



Taking an action reflective assessment approach when teaching dispute management

Pauline Collins

University of Southern Queensland, Australia, Pauline.Collins@usq.edu.au

Follow this and additional works at: <https://ro.uow.edu.au/jutlp>

Recommended Citation

Collins, Pauline, Taking an action reflective assessment approach when teaching dispute management, *Journal of University Teaching & Learning Practice*, 18(1), .

Available at: <https://ro.uow.edu.au/jutlp/vol18/iss1/8>

Taking an action reflective assessment approach when teaching dispute management

Abstract

Encouraging life-long learner skills and preparing students for a new style of lawyering in the 21st Century to meet changing needs requires approaching teaching in renewed ways. This paper describes the action reflection learning approach adopted when teaching a mediation law course in an Australian law school. The approach and outcomes are described with specific attention to how this style of teaching enriches the student experience. Student reflections describe the teaching method as having developed their skills, learning and appreciation of a new conflict resolution advocacy style.

Keywords

Action reflective assessment, mediation, legal education

Introduction

The regulatory environment in Higher Education in Australia places demands on law teachers to encourage life-long learner skills such as reflection and development of professionalism in practice in order to meet a new style of lawyering in the 21st Century. Teaching dispute management has been introduced over the last decade and is a departure from the traditional law curriculum. Previously dispute management, communication skills and reflective learning have not been prioritised (Sourdin, 2012). This challenges teachers to adjust and renew their approach to teaching. It is a contrast to traditional doctrinal law teaching which remains dominant in many law schools. Evidence is clear that the leaders of tomorrow will need an adaptability for fast moving IT skills and a very sophisticated understanding and ability to communicate (Doraisamy, 2019). Technology's presence in higher education sees a growing sophistication in adoption. This contrasts, somewhat surprisingly, with a lack of focus in law on communication skills, notwithstanding the Threshold Learning Outcomes introduced in law in 2010 (Kift, et al., 2010; Rundle & Hiller, 2012) which emphasise communication, reflection and dispute management methods other than the prevalent litigation route (McShane, 2013). The recent government incentivising of science, technology, engineering and mathematics (STEM) disciplines over humanities with the restructuring of fees in an attempt to drive students to the areas government perceive as fulfilling future job needs is a further example of the lack of understanding of the importance of developing communication ability (Tehan, 2020). To be a good communicator one must have an ability to listen, be empathetic, reflective, self-aware, have insight to one's own and others' values, understand and deal with emotion, manage conflict appropriately and remain transparent and non-judgmental (Bolton, 2009). These are all aspects of communication students learn from a course in dispute management.

This article presents an exemplar of how a course introducing theory in communication and conflict integrated with skill development is taught and how reflectiveness is encouraged and adopted in the current demanding higher education landscape. Responding to the contemporary state of higher education, as an increasingly complex environment facing growing competition globally, pandemics, job uncertainty for graduates and continual funding cuts along with government intervention the focus here remains on the educator and student experience. Developing the lifelong active learning ability of students through the incorporation of reflective activities to support a self-management approach to learning is described. This is achieved in a manner that empowers students by encouraging them to adjust, after diverse feedback and reflection opportunities, in order to develop their professional capability. Self-management is not just a skill it involves theoretical learning and a meta-cognitive development (Valle et al., 2009). Despite acknowledging the challenges of these many masters, a positive story in delivering deep learning and satisfaction for students is presented.

First, the article describes the methodology, next the Higher Education environment for law degrees. It will then provide clarification on what action reflective learning entails. This is then linked to a description of the course and assessment. The course processes and outcomes are outlined to indicate how this style of teaching bridges the divide between doctrine and skills as well as adversarial and collaborative legal training to enrich the student experience and cognitive ability. The assessment and its relationship with the approach to learning, communication skills and the objective of the course are addressed. There is a clear indication of a change in behaviour through group reflection and feedback, reflectivity as a professional, and learning that engages all senses to provide a powerful memory. The article concludes by discussing the learning experience for both the teacher and students.

Methodology

This article is a case study on using action reflection assessment that incorporates a reflective methodology by the teacher when reporting the experience. Student reflections indicate how the teaching method developed their skills, learning and appreciation of a new advocacy style for dispute management.

The uniquely designed dispute management undergraduate law course LAW1122 *Legal Conflict Resolution* is a core course at the University of Southern Queensland an Australian regional university. It is delivered on average to approximately two hundred and fifty students a year. The course is also available as an elective course in the Juris Doctor law program. It provides an early opportunity within the degree to understand the advantages of learning by doing and reflecting. This encourages a timely adoption by students of a metacognitive level awareness of their abilities. When law is going through a paradigm shift to non-adversarial management of disputes a change in thinking is demanded around how to design the curriculum and what to teach considering the attributes employers and clients will demand of graduates.

The teacher adopts a reflective methodology through the reporting of the classroom teaching experience in this article. Student assessment is described detailing how each assessment provides an integrated opportunity for student reflection on their learning. The teaching team comprises the teacher, a course moderator and up to two assistant coaches. The data was ethically cleared for collection and relies on student posts to the study desk from across 3 semesters in which on average 250 students were taught in each semester. Ethical consent to publish anonymised students' responses was obtained.

The Law Curriculum and Teaching Environment

The professional accreditation agency in Australia the Legal Professional Admissions Board (LPAB) (2011) has adopted a Threshold of Learning Outcomes (TLO) (Kift, et al., 2010). These have been acknowledged by the Council of Australian Law Deans (CALD) as essential requirements for law graduates. TLO 2 (Ethics) and 6 (Self-management) require students to reflect. TLO 6 expects law students to develop self-management which includes a reflective capacity. It is expressed as students being able to "reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development" (Marychurch, 2011, p.1). Further elaboration on how to teach and assess reflective practice skills is provided in *The Good Practice Guide* (McNamara et al., 2013).

Adapting to a collaborative communication over a rights-based communication approach can be very difficult for law students if the law school curriculum still focuses on adversarial advocacy (McShane, 2013). This approach resists adoption of a holistic style of dispute management communication when it comes to mediation training within a law school. Students describe the transition as analogous to wearing different hats. Allowing greater ownership of the dispute management by the parties is an anathema to lawyers as also is the requirement to recognise emotion, needs and interest outside of mere rights.

One would think legal practitioners are trained to be good communicators. However, the training in common law countries has focused on a narrow adversarial communication style, creating warrior lawyers that take over a client's concerns in a partisan manner and follow rights-based argumentation to 'win the day' for their client. The idea of a winner also means there must also be a loser. In an integrated globalised world where doing business requires maintaining and

strengthening working relationships, clients are demanding a more refined approach. The new professional embraces an entirely new manner of lawyering by using communication to advance client's interests rather than entrenching their client behind a partisan advocacy that demands an unshakable position. The new lawyer uses communication in an inclusive and collaborative manner to maintain relationships and satisfy more than purely monetary interests. This has been described as a 'seismic change' from adversarial advocacy to conflict resolution advocacy' (Macfarlane, 2008, p.62).

Unfortunately, law schools can be conservatively resistant to changes in curriculum and assessment design. The use of a didactic approach following the Issues/Rules/Application/Conclusion (IRAC) concept (Graham, 2015) is habituated throughout law school teaching. This involves stating the issue in a problem scenario, identifying the related legal rules, then applying these to the given set of facts and drawing a conclusion. This approach to learning is reinforced through summative assessment that denies a lifelong learning approach supporting self-awareness of any opportunity to improve knowledge and skills (Kift et al., 2010).

The perpetual divide between doctrine, or theory, and skills teaching presents a further series of dilemmas for law teachers. Despite being well documented as a false binary, (Jewel, 2015, p.111; Lande & Sternlight, 2010, p. 268) the theory versus skills view can present as a major block to adopting a holistic approach when teaching dispute management in a law school. Much has been written about the hierarchical division between the heroic doctrinal teacher and the lessor vocational skills 'trainer.' In the US, Jewel (2015) has described how this has overtime resulted in reinforcing the development of a perceived superior level of doctrinal professors aiming to distinguish themselves from law school professors who were often practitioners and are now described as clinical or legal skills teachers. The distinction applies in Australia and as Thornton (2014, p. 19) further reinforces Australian doctrinal professors pursue prestige in the enterprise university through the prioritising of research over teaching. This has also raised concerns about a hierarchical and gendered problem with the vocational skills trainer being seen as lessor in the hierarchy and a position often filled by females (Thornton, 2013).

Dispute management teaching can be perceived as harder as such courses are often referred to as skills-based courses, thus potentially seen as falling into the vocational training, second class hierarchy. Constrained as one may be by the regulatory and enterprising institutional environment this article suggests however, the resistant female professor can adopt an approach that diffuses the perceived divide, while still carving out a space for a socially conscious, theoretically sophisticated and highly skilled communicative practitioner (Menkel-Meadow, 1994, 2013). As a female professor appreciating doctrinal, theoretical, and critical thinking, but also as a practitioner mediator, it is apparent that a first-year undergraduate course can cross the binary divide in the academic hierarchy to teach theory and skills in a holistic manner. Such a professor teaching a dispute management course does not fall neatly into either of the binary categories.

Further challenges are exposed in the research by Schultz and Zedeck, (2012; Holmquist, 2014) in the US on law school admissions which are, much as in Australia, based on academic proficiency or merit score. These provide another avenue for considering the law school role in educating 21st Century lawyers. Schultz and Zedeck propose a professional competency scoring process over the merit score as it improves predictability for producing more competent and professional lawyers. Their extensive research indicates that having ability to address 26 lawyer effectiveness factors is essential. These include areas such as being able to listen, self-organise and manage one's time, creating healthy relationships and being able to see the world as others may through empathetic abilities (Schultz & Zedeck, 2012). Such capabilities all provide for a more accurate prediction of a

successful professional lawyer outcome. Recognition of the importance of communication, cultural competence and empathetic listening are also keenly supported attributes for Australian law students (McShane, 2013, pp.21-22; Waters, 2016a).

A further demand highlighted by the 2020 pandemic is the ability to deliver teaching through a technology interface. The regional university at which this course is taught, University of Southern Queensland is Australia's longest distance education provider and as such is familiar with using technology to aid delivery of courses. Role-plays and mediation can be conducted online through various synchronous technology platforms. With the 2020 Covid-19 pandemic and increasing online teaching the need for good communication remains and even demands higher capability as it operates through a medium. The technology medium presents another potential interface barrier sometimes bringing its own noise to the communication space. Notwithstanding this it is possible to equally deliver role plays through online teaching and assist the development of students as reflective practitioners in an online environment (Douglas, 2007; Le Brun & MacDuff, 2005).

Reflection is an interesting requirement for law as the curriculum allows little space for ensuring the time needed to engage students in both action learning, or assessment, and reflective practise. This is despite the acknowledgment of the necessity for such a skill. Even calling it a skill as previously discussed raises the perpetual ogre of the division between doctrine and skills teaching (Lande, 2013, p.1). The dispute management course described here supports a self-management approach to learning that enables students, by adjusting after feedback and reflection, to appreciate the development in their capabilities such as listening, communicative ability for better relationships and acknowledgment of emotions. As such it attempts to satisfy the TLOs and professional accreditation body's demands.

The current state of higher education presents a number of factors that coalesce to make the task of the dispute management professor challenging when attempting to ensure regulatory bodies, the TLOs and student needs are met. However, teaching in the classes discussed in this article demonstrates an approach that avoids a dualistic distinction between theory and skills. The doctrinal theory along with skill development are combined in a praxis, that provides a holistic integration of what to do (skill) and why one is doing it (theory) by understanding the practical and theoretical consequences if one is not performing as required. The teaching also addresses concerns around the desirable attributes of law students in the 21st Century and the new teaching environments.

Action (Role-play) and reflection

Action learning is learning that takes place by doing. Reflection requires a review of one's actions, behaviours and thinking. As there are a range of approaches to accommodate when marrying theory with practice in an action reflective learning approach it can be bewildering in setting assessment tasks (Bond, 2015; Dewey, 1902, 1933, 1964; Rogers, 2001; Schön, 1983, 1987, 1995, 1995a). Hébert (2015) notes the almost overwhelming literature on reflection in teaching practice. However, this range and flexibility can also improve the opportunity for success as it enables adult student learning across cognitivist, behaviourist, humanist, constructivist, and social learning platforms.

An early contributor to reflection in learning was Dewey (1938, 1933, 1902), documenting that reflection on experience, rather than just experience is required if one is to learn. This constructivist view of learning requiring the individual to look for answers in a "... conscious and voluntary effort to establish belief upon a firm basis of evidence and rationality" (Dewey, 1933, p.9) has been criticised for its reliance on rational scientific method and exclusion of more intuitive or tacit learning (Bond, 2015, p.6; Hébert, 2015, pp. 362-63;). Schön (1983, p. 49) however, went possibly

too far the other way in supporting an intuitive or tacit way of knowing based on action, stating knowledge is gained as ‘tacit, implicit in our patterns of action and in our feel for the stuff with which we are dealing.’” While Dewey is more aligned with a reflection on action and Schön a reflexivity in action, both Dewey and Schön’s approach has been criticised for not affording the reflection preferred by Friere and others that is more likely to lead to change and escape from ‘oppressive’ practice (Eraut, 1995; Hébert, 2015; Ryan & Ryan, 2012, p. 2). Friere (1972) prefers adopting a critical thinking approach in which reflection uses complex thinking to avoid an otherwise narrow learning of information often not contextually situated. Such an approach goes beyond the mere ‘stop and think’ to engage the theoretical constructs around how the individual sees their place in the world and how this affects their professional demeanour. In this way, critical reflective responses engage in a complex situational awareness that encompasses an individual’s values and allows for insight into differing perspectives. Fruehwald’s (2016, p. 3) work on assisting law students gain a professional identity is also relevant. He has advocated for authentic learning experiences that nurture the development of legal professional identity incorporating ethical values and reflective moral development. For a mediator this is an essential aspect of providing professional advocacy communication by being reflexive through the mediation process and also reflective post a mediation. This reflection is encouraged to take place through confidential debriefs with mediation colleagues.

Rogers (2001, p.41) has attempted to draw the various approaches together by describing reflection as a cognitive affective process that (1) requires active engagement by the individual; (2) is triggered by an unusual or perplexing situation or experience; (3) involves examining one’s responses, beliefs, and perceptions given the situation; and (4) results in integration of the new understanding of one’s experience. Freire’s (1972) concept of praxis that requires practice be purposefully integrated with the theory is followed in the course described in this article when adopting a critical reflection approach to action learning. While there are four types of action learning namely ‘tacit,’ scientific,’ ‘experimental’ and ‘critical reflection’ (Rimanoczy, 2008) the last is the overarching approach adopted in the mediation course described here.

These are operationalised for law students through the opportunity to do a range of reflective activities covering reflection in action, being reflexive, and reflection on action, being reflective from a critical thinking approach. Students are given prior theoretical learning in the flipped class mode (Carol & Foggett, 2016) to reinforce their cognition and provide baselines from which to develop their reflection. Reflection in action opportunity is provided when students experience group mediation role-plays and learn a new communicative process through active reflexive application. The affective mode is activated by experiences that are not aligned with the cognitive learning providing an immediate praxis, or learning in action, creating the opportunity for genuine insights. Students are encouraged because each in the group have a shared goal and level of understanding that assists with learner self-assurance. Reflection on action is enabled through the written reflective assignment in the week following the role-play experience and then again at a deeper critical level in a reflective forum opportunity at the conclusion of the course. The teaching method develops student confidence whereby using the knowledge gained in action reflection they can adopt behaviour that helps them to evolve into professional practitioners (Fruehwald, 2016; Sofu, et al. 2010).

Role plays enable the strategic introduction of aspects of theory that can be tested in action such as power relations, dealing with different personalities and approaches to communication and conflict as well as testing cultural communication approaches. The students are able to experience through all senses and from party and mediator perspectives at least four different dispute scenarios. The scenarios create very real contexts that students can relate too. If the scenario is too close to their

own experiences and evokes strong emotions, they can refrain from engaging. However, as Alexander and LeBaron (2010, p.465) note enabling a student to “respond in contexts that are as realistic as possible and that evoke authentic responses” provides the more genuine possibility of experiencing the paradigm shifts involved in cooperative over competitive communication. This fits well with Freire’s (1972) approach to critical reflection bringing change. Howison and Rogers (2017, p.192) indicate a deep authentic learning occurs in using role-plays, “... students learnt about themselves, about others, and learnt about the subject matter of the material.”

Reflection adopted in the teaching practice presented in this case study entails taking a critical perspective and so is more than stopping and thinking about what has just occurred. It is also reflective in that it involves addressing the context in which the problem arises by challenging assumptions and by “examination of place, biography, self and other to understand how they shape the analytic exercise” (Macbeth, 2001, p.35). This gives rise to an empathetic appreciation of the consequences of actions as they affect outcomes and other parties, a requirement noted by Schultz and Zedeck (2012) and McShane (2013) as being increasingly in demand for law practitioners. Action reflection encourages alternative ways of being and provides a sustained and deeper learning that incorporates a theoretical underpinning to ensure universities produce 21st Century graduates.

Using both action, reflexive and reflective learning requires combining components of activity usually such as a group addressing a problem related to the participant’s professional context, with varied conceivable outcomes and incorporating opportunity for reflection by the individual and group while assisted by an expert action learning coach (Marquardt, 1999). The coach provides guidance for the participants in linking the theory and the practise and uses appropriate questioning to prompt the participants development.

The Assessment

Opportunity for reflection occurs at key points throughout the course and the assessment drives the adoption of reflection. After students have engaged with the theory and skills activities that develop understanding of conflict and communication theory in a first intensive teaching block over two days they approach a written assessment reflecting on their experience subsequent to a second intensive in which they actively role-play mediating a dispute.

One of the main assessments that support reflection is a reflective written exercise worth 35%. The flipped class style in which they read and explore content prior to the intensive in a face-to-face teaching mode adopts a scaffolded approach that starts with learning relevant theory, then the framework of the mediation process, with the final praxis bringing both together through the role-play mediations. The role plays occur in the second two-day intensive teaching. While this is offered face-to-face recordings are also provided to students via the *StudyDesk* for subsequent access.

The first action reflexive opportunity involves groups of three students conducting mock mediations using real life scenarios. This occurs over the two days of intensive teaching which enables four mediation role-plays of 90 minutes each. The role-plays are not assessed. This gives the students a safe non-judgmental space to encourage a free and full engagement without fear of failure. All students have an opportunity to experience a mediation as both mediator and a party as they alternate the roles of party and mediator. The students take contemporaneous notes at the conclusion of a role-play to aid in their individual reflection in the subsequent written assignment.

A group debrief both during and after the role-play occurs with each participant supported by the coach. Debriefs involve appropriate questioning in order to help the students reflect on what worked

well and what could have been improved. Following the individual and group reflection the entire class share their learnings after each role-play in a centralised debrief that increases the diversity of voices contributing thought-provoking insights. The diverse voices provide opportunity for feedback during and immediately following each role-play creating a reflexive in action richness for learning. This is adoptive of Schön's intuitive approach in which students can 'feel' the consequences of theirs and others' actions.

Each role-play's reflective learning is followed with an immediate opportunity to apply it actively and reflexively in the next role-play. Unlike problem based learning, which requires employing solutions assimilated from the past, the reflective approach follows an action learning in which the participants step into the shoes of another and adopt a critical reflective practice from the empathetic experience and then act upon thinking, simultaneously with learning.

Students focus on their active role experience, motivated by the assessment in a manner that stimulates students' engagement in the process. The coach and teaching team model reflection by using mediational communication techniques to illicit student comment through appropriate questioning. They demonstrate exemplars and provide guidance by setting clear expectations. In this manner, the coach empowers the students by creating a safe non-assessed learning environment. This aides embedding and integrating reflective practice (Bond 2015) in a normalisation that nurtures a mediational dispute management approach.

The second reflective opportunity involves a written assessment that requires the students to subsequently document and respond to two of the four role-plays they have participated in, one as mediator and one as party. Having learned the theory, process, and skills in scaffolded prior sessions the students are required to identify how this informed their experience by reflecting on the links between theory and practice in the written assessment completed within one week of the role-plays. Students critically comment on areas of the mediation process, which they felt were successful or otherwise, and conclude by outlining key communication techniques adopted and evaluating their effectiveness with reference to theory and feedback. This combination of reflexive and reflective opportunity enables the deeper critical aspects of reflection (Friere 1972) as a student confirmed

I particularly like the way that the various pieces of assessment were able to be combined to gain an in-depth understanding...

The third opportunity for reflection is provided at a key point towards the conclusion of the course. A post to the online *StudyDesk* forum asks students to reflect on their most meaningful learnings and why they are significant. This takes the earlier reflexive experience and reflective assessment to a deeper level by asking students to engage in critical self-reflection considering their personal worldview and motivations and what knowledge they have gained over the course. The following question is posted on the *StudyDesk*:

Describe some important things you have learnt in the course and if this has changed your thinking/approach to dispute settlement. What areas do you think you need to know more about and to develop in yourself?

This reflective component further reinforces Freire's (1972) demand that reflection should aid in breaking free of the oppressive. Students indicate they had 'aha' moments in which their learning across the semester resulted in a deep reflection that reinforced new ways of seeing and doing dispute management as a lawyer/mediator.

Discussion

Reflection invests students with improved responsibility for their learning. Deprived of this, students are in danger of becoming reliant on external rewards. This reduces a student's ability to self-assess their capacity to become a successful practitioner (Hammer et al. 2012). For students to have a reflective ability in their later professional capacity it requires reflection to become ubiquitous by embedding it throughout the curriculum. In the course in this case study students learnt relevant theory, then the framework of the mediation process, with the final praxis bringing both together through the role-play mediations.

The role plays as noted follow good advice (Alexander & LeBaron, 2010) in avoiding excesses in theatrics by staying close to reality in the scenarios, avoiding ethnic stereotyping and enabling the students to bring their authentic self to interpreting how to play the role. This is assisted by allowing some room for improvisation within the loosely scripted scenarios. Embedding the objective of reflection on the theoretical learning they have previously undertaken with the requirement of assessment in the written reflection on their role play ensures the experiences are engaged with meaningfully. Having immediate coaching and feedback opportunities enlivens students' responses and application in learning (Waters, 2016). Students observed the lived connection:

It's... hard to imagine what the practical process of doing law is when we're studying it. I have gained a greater understanding of the theory by putting it into practice.

It was really good to have the opportunity to take the time to really examine conflict, what it really is, what causes it and how best to deal with the varying types.

I ... believe that all of the information that I have learnt will greatly equip me as a future lawyer.

Student learning goes beyond content to incorporate the self by creating contextualised memorable experiences. When the physical senses are activated by the bodies' involvement the body memory is engaged (Bond, 2015, p.3). An active cognitive approach develops metacognitive awareness - thinking about thinking in which the self observes, while also participating in the role-play. The teacher and coaches observe the learning through the improvement between the first and last role-play. Students describe it as an authentic 'real world' learning experience:

... the discussion seemed 'real world' and I believe the skills and the way of thinking ... are very transferable to other situations as a lawyer.

... 'real world' application of the law is very different to the textbook approach.

The assessment design adopts Rogers (2001, p.42) suggestions of crucial aspects for action reflective learning such as providing a challenging or new experience and a setting that encourages reflection. The students directly experience the difference from an adversarial rights based advocacy to a client collaborative dispute management. Students analyse their perceptions and consider their world-view and assumptions. Student reflections express this changed perception:

... this course ... really allowed me to alter my thinking with regards to resolving disputes...Most importantly, I'd say I've come to learn that winning isn't

everything and that issues can actually be negotiated in a sense that allows both parties to 'win'.

I was able to identify and develop the skills I needed to understand how to communicate with clients of different cultures and backgrounds and how I should speak to them, depending on the situation.

Praxis relates current knowledge to experience by providing new learning. This holistic approach provides a feedback loop that can promote conscious change in behaviour based on a deeper reflective understanding of when to use what skills. The delayed reflection possible in the week after the experience of the activity by engaging in a thoughtful space further reinforces the experience. Writing the assignment reflection allows deeper responses to the immediate group reflection by providing a contemplative lens for the learning inducing lasting and profound awareness that develops the professional self. Students' social consciousness is developed, as they are encouraged to question their assumptions and worldview. Adversarial advocacy based on a rights-only approach is overlaid with an understanding of client based advocacy that addresses the individual uniquely. This meta-awareness is demonstrated within the student reflections:

I know that I have to work on being more impartial. I thought that this was something that I would be good at, although while studying this module I have found otherwise.

I've always been a 'listener' and now I understand something of why that can help others...

I was able to identify and develop the skills ... to communicate with clients of different cultures and backgrounds ...

... by studying active listening and non-verbal communication I gained a greater understanding of not just myself but others. Although I have to admit that I still need to practice my active listening...

Minor things such as interpreting people's body language is a trait I greatly undervalued and this course has demonstrated the usefulness of this.

The final reflective component near the end of course enables online student posts that go some way to accommodating Freire's (1972) concerns with breaking free of the oppressive. It enables students to take time to consider their experience of the learning journey over the course and reflect on how it has changed their world view:

I learned so much about myself and what a challenge it is to step back and not get involved emotionally ...

The course allowed me to think about a great deal of aspects that I had never taken the time to consider ... I think dealing with emotional aspects of conflict may be one of the most difficult hurdles to overcome.

I found that by studying active listening and non-verbal communication I gained a greater understanding of not just myself but others.

I found myself reading the types of personalities and saying... “I know someone like that at work” and thinking about the last disagreement you had with a friend and thinking ... perhaps if I had approached that a little differently things might not have gotten so out of hand.

Coming from a law firm where going to a settlement conference is often described as ‘going into battle’ left me with the notion that position based bargaining was the only acceptable way to resolve a matter. Also, I think that a lot of law students choose this career because they enjoy arguing their point – and are very good at it. This class helped me to understand other factors to dispute resolution such as promoting communication and open relationships (both business and personal); it is not always about us versus them or ‘winning’ a case.

A reflective learning approach to teaching has the potential to assist students who may be afflicted with anxiety and depression (Collins, 2016; Skead & Rogers, 2014). Summative assessment risks perceived separateness from learning in an assessment *of*, rather than *for*, learning. In a highly competitive law school environment, this creates potential for students to develop a negative self-perception (Bond, 2015, p.1). Reflective action learning promotes a graduate’s ability to be responsive and adaptable in situations as they are presented. It does this by advancing their emotional intelligence, recognition of mental patterns, dialogue and personal interactions (Sofu et al., 2010, p.213). Active learning promotes a growing confidence, sense of achievement and self-esteem as students observe their immediately improved ability and developing knowledge. This can only improve students’ confidence and correspondingly mental health (Field & Duffy, 2012).

Conclusion

The essential learning from developing and delivering this mediation course for law students was that by incorporating an active reflective learning experience, positive outcomes were possible. Student observations and reflections demonstrated improved individual cognitive awareness, the ability to change behaviour, to engage in group reflection and appropriate feedback skills, development as a reflective professional, learning that is remembered by engaging all senses, and lifelong active learning approaches. These all go some way to satisfying some of the regulatory masters TLO demands for reflection by law students and employer graduate attributes.

However, the process of incorporating reflective assessments and formative reflection can be challenging for teachers in satisfying the masters (university, professional and government) in today’s higher education environment in which economic efficiency requires ever more to be done with less (Thornton, 2012, p. 173). In the teaching and assessment approach described in this reflective case study assistant teacher coaches are generally required to circulate and ensure all role-play participants are receiving appropriate guidance and feedback during the active teaching session. This is seen as creating a more expensive course, if the assistant is paid, although often they volunteer because of their passion for imparting their knowledge of the topic. To be successful the action reflection role-plays generally requires students to be present face-to-face. Experience of teaching students in online participation role-plays has demonstrated that it is possible and can be rewarding. However, if in combination with face-to-face students having some online can present a burden on a teacher (Douglas, 2007). The teacher has to ensure students are engaged and the technology is operating appropriately. Face-to-face students can resent attention paid to technology needs when they have taken the effort to travel to the teaching location. Challenges also arise in using more resource intensive teaching when having to address law schools and universities focused

on costs and student opinion audits. Insight and perseverance are requirements to achieve this teaching style, which adopts an approach to skills and theory development as intertwined, rather than disparate concepts.

Developing the skill of self-regulation along-side core content knowledge by instilling reflective questioning is vital for those wishing to become robust practitioners satisfying employer and client demands. If universities are to educate dispute managers with awareness of how their dialogue affects others, including whether it escalates or de-escalates disputes, then the obstacles have to be overcome. The 21st Century organisation with changing environments, new technologies and flexibility a premium, find reflective skills essential for their flourishing and for the endurance of the individual. Designing a learning approach that infuses values and ethical understanding for students (TLO 2- Ethics and Professional Responsibility) enables good judgement when exercising professional responsibilities.

Becoming an aware professional practitioner with an ability to utilise a life-long learning approach through being reflective is important in order to resist oppressive practice. Teaching reflectivity in a summative and formative manner makes it ubiquitous for the informed, flexible and adaptive lawyer (TLO6 – Self Management). Student learning is intensified when they are actively part of the assessment, instead of just the teacher.

It is hoped this reflective case study encourages others that, despite costs restrictions and the current constraining regulatory environment, it is possible to create spaces that enable reflection and still achieve a rewarding space for teachers and students to experience the benefits of both delivering and learning from this type of approach. Adopting a Freirean critical awareness through reflection is the quietly radical process that can exist within a law school curriculum and ultimately overcome oppressive and rigid systems of thinking and indeed intrusive and constraining government influence.

Reference List

- Legal Qualifications Committee Annual Report (2011). Report of the Legal Qualifications Committee to the Legal Profession Admission Board (1 July 2010 – 30 June 2011). <http://www.lpab.justice.nsw.gov.au/Documents/lqc%20ann%20report%20final%202011.pdf>
- Alexander, N., & LeBaron, M. (2010). Death of the Role-Play. *Hamline Journal of Public Law & Policy*, 31, 459-482.
- Bolton, R. (2009). *People Skills*. Simon & Schuster.
- Bond, J. B. (23 November 2015). Reflective Assessment: Including Students in the Assessment Process. *Forum on Public Policy*. <https://files.eric.ed.gov/fulltext/EJ1099068.pdf>
- Carol, A. & Foggett, K. (2016). Supporting Our Students to Achieve Academic Success in the Unfamiliar World of Flipped and Blended Classrooms. *Journal of University Teaching & Learning Practice, Online*. 13(4), art 2.
- Collins, P. (2016). Australian Legal Education at a Cross Roads. *Australian Universities' Review*, 58(1), 30-38.
- Dewey, J. (1902). The School as Social Centre. *The Elementary School Teacher*, 3(2), 73-86. <https://doi.org/10.1086/453152>
- Dewey, J. (1933). *How we think: A restatement of the relation of reflective thinking to the educative process*. D. C. Heath, New York.
- Dewey, J. (1964) The need for a philosophy of education. In R. D. Archambault (Ed.), *John Dewey on education: Selected writings*. University of Chicago Press, Chicago.

- Doraisamy, J. (13 November 2019). 3 in 4 firms think law schools aren't properly equipping grads for success. *The Lawyers Weekly*. <https://www.lawyersweekly.com.au/biglaw/26914-3-in-4-firms-think-law-schools-aren-t-properly-equipping-grads-for-success>
- Douglas, K. (2007). Mediation accreditation: Using online role-plays to teach theoretical issues. *Australasian Dispute Resolution Journal*, 18, 92-100.
- Eraut, M. (1995) Schön Shock: a case for refraining reflection-in-action? *Teachers and Teaching*, 1(1), pp.19-22. <https://doi.org/10.1080/1354060950010102>
- Field, R. & Duffy, J. (2012). Better to light a single candle than to curse the darkness: promoting law student well-being through a first year law subject. *Queensland Uni. of Technology Law and Justice Journal*, 12(1), 133-156. <https://doi.org/10.5204/qutlr.v12i1.233>
- Freire, P. (1972). *Pedagogy of the Oppressed*. Penguin, Harmondsworth, UK.
- Fruehwald, E. S. (2015) Developing Law Students' Professional Identities' *University of La Verne Law Review*, 37(1), 1-32.
- Graham, L. P. (2015). Why-RAC? Revisiting the Traditional Paradigm for Writing about Legal Analysis' *Kansas Law Review*, 63, 681-715.
- Hammer, S. Chardon, T. Collins, P. & Hart, C. (2012). Legal educators' perceptions of lifelong learning: conceptualisation and practice. *International Journal of Lifelong Education*, 31, 187-201. <https://doi.org/10.1080/02601370.2012.663803>
- Hébert, C. (2015). Knowing and/or experiencing: a critical examination of the reflective models of John Dewey and Donald Schön. *Reflective Practice*, 16(3), 361-371
<https://doi.org/10.1080/14623943.2015.1023281>
- Holmquist, K. Shultz, M. Zedeck, S. & Oppenheimer, D. (2014). Measuring Merit: The Shultz-Zedeck Research on Law School Admissions. *Legal Education*, 63, 565-584.
- Howieson, J. & Rogers, S. (2017). Using the role-play at the lectern: developing "work-ready" and confident professionals. *The Law Teacher*. 52(2), 190-200
<https://doi.org/10.1080/03069400.2017.1340531>
- Jewel, L. A. (2015). Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies. *Columbia Journal of Gender and Law*, 31(1), 111-134.
- Kift, S. Israel, M. & Field, R. (December 2010). Learning and Teaching Academic Standards Project: Bachelor of Laws Learning & Teaching Academic Standards Statement. *Australian Learning & Teaching Council*.
- Lande, J. (2013). Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice. *Journal of Dispute Resolution*, 1, 1-18.
- Lande, J. & Sternlight, J. (2010). The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students to the Real World of Lawyering. *Ohio State Journal on Dispute Resolution*, 25(1), 247-298.
- Le Brun, M.J. & MacDuff, A. (2005). Developing the Reflective Practitioner Online (In Law). *Law Teacher*, 39, pp. 16-28. <https://doi.org/10.1080/03069400.2005.9993168>
- Macbeth, D. (2001). On reflexivity in qualitative research: two readings, and a third. *Qualitative Inquiry*, 7(1), pp.35-68. <https://doi.org/10.1177/107780040100700103>
- Macfarlane, J. (2008). The Evolution of the New Lawyer: How Lawyers Are Reshaping the Practice of Law. *Journal of Dispute Resolution*, 1, 61-81.
- Marychurch, J. (2011). Good Practice Guide (Bachelor of Laws) Self-Management (Threshold Learning Outcome 6). <http://lawteachnetwork.org/resources/gpg-self-management.pdf>
- Marquardt, M. (1999). *Action learning in action*. Davies-Black, Palo Alto, CA.
- Rimanoczy, I. (2007). Action Learning and Action Reflection Learning: Are They Different? *Industrial and Commercial Training*, 39(5), 246-256.
<https://doi.org/10.1108/00197850710761936>

- Menkel-Meadow, C. (1994). Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report--Of Skills, Legal Science and Being a Human Being. *Washington Law Review*, 69(3), 59 - 624.
- Menkel-Meadow, C. (2013). Crisis in legal education or the other things law students should be learning and doing. *McGeorge Law Review*, 4(1), 133-160.
- McNamara, J. Cockburn, T. and Campbell, C. (2013). Good Practice Guide (Bachelor of Laws) Reflective Practice. *Australian Learning and Teaching Council*.
- McShane, M. (2013) Good Practice Guide (Bachelor of Laws) Appropriate Responses to Legal Issues: ADR. *Australian Learning and Teaching Council*.
- Rogers, R.R. (2001). Reflection in higher education: a concept analysis. *Innovative Higher Education*, 26(1), 37-57. <https://doi.org/10.1023/A:1010986404527>
- Rundle, O. and Hiller, S. (2012). Teaching self-reflection to law students in a dispute resolution unit. *Australasian Dispute Resolution Journal*, 23(3). 168-178
- Ryan, M. and Ryan, M. (2012). Theorising a model for teaching and assessing reflective learning in higher education. *Higher Education Research and Development*, 32(2), 1-14. <https://doi.org/10.1080/07294360.2012.661704>
- Schön, D. A. (1983., 1987). *The reflective practitioner: how professionals think in action*. Basic Books, New York.
- Schön, D.A. (1995). Knowing-in-Action: The New Scholarship Requires a New Epistemology. *Change: The Magazine of Higher Learning*, 27(6), 27-34. <https://doi.org/10.1080/00091383.1995.10544673>
- Schön, D A. (1995a). *The reflective practitioner: how professionals think in action*. Arena, Basic Books.
- Shultz, M. M. & Zedeck, S. (2012). Admission to Law School: New Measures. *Educational Psychologist*, 47(1), pp. 51–65. <https://doi.org/10.1080/00461520.2011.610679>
- Skead, N. & Rogers, S.L. (2014). Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing. *Monash University Law Review*, 40(2). 564-587.
- Sofó, F. Yeo, R K. & Villafañe, J. (2010). Optimizing the Learning in Action Learning: Reflective Questions, Levels of Learning, and Coaching. *Advances in Developing Human*, 12, 205–24. <https://doi.org/10.1177/1523422310367883>
- Sourdin, T. (2012). Not teaching ADR in law schools? Implications for law students, clients and the ADR field. *Australasian Dispute Resolution Journal*, 23, 148-156. <https://doi.org/10.2139/ssrn.2721539>
- Tehan, D. (19 June 2020). Minister for Education, National Press Club. <https://ministers.dese.gov.au/tehan/minister-education-dan-tehan-national-press-club-address>
- Thornton, M. (2012). *Privatising the Public University: The Case of Law*. Routledge <https://doi.org/10.4324/9780203804537>
- Thornton, M. (2013). The Mirage of Merit. *Australian Feminist Studies*, 28(76), 127-143. <https://doi.org/10.1080/08164649.2013.789584>
- Thornton, M. (2014). Legal Education in the Corporate University. *Annual Review of Law and Social Science*, 19-35. <https://doi.org/10.1146/annurev-lawsocsci-110413-030714>
- Valle, A. et al. (2009). Academic Goals and Learning Quality in Higher Education Students. *The Spanish Journal of Psychology*, 12(1), 96-105. <https://doi.org/10.1017/S1138741600001517>
- Waters, B. (2016). ‘A Part to Play’: The Value of Role-Play Simulation in Undergraduate Legal Education. *Law Teacher*, 50(2), 172-194. <https://doi.org/10.1080/03069400.2016.1162404>
- Waters, B. (2016a). The importance of teaching dispute resolution in a twenty-first-century law school. *The Law Teacher*, 51(2), 227-246. <https://doi.org/10.1080/03069400.2016.1162069>