific* skills units (such as legal research, advocacy, negotiation), very few substantive or core law units aim expressly to teach generic skills such as communication, time management or computer skills. Nevertheless, if asked, the majority of legal academics would say that a skill such as effective oral communication, for example, is obviously necessary to successfully complete a law degree. The simultaneous (though inconsistent) expectation is, however, that the student will acquire the skill more by osmosis than by instruction.

The solution to the mismatch between graduate preparation and workplace demands lies in the acceptance that procedural knowledge is just as important as conceptual knowledge and that a curriculum which successfully integrates and fosters the development of a combination of personal qualities and meta-cognitive functions (particularly self-reflection) will produce a highly desirable graduate.²²

The challenge to provide a coherent framework for the teaching of both conceptual knowledge *and* transferable generic and legal skills has been taken up by the Faculty of Law at QUT as part of a Large Teaching and Learning Grant project. The aim of the project is to develop an authentic learning environment for students through the adoption of appropriate learning objectives, teaching and learning approaches, and assessment methods, which take into account the global workplace, social and ethical values, and the development of lifelong learning skills. Through such a learning environment, students will be given the opportunity to develop both the generic and specific legal professional and ethical skills and

20 AC Nielsen Research Services, *Employer Satisfaction with Graduate Skills* (Canberra: Department of Education, Training and Youth Affairs, 2000) <http://deet.gov.au/archive/highered/eippubs/eip99-7/eip99_7.pdf>

attributes they will need to practise as reflective practitioners in changing and challenging work environments. This will include equipping students with the appropriate level of skills to allow a seamless transition from the academic to the professional environment.

Outline of the QUT Law Faculty Project

The project's focus is on establishing a teaching, learning and assessment framework for an integrated and incremental approach to the development of generic and discipline specific attributes in law. The term "attributes" has been chosen to reflect QUT's involvement in the ATN Project. If one analyses an attribute, one can identify the generic and/or specific legal skills which make up its components. This is explained and exemplified further below.

In building the framework, the Law Faculty project will move through four stages:

- 1 The *first* involves the identification of generic and discipline-specific attributes for law utilising feedback from employers and graduates and various studies. These attributes take into account the global workplace, social and ethical values, and the inculcation of lifelong learning skills. This stage has already been completed.
- 2 During the *second* stage the emphasis is on identifying those skills and their competency levels that a legal graduate will need to attain the desired attributes. A preliminary table of attributes and related skills has been developed and is explained below.
- 3 *Third*, the current undergraduate law course will be reviewed with a view to:
 - (i) Integrating the identified skills within the processes and content of existing LLB units.²³
 - (ii) Developing appropriate tools and mechanisms for assessing competency levels within each of the skills.

21 A Lamb, Preparation for Practice: Recent Developments in Practical Legal Training in Australia, paper presented at the Commonwealth Legal Education Association Conference "Innovation in Legal Education", University of Adelaide, April 2000, at 16.

22 Hart, Bowden and Watters, *supra* note 7, at 301-08.

23 It has been recognised that an appropriate balance between skills training and acquisition of substantive knowledge will need to be achieved. Some strategies developed to facilitate this include:

- the identification of appropriate units in which to position the development of the various skills and the articulation of those skills within other units throughout the degree

- (iii) Establishing an appropriate reporting procedure to enable students to track their development. This will involve the documentation of skills attainment (at the various levels of competency) through a reflective process that will lead to the development of a "student attribute profile".²⁴
 - (iv) Creating and implementing a staff development model to enhance instructors' abilities to facilitate, assess, and guide attribute development in students.
 - (v) Compiling resource material for teaching generic attributes for the benefit of staff.
 - (vi) Utilising the on-line facility for course development which is in the process of being progressively introduced into the Faculty.
- 4 The *fourth* and final stage will involve the utilisation of developed skills within a real world context. This will be achieved by enhancing legal clinic components of faculty courses.

Stages 1 & 2 – What are the Necessary Attributes and Skills for a Law Graduate?

The table of desirable attributes for law graduates developed by the project team takes into account data from the Vignaendra Report,²⁵ the list of skills and values in the MacCrate Report,²⁶ the generic attributes identified by the University, and the skills previously identified by the QUT Law Faculty for incorporation within the course.²⁷ In the first instance,²⁸ the project team decided to utilise and re-interpret the generic attributes set out by the University in its Manual of Policies and Procedures.²⁹ From this list, the project team identified six desirable attributes of a law graduate. Each is designed to encapsulate broad descriptors of graduate quality and is expressed in terms of the abilities a graduate will be expected to possess upon graduation:

- a reconsideration of learning objectives, teaching strategies and assessment methods for each unit to include a balance of substantive content and skills
 - a re-assessment of the modes of delivery of units in order to achieve an authentic learning environment for the development of skills within the course.
- 24 It is anticipated that, ultimately, a system developed by the university will be used.
- 25 Vignaendra Report, *supra* note 19, at 39.
- 26 MacCrate Report, *supra* note 3, at 138-41.

Discipline Knowledge
Graduates will possess detailed and comprehensive knowledge of Australian legal principles and statutory regimes, knowledge of legal systems and influences outside Australia, an understanding of the latter's relationship with the Australian legal system and a fundamental knowledge of extra-legal factors impinging upon substantive law.
Ethical Attitude
Graduates will possess a sense of community and professional responsibility and will be able to identify and offer appropriate solutions to ethical dilemmas.
Communication
Graduates will be able to clearly, appropriately and accurately communicate, both orally and in writing, having regard to the appropriate language for a variety of contexts.
Problem Solving and Reasoning
Graduates will possess critical thinking and problem solving skills, to enable effective analysis, evaluation and creative resolution of legal problems.
Information Literacy
Graduates will be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learner.
Interpersonal Focus
Graduates will be able to work both independently and as a productive member of a team, practise critical reflection and creative thinking, be socially responsible and inclusive, and be able to work effectively and sensitively within the global community in continually changing environments.

A graduate who possesses the nominated attributes would generally be able to demonstrate a variety of skills. Therefore, from this list of attributes, a list of generic and legally specific skills for incorporation within the course was identified, categorised broadly as:

- attitudinal skills
- cognitive skills
- communication skills
- relational skills.

The specific skills within each category as identified by the project team are:

Attitudinal Skills	Cognitive Skills
<ul style="list-style-type: none"> • Ethical orientation • Creative outlook • Reflective practice • Inclusive perspective • Social justice orientation • Adaptive behaviour • Pro-active behaviour 	<ul style="list-style-type: none"> • Problem solving • Legal analysis • IT literacy • Legal research • Document management • Discipline & ethical knowledge

Communication Skills	Relational Skills
<ul style="list-style-type: none"> • Oral communication • Oral presentations • Advocacy • Legal interviewing • Mooting • Negotiation • Written communication • Drafting 	<ul style="list-style-type: none"> • Work independently • Teamwork • Appreciate race, gender, culture and socio-economic differences specifically and diversity generally • Time management

There are two core elements upon which the structured development of skills is prefaced. The first is the acquisition, understanding, application and critique of substantive legal knowledge. It is within the context of legal principles, doctrines and theories that students will be provided with the environment for the development of contemporary generic and legal skills. The second element is that of legal ethics. The development of an ethical attitude, the identification of ethical issues, and the offering of resolutions to ethical dilemmas are to be incorporated at each stage of the degree. By the project's conclusion, the ultimate objective of the QUT LLB will be to have developed the identified legal and generic skills that together will constitute the identified graduate attributes within the context of discipline knowledge and ethics.

For example, the attribute of "ethical attitude" encompasses (at least) the following skills of "ethical orientation" and "discipline and ethical knowledge" which have both generic and legal applications:

Ethical Attitude

- | | |
|---|--|
| 1 | The graduate is able to value and promote truth, accuracy, honesty, accountability and ethical behaviour. |
| 2 | The graduate possesses knowledge of and an understanding of the nature and sources of ethical standards and their enforcement. |
| 3 | The graduate recognises and applies possible processes for resolving ethical dilemmas. |

Each of the identified skills has been de-constructed to produce a draft *Table of Core Skills*. This table identifies the following in order of detail:

- the broad *skill category*: from the four categories set out above
- the *specific skills* within those categories: from the more detailed table above
- the *course objectives*: that is, the level of competency expected of a graduate regarding the specific skill by the end of his or her course
- the *demonstrated abilities* of the graduate for each of the skills: that is, to meet the (final) course objective for the specific skill, the graduate will have demonstrated these particular abilities.

While the draft *Table of Core Skills* sets out each of the skills separately, none of the identified skills should be viewed in isolation: many skills draw upon others to demonstrate effective acquisition of a particular skill, while some skills are so fundamental that they permeate the application of nearly every other skill.

Having developed the initial taxonomy, each specific skill is also broken down into three broad levels of progression or development. For each level, certain compulsory units in the undergraduate law degree will be indicated as units in which the skill is developed. Each of the levels of progression relate broadly to the notion that a student should move through various stages in the attainment of a skill (as adapted from the ATN Project):

- 1 *Scope* – defining the scope of the skill by the teacher. This may be achieved by direct instruction and/or by the provision of resources to students.
- 2 *Practical* – providing an environment within the context of a particular area or discipline of law for the student to practise the skill.
- 3 *Relational* – an understanding of the relation between the use of the skill and its context.

In the specific terms of the undergraduate degree, this may be represented as follows:

- *Skill Level 1* – At this level (notionally year 1), the student will be instructed on the theoretical framework and application of the skill, usually at a generic level. The skill may be practised under guidance and feedback provided. Assessment will usually include a critique of the skill as practised.
- *Skill Level 2* – At this level (notionally year 2), a degree of independence is required of the student. This may involve some additional guidance at an advanced level of the skill, an environment in which to practise the skill in a real world legal scenario, and feedback to students on their progress. Students will be encouraged to reflect on their performance and on ways to improve. At this level, individually or within a group, a student should be able to complete a task utilising a range of skills in relation to a simple legal matter.
- *Skill Level 3* – At this level (notionally years 3 and 4), students should be able to draw on their previous instruction and transfer the use of the skill to a variety of different circumstances and contexts without guidance. Students should be able to adapt and be creative in the ways they approach the context and use particular skills. Reflection on performance will be a key aspect. At this level, individually or within a group, a student should be able to complete a task utilising a range of skills in a complex legal matter for a knowledgeable and critical audience.

At each level of progression, students will be assessed on their level of attainment. These levels then provide the framework for the reporting procedure utilised for the development of the student attribute profile. The progression from each level to the next also works as an aid to student understanding and provides opportunity for student reflection on skill attainment.

Stage 3 – Integration of Skills into the Curriculum

The third stage of the process, which is currently underway, requires a significant cultural shift in approaches to teaching and learning law within the Faculty. While a radical overhaul of units comprising the course may not be necessary (other than the first year program which was completely revised for Year 2000 implementation), the significantly content-based approach used in many units is no longer feasible. This is not to say that large amounts of content need to be abandoned. Rather, a different focus needs to be developed to ensure that an authentic learning environment is created for

the teaching and learning of skills *in parallel* with the substantive law.

This presented some particular difficulties for the development of an integrated first year, especially given the considerable diversity of backgrounds and varying life skills of students entering the course. The following issues arose and will be considered further below:

- What approach should be adopted to ensure that *each* student could meet the competency benchmark by the end of the first year in order to be able to progress to the next level?
- Assessment practices would need to be reviewed to ensure appropriate skills assessment (both formative and summative).
- Assessment should also be linked with the reporting or recording of graduate attribute development.
- Students should be able to utilise their assessment to assist them both to record their competency level and to encourage self-reflection on strategies for improvement. Facilitation of student choices about how to progress the development of their skills through the course options open to them should also occur.

Integration with Substantive Units – Course Level

The majority of projects and research in the area of graduate attributes recognises that the most effective way of developing skills within a graduate is to embed those skills within the curriculum. Encouraging skills development throughout the course allows graduates to develop their attributes over time, maximising the opportunity for an advanced level of skills attainment. The “one shot” or inoculation model of teaching, which is commonly characterised by having one skills unit at the beginning of the course and a “booster” unit/shot at the end, does not allow for the incremental development of skills over a period of time.³⁰ For the law degree as an entity to provide the learning environment necessary for students to develop skills in parallel with the substantive law, it becomes necessary to match identified skills with units that are appropriate for their development.

As part of this process the following two matters require particular consideration:

- Each of the skills needs to be developed systematically through a process of explicit instruction, practice, feedback

and final assessment, ranging across the whole of the degree. It is not necessary for each unit to take on the responsibility for the whole of the development process for a particular skill: it may be necessary (and indeed desirable) to spread the students' experiences across a number of units (particularly, for example, in a multi-faceted skill such as written or oral communication).

- Each of the skills needs to be developed as an integrated package *horizontally* across the particular year of the degree and then *vertically* through the remainder of the course.

First year example

Students are advised in their first year course materials that the Faculty's philosophy is to provide an education which makes available to the graduate-in-training the broadest possible range of generic and legally specific skills, developed within the context of discipline knowledge and understanding, and a professional and ethical attitude. One of the specific objectives of the first year program is to encourage students to access and analyse information through practising generic skills which will be reinforced throughout the rest of the course.

In particular, there is an express acknowledgement that students will commence the course with varying skill levels, in the same way that they will have varying levels of legal knowledge. The first year curriculum as a whole is designed to assist students to reach a common level of competency in relation to certain skills.

Students are informed that, in accordance with the policy of the University, the Faculty has identified several skills that fall within three generic graduate attributes. The link between the generic attributes and the skills to the real world and professional practice is made explicit to enhance motivation.

Through tuition and practice of nominated skills during first year, students are expected to achieve a *basic level of development* in the generic attributes of:

- *information literacy*, which includes the following skills:
 - computer skills
 - information technology literacy – e-mail, use of the World Wide Web, use of library cd-roms, word processing

continued

- knowledge of database structures
- library and research skills
- problem solving
- critical analysis skills
- oral communication
- written communication

- *social and relational skills*, which include:
 - ability to work independently
 - ability to be a productive member of a team
 - ability to recognise and appreciate cultural and gender differences
- *an ethical attitude*:
 - an ethical attitude involves knowledge of ethics, knowledge of the basic ethical rules, an ability to offer appropriate solutions to ethical dilemmas, and generally conducting oneself in an ethical manner.

The skills to be explicitly developed as part of the first year program have been “distributed” between the various (core) first year units, in each case ensuring students have instruction on the skill itself, opportunity to practise the skill, feedback and assessment:
- *Legal Institutions and Method* (1st semester, all students) specifically develops:
 - oral communication – speaking clearly and logically, conveying ideas in group, and active listening
 - comprehension and analysis #1
 - problem solving #1
- *Law Society and Justice* (1st semester, all students) specifically develops in a socio-legal context:
 - critical thinking #1
 - oral communication – oral presentation
 - ethical and attitudinal awareness #1
- *Legal Research and Writing* (2nd semester, all students) specifically develops:
 - information literacy – Australian, comparative and international legal research
 - problem solving #2
 - written communication – writing skills and plain English
 - computer skills
- *Contract* (full year, first year full-time students) specifically develops in the substantive law of contract:
 - comprehension and analysis #2
 - problem solving #2
 - written communication – letter writing

continued

- *Laws and Global Perspectives* (2nd semester, all students) specifically develops in a cross-cultural context:
 - critical thinking #2
 - information literacy – international electronic research
 - team work
 - ethical and attitudinal awareness #2
- *Torts* (full year, first year full-time students) specifically develops in the context of the substantive law of torts:
 - comprehension and analysis #2
 - problem solving #2
 - oral communication – interviewing
 - written communication – formal writing.

There is also a range of skills that are developed implicitly within the unit *Legal Institutions and Method* as a foundation for other units.³¹ The focus here is on skills which are necessary for successful completion of a law degree and which students should begin to use and practise as early as possible, but which time and resources dictate cannot be extensively or explicitly taught within the first semester of the course:

- *Time management*
Students are referred to the necessity for time management skills and to the indicia of independent workers by information made available on the on-line site for the unit *Legal Institutions and Method*.
- *Independent work*
This desirable skill is constantly referred to in lectures and seminars, while the teaching and learning approach in the unit has been chosen to foster independent learning (that is, one hour "lecture forum" in the nature of an "overview" or "briefing" on the assumption that pre-reading has occurred and that learning is facilitated in two hour seminars).
- *Ethical behaviour*
Students are referred to specifically developed *Student Conduct Guidelines* which set out certain expectations relating to the conduct between students and lecturers, and between students and administrative staff; student conduct generally; and e-mail and voice mail etiquette. This standard of appropriate conduct is reinforced in the students' seminar performance assessment, where one of the criteria is specified as compliance with the student guidelines in relation to seminar or small group conduct.

continued

- *Computer skills and information technology*

In its first offering in Semester 1, 2000, *Legal Institutions and Method* has been offered in a combination of face-to-face and on-line teaching. One of the specified objectives of offering the unit on-line is to “allow [the student] to learn and practise skills concerning the use of information technology”. All students are required to be familiar with and access the university’s on-line information system, “QUT Virtual”, to have access to and use e-mail accounts, to be able to access a limited range of legal information sites on the Internet, and to use the on-line site for the unit. To encourage and assist students to use technology, a number of strategies were put in place. First, as part of their seminar program, students are taken to the computer lab, instructed on how to use the on-line system and shown various useful internet sites. Second, students are required to submit a copy of an e-mail notice sent to them early in the semester for the express purpose of “ensuring that all students have at least the basic level of computer literacy skills of accessing their e-mail account”. Third, external students are encouraged to participate in on-line discussion forums representational of the locality in which the students live. Students are informed:

The purpose of this discussion forum [in this unit] is to provide external students with the opportunity to communicate with each other and to practise using a discussion forum. Participation in discussion forums will be optional for external students in *Torts* and compulsory for external students in *Laws and Global Perspectives* [in Semester 2]. The academic staff in *Legal Institutions and Method* will not participate in the forum but it will be monitored to ensure the guidelines concerning etiquette are followed.

Students’ information literacy and computer skills are then further developed and assessed in the unit *Legal Research and Writing* and in *Laws and Global Perspectives* in 2nd semester of first year.

Teaching and Learning Approaches – the Unit Level

The teaching and learning approach of any unit deciding to integrate skills within the course should take account of a range of important issues at unit level.

The Existing Competency Level of Students Entering the Unit

Where the unit is taught in first year, competency levels may vary depending on the demographic of the student cohort. In later years of the course, teachers should be able to gain guidance from the objectives of units in the earlier part of the course regarding skill development.

First year example – QUT

The diverse range of skill levels of students entering a law course over the last few years makes the development of a first year program particularly challenging. A fine line must be tread to ensure that the first year program embraces the different skill levels of the commencing student body but nevertheless brings all students to some level of parity by the completion of the first year.

In 1999 the commencing student load for law was distributed as follows:

Age – 1999

17-24	24-30	31-36	37-42	43-50	50+
54%	20%	15%	6%	5%	0.5%

Admission basis – 1999

Prev HE	TAFE	Senior	Alt Ent	Q-Step	Ood	Other
59%	7%	19%	8%	2%	2%	3%

Key:

Prev HE	Previous Higher Education
Senior	Grade 12 qualifications
Alt Ent	Alternative Entry
Q-step	Entry program for students from low socio-economic backgrounds
Ood	Aboriginal and Torres Strait Islander

This did not change dramatically in 2000 with the following student distributions:

Age – 2000

17-24	24-30	31-36	37-42	43-50	50+
67%	17%	6%	5%	4%	1%

Admission basis – 2000

Prev HE	TAFE	Senior	Alt Ent	Q-Step	Ood	Other
56%	6%	29%	4%	2%	1%	2%

Sex – 2000

Male	Female	No Answer
32%	59%	9%

The development of an integrated skills program must therefore take into account the varying life skills of students entering the course. Students who have already studied at university or completed another degree will possess, on the whole, a more varied and developed set of generic attributes

than students entering straight from secondary school. On the other hand, the latter students, on the whole, may possess more advanced computer and information technology skills. With knowledge of these diversities, the entire first year program has been redesigned to ensure that all students will have attained at least basic competency levels for the targeted skills. This is desirable for a number of obvious reasons (many of which have already been described) and is critical for providing the solid platform on which second year skills teaching and learning can be built.

Additional issues arise in the context of diversity. In one of the first year units, students were asked to rate themselves on the skills of problem solving, comprehension and oral communication using the following five point scale:

- 1 - Quite poor; needs considerable improvement
- 2 - Only moderate; needs improvement
- 3 - Quite good, but still scope for some improvement
- 4 - Competent; only fine tuning required
- 5 - Excellent

In general, the results indicated that the 17-24 age group tended to rate themselves as either "competent" or "excellent" across the skills, while the older age groups were more critical of their own ability. This would seem to highlight a lack of self-reflection on the part of younger students which requires specific attention on our part. The current feedback from tutors across the particular first year unit suggests that the younger students' skills are not as developed or advanced as they believe. It is anticipated that the formative feedback on their comprehension tasks in seminars, together with the summative feedback on the assessment exercises, will provide a basis for better informed and tutor-facilitated self-reflection.

Apart from the stark breakdown between male and female enrolments, other interesting findings from the survey were the particular areas in which the female cohort tended to be more critical of their ability than their male counterparts. The most dramatic contrast occurred in the area of conflict management and resolution. This may lead us to include conflict management training within the first year program.

The most significant variations in results are shown in the table below.

Question	Male - Competent & Excellent Responses	Female - Competent & Excellent Responses
<i>Listening skills</i> - remain calm in the face of threatening situations	58.8%	37.1%
<i>Oral skills</i> - deal appropriately with threatening situations	61.8%	37.9%
<i>Body language skills</i> - make appropriate eye contact with others	60.3%	70.9%
<i>Problem solving skills</i> - identify an issue within a given fact situation	53.7%	42.7%
<i>Problem solving skills</i> - generate alternative solutions to the problem	58.8%	38.7%
<i>Problem solving skills</i> - implement the plan	54.4%	44.6%

Review of Learning Objectives for the Unit

The learning objectives for each unit should clearly indicate the skills to be developed, the methods used to develop the skills, the competency level expected of the student upon completion of the unit, and the methods for assessment of the skill. While generic skills have often been “taught” implicitly in the past, it is obviously preferable and more effective that they be taught by explicit identification of the skills in unit descriptions and assessments. Students need to be informed very early in their studies how and why they are going to be taught generic skills, how these skills preface the development of legally specific skills, and what part they, as students, should be playing in developing these skills.

First year example

In the 1st semester, 1st year unit, *Legal Institutions and Method*, as mentioned above, the skills specifically concentrated on are:

- oral communication
- comprehension and analysis
- problem solving.

The Study Guide for the unit, which is produced each year by the teaching team, deals specifically with why *these* skills have been chosen as the focus, what level of achievement is expected for each skill on completion of the unit, how the skills will be developed through the course of the semester, and how all of this relates to the first year course as a whole. This is reinforced in the very first lecture, where the bigger picture (through to graduation) is presented, and again in the first seminar in the unit. The *Legal Institutions and Method* Study Guide sets out the detail of this information as follows:

Why these skills?

Each unit in the first year program will take responsibility for the development of a certain number of the identified skills for the Faculty. The skills chosen for *Legal Institutions and Method* are intended to provide the platform for development of higher level skills in the second semester of first year and later years in your degree.

What is the level of achievement expected for each skill on completion of the unit?

Oral communication

You will be expected to be able to speak clearly and logically within a seminar group and to convey an idea or issue to another person within your group. You will be expected to use appropriate language and demonstrate active use of listening skills.

Comprehension and analysis

This will involve a two step process. First, you will be expected to be able to analyse a short piece of writing or case so as to answer set questions. The second step in the process is the development of analytical skills. You will be expected to be able to analyse a piece of work by answering set questions. The skill of analysis will be developed further in *Laws and Global Perspectives* in second semester.

continued

Problem solving

You will be introduced to basic problem solving. You will be expected to use the approach to problem solving in *Legal Institutions and Method* and in your other units, including *Torts and Contract*. By the end of this unit you will be expected to be able to use a simple problem solving approach. Problem solving will be developed to a higher level in *Legal Research and Writing, Torts and Contract*.

How will each of the skills be developed?

Each of the skills will be developed through a process of instruction, practice, formative feedback, reflection, and summative assessment.

Oral communication

You will receive feedback in relation to your performance in seminars from the tutor. Prior to each seminar you should use the questions posed under "Assessment Criteria for Seminar Performance" in 8.5 of this Introductory Guide as a checklist. Following the seminar you should again address the questions listed for seminar performance and consider how your performance could be improved.

Comprehension and analysis

Instruction will be given in small group discussions in relation to comprehension skills and you will be given the opportunity to practise those skills as part of the seminar program. The tutor and other students will provide feedback on your attempts during the sessions. The comprehension exercise will provide feedback in relation to the improvement of your comprehension skills. Following this exercise you will be required, as part of the small group discussion, to reflect on how your performance could be improved. You will be given a further opportunity to practise your skills in light of your reflection in seminar program. The final assessment of your comprehension skills will occur in the exam.

Problem solving

You will be introduced to basic problem solving through the Study Guide and in lectures. You will be given the opportunity to practise your problem solving techniques during the small group discussions. In particular, you will be required to apply the problem solving technique to solve statutory interpretation questions. You will also be able to practise your problem solving technique in *Torts and Contract*. Feedback will be given during small group discussions. Your problem solving skills will be assessed in the exam.

continued

How does this relate to the first year curriculum as a whole?

In the first year of your studies you will be given the opportunity to develop a basic level of competency in each of the three generic attributes detailed above. This will be achieved by an integrated and developmental approach across the whole of the first year curriculum. You will be required to use and build on the skills acquired in *Legal Institutions and Method* in your second semester units and in the later years of your degree. For example, you will be expected to use and develop your problem solving skills in *Legal Research and Writing, Torts and Contract*. You should not assume that just because you were assessed on that particular skill in *Legal Institutions and Method* that you will not need to use it again.

Review of Teaching Strategies

Depending on the level of skill to be achieved, teaching strategies should aim to put the skill within the context of the unit content and to give the skill a real world meaning. This should be made feasible by an appropriate matching of the skill with the unit content. Again, the linkage should be made explicit to students.

First year example

In *Legal Institutions and Method*, one of the skills developed is that of comprehension and analysis. The emphasis on "comprehension" is not accidental. One of the commonly identified skill deficiencies in first year law students is an inability to comprehend, not just legal writing, but any piece of even mildly sophisticated prose. The positioning of basic comprehension and analysis skills in this unit is appropriate, given the place of *Legal Institutions and Method* in the degree as the foundation unit and "comprehension and analysis" as the generic foundation of legal reasoning.

Students are provided with "Comprehension Guidelines" which progress from a basic level of instruction through to the more difficult aspect of analysing that which has been comprehended. The Guidelines are practised and reinforced in seminar exercises where the examples used are writings on unit content introduced in lectures. Case noting exercises and statutory interpretation instruction are presented as legally specific examples of generic comprehension: the ability to navigate a statute and a case report, and then to analyse and interpret cases and statutes in response to specific questions posed, are put in the context of the generic skill of comprehension and analysis.

Review of Assessment

Assessment methods for each unit should be revised to ensure appropriate assessment tasks for both substantive content and skills.

First year example

In the Study Guide for a unit such as *Legal Institutions and Method*, each piece of assessment in the unit is explicitly linked to the unit objectives (as you would expect) and the skills being developed by the particular item.

For example:

- The external exercises develop written communication skills, comprehension and problem solving skills. At the end of the semester, students should be able to solve simple problems, to convey clearly in writing relevant legal principles, and to analyse and interpret case law.

Performance is measured against:

- presentation
- clarity of expression, grammar and spelling
- use of plain English
- demonstrated ability to properly acknowledge sources and cite cases and legislation
- demonstrated understanding of relevant principles
- demonstrated ability to apply relevant principles.
- One of the objectives of seminar performance is to assist in the development of oral communication skills. At the completion of the semester students should be able to demonstrate an ability to speak clearly and logically within the seminar group and use appropriate language and listening skills.

The criteria upon which performance is assessed are:

- Attendance – this concerns physical attendance at seminars
- Participation –
 - Preparation; demonstration to the tutor of preparation by being involved in the discussion. (Has the required reading been done?)
 - Has there been an attempt to answer the questions for the week?
 - Is the student involved in the discussions that are occurring, whether it is by listening, speaking, asking questions, or noting what is going on?
 - Are good listening skills demonstrated?
 - Did the student allow other students to contribute to the discussion?
 - When asked a question was the student able to provide an answer that demonstrated knowledge and understanding of the material for the small group discussions?

continued

- Did the student comply with the student guidelines in relation to seminar or small group conduct?
- Has the student submitted all items of work required by the tutor?
- The comprehension exercise is particularly aimed at the development of comprehension and analytical skills. Upon completion of the unit, it is expected that students will be able to demonstrate an ability to comprehend and analyse a simple article, case or statute.

The criteria against which performance is measured include:

 - presentation
 - clarity of expression, grammar and spelling
 - use of plain English
 - demonstrated understanding of principles articulated in the article, case or statute
 - demonstrated ability to discern relevant legal and factual issues as required
 - demonstrated ability to interpret and analyse the article, case or statute, and to answer set questions clearly and coherently.

Reporting Attribute and Skill Attainment and Competency – The Graduate Profile

Any reporting procedure on students' attributes, skills and progress should have a two-fold purpose. First, students need to be able to track their own development and document their skill attainment (at the various levels of progression) through a reflective process. Second, students need to be able to use the record for employment purposes. These purposes are satisfied by the development of a student attribute profile. At QUT the development of a student/graduate attribute profile is occurring at a university level as part of the ATN Project. The Law Faculty project aims to utilise the system developed by the ATN Project for the recording of graduate attributes.

Issues that have been identified for the development of such a system include:

- How will students record their initial skill level? Will this be by way of self-assessment only, or will some objective test be undertaken? Is this even necessary?
- How will a student be able to assess any changes in the development of their skills? Will the assessment within each of the courses need to be adapted to specifically provide assessment on the skill and the content that can be transferred straight to the graduate attribute profile?
- How will the student recording of the skill be validated? Is it necessary for a staff member to review the student

profile at various points within the course and provide feedback? Will the profile be a university-approved document? Validation of entries will be crucial from an employer perspective.

Implications and Issues

The final part of this article will raise, as discussion points, some of the implications and issues that arise for legal education when it embraces an explicit skills approach. The purpose is not to suggest absolute solutions to these problems but to raise an awareness of some of the difficulties that may be encountered when embarking on this wholesale curriculum change.

Change in Paradigm

The development of an authentic learning environment for the delivery of skills teaching and learning requires law academics to change their teaching focus:

- *from* content-driven *to* attribute attainment
- *from* teacher-focussed *to* student-focussed
- *from* teaching students *to* providing the environment for students to learn.

This may result in teaching staff wanting to focus upon more easily assessable skills (such as library and computer skills) and disregarding the more complex skills of team work, oral communication and research.

Staff Development

Many staff may consider that they do not possess the necessary skills that are now expected of their students on graduation. Likewise, some staff may not consider themselves competent to teach or assess many of the skills. These concerns need to be addressed as part of staff development. In particular, there is a need to address the generation of a staff development model designed to enhance the instructors' ability to facilitate, assess and guide generic attribute development in students. This may require other academics who are expert in the particular skill to provide staff training, *or* for the expert academic teacher to become a member of a particular teaching team for the purpose of assisting existing team members to develop the skill. In either case, the emphasis should be on collaboration between staff members. Staff development will also be assisted by the compilation of

readily available staff resources for the teaching of generic attributes.

Staff Commitment

The level of staff commitment may be affected by a number of factors:

- concerns staff may have in relation to their own abilities
- concerns academic staff may have about how this project, when implemented, will impact on their academic freedom, and whether it will dictate how they teach “their” units in terms of teaching and learning approaches and assessment strategies
- the commitment evidenced by the university to the development of skills across university curricula
- the commitment of Faculty management to the development of skills as evidenced by resource and workload allocations.

It is important that barriers such as these are appropriately recognised and overcome. It is clear that there is a need for academic and support staff to collaborate in the development of workable guidelines and policies to implement skills development. It is equally necessary that a collection of practical resources to integrate generic skills across curricula is made available at a university level and is accessible to all staff. These various issues require substantial goodwill on the part of all involved and a “whole of university” commitment to the validity of skills training as discussed above. To ensure that staff ownership of units is not lost, staff should be active participants within the process from an early stage, particularly in the development of the curriculum.

Resources and Workload

The Faculty needs to give careful consideration to the issue of resources and workload. The shift in teaching paradigm necessary for the successful inculcation of skills within an existing curriculum places increased burdens on staff members in terms of reconceptualisation, assessment methodology, and marking. The Faculty should be prepared to allocate resources to assist staff in making the transition and in sustaining the learning environment for students. This may necessitate a reconsideration of workloads and a creative allocation of resources.

The supply of “hard” resources is also necessary, particularly in the area of information technology. Sufficient hardware (and software) needs to be provided for both students and staff to enable development of computer and information

technology skills. IT support is also an important issue, given generally increased workloads.

Student Response

Student response to a change in focus *from content to skills* development embedded in content may be mixed. While all students may see the ultimate benefit in developing their skills at university, many may consider they already possess sufficient levels of skills competency. Others may perceive skills attainment and improvement to be too confronting and as having the potential to pull down their marks in a very competitive student environment.

Strategies to engage students in the validity of skills learning might include:

- creating “Faculty Maps” which chart the accommodation of generic skills within units and programs within the Faculty and which show how the generic relates to the legally specific “real-professional-world” skill
- including skills explicitly in the curriculum and alerting students to the skills they are expected to develop
- making it clear to students that they share responsibility for acquiring these skills (that is, to develop as independent, self-directed learners – highly sought after by potential employers)
- providing avenues for students to gain skills outside the discipline context.

Conclusion

This article has sought to demonstrate that an integrated and incremental approach to embedding generic and legally specific skills in an undergraduate law curriculum is a challenge that must now be embraced. At the very least the call cannot be ignored. University hierarchies, employers, graduates, students and other informed professional bodies are all demanding that law school curricula equip their law graduates with the appropriate level of skills attainment to enable a seamless transition from the academic world to the professional, global and ever-changing workplace.

While meeting such a challenge may be laborious and burdensome, and will certainly require enormous effort and commitment on the part of all stakeholders, it is nevertheless a cause deserving of our allegiance. To decline the challenge will lead ultimately to the irrelevance of law teaching as a discipline and to the disintegration of the value of the professional degree.

APPENDIX

Queensland University of Technology
Generic Skills*Knowledge/Problem-solving*

QUT graduates should –

- possess coherent, extensive, theoretical and practical knowledge in at least one discipline area
- be able to define and solve problems in at least one discipline area
- be able to retrieve, evaluate and use relevant information
- be able to use current technologies to advance their own learning
- be equipped for lifelong learning, intellectual development and critically reflective and creative thinking
- be able to adapt to an unfamiliar culture and operate in a socially and culturally diverse environment
- possess effective written and oral communication skills
- know how to manage time and prioritise activities
- be aware of their own strengths and limitations.

Ethical/Attitudinal

QUT graduates should –

- possess a sense of community and professional responsibility
- value and promote truth, accuracy, honesty, accountability and ethical standards
- be confident about their ability to learn independently and interdependently
- desire continued intellectual development
- be willing to deal with ambiguity and to initiate and participate in change as appropriate
- appreciate differences in gender, culture and customs.

Social/Relational

QUT graduates should –

- be able to work independently
- be able to fill the role of a co-operative, productive team member or leader
- accept responsibilities and obligations, assert individual rights and respect the rights of others

- be able to participate in social commentary and contribute to intellectual, social and cultural activities in the local and international community
- be able to work effectively and sensitively within the Australian and international community.

TEACHING NOTE

Interdisciplinary Teaching in Law and Environmental Science: Jurisprudence and Environment

*Lee Godden and Pat Dale**

Introduction

Griffith University introduced an integrated Law and Environmental Science degree in 1992. Students who successfully complete the five-year course receive both a Bachelor of Law and a Bachelor of Science degree. The first graduates entered the work force in 1997. With burgeoning regulation of the environment these graduates will help fill a growing demand for legally qualified environmental scientists or scientifically qualified lawyers. The first years of the degrees of the course are devoted to studying the two discipline areas, with integration across disciplines wherever possible. One example is that many of the core legal subjects set an integrated law and environmental science assignment that, for instance, might include the environmental and legal aspects of toxic torts. The theoretical and philosophical frameworks of law and environmental science are integrated in the fourth year subject, Jurisprudential Theories of Law and the Environment. This subject, together with a final year integrated research project, represents a culmination of the interdisciplinary study across the two degrees. The subject is a novel one, being the first of its kind in Australia, and is the focus of this article. We outline the aims of the subject, its approach, content, teaching and assessment methods, summarise innovative student achievements, and provide illustrative feedback from students.

Aims

The general aims of the subject are to provide an interdisciplinary framework for the study of Law and Environmental

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Science. The approach combines both theoretical issues and substantive Law and Science. Currently, the subject dovetails with a first semester jurisprudence subject. In the first few years of offering the general jurisprudence section was not separated from the integrated law/science component. Instead, the subject commenced with a ten week jurisprudential section and then the integrated focus continued thereafter across two semesters. Under the new structure, the first-semester subject, (and the former 10-week component) applies a theoretical and analytical perspective from a range of jurisprudential schools of thought. Ultimately, it examines how law is relevant to human experience.¹ This focus is common to all integration areas, not only the Law/Environmental Science integration.² In addition, Environmental Science students are already familiar with the basics of the philosophy of science which is taught in earlier years in the context of hypothesis testing and experimental design in various Environmental Science subjects. The second semester subject is developed and implemented by academics from each of the disciplinary integration areas. What follows is an account of the way the Law-Environmental Science integration is developed.

Approach to Integration of Law and Environmental Science

The principal aim of this subject is to develop a conceptual framework to assist the evolution of an integrated approach to the study of Law and Environmental Science. As such the approach pursues a theoretical understanding of central issues concerning the environment that arise in Science, in Law and also as a result of the interaction between the two areas. On completing the subject, students should have an understanding of how and why the legal process regulates, or fails to regulate, the complex interaction between human behaviour and the biophysical/social milieu.

Objectives of the subject are to:

- (a) examine the relevance of law to human experience in the context of the "environment";

1 The authors acknowledge the substantial work that was undertaken by Shaun McVeigh in developing the core jurisprudence element that comprises an introductory jurisprudential section prior to the students undertaking the specific interdisciplinary section.

2 Other disciplines involved in the integrated degree courses include: Public Policy, International Business, Media, Accountancy, and Modern Asian Languages.

- (b) explore the extent to which theories can provide an explanatory basis for understanding issues that arise in relation to law and the environment;
- (c) discuss limitations of the theories and propose alternative bases of explanation;
- (d) examine the appropriateness of substantive law and legal reasoning to environmental issues; and
- (e) consider whether the legal framework is sufficiently flexible to provide just outcomes in environmental disputes.

The specific themes of the subject were developed in association with a “core” common part of the jurisprudence subject. Key concepts and issues from a jurisprudential perspective, such as rights, ethics, justice, individual and community interests, sanctions and punishment, and their application to environmental issues, are covered. In addition, various approaches to interpretation and the construction of meaning from a disciplinary standpoint are discussed. An example here is the section which considers the interaction of legal and scientific procedures and methodologies for establishing “truth”. As a further example, the section on “interpreting the environment” resonates with the discussion of postmodern interpretations of legal texts from the core jurisprudence section but adapts these approaches to an environmental planning context.

The subject is not designed to be a comprehensive environmental law subject, although various aspects of environmental law, both legislation and case law, are highlighted. Students are encouraged throughout to “bring across” information from subjects taught in both degrees and to examine it from an interdisciplinary perspective.

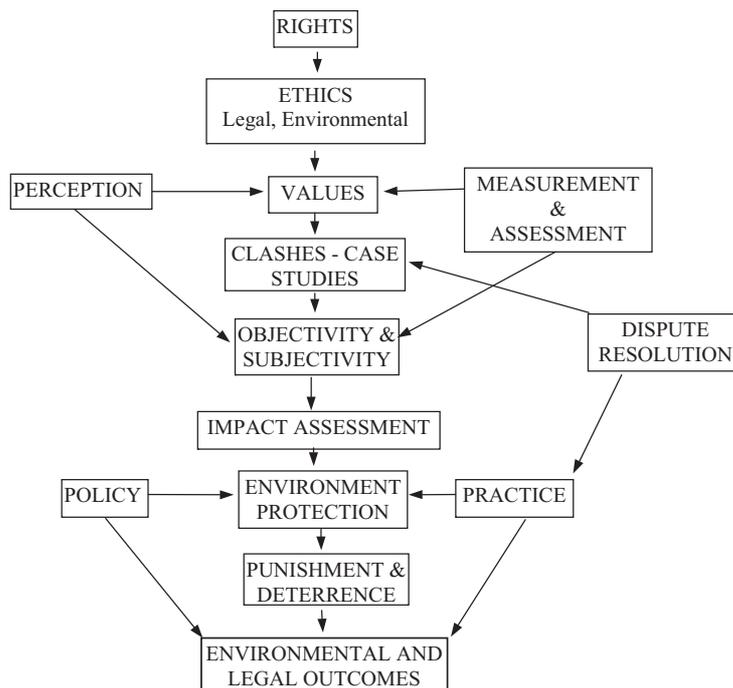
The content for weekly topics was designed to illustrate various jurisprudential issues, or to provide a point of departure to consider vexed ethical or moral dilemmas confronting persons who practise in the fields of law and environmental science. For example, the content dealing with biodiversity protection illustrates issues about the “value” that law ascribes to the natural world. The discussion hinges around the relationship between law and morality in terms of legal norms prescribing how people “should” act when confronted with rapidly diminishing natural species. A further theme considered in relation to this substantive content is whether the emergence of biodiversity protection laws, incorporating concepts such as the precautionary principle, constitutes a form of natural law. A discussion of natural law as a point of comparison with positivist law, reinforces the analysis

conducted in the common jurisprudential section, while providing a uniquely environmental “twist” to the theme.

Content

To provide a succinct summary of the content, the subject overview is shown in Figure 1 and the content is summarised in Table 1. Figure 1 shows the integration of legal “theory”³ into environmental issues such as policy development. In effect, the development of theoretical constructs about law, environmental science and their inter-action presides, and permeates the other topics and environmental issues. All of this affects the practical issues and ultimately the “grass roots” where policy decisions are put into effect and environmental and legal outcomes occur.

FIGURE 1
A qualitative model of the relationships between subject components.



3 We prefer to use the term “theory” rather than jurisprudence as many matters discussed in an interdisciplinary subject of this type range more broadly than traditional jurisprudential topics. It is acknowledged that “theory” also is open to a wide range of interpretations.

TABLE 1
 Topics and Content of Jurisprudential Theories of
 Law and Environment: integration in the
 second part of the subject

Topic	Content
Property Rights and the Environment	<ul style="list-style-type: none"> • Continues the concept of rights from the first part of the subject, translating them into in an environmental framework. • Examines the role of rights, (especially property rights) in terms of their limitations for protecting the environment • Examines the traditional rights based adversarial mode of the common law as a factor in the perceived ineffectiveness of common law to deal with environmental issues.
The Individual, the Community and "Environmental Rights"	<p>Examines the balance between the rights of the individual, the public interest and the needs of the environment by examining:</p> <ul style="list-style-type: none"> • the role of individual interactions (Hohfeldian analysis) • whether the environment can be imbued with legally enforceable rights ensuring its continued existence and protection • western legal system concept of the individual and the "other" (here the environment).
Environmental Ethics/Professional Ethics	<ul style="list-style-type: none"> • Develops ideas about human responsibilities and the entities to which they are owed. • Explores the potential contribution that Law and Environmental Science can make to the field, in particular Environmental Ethics. • Discusses ethical dilemmas for people trained in both law and environmental science.
Valuing the Environment	<p>The theme of "values" discusses:</p> <ul style="list-style-type: none"> • utilitarian arguments advocating a use value for the environment • philosophical positions which contend that the environment has intrinsic value.

continued

Topic	Content
Case Studies - The Clash of Instrumental vs Intrinsic Environmental Value	<p>Examines and discusses, in the context of specific examples:</p> <ul style="list-style-type: none"> • the conflict of instrumental and intrinsic values in the "real world" (case study) • potential links between the notion of "natural law" and advocacy of intrinsic value • some of the guiding principles of ecologically sustainable development, which are being incorporated into current legislation, and how these view environmental values.
Environment, Sustainability and Justice	<p>Considers the problem of achieving a just balance between the often conflicting demands of environmental conservation and development, given the "rights" of the interested parties. Cases studies are used to focus discussion (eg, World Heritage issues)</p>
Scientific Methodology for Interpreting and Assessing the Environment	<ul style="list-style-type: none"> • Intersection of scientific methodology with the legal process: • the manner in which "facts" and "evidence" are derived and interpreted through the disciplinary processes of both environmental science and law. • the fact/law distinction and its applicability in the context of environmental disputes. • how law relies on science to provide "evidence" in a range of environmental issues. • the role of the expert witness from the perspective of factual data and its scientific proof and the standards of proof developed in Law.
Environmental Perception	<p>Explores and examines:</p> <ul style="list-style-type: none"> • the role of beliefs, attitudes and values in shaping the human response to the environment, and its reflection in legislation - how do we "interpret" meaning in the environment. • the extent to which western modes of thought have determined a particular interpretation of the environment.

continued

Topic	Content
Integration: Objectivity/ Subjectivity	<p>How Law and Science conceive of objectivity by considering concepts such as the reasonable person test and the scientific method. Questions addressed include:</p> <ul style="list-style-type: none"> • What are their implications when applied to environmental problems? • Do they provide adequate guidelines for human interaction with the environment? • Can we determine what is reasonable behaviour in the face of uncertainty?
Environmental Impact Assessment: Approaches and Theoretical basis	<p>Focus on Government and environmental regulation.</p> <p>Environmental impact statements are central to the Government's decision making process.</p> <p>Examines the problems and limitations associated with the Environmental Impact Statement process as an exemplar of conceptions of "risk", reviewing relevant legislation.</p>
New Approaches to Environmental Protection: From Policy to Practice	<p>Examines recent Queensland policy and statutory initiatives which seek to reform procedures, such as the Integrated Planning Act 1997 (Qld).</p> <p>Critique focuses on whether the proposed reforms ensure greater environmental protection and at the same time allow for an expedition of decision making processes?</p> <p>Practical exercises include drafting and inputs to recent draft legislation or policy documents as available.</p>
Courts Versus Other Means of Dispute Resolution.	<p>The growing trend is to reconcile environmental differences through processes other than the adversarial court system. Dispute resolution is a less adversarial approach to environmental problems. Discussion focuses on case studies which utilise alternatives to the courts.</p>

continued

Topic	Content
Punishment and Deterrence	<p>What happens to the environmental offender?</p> <p>We introduce a theoretical framework for punishment, deterrence and rehabilitation and discuss pragmatic solutions and ethics.</p> <p>We refer to basic concepts of culture (values, beliefs and norms, of which norms are the behavioural outcome).</p> <p>We consider how such concepts apply to environmental offenders, and how penalties may reflect the values held by a society and also how these have changed, and are changing.</p>
Review and Synthesis: a Conceptual Framework	<p>A conceptual model is developed to synthesise and analyse the theoretical framework.</p> <p>A general qualitative “model” is developed (Figure 1) to provide an interdisciplinary framework for the study of law and environment. The “model” is presented as one of a possible range of conceptual frameworks and students are encouraged to develop their own “model” to aid in understanding the application of jurisprudential theories to the environment.</p>

Teaching Methods

The subject is taught by two hours allocated to lectures and a student-lead seminar each week. In the first two years, the student numbers were around 8–10 but this number has increased in succeeding years to a steady state of approximately 15–20 students. The lecture format is informal. The normal process is for one teacher from the two faculties involved to give an overview “lecture” while the other “interferes”, stimulating discussion amongst all participants. With a small and motivated class this format is an effective way to achieve the subject objectives and provides students with opportunities to develop their advocacy skills. From the teaching perspective we are fortunate in having two different academic perspectives (one lecturer from Law and the other from Environmental Science) yet both lecturers’ first degrees were in Geography and each also has a Bachelor of Laws. The interaction between faculty is important in facilitating active student involvement

in the lectures and recognising the need to communicate effectively across disciplines.

The second hour may include further informal lecturing or a guest lecture, but commonly uses more innovative and entertaining methods to convey understanding. Typically students are given a scenario and asked to develop a case from various perspectives, using both legal and environmental arguments. In other instances they are asked to critically examine environmental policy, draft legislation to give effect to policy, or comment on draft legislation culminating in providing a written response to the relevant government department. As well, practical "experiments" are conducted to investigate the group attitude to issues such as punishment or perception of environment. These are then compared in class to the results of published research on the same issues and discussed in the light of current theory.⁴

The seminar is student driven. At the start of semester a list of seminar topics is distributed. Each week's topic relates to the lecture theme for the week and is organised by students. Each student selects topics from a designated list and a small number of students present their work each week. How the students organise the topic for a particular seminar is for them to choose. Some split the topic, others may focus on contrasting examples. Occasionally innovative activities such as role-plays are arranged by the students involving the whole class, including the lecturers.

Assessment

The Law/Environmental Science integration part of the subject has three assessment items. These are based on class participation, seminar presentations, and a major assignment. The items test a range of skills and are designed to enhance the students' ability to analyse and present material in an interdisciplinary manner.

The seminar presentations are initially given on the basis of pre-set topics related to the lecture component each week and which covers both law and environment. The major assignment may be based on a seminar topic or students may select a topic, subject to it being approved by one of the lecturers. One criterion for approval is that the topic involves both legal

4 For example, students are asked to "map" their perception of the campus. These "cognitive" maps are compared with research on the cognition of space and its incorporation in environmental planning concepts.

and environmental issues. It may, for example, focus on an area of law and discuss environmental implications or it may take an environmental issue and discuss the relevance of law and legal process to its resolution.

Innovative Student Achievements

Students surprise us with the degree of insight they show on difficult theoretical issues, both from the legal and environmental perspective. Topics covered in the major assignment have included: comparing indigenous peoples rights with respect to environmental management in Australia and overseas, a detailed examination of evidentiary processes in environmental disputes, a feminist critique of pollution legislation, an examination of changing attitudes to rural land use practices, and an examination of social contract theory and environmental justice. Some of the work is of publishable quality. Importantly, the assignments provide an introduction to independent research for the students who all have to conduct a major interdisciplinary research project in their final year of study.

In seminars, the work has ranged from an intensive analysis of case law on the application of the precautionary principle in environmental disputes as an example of the permeation of "risk" concepts in modern society, video presentations of world heritage management issues on the Barrier Reef, to a role play on negotiation for a toxic waste dump, to a philosophical discussion between two "trees" providing an analysis of Stone's classic argument - Should Trees Have Standing?

Student Feedback

It is essential to have student feedback to guide the future development of the subject, given its innovative concept, the breadth of topics covered and the interdisciplinary context. The subject is evaluated each time it is completed. Overall there has been a positive response to the subject and generally student evaluations indicate that students perceive that the subject achieves most of its stated aims. Evaluations reveal that the most positive aspects of the subject are in making theory less intimidating and more interesting. A small selection of student comments follows:

I have always baulked at the theoretical content of the course since first year - due to my own mental block! I found jurisprudence finally gave me the confidence to feel

I was capable of forming my own ideas and reflecting on others. I think that this was mainly due to the use of examples and relating jurisprudence to substantive issues.

Materials and subject were interesting and well structured.

In particular students found the student seminars useful, commenting that they are:

A good way to look at issues in depth and see new ideas
- of other students.

There have been no serious negative criticisms although one comment suggests possible improvement:

I'd make it more relevant to practical issues - probably more theory but relate it back to stuff we've done in Law/ENS(Environmental Science).

Making sure the examples are relevant to the "real world" issues which students will face when they graduate can accommodate this objective. But perhaps the most rewarding aspect is the *ad hoc* comments that arise in class discussion which reveal that students have been able to draw together the sometimes disparate strands to offer a new insight based upon their "environmental grounding" in two disciplines.

Critical Evaluation and Future Developments

Given the positive response from students and the generally high standard of the students' assigned work there is no apparent need for major changes. However there is still some fine-tuning which is driven by experiences in the subject itself.

For instance, we propose to augment the essay with a document showing the "chain of research" pursued in developing one of the seminars (eg literature search, use of legal digests, Case Annotator, on-line data bases etc).⁵ This would show the process by which information was sought - a factor of extreme importance when undertaking interdisciplinary study where there is a need to be very wide ranging in obtaining information from diverse sources beyond the standard case and statute laws. Moreover, the "chain of research" illustrates a student's ability to effectively find

⁵ Since writing the first draft of this paper the "chain of research" has been included in the assessment, with great success.

research information and assists in preparing for a major interdisciplinary research project that is undertaken in the fifth year of the degree. It also gives recognition to the work that goes into researching for the essay and would help avoid the temptation for students to include what is not particularly relevant just to demonstrate that they have been diligent in their studies. In some complex areas competent research may yield a lot of material (much of which is not very relevant) or a very little. Indeed the impetus for this development was from one of the students who attached such a "chain" to her seminar report, mainly because she wished to show the paucity of material available on her subject, despite having carried out an extensive and "appropriate" search.

Further, as changes occur in current issues it will be necessary to modify the content to ensure that it remains relevant and incorporates topical issues. One such issue is the relationship between the rights of indigenous people and policies for environmental protection. Timeliness is particularly important when students make submissions on draft policy documents or evaluate environmental policies in areas of current concern such as coastal management.

Conclusions

In summary, in considering the subject as a whole, there is perhaps a need for more collaborative work between the teachers in the subject to increase the consistency of emphasis between the core jurisprudence section and the later integrated section. It remains challenging to bring together the very complex and fundamental questions about how law operates in society, and how it can be made meaningful to human experience in the late twentieth century using an interdisciplinary perspective. It is a perspective that considers law in the light of particular experiences – the interaction of humans and the environment and, moreover of law as itself part of that environment.

It is acknowledged that tensions exist between examining issues from a predominantly jurisprudential or law perspective when some critical environmental science issues have no direct equivalent expression in jurisprudential traditions. Further, and perhaps surprisingly, any difficulties in providing a holistic integrated framework for understanding arise not so much from a substantive content basis but from the need to coalesce the two very different methodological approaches from the disciplines of law and science.

To the extent that disciplinary methodology imposes a way of ordering knowledge and “seeing” the world, then it has been very instructive to have to work together to accommodate these approaches in a single subject. The “accommodation” of the two disciplinary bases more often than not comes from the students themselves, who having been trained in both disciplines are able to make the necessary links.

By its very nature, any consideration of the environment ranges over a diversity of issues, interests and concerns. It would seem then, that this requires a broad understanding as a prerequisite to working as a professional in this field. Further, it is often noted that the resolution of environmental problems needs to be approached from various standpoints, not least, the disciplines of law and science. Such issues need not just an understanding of relevant substantive content but an appreciation of the values, ethics and methodologies that can be brought to bear upon such problems.⁶ While many forms of “modern” knowledge tend toward specialisation, the scope of the environment seems to compel an interdisciplinary, comprehensive focus.⁷ The subject, *Jurisprudential Theories of Law and the Environment*, in its aims, content and teaching methods represents a still formative attempt to equip students with this interdisciplinary and broad approach to environmental questions.

6 G Morgan, *The Dominion of Nature: Can Law Embody a New Attitude?* (1993) 18 *Bulletin of the Australian Society of Legal Philosophy* 60.

7 For a discussion of the need for a broad approach to environmental problems see S Molesworth, *The Integration of Environmental Imperatives into Decision Making*, paper delivered at *Courting the Environment: National Environmental Law Association Conference*, Coolum Qld, 1996, *Collected papers*, 1.1 at 1.1.2.

TEACHING NOTE

Clinical Legal Education in a Developing Island Jurisdiction – A Unique Environment

*Edward R Hill**

Overview

This article provides an insight into the environment and background of the Law Clinic, a clinical legal education course offered on a placement basis by the University of the South Pacific (USP) School of Law based in Port Vila, Vanuatu. The article briefly examines the structure of the course before focussing on some of its unique features. By providing a description of the course and identifying some important issues, it is hoped that the article will provide a different perspective of clinical legal education.

Background

The Social and Legal Landscape of Vanuatu

Vanuatu is a Melanesian country that gained its independence from Britain and France in 1980. It is a developing country with a small legal profession.

There are three official languages: English, French and Bislama. Bislama is a type of pidgin which is spoken by most ni Vanuatu people.¹ Many also speak English or French, which are the languages of most expatriates. In addition, there are approximately 110 indigenous languages spoken in the country.

The country is small, but comprises 83 islands. The population is approximately 200,000. Port Vila, the capital and largest city, is said to have a population of about 30,000.²

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1 Ni Vanuatu is the expression by which indigenous people of Vanuatu refer to themselves. It is comparable to Fijian or Solomon Islander. Rather than diminishing in importance, Bislama appears to be providing a linguistic bridge between indigenous communities which have either a French or English background.

2 Accurate population statistics are difficult to find in Vanuatu and several other Pacific Island states.

Commercially, the country is a tax haven and offshore banking centre. The private legal profession services mainly the commercial and financial interests of residents and offshore clients. The private profession is predominantly expatriate, mostly from Australia and New Zealand.

The countries of the South Pacific have formal legal systems that are similar. These similarities arise out of their colonial legacies. While there are differences, they all share a common law tradition that either comes directly from the United Kingdom or indirectly through New Zealand (Cook Islands, Samoa) or Australia (Nauru). All have written constitutions. One country, the Marshall Islands, was a dependency of the United States before independence and therefore has a legal system that is quite American in nature.

The Law Council (comprising the Chief Justice, the Solicitor General and an appointed private practitioner) has statutory responsibility for the admission of lawyers to practice in the country.³ There is a growing proportion of ni-Vanuatu Lawyers. Until recently most were graduates of the University of Papua New Guinea law school. Now, however, most new lawyers are graduates of the USP program.

The legal profession is nevertheless tiny by Western standards. There are about 15 private lawyers in the country and a similar number of lawyers in the public service. The largest private firms have three lawyers. There are several government law offices including the State Law Office (the Attorney General) but these too are small. The State Law Office has four lawyers including an expatriate legislative drafter working on a consultancy arrangement. The Public Solicitor has only two lawyers.

The country is served by a Public Solicitor who is a constitutional office holder appointed by the President.⁴ His mandate is to provide legal assistance to needy persons or any person when so directed by the Supreme Court.⁵ The fact

3 The writer and other members of the School of Law staff have repeatedly applied for admission to practise law in Vanuatu. In the case of the writer and a USP colleague, temporary admission was granted that contained a series of restrictions which effectively precluded either *pro bono* or paid legal services. No legal challenge has been brought in relation to this. It remains a constraining factor in the development of a law clinic program.

4 Article 56 of the Constitution of the Republic of Vanuatu.

5 Section 5(2) of the Public Solicitor's Act 1984 provides that the term "needy person" is to be "interpreted in relation to each particular case and, without limiting the generality of this expression, account shall be taken of the means of the person to meet the probable cost of obtaining

that the Public Solicitor has a support staff of one lawyer and two secretaries effectively narrows the definition of needy persons to be those in custody in respect of criminal cases and the occasional civil case. There is a serious backlog of civil cases at the office of the Public Solicitor. There is no system of legal aid referrals to members of the private profession.

Vanuatu has no statutory law society. The Port Vila Law Society is a largely informal association of private lawyers. Its primary function has been as a convenor of social events without a significant role in the regulation of the profession.⁶

There is no code of professional conduct for lawyers in Vanuatu. The level of consumer awareness in relation to legal services among the local population is very low; lawyers are seldom if ever subject to an official complaint in relation to services rendered to a client, and none has successfully been sued for any form of malpractice.

The University of the South Pacific

The University is controlled by 12 countries in the South Pacific region.⁷ The USP School of Law is relatively new. It grew out of a Department of Law which was part of the School of Social and Economic Development at USP. Beginning in 1985, the Department of Law began to offer sub-degree courses, mostly by extension.

Although the main campus of the USP is in Suva, Fiji, there are extension centres and campuses in other countries throughout the region. The School of Law was built in Vanuatu and completed in 1996. There are presently approximately 200 full time students studying law on the campus. A number of students take courses (particularly 1st year courses) in Suva, and by extension, a mode of learning which is an area of increasing importance at the USP Law School.⁸

alternative legal assistance, the availability of such assistance and the hardship which might result to the person if compelled to obtain legal assistance other than by the Public Solicitor".

- 6 There are recent signs that the Law Society is taking on a more significant role. Although, until now, membership has only been open to private practitioners, consideration is being given to opening membership up to all lawyers. Also, a committee of practitioners has formed a Rules Review Committee to advise the judiciary regarding possible revisions to the existing civil rules of court.
- 7 The 12 countries of the USP region are Fiji, Tonga, Samoa, Solomon Islands, Kiribati, Tuvalu, Cook Islands, Vanuatu, Niue, Tokelau, Nauru, and Marshall Islands.
- 8 This is understandable in view of the vast area (approximately 20 million square miles) and the isolated populations serviced by USP.

The LLB program is of four years duration and is broadly similar in content and structure to that of Australian or New Zealand Universities.⁹ The first class graduated with LLBs in 1997.

Students come to the School of Law (as they do for all the USP programs) from the 12 countries of the South Pacific that control the University. The main countries represented at the School of Law are Fiji, Solomon Islands, Tonga, Samoa, Vanuatu and Kiribati. The rest are tiny jurisdictions, not all of which are represented in each year. The student population comprises a number of languages, ethnic groups and cultural backgrounds. For many students, English is a second or even a third language. These diverse backgrounds must be taken into account in the provision of clinical learning opportunities. All instruction at USP is in English.

Establishment of the Law Clinic

The Law Clinic course was approved by USP in 1996 and was launched in second semester 1997, in time to allow some students of the first graduating class to take the course before the completion of their LLB studies. A unique position, that of Law Clinic Supervisor, was created. This position was divided equally between the Law School in Port Vila, Vanuatu, and the Institute of Justice and Applied Legal Studies in Suva. After one year, this arrangement proved to be unworkable with the result that the IJALS portion of the contract was "bought out" by the Law School. Much of the initial momentum behind clinical education was generated by the Coordinator of Clinical Education who came to USP on secondment from Sheffield Hallam University in the UK. He had experience in autonomous live client clinics in the UK and tended to favour such a model for USP – both in the LLB course and the professional practice diploma program offered by IJALS.

A live client clinic, as originally envisaged, would have adhered to the model of a law practice with an admitted lawyer supervising law students who would provide legal

9 One significant difference is that the law of up to 12 jurisdictions is covered in any one course. This is not as difficult as it sounds because the adopted laws of the various countries are quite similar in many respects. Most of the central concepts and principles are common if not identical in all of the countries represented. Students are encouraged to write assignments and answer examination questions taking into account the laws of their own jurisdiction.

information and advice to clients from the community.¹⁰ Although academic approval had been granted, no steps had been taken to prepare for such a clinic before April 1997.

The writer arrived in Port Vila as the newly appointed Law Clinic Supervisor. It was clear that, in the time available before the beginning of second semester, a live client clinic based on an autonomous law practice could not be established. Instead, a clinic based on the placement (or externship) model was planned for the beginning of second semester, 1997.¹¹ The Law Clinic course has continued to operate on this model since its inception.

When the Law Clinic course was being introduced, there was a detectable reluctance (or at least hesitation) on the part of the profession and even the judiciary to embrace the USP Law School – which had suddenly appeared in its midst. Apart from one lawyer who worked part time at the Law School, there was little cross over between the university and the legal or judicial community. They existed in separate worlds. This separation has now diminished somewhat due in part to the existence of the Law Clinic course.¹²

Enrolment in the course is restricted to maintain a staff/student ratio of approximately 12 to one although this has been slightly exceeded each year. When more students apply than there are places, the selection is conducted on a random basis. Most students coming into the course have had little or no experience with practical legal skills.

Structure of the Course

The Law Clinic course has been offered on a placement basis during second semester each year. It is divided into two parts: the placements themselves, and a weekly, on-campus workshop. These parts are assessed equally. There is no final examination.

Placements

One part is the placement of students with law offices in Vanuatu. Students are required to work a minimum of five

10 The Monash-Springvale Community Legal Service operated by Monash University is a highly evolved example of this type.

11 Australian universities with similar models include the University of Newcastle and Griffith University.

12 A non-credit mooting program has also attracted lawyers as volunteer judges. Other social and formal connections between members of the Law School and the profession have also developed.

hours each week at their placement office. To the extent possible, they choose their placement from among a range of public and private law offices in Vanuatu. They then arrange their work schedule individually with the office in which they are placed.

Recruiting suitable placement offices was a challenge and required a degree of trust (and risk) as, apart from some word of mouth guidance regarding several private practitioners, the options were very much unknown quantities in respect of quality of practice and ability to supervise law students. A great deal of personal contact, promotion and explanation was required in order to bring many potential placements into a state of willingness to participate. During the first year of the course, one private law firm, six government departments employing lawyers and one non government organisation were selected as placements.¹³ All placements have been willing to accept students in subsequent years with the exception of the State Law Office which has recently experienced office space constraints. Two of the original placements have been dropped due to concerns about quality of supervision. Two other private firms have been added and some other public law offices have increased the number of students they are prepared to take. The Supreme Court now accepts two students. The maximum number of students who have been placed at any one placement is three. Overall however, there has been little variation in the placement offices during the three years that the Law Clinic course has run.

Students from each placement office meet once each week with the Law Clinic Supervisor to discuss progress, practice issues and any other concerns that arise in relation to placements. This is separate from the weekly workshop where all students meet together. This weekly meeting is an opportunity to monitor the students' progress at their placements in a confidential atmosphere and to deal with any concerns which arise.

Assessment of students' performances at their placements is based on a major case report and a detailed journal. These are both submitted at the end of the semester.

13 The public law offices were the Attorney General's Office (now known as the State Law Office), Financial Services Commission, Ombudsman's Office, Public Prosecutor, Public Solicitor, and Reserve Bank of Vanuatu. The NGO was the Vanuatu Women's Centre.

Weekly Skills Workshop

This is a two hour weekly session held on campus. The entire class meets together. The workshop is intended, in part, to provide some uniformity to the students' experiences and, to the extent that it is possible to do so, to practise those skills that are common to all placements. This is a challenge given the wide range of experiences of students. For instance, drafting, interviewing, negotiation and advocacy, are each featured in some placements. However, none is common to all placements. What *is* common to all placements is a concern about professional ethics and practice standards. These have therefore become an area of concentration in the weekly on-campus workshops. The examination of these issues combines nicely with other more generic skills such as public speaking and debating. These take place in the context of classroom presentations, discussions and debates of hypothetical fact scenarios based on real cases. Moot court exercises have also been included in the weekly skills workshops. These however have not been included in the current year.¹⁴ Interviewing, which is the most common skill used in placements and which is useful in a number of contexts, is the only other major skill which is currently included.

Some Unique Issues

What Lawyers? What Standards?

It is important in any placement-based clinical program, just as it is in any professional practice, that practice standards be identified and adhered to. This is not only for obvious educational reasons but also to preserve the image of the clinical program and the University. These include ethical standards, competency standards and general standards relating to file management and client relations.

In the Law Clinic program in Vanuatu, where students come from a variety of jurisdictions and anticipate returning to them to practise law, a question arises as to what professional standards should apply to the clinical work of the students. In other words, should they be the standards of Vanuatu, Fiji, the Solomon Islands, Tonga, Australia, or some other real or

¹⁴ Mooting at USP is required in at least one compulsory course. It is also available on a non credit basis to students who wish to compete in a round of internal moots. Students may also apply for a place on the USP moot team which competes annually in the South Pacific International Moot Court Competition.

hypothetical jurisdiction? This question does not exist (or does not exist to the same extent) in a larger jurisdiction that has a more homogeneous and established profession, disciplinary proceedings, continuing legal education, etc, and where most if not all students anticipate remaining in that jurisdiction to practise.

This issue presents itself in a real way in relation to the Law Clinic. For instance, in some jurisdictions, appearing late for court without a very good excuse would be a matter approaching contempt. In other jurisdictions it is almost routine. In some jurisdictions acting for more than one party in a real estate transaction is controlled or forbidden. In others, it is neither. Varying standards apply to a range of other aspects of practice including conflict of interest, billing practices, preparation for court, file management and a range of ethical issues.

The issue of practice standards arises in relation to the Public Solicitor's Office. In it, there are files that have been unattended for longer than would be acceptable to a Law Society in a jurisdiction such as New Zealand or Australia. However, the operation of the Public Solicitor's Office takes place under severe resource constraints which are unlikely to exist in either Australia or New Zealand. These sorts of constraints are not uncommon in many parts of the Pacific. A similar clinical course, operated in a placement model in Australia might not accept a placement such as the Vanuatu Public Solicitor's Office as a suitable placement. The evaluation of such a placement therefore depends upon what yardstick is being used.¹⁵

It is platitudinous to say that the highest standards possible should be identified and encouraged in any clinical legal program. The difficulty arises when this, by implication, imputes sub-standard conduct to any placement. At the same time students must not be permitted to regard standards that fall below international optimum as being the highest possible level of practice. A responsibility falls to a Law Clinic Supervisor to deal with this issue in a sensitive yet responsive manner. Significant attention must be given to providing students with a comparative and critical perspective on all

15 In fact, the level of encouragement and responsibility given to the students and the range of experiences gained by students in the Public Solicitor's Office make it one of the better placements – provided students placed there are able to put their experience in a broader practice context. The weekly on-campus workshops serves this purpose.

placements. This is possible through the sharing of experiences and through examination of practice standards which take place during the weekly on-campus workshops. Students, presented with comparisons of standards of practice in various placements are, to a great extent, able to draw their own conclusions.

A significant number of placements are within the public service of Vanuatu. This parallels the general expectations of students within the Law Clinic in the sense that many of them expect to find future employment within the public service of their home country.¹⁶ The weekly workshops place a significant focus on ethical standards for lawyers in the public service. This aspect of professional conduct is not common to most clinical courses or texts on professional ethics and responsibility. However, the issues of professional conduct within the public service are common to all jurisdictions and especially applicable to the high proportion of South Pacific students.

Custom

Customary law exists alongside and, to some extent is integrated with, adopted law in many Pacific Island countries. In Vanuatu, customary law is recognised in the Constitution. Section 95 (3) states: "Customary law shall continue to have effect as part of the law of the Republic of Vanuatu."

Further, all land in Vanuatu is held by customary owners. Legislation provides for a system of island courts within the country. These courts have exclusive jurisdiction and are mandated to deal, at a trial level, with customary disputes and customary land matters. However, these courts are moribund at present and, in any event, the rules of procedure do not permit lawyers to represent clients in the island courts. This aspect of customary law is therefore beyond the reach of the Law Clinic.

Customary law also has a place in the societies and the constitutions of most other Pacific Island countries. However, it is difficult to find a practising lawyer who incorporates customary law into his or her practice. Custom seldom arises within the professional practice of law probably for a range of reasons. Arguably lawyers are not familiar with how it

¹⁶ In fact, many students are sponsored by the governments of their home country and are bound to serve the government of that country for a minimum number of years after qualifying for practice.

can be used in the service of their clients. They are not familiar with it because they perceive that the interests of their clients are best served by the application of substantive and procedural laws which adhere to the adopted “western” laws found in the legal systems of each country. Much custom that is applied is outside the formal legal and judicial structures of the countries in the region.

The Law Clinic experience at USP does not include a significant component of customary law. Whether it should and, if so, how it could be done remains moot. In any event, it is clear that, during a one-semester course, the inclusion of a significant customary legal component would displace other experiences to an extent that would significantly change the nature of the course.

Diversity

Diversity, in a number of respects, pervades the Law Clinic course. Students bring to the course a variety of cultural, ethnic, linguistic and educational backgrounds. Some have a career background and are at law school to upgrade their qualifications. Others are young and have no working experience. Nearly all are expatriates living in Vanuatu.¹⁷ The writer’s background as a lawyer comes from outside the countries of the region.¹⁸

The range of law offices into which students are placed also presents a picture of diversity. The private firms tend not to be specialised but provide legal services across a broad spectrum of legal practice, including maritime law, offshore banking, and trusts.

The range of public service placements is also diversified. It includes the Public Prosecutor, the Public Solicitor, the Attorney General, the Financial Service Commission (which is charged with the incorporation and regulation of offshore banking, companies and trusts, among other things) and the Ombudsman.¹⁹

17 During the three semesters that the course has run only 2 ni Vanuatu students have been enrolled.

18 Comprising 12 years of litigation practice in British Columbia. I am also admitted to the High Court of Fiji.

19 In the South Pacific jurisdictions, a greater proportion of the legal profession is employed within the public service than in private practice capacities. This is in part attributable to the fact that, despite its small size, each country is obliged to maintain a full range of government legal services.

From the outset of the USP Law Clinic, it was recognised that this diversity could not be eliminated. The challenge was to find a way to turn it into a strength. The key to this was the realisation that the placements and the students' collective experiences in them cut across the entire legal and judicial systems of the country. Together, they have a unique picture of the entire legal and judicial system of a country. This feature provides significant learning opportunities.

The method for capitalising on this range of practices is the use of exercises in the weekly on-campus workshops that allow students to share their insights. This takes the form of oral reports to the class. The first, called an Orientation Report, is presented during the first three or four weeks of the semester. Students are expected to include some or all of the following matters in their report:

- mandate of the placement office
- the organisation and personnel of the placement office
- any constraints and limitations which affect the operation of the placement office
- the student's expected duties at the placement office and how those duties assist the placement office and/or the student's learning.

None of these topics requires students to report on the particulars of any specific file and therefore the exercise avoids an issue of confidentiality. Delivery of the orientation reports takes between two and three weeks of the semester. Questions and class discussion follow each presentation as time allows.

In the final weeks of the semester, students are required to present a Final Placement Report. This is similar to the Orientation Report but allows a greater opportunity for reflection and evaluation of the placement after a semester's worth of exposure.

Both the Orientation and Final Placement Reports are videotaped, critiqued and assessed for content and delivery. Students who share a placement with another student are permitted to co-operate in their presentations as they wish.

These exercises combine a number of objectives. Firstly, they provide a context for practising the skill of public speaking and a basis for being assessed on this skill. Students are provided with guidelines for their own presentation and for the evaluation of the reports of their fellow students. Secondly, they require students to reflect upon, structure and articulate their thoughts about their placement experience and, by doing so, gain further insights into their

own placement experience. Thirdly, they allow students to learn about other students' placement experiences. Together the class acquires a broad appreciation of the entire legal system of the country. In turn, this comparative perspective (learning about others' placements) allows students to gain further insights into their own experience. Another benefit is that any specific weakness in the quality or standards of a placement is revealed in a comparative way, in the overall context of both the placement and the legal community.

Confidentiality and Conflict of Interest

Not only are the issues of conflict of interest and confidentiality important in any private or public practice of law. They carry over and are integral to the operation of any clinical program operated on a placement model. It is therefore necessary, particularly when operating a clinic by placements in a small community, to implement procedures and rules that minimise the potential for conflict of interest or breach of confidentiality to occur.

In the USP Law Clinic, it is not uncommon for students in different placements to become involved in a specific case on behalf of different clients (or, in the case of students placed at the Supreme Court, to gain confidential insights from a judicial perspective). It is extremely important that all students appreciate the high importance of maintaining confidentiality.²⁰

The potential for conflict requires that, during weekly meetings to discuss placement matters, the clinic supervisor meet with students from different placements separately. This diminishes the potential for disclosure of confidential information relating to specific files and clients. Some instructive issues can later be raised in hypothetical form at a weekly workshop. Separate meetings with students from each placement increases the time burden on the clinic supervisor from what it would be if students from different placements could meet together in larger groups to discuss specific cases.

It is necessary for the Law Clinic Supervisor to maintain a particularly detached position with respect to client matters at all placements. During the weekly meetings, an attempt is made to deal with all issues in a hypothetical and anonymous

20 This is a topic that receives particular emphasis at the beginning of the semester. It is the subject of a declaration that students sign before they begin work at their placements.

manner. However, ongoing matters from different sides of a specific case do occasionally become apparent. This creates a potentially compromising position. While assisting students to isolate issues and explore options, the Law Clinic Supervisor must refrain from giving anything that could be construed as legal advice, leaving that to the lawyers acting as placement supervisors. At the weekly meetings, there is still plenty of scope for discussion and guidance in relation to students' experiences at their placements without compromising confidentiality or creating conflict of interest.

Conclusion

The Law Clinic course at USP is now operating on a sound and sustainable basis using a placement model. The placements themselves are complemented by an on-campus skills and professional ethics workshop component. The course is flexible in that it could operate during one or both semesters and can easily be interrupted during semester breaks. The Law Clinic course has been structured to meet the educational goals of students and the unique environment represented by the Vanuatu legal and judicial systems. In future, the Law Clinic course is likely to evolve further and perhaps to adopt the model of an autonomous clinic serving clients directly. While this might be a natural progression, it would have been difficult to introduce such a model without first employing an intermediate placement model. The Law Clinic course has helped integrate the students and the university into the legal and judicial communities while at the same time helping make legal education more relevant for students from the South Pacific.

