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EDITORIAL

*JANE JARMAN**

Welcome to this special edition of the Nottingham Law Journal which will focus on the work of Nottingham Law School's Centre for Legal Education.

Led by Professor Jane Ching and her deputy, Pamela Henderson, the Centre has a long history of commitment to innovation, creativity, and collaboration in legal education. Through its work with law firms, regulators, academics, and legal professionals, in the UK and internationally, it seeks to find ways in which to share best practice at all stages of the legal curriculum, from first year undergraduate to experienced legal professionals.

Part of this commitment can be seen in the Centre's biennial conference. In June 2022, the focus of the conference was *Community, Creativity and Culture in Legal Education.* Most of the papers which form this special edition have been drawn from that conference. My colleague Pamela Henderson has written a special postscript in which she reflects on what was a varied and inventive programme of papers and events.

In this editorial, I have looked for a common thread throughout the papers. Although the authors approach a varied diet of issues in the law school curriculum, the central motivating factor appears to be one of compassion.

In *"I See You, You See Me"*, Nandini Boodia-Canoo reflects on the transformative impact of legal education, especially when the tutor seeks to meet the student on an equal basis, to allow both parties to be "seen" by the other, engendering a powerful and compassionate teaching environment.

Hazel Dawe reflects on how universities can support students to navigate the law school culture shock in the transition from school to university. Compassion for the position of the new student, and the need to battle 'friendsickness' by the support mechanisms and learning community at the heart of a new foundation module at Oxford Brookes University during the challenge of the 2021 academic year.

Again, compassion was at the centre of the paper by Laura Hughes-Gerber, Noel McGuirk and Rafael Savva. They argue for a heightened awareness of the personal circumstances of the student, and sometimes the inherent distress as they make their way through law school requires an integrated approach from student support and the tutor. "Compassion is part of the jigsaw" within the department.

We then turn to the various ways in which an inventive approach to the learning environment can embolden the student and dispel the anxiety that often acts as an anchor drag on attainment. Javier Garcia Oliva and Helen Hall outline the way in which engagement in play, such as in the 'Escape Room' setting can act to promote a deeper engagement with the common law narrative, allowing space for deeper thought and reflection.

In their paper on the 'Brave New World' game, Helen Hall and Tom Lewis also promote the idea of game play as fostering willing engagement with values as well

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asbreaking down barriers to learning. Again, the search for a way in which to support students who may be struggling, both emotionally and intellectually, is central to the innovative game play model.

In writing this editorial, I have been reminded of two Nottingham Law School students whom I met as I transferred papers to my car just before the first COVID-19 lockdown in March 2020. The box I was transferring tipped over and, typically out of nowhere, they arrived to help me collect my books. As they helped me, one student asked me a question I shall not forget. "Do you think the world will be kinder and more compassionate after all this?" I replied that I hoped so.

Whilst there are many events which might prompt a negative answer, the care, inventiveness, and compassion evident in the work of the authors of the papers in this edition, as well as everyone who attended the conference would prompt a more assertive answer from me. Will we be more compassionate? Yes. I know so.

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ARTICLES

The address for submission of articles is given at the beginning of this issue.

I SEE YOU AND YOU SEE ME: A CONTEMPLATION ON THE PURPOSES AND AIMS IN TEACHING LAW

*NANDINI S BOODIA-CANOO**

In this reflective paper, alternative formulations of pedagogy will be explored to make the case for a teaching philosophy which places humanity at its centre. To this end, in the first instance, recent trends in the UK which have been aimed at broadening the scope of higher education in making it more inclusive and diverse will be discussed and interrogated. The latter part of the paper contains an outline of pedagogical strategies which have been applied and refined in the author's personal law teaching practice over the years.

The arguments are presented in a contemplative style, inviting the reader to consciously engage with the discourse outlined and critically appraise any entrenched or automated processes they may have adopted in their role as educators. It will be observed that several elements can and should be examined in much greater detail than the format of this particular paper allows, and the reader is requested to do so in their own practice, not only in the format of scholarly research but in informal exchanges with colleagues and students. Here broad discussions of concepts have been outlined to enable an appraisal which a micro-analysis of the constituent parts would obscure. The primary aim is to share thoughts based on personal experience in order to inspire experimentation with different approaches which prove satisfying and fruitful.

It is submitted that the teaching of law is a very particular occupation, which carries with it not only the readily observable pressures of delivering an intellectually demanding degree, but also the chance to experience growth, insight and immense satisfaction as part of the endeavour. If teaching is approached in a genuine spirit of partnership, as this paper argues for, the latter is not an opportunity solely reserved to the instructor, but rather presents an adventure which is embarked upon by educators and students jointly. The encounter between the two is a powerful seeding point, and a potential multiplying factor in the larger process through which knowledge and values are disseminated to wider society, the inherent potency of which calls for a courageous pedagogy.

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LEGAL EDUCATION WITHIN THE WIDER UK CONTEXT

To situate the pedagogical discussion within its wider context and the current UK higher education landscape, a brief sketch of the same may be useful. The provision of legal education and pathways to qualifying have undergone several changes in recent years. Partly driven by market considerations, partly by the ostensible aim to make the legal profession more accessible, legal qualifications are multitudinous and varied. The distinction between academic and professional study has narrowed, notably through the introduction of the Solicitors Qualifying Examinations and the modifications to the Bar course. Despite these adjustments, specific purposes to the different stages remain discernible.[1]

In the context of broadening the curriculum, the concern most frequently expressed by instructors of law particularly at the academic stage is one of time and space within syllabi. Foundations of knowledge, as stipulated by the regulatory bodies,[2] are extensive, and it is not uncommon for staff to consider significant variations to existing programmes as unfeasible, or even undesirable. It is against this observable resistance that new approaches often have to be incorporated.

Recent Trends in UK Higher Education

Across the sector, two developments have gained particular traction: (a) the call to decolonise curricula, and (b) the general adoption of what is known as the "compassion-based" approach, which will be examined in turn.

(a) Decolonisation

Arguably the clearest and most accessible definition has been articulated by Katy Sian, who explains it thus:

> 'calls to decolonize the curriculum seek to introduce different histories, alternative philosophies, and broader concepts, which combine to displace, or rather, decentre, Eurocentric thought and practice within the academy.'[3]

In the specific context of legal education, what does decentring Eurocentric thought and practice mean? The applications are multifarious: from more obvious matters, such as the subjects chosen and the materials selected, to less conspicuous issues, such as the type and form of teaching employed, emphases placed, and the many hidden messages and unspoken symbols encountered in higher education. It is clear that decolonisation requires more than a tokenistic approach of adding one or two scholars from the Global South to a module reading list, but it is not infrequently reduced to precisely that. This casuistry notwithstanding, there seems to be considerable fear associated with the process of decolonisation, one colleague sharing that their endeavours to achieve a more inclusive environment have been likened to "burning the house down" and met with vehement resistance.

It is submitted that it is not necessary to burn the house down, but substantial re-building may, indeed, be required. Drawing on the work of Vanessa de Oliveira

[1] For a more detailed exposition of the stages of qualifying and a discussion of relevant learning theories, see Nandini Boodia-Canoo, 'Learning Theories in the context of teaching Law' (2010) 14(1) Compass: Journal of Learning and Teaching <https://journals.gre.ac.uk/index.php/compass/article/view/1141> accessed 14 November 2022.

[2] See for example the Bar Standards Board's Qualification Manual, BSB, 'The Bar Qualification Manual' (*Bar Standards Board*, 2023) <https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=CC6E51DC-0FF4-45C8-A0CE31EA825C4692&q=> accessed 14 November 2022.

[3] Katy Sian, *Navigating Institution Racism in British Universities* (Palgrave Macmillan 2019) 98.

Andreotti *et al*, Sian discusses four spaces through which decolonisation of higher education is articulated, ranging from "Everything is awesome" and thus no decolonising practices are required, to a position of "Beyond-reform", which makes subversive use of educational resources.[4] In between, as per Andreotti et al, institutions may adopt either a soft- or radical-reform methodology.[5]

The dangers of the self-congratulatory approach of the first position have been highlighted elsewhere.[6] To recall, particularly when institutions in fact do employ certain practices of soft-reform, such as opting into the fashionable language of wider participation with some additional resource provision, it brings with it the risk of "Othering". Instead of genuine inclusion and integration, the needs of those who are not part of the dominant culture become exoticized, marked out as even more different than pervasive prejudice and systemic disadvantage already characterises them. As a result, Eurocentric perspectives remain centred, oppressive dynamics are entrenched, and issues framed around the strategic objectives of equality, diversity and inclusion amount to no more than box-ticking exercises to placate boards and regulators.

In the context of decolonising the law school, Suhraya Jivraj and Foluke Adebisi have composed extensive guidance to implementing changes.[7] Their work, as that of other scholars, has influenced the personal approach outlined in the second part of this paper. A salient reminder here would be that acquiring an understanding of these processes is a responsibility which continues to rest with each member of academia in the ongoing enterprise to draw nearer to equity.

(b) Compassion-based teaching

A further significant development in higher education has been the introduction of compassion-based approaches, as adopted by various institutions.[8] Pioneering this path is Theo Gilbert,[9] who advocates compassion as a teachable and assessable value by incorporating it in curricula and requiring its demonstration in assessments. It is suggested that this approach can be fraught, particularly in the context of assignments, as in its practical application it requires giving a lower grade if the expression of compassion is not deemed sufficient. Effectively demanding standardisation in how compassion is displayed, by expecting it to take a specific or even prescribed form, the examiner's value judgement is imposed and given precedence over that of the student. This critique in the context of assessments notwithstanding, the concept does hold a certain appeal. It is further related to the notion of psychological safety within teams and group settings, which available research indicates leads to highly positive outcomes for those involved.[10] As a strategy, it is adaptable to varying contexts. Within the framework of legal education,

[4] *Ibid* 110.

[5] *Ibid*. See also Vanessa de Oliveira Andreotti, Sharon Stein, Cash Ahenakew and Dallas Hunt, "Mapping interpretations of decolonization in the context of higher education" (2015) 4(1) Decolonization: Indigeneity, Education & Society, 21.

[6] Nandini Canoo, 'Welcoming international students: good practice for assisting integration', (Advance HE, 26 July 2022) <https://www.advance-he.ac.uk/news-and-views/welcoming-international-students-good-practice-assisting-integration> accessed 14 November 2022.

[7] Suhraiya Jivraj, 'Towards Anti-Racist Legal Pedagogy: A Resource' (*University of Kent*, 2020) <https://research.kent.ac.uk/decolonising-law-schools/wp-content/uploads/sites/866/2020/09/Towards-Anti-racist-Legal-Pedagogy-A-Resource.pdf> accessed 14 November 2022 and Foluke Adebisi, 'A Reading List for New Law Students', (*Foluke's African Skies*, 13 April 2020) <https://folukeafrica.com/a-reading-list-for-new-law-students/> accessed 14 November 2022.

[8] The author was fortunate to gain insight into the work of Clare Forder and Fiona Elstead at the universities of Brighton and Essex, respectively.

[9] Theo Gilbert, 'When Looking is Allowed: What Compassionate Groupwork Looks Like in a UK University', in Paul Gibbs (ed) *The Pedagogy of Compassion at the Heart of HE* (Springer 2017).

[10] See Google's Project Aristotle, *(re:Work*, 17 November 2015) <https://rework.withgoogle.com/print/guides/5721312655835136/> accessed 14 November 2022.

the introduction of compassion-based parameters at the beginning of term can aid to the creation of an environment more conducive to considerate exchanges. Debate and argument construction are essential elements of any law syllabus, and hereby, respectful disagreement is a competence certainly to be practised with students. While seemingly connected to the familiar concept of professional legal ethics, it should be noted that it is distinct from the latter, which is rooted in fiduciary obligations and the multifaceted aspects of professional responsibility.[11] Fostering the ability to engage with compassionate regard is thus a useful stepping stone in pedagogy, but as will be explored below, may benefit from further augmentation.

COURAGEOUS PEDAGOGY

As the preceding section has outlined, the process of establishing equitable spaces within which learning should take place is ongoing, decolonial and compassion-based approaches being among the latest strategies currently employed in higher education. What can become obscured in the process of pursuing these projects is the reason for doing so. After all, the desire for social justice is not new. Often prompted by external developments, three years after the murder of George Floyd, 30 years after the murder of Stephen Lawrence, and approximately 190 years after the legal abolition of slavery, calls to address systemic disadvantages in society are recurrent. Higher education is merely another arena in which this plays out. Yet for the instructor who believes in the transformative power of education, the classroom is a place where change may germinate. While all the ills of the world may not be cured in this way, they may at least find improvement within one's sphere of influence.

A holistic approach as advocated here can only rest on progressive methods, but these can be often considered as too radical. Yet to utilise education as a life-changing tool, nothing less than a courageous formulation of pedagogy will suffice. In *Pedagogy of the Oppressed*, Paulo Freire describes the concept of dialogue as "existential necessity", which he defined as the encounter between people to name the world in order to transform and humanize it.[12] Prerequisite to this encounter he placed another act: the exercise of love. According to Freire, "[i]f I do not love the world – if I do not love life – if I do not love people – I cannot enter into dialogue."[13] Freire is very clear that love in this context does not denote sentimentality. For him, it is an act of courage and commitment.[14] What is required thus, is to see the Other, and to meet him or her in a space where true dialogue can take place, which inevitably demands a level of vulnerability.

In the context of education, love and its presence between students and teachers, is easily dismissed as a lack of academic rigour. In her collection of essays, *Teaching to Transgress*, bell hooks observes, somewhat humorously, that "[t]eachers who love students and are loved by them are still 'suspect' in the academy".[15] This, she explains, is down to a narrow definition of love that characterises it as a private, exclusive emotion which acts to prevent objective evaluations of merit.[16] Yet the practice of love, defined by hooks as a "combination of care, commitment, knowledge, responsibility, respect

[11] Alan Paterson, 'Legal Ethics: Its Nature and Place in the Curriculum' in Ross Cranston (ed) *Legal Ethics and Professional Responsibility* (Oxford University Press 1995).

[12] Paulo Freire, *Pedagogy of the Oppressed* (Myra Bergman tr, 30th edn, Continuum International Publishing 2005), 88–89.

[13] *Ibid* 90.

[14] *Ibid*.

[15] Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom (*Routledge, 1994) 198.

[16] *Ibid*.

and trust",[17] is what creates the environment for a transformative experience through laying "a foundation for learning that embraces and empowers everyone".[18] While it could be said that such a teaching philosophy aligns itself with humanistic or even religious ideals, it is submitted that such principles exist outside philosophic or theistic constructs. Here, they are advocated as values born out of mutual humanity, which make the creation of a learning container with individuals from diverse backgrounds and belief systems possible.

Both hooks and Freire highlight the connection between taught knowledge and life practices – to understand the student as a whole person, and to ensure that what is taught is relevant to who they are and where they come from. A different form of "real-life relevance" has been popularised in legal education at the academic stage, and the motivation behind the rise of modern degrees emphasising practical skills. The attention placed on employability skills, which aims to prepare students to enter the workplace, is commendable, but, it is submitted, should not fail to take into account social, cultural and historical realities. It is these that inform students' identities, and which will inevitably form part of their eventual career experience.

Countering critique which sees no place for such considerations in legal studies, Julia Shaw asserts a sentimental education to be an imperative, describing law as an activity of the heart, soul and intellect.[19] She states, "[b]ecoming a good lawyer [. . .] involves more than learning the rudiments of legal reasoning and argument; rather, it requires an enlargement of our empathic understanding by training oneself to become a human being capable of love and imagination."[20]

TRANSFORMATIVE TEACHING: CENTRING HUMANITY

To examine the purposes and aims which can underly and inform legal teaching, it is worth considering the equivalent values behind students' desire to study law. These of course cannot be generalised, so enquiring into their motivations at the start of a course of study is an insightful exercise. While humorous and irreverent answers are to be expected and welcomed (since they too can be revealing beyond the verbal answer given), if taken seriously, responses can strongly inform and guide pedagogical approaches for the module ahead.

At widening participation institutions with a diverse student profile, a common theme is that applicants come to the study of law with a purpose. Themes of dreams and aspiration can be strong. Depending on previous life experiences, students come to the study of law with the wish to experience justice. Various questions arise for a teacher of law: How is this to be achieved? Is it at all possible? Should it even be attempted? Can it be approximated? How to create a space in which the study of law can be experienced in this way?

As every lawyer knows, law and justice are not synonymous concepts. Further, the meaning of justice varies from student to student, as well as (most importantly perhaps) from instructor to instructor, coloured as it is from individual life experiences and circumstances. Strategies, such as decolonising the curriculum and compassion-based teaching can form essential elements of an effective teaching strategy, but the manner

[17] Bell Hooks, *Teaching Critical Thinking: Practical Wisdom* (Routledge, 2010) 159.

[18] *Ibid.*

[19] Julia J A Shaw, *Law and the Passions: Why Emotion Matters for Justice* (Routledge, 2020) 171.

[20] *Ibid* 172.

of their implementation and any resulting impact demands a depth of commitment and understanding that goes beyond following popular policy. To approximate the aims with which students come to the study of law, it is necessary to adopt a pedagogy which creates space not only for inclusivity, but also provide them with a genuinely transformative experience, to take them from where they started to where they wish to go, as articulated by pedagogists such as Freire and hooks discussed above. Any modern conception of legal education would not consider an instruction solely in black letter law as comprehensive. What ultimately makes up the syllabus, and the values which underlie these choices and decisions, is where in the influence of the individual law teacher becomes most powerful.

To this end, a number of strategies may be adopted. In the following, methods which have been applied and refined in personal teaching practice are outlined. They are the cumulative result of study, research and interactions with colleagues and students over the years. These suggestions do not claim to be original or ground-breaking, but they have produced the highly enriching teaching and learning experiences alluded to at the beginning of this paper, and are shared in this spirit.

To self-identify and self-locate

It is important as an educator to be acutely aware of one's own perspective and location, in terms of background, experience, systemic advantage and potential biases. These can be explicitly shared with students, who in turn will be encouraged to do the same. Crucially, it is imperative to highlight that the teaching is necessarily filtered through this prism, but that it is not the only way to approach a subject, and certainly not the only valid one.

To meet on an equal basis

To meet on an equal basis here signifies to reject deficit- or banking models of education, and to recognise the experiences and backgrounds of students as valid sources of knowledge. It is to enter the teaching experience with the intention to learn as well as to impart, demonstrating a willingness to share understanding with generosity and humility.

To extend invitations for connection

The previous two steps will enable a connection to take place that is mutually enriching, and by framing teaching as essentially one long conversation in which everyone in classroom is invited to participate. Timetabled lessons become a fixed commitment beyond mere attendance requirements, where the instructor implicitly promises their conscious presence as the anchor around which the learning experience develops. As a result, students will be inclined to extend their own commitment and participants look forward to the sessions.

To allow oneself to be seen

This is perhaps the most difficult yet crucial aspect. The approach outlined here relies on the teacher's visibility and demands that he or she presents authentically. This can leave educators feeling vulnerable, though it should be borne in mind that inauthentic presentation is easily discerned by students. Figuratively, the educator is already naked, being far more exposed than anyone who has stood and interacted in a classroom would like to admit. Authentic presentation and allowing oneself to be seen clothes the bareness.

To set the standard

The preceding steps combine to automatically set a high standard for the teaching and learning space. Students will be aware of the collective responsibility in creating a positive experience. At the same time, qualities sought to be developed must be exhibited by the educator first, among which should be openness, transparency, courtesy, commitment to knowledge and growth, and a dedication to excellence.

A final point: the role of self-awareness

Any desire to engage in more equitable practices requires self-awareness. Janelle Adsit points out that structural hegemony is maintained through established internal patterns, which can only be changed if the automatic nature of our thought-processes is disrupted. Otherwise we are likely to repeat various forms of injustice which unconsciously form part of our mental landscape.[21]

In exploring the concept of cultural humility, Adsit identifies that there are different relations to humility and vulnerability, depending on where one is standing within certain power regimes and their historical legacies. Resisting the epistemological monopolisations of the Global North, cultural humility here signifies "a pronounced turn from 'knowing best' and 'knowing for' that is the stance of the missionary, the colonial figure, the master, the white saviour."[22] Self-serving benevolence is found behind strategies that ostensibly aim at inclusivity, remediation of perceived deficiency and other acts of charity, keeping in place the structures responsible for them, all the while true deficiency in higher education exists in the absence of "representation, cultural relevance, equitable policies, humanizing and affirming practices".[23]

The five practices shared above have at their core precisely this aim: to be affirming and humanise the teaching and learning space by seeing each other fully.

CONCLUSION

This paper has discussed current trends within higher education and sought to encourage educators to go further with their approaches to pedagogies, with the view that the teaching and learning in legal education can provide a transformative and developmental experience, for both the student and the instructor. Specific practices based on personal experimentation have been outlined, highlighting self-awareness as the overarching and connecting imperative for a pedagogy that is not only inclusive but courageous. Given the nexus to justice, these concepts assume particular relevance in the context of legal education, which it has been argued should at its heart always maintain the purpose of enhancing, and thereby centring, humanity.

[21] Jannelle Adsit, Pursuing Antiracist and Anticolonial Approaches to Contemplative Practices, in Greta Gaard and Bengu Erguner-Tekinalp (eds) *Contemplative Practices and Anti-Oppressive Pedagogies for Higher Education* (Routledge, 2022), 17–19.

[22] *Ibid* 23.

[23] *Ibid*.

BUILDING LEARNING COMMUNITIES AS A MEANS OF HELPING STUDENTS COPE WITH THE TRANSITION FROM SCHOOL TO UNIVERSITY

*HAZEL DAWE**

INTRODUCTION

Transition from school to university is a fundamental and difficult change in life for students Sometimes called 'mind the gap'[1] and 'bridging the gap'.[2] This is where students need substantial and targeted support from universities. 'Transition is a time during which students develop their identity as a university student and come to terms with whether or not university life is what they expected it to be.'[3] This article will examine how universities can support students through the transition, in particular it will focus on social support to help create learning communities. It will illustrate the difficulties students face transitioning from school to university through the concept of culture shock.

Culture shock is identified as 'the psychological consequences of exposure to novel and unfamiliar cultural environments.'[4] There are two dimensions to this specific form of culture shock, one academic and the other social. Although both will be discussed, the main emphasis will be on supporting students through the social culture shock. 'One of the reasons students find the transition to university so tumultuous is that it often challenges existing views of self and one's place in the world.'[5] This causes disorientation when they are already struggling with a difficult transition from one educational and social environment to another. 'Transition is a time of identity re-shaping and coming to terms with whether expectations about university life have been met, or need to be revised, or, in fact, if the mismatch between expectation and reality is too great to warrant persistence.'[6] The author was involved in both designing a Foundation in Law year and delivering it for the first time in the academic year 2020–2021, at Oxford Brookes University. Foundation courses are level three studies, typically lasting one academic year, which are designed to introduce atypical students to university study. Usually they are heavily study skills based. This new Foundation in Law course included a substantial element of skills teaching but also some introductory substantive law. It was incorporated into a four-year law degree. It was intended to use the foundation year to alleviate culture shock and make the transition from school to university easier for students who might otherwise not cope.

There is also an academic dimension to this transition which causes further disorientation. Briefly, the academic dimension includes the different demands on students

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[1] Jan Parker, 'Introduction, Forum on Access and Transition to Higher Education' (2003) 2(1) Arts and Humanities in Higher Education 28.

[2] Gillian J Ballinger, 'Bridging the Gap between A Level and Degree' (2002) 2(1) Art & Humanities in Higher Education 99.

[3] K L Krause and H Coates, ' Students' engagement in first-year university', (2008) 33(5) Assessment & Evaluation in Higher Education 493, 500.

[4] Coleen Ward, Stephen Bochner and Adrian Furnham, *The Psychology of Culture Shock* (Routledge, 2001) 1.

[5] K L Krause and H Coates '(n 3) 500.

[6] *Ibid* 500.

both in novel types of assessment and new skills as well as a different style of teaching. Students will not have previously encountered assessments such as legal problem questions, mooting, client interviewing for example. New skills include how to read a law report, how to identify relevant sections in a statute and interpret them. This can lead to students having difficulty adjusting. Academic writers have noted the 'disparity between the experience of school-based Advanced Level study and degree expectations'.[7] For example, in her research, Ballinger notes the change from tutorial groups of 10–14 at A Level to the larger groups of 20 or more in seminars at university, or the even more intimidating situation in a lecture of potentially around 200 especially when required or encouraged to participate. [8] Numbers may vary across institutions, but the general principle is valid. It is understandable that first year university students struggle to adapt to the very different teaching and learning culture of university as they come fresh from their experience of learning and teaching at school. The Foundation in Law aims to help students adapt more easily.

CULTURE SHOCK AND SOCIAL TRANSITION

The main emphasis of this article will be on the social dimension of transition. The social dimension of culture shock in the transition from school to university includes the loss of a long-term peer group, and for many students, living away from home for the first time. Hence students lose not only the proximity to their friendship network but also to their family. Most secondary school pupils have known at least some of their cohort for several years and the cohort comes from a generally relatively small geographical area.[9] Going to university involves breaking out of these narrow confines and moving further away geographically with less likelihood that the students will know any of their cohort. The feeling this engenders in students starting university has been described as 'friendsickness', a combination of homesickness and loss of friendship relationships.[10] The definition given of this concept is: 'a pressing relational challenge for new college students that is induced by moving away from an established network of friends'.[11]

It can be hard for students to deal with this upheaval amidst all the new concepts and new types of study and assessment. They can feel overwhelmed. 'The lack of friendship networks has been a critical factor in students' level of adjustment to the university, many stating that peer interaction is most crucial in addressing transition issues.'[12] Development of good friendship networks once at university has been shown to help with achieving a smooth transition.[13] 'Homesickness has been found to be associated with poor academic performance, depression, anxiety.'[14] This means that support for students to help them form friendship networks, in particular in their first year at university, should be a high priority for universities and can help improve student well-being

[7] Gillian Ballinger (n2) 99.

[8] *Ibid* 99.

[9] Keverne Smith, 'School to University: sunlit steps or stumbling in the dark?' (2003) 2(1) Arts and Humanities in Higher Education 90, 91.

[10] Elizabeth Paul and Sigal Brier, 'Friendsickness in the Transition to College: precollege Predictors and College Adjustment Correlates' (2001) 79 Journal of Counseling & Development 77, 77.

[11] *Ibid* 77.

[12] Martin Harris, Tony Barnett et al, *Thriving in transition: A model for students support in the transition in Australian Higher Education*, Final Report 2014, Office for Learning and Teaching, Sydney, 22.

[13] Fisher and Hood (1987) cited in Elizabeth Paul and Sigal Brier (n 10) 78.

[14] 14 Elizabeth Paul and Sigal Brier (n10) 79.

as well as enhancing their academic performance. Research shows that both are clearly linked.[15] 'With assistance however, students can form supportive peer groups, learning communities and friendships.'[16] This method is supported by the stress and coping approach to the psychology of culture shock: 'Stress and coping approaches . . . incorporate social aspects of the adjustment experience. Attention is directed . . . to their wider sociocultural environment.'[17] A comparison of law students and medical students established that the law students had 'lower wellbeing, higher levels of psychological distress, and high levels of depression'.[18] This disparity was discovered independently in both a US and a UK study where law students were used as a control group for a study into well-being and stress levels of medical students.[19] Law students were chosen as a control group as both law and medicine are ; vocational subjects with similarly high academic credentials'.[20] 'The results were viewed as *prima facie* counter intuitive as law students were not seen as a vulnerable group of people.'[21] This leads to the conclusion that law students need particularly high levels of social support and additional psychological support.

There is evidence to suggest that high drop out rates in the first year of university are, at least in part, due to a lack of social integration into the student body. Research has demonstrated that premature withdrawal of students can be influenced by 'social integration issues . . . lack of social support' and that it is important to provide students 'not only with academic support, but also personal, physical and emotional support'.[22] A study on why students withdraw in their first year established that nine out of 12 who withdrew cited the difficulties in making compatible friends as a reason for leaving university.[23] Other contributing factors included unsuitable accommodation and having problems adjusting to independent study.[24] This confirms that there is a social component to the difficulty of transition as the separation from social peers contributes towards an inability to adjust to university study. The study mentioned above established that new students lose being 'part of a group of peers with whom they have formed long-term friendships when they enter university'.[25] This means that universities should do all they can to facilitate the forming of new peer groups. Emotional support of new students by universities should be a high priority.[26]

LEARNING COMMUNITIES

It has been suggested that forming learning communities is one way of helping students cope with the transition and that this can help students form new networks by

[15] *Ibid*.

[16] J Lave, 'Situating learning in communities of practice.' In: L Resnick, J Levine, and S Teasley, eds. *Perspectives on socially shared cognition*. (American Psychological Association 1991), 63–82; J Lave and E Wenger, *Situated learning: legitimate peripheral participation*. (Cambridge University Press 1991) 63.

[17] Coleen Ward, Stephen Bochner and Adrian Furnham, *The Psychology of Culture Shock* (Routledge, 2001) 38.

[18] Graham Ferris. 'Law -students well being and vulnerability', (2022) 56 The Law Teacher: 15, 5.

[19] *Ibid* 5.

[20] *Ibid* 6.

[21] *Ibid*

[22] Harris et al (n 12) 24.

[23] Paula Wilcox, Sandra Winn & Marylynn Fyvie-Gauld (2005) '"It was nothing to do with the university, it was just the people": the role of social support in the first-year experience of higher education', (2005) 30(6)] Studies in Higher Education, 707.

[24] *Ibid* 711–712.

[25] *Ibid*.

[26] Ballinger (n 2) 106.

'connect[ing] them with faculty and other students in efforts of forming supportive peer interaction'.[27]

Learning communities is a broad expression which encompasses several different types of communities. A basic definition of a learning community is 'an intentionally developed community that exists to promote and maximize the individual and shared learning of its members'.[28] This covers a broad spectrum of groups from 'small scale groups of students learning together in classrooms to the more intense community of students living and learning together in a residence hall'.[29] There is research evidence that learning communities improve academic performance and engender high social integration.[30] Therefore universities and their staff need to promote and enable the formation of learning communities particularly amongst foundation and first year students. 'It is important that tutors make students' experience of what small group contact they have as constructive as possible so that they feel they can find their own critical voice.'[31] 'Promotion of student solidarity, a sense of 'we're in it together' can be helpful. Reading groups and group study sessions may be beneficial.'[32]

> 'There is abundant evidence that the most effective higher education environments are ones in which students are diligently involved as part of a community of learners. As part of this engagement they work together with academics to enhance teaching, assure quality and maintain standards. In these contexts they understand themselves as active partners with academic staff in a process of continual improvement of the learning experience.'[33]

Our Foundation in Law was therefore designed to assist the students to form a learning community, this is facilitated by the fact that they are a small group (just over 20) who take all their lessons together: the first and basic requirement for forming a learning community. However, US research has also identified that 'students struggling with social adaptation and homesickness did not experience their peers' positive effects'.[34] Therefore social adaptation must also be encouraged for all students in order to combat homesickness and friendsickness. There is a need to emphasise the social aspect of forming a learning community and not just the academic benefits. This was attempted within our Foundation in Law year.

The small size of the Foundation in Law cohort (22 in the 2020–2021 intake and 24 in the 2021–2022 intake) intensifies the relationship between the students and between students and faculty. In contrast, the first year LLB intake is generally around 180 students. The majority of the foundation modules are taught by only two lecturers, who are also the Subject Coordinator and the Academic Advisor (Personal Tutor) thus enabling a closer relationship between students and faculty than can generally exist in a large undergraduate law school. Attempts to enhance social support for Foundation in Law students are described in more detail in a subsequent section.

[27] Harris et al (n 12) 22.

[28] Lenning and others, cited in Jody E Jessup-Anger, Chapter 2 Theoretical Foundations of Learning Communities', in *Learning Communities from Start to Finish: New Directions for Students Services*, ed. Mimi Benjamin (John Wiley & Sons 2015) 17.

[29] Kevin Fosnacht and Polly Graham, 'Is a HIP always a HIP? The case of learning communities' (2022) 59(1) Journal of Student Affairs Research and Practice 59.

[30] *Ibid* 6.

[31] Ballinger (n 2) 105.

[32] *Ibid* 105.

[33] Paul Ramsden, 'The Future of Higher Education – Teaching and the Student Experience' (Higher Education Academy 2008) <https://www.advance-he.ac.uk/knowledge-hub/future-higher-education-teaching-and-student-experience> accessed 31 May 2023; 16.

[34] Kevin Fosnacht and Polly Graham (n 28) 60.

This support for students to create learning communities also extends to our LLB programme. The Law School has been attempting to create a discrete identity as a law school to enable the law students to become a learning community. 'Student involvement in quality processes should start from the idea of building learning communities.'[35] Induction of the undergraduate LLB students at Oxford Brookes University contains some elements to enhance social cohesion but has concentrated mainly on skills. During the LLB induction week the new undergraduate students are given legal and study skills sessions e.g., legal writing including how to write legal essays and answers to legal problem questions. Because there is a large intake therefore they are also allocated to smaller groups within which they stay for all their induction week sessions, which should help them to form social bonds within those groups. It is, unfortunately, not possible to retain these groups after induction. Allocation to tutorial groups is a separate process. When it was discovered that most of the students were not coming to see their academic advisors (known as personal tutors in most UK universities) the advisors came to them. In one large lecture session the academic advisors attend, collect their allocated students, and take them out as a group thus promoting social connections both between the students and between the students and the academic advisor. Learning communities allow students to 'connect with faculty and other students in efforts of forming supportive peer interaction . . . therefore bridging the academic demands of university with social needs of students'.[36] A community of learners thus contains two components: the community of students together and the supra-curricular relationship between students and academics both of which were promoted by this action.

THE NEED FOR SOCIAL SUPPORT AND TYPES OF SOCIAL SUPPORT

'Whereas social integration refers to the structural aspects of social relationships, social support refers to the functional content of relationships such as the perceived or actual support received.'[37] 'It is thought that successful integration in [the academic and social worlds of the university] reduces the likelihood of students' withdrawal.'[38] Some studies have shown that 'social support is vital for successful adjustment to university life'.[39]

Equally, there is evidence that 'leaving in the early part of the course frequently resulted from a failure in social integration such as difficulties in making friends or homesickness.'[40] 'Students' new social networks at university often provided support to overcome such difficulties.'[41] There seems to be a direct link between the successful integration of students and their ability to continue their studies.

Examples of social support for students can be found in the Student Engagement Framework for Scotland. The Framework was developed by the key agencies in Scotland involved in higher education in 2011 as 'a basis for sharing existing practices and approaches whilst supporting future developments'.[42] It is still used as a tool to promote best practice and to evaluate the results. The Framework identifies several issues to

[35] Ramsden (n 33) 16.
[36] Harris et al (n 12) 22.
[37] Wilcox (n 23) 708.
[38] *Ibid* 708.
[39] *Ibid* 709.
[40] *Ibid.*
[41] *Ibid.*
[42] QAA Scotland and others, 'A Student Engagement Framework for Scotland' (QAA Scotland and others 2008) <https://www.sparqs.ac.uk/upfiles/SEFScotland.pdf> accessed 31 May 2023.

improve students' engagement and involvement with higher education institutions some of which include an element of social support for students. The first of five key elements of Student Engagement is 'Students feeling part of a supportive institution'.[43] The basic definition of this feature is that it includes 'the range of activities and approaches that encourage students to come to, feel part of, feel supported by and participate in an institution'.[44] In order to achieve this, institutions in Scotland are urged to 'offer activities which create a sense of community'.[45] These activities are expected to be more effective if they are student-led or shaped e.g., students' associations organising events . . . or students' involvement in the design and delivery of induction: social events are specifically recommended. Our Student Law Society organises social events and careers related events including an annual ball, webinars on legal careers and training for Amicus, an organisation which helps death row inmates present their appeals. Foundation in Law students are invited to become members of the Student Law Society and to participate fully in their events in order to integrate them into the wider law student community.

SOCIAL SUPPORT OFFERED IN THE FOUNDATION IN LAW YEAR PROGRAMME

The Foundation in Law programme was designed to provide both academic and social support. To help support students through the social upheaval of the transition it was intended that foundation law students would take part in the Law School mentoring programme which would have helped manage their expectations. Unfortunately, the restrictions introduced because of the COVID-19 pandemic made this impossible as the country went into lockdown.[46] This was known as the first lockdown. People were not allowed to leave their homes apart from for certain restricted purposes – this did not include higher education.[47] Gatherings of more than six people were prohibited – again apart from for a very limited number of purposes. This was an even more restrictive list of permitted purposes.[48] Under these conditions, the mentoring programme was unable to proceed. Law School staff who would otherwise have organised the mentoring programme were overwhelmed with work recording all their lectures for online delivery and therefore did not have the capacity to start this new programme. The following year, a start was made on mentoring of first year LLB students but there was insufficient capacity at this early stage to also include Foundation in Law students. It is hoped that Foundation in Law students can be included in the mentoring programme in future.

In the first year of delivery of the Foundation in Law programme, the initial session for the students was consciously designed to be as informal as possible, with building social contacts a high priority. All induction session were held online. There was an initial music/film focus followed by icebreakers aimed at focussing the students on how to cope with the psychological effects of the COVID-19 lockdown situation. When introducing ourselves the lecturers included where they live as a means of incorporating a sense of space: introducing the students to the area where they will spend the next year, or the next four years of their full degree programme, to make them feel more

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

[46] The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 , SI 2020/350 came into force on 26th March 2020.

[47] *Ibid* para 6.

[48] *Ibid* para 7.

at home and to help them cope better with the loss of their own home (one aspect of friendsickness). Our next social event was a panel discussion with existing students, again delivered online. It was hoped that personal contact with existing students would offer reassurance and emotional support. In the first year of delivery of the foundation course, the vice chair of the Student Law Society addressed the students, as did a third year LLB student who was heavily involved in several co-curricular activities e.g., Law Society, Commercial Awareness Society. In the second year of delivery, as well as the chair of the Student Law Society, it was now possible to have a foundation student from the previous year on the panel and the session was delivered face to face. On both occasions, the new foundation students were able to ask questions of the panel whilst a lecturer was present, but they were also given the option of asking questions of the existing students on the panel without the presence of an academic in the room. On both occasions, they availed themselves of this opportunity, thus providing informal social contact and helping them bond with each other and with undergraduate law students. The sessions were extremely interactive.

Our third induction session, comprised a short law taster subject session, a contemporary case in the news: in the first year, the Asher's cake case (Lee v Ashers Baking Co Ltd[49]) and human rights: again a less formal and more sociable session. In the following year *DPP v Ziegler*[50] was covered: this time face to face with LLB students attending as student ambassadors, again with a human rights focus: this time the right to demonstrate. Foundation students were given the opportunity for both semi-formal and informal interaction with the LLB students.

Breakout groups were used extensively in the first year for the online sessions. However, given the high levels of psychological distress amongst law students early socialisation and formation of friendship groups continues to be a priority, using pair work in face to face sessions to replace the breakout groups the following year. Students engaged better in the face to face sessions. Students were generally allowed to choose their own partners for pair work, although any unpaired students were allocated to another unpaired student to form a pair – or if necessary, a group of three. Students tended to stay in roughly the same pairings although some movement between groups did happen over the year.

The use of breakout groups online gave students the opportunity to disengage as it was not possible for the lecturer to monitor the level of activity in all breakout groups running simultaneously. Lecturers did dip into breakout rooms, but this does not allow the same level of ensuring participation that face to face sessions in the same room do. 'Studies that have investigated social support in relation to transition to university . . . have shown that social support is vital for successful adjustment to university life.'[51] It is hoped that the promotion of social contact and the support for students to form links with others, both in their own cohort and among the LLB students, will provide the social and emotional support necessary to enable our students to transition successfully from school to university by helping them establish those all important interpersonal relationships. This should give the students the emotional support they need to enable them to manage psychological stress. Whilst this seemed to work well with our first foundation law cohort, it does not seem to have worked as well with the second cohort (2021–2022) who have had more opportunities for face to face contact. Some of them did not use those opportunities. This is a puzzling finding and contrary to our expectations.

[49] [2018] UKSC 49.
[50] [2021] UKSC 23.
[51] Paula Wilcox et al (n23) 709.

More research would be needed to establish if there are other reasons behind the poorer social cohesion of our second cohort. However, there is already some research emerging that the use of COVID restrictions for two years running have led to a break in habits of school attendance and to pupils disengaging with the school and the second cohort would have experienced COVID restrictions for a further year in their schooling before joining the foundation course. Certainly, a group of UNESCO educators are concerned about the effects of extended disruption on pupils' social development. 'With students at home, the school community is absent and . . . a barrier is created in the educational relationship between pupils and teachers.'[52] The same authors express concerns that this makes it harder for young people 'to become conscious members of a solidarity based community'.[53] This seems to reflect the problems our second cohort had with social integration.

Switching between blended learning, i.e., partly online and partly in person, and purely remote learning caused us to improve our own flexibility and evaluate the possible benefits of such techniques for future teaching and learning. In 2021–2022 more face to face teaching was made available, albeit still with some COVID restrictions and therefore some students joining those present in the classroom via remote links.

SIGNS OF SUCCESS

Due to the efforts of the third year student on our inaugural panel discussion one of our foundation students was inspired to become involved in helping create the new Commercial Awareness Society for our law students. This is regarded as a positive outcome and an indication of foundation students beginning to integrate into the wider law undergraduate community.

The Academic Advisor has helped the students form their own online chat group and encouraged them to use it to discuss any issues they have around the course. There was continuing evidence from conversations with students that they were using this group to communicate with each other and build relationships. It was also used by the student representatives to obtain student feedback on any elements of the course they particularly liked or that they felt needed improvement. This initiative has therefore been continued even now that COVID restrictions no longer apply. The author personally witnessed foundation students in the first year when blended learning was being delivered, meeting informally after classes and developing small informal social groups.

Given the evidence that lack of social interaction and inability to build peer relationships contributes to students dropping out in their first year, then drop out rates in the foundation year can be compared to overall drop out rates in the first year in higher education as a bench mark. The Higher Education Statistics Agency (HESA) defines non continuation as those who leave higher education completely. HESA collects sector wide data on this benchmark. Using their definition, the Foundation in Law year at Brookes had a 0% non continuation rate in its first year.

To clarify, all of the foundation students continued with some form of higher education study. Seventeen continued at Oxford Brookes in various LLB programmes; three students went to other universities to study law, including one who obtained entry to the University of Cambridge, and three retook modules. Every foundation student was asked by the Subject Coordinator if they were continuing at Oxford Brookes or not and

[52] Annamaria Colao and others, 'Rethinking the Role of the School after COVID-19' (2020) 5 The Lancet Public Health e370.

[53] *Ibid.*

with which LLB programme for the purposes of university enrolment in the following year. The responses confirmed that the three had obtained places at other universities. As Subject Coordinator, the author was responsible for writing references for the two of the three students who went to other universities.

Although this is a small sample size, the contrast is extreme. The 0% non-continuation rate on the foundation course compares with a sector wide non continuation rate of 5.3% for the UK overall and 4.5% amongst first year students at Oxford Brookes in the year 2019–2020.[54] Data for 2020–2021 is not yet available from HESA. As our Foundation in Law programme has achieved a continuation rate far beyond what is the norm in higher education for first year students, and non continuation is linked heavily to lack of social integration, our attempts to create social bonding between our students would seem to have been successful.

CONCLUSION

Students face a bewildering gap between school and university. This transition is not only difficult for them in terms of novel teaching and assessment styles, but also socially difficult. The shock of transition has been described as culture shock and the social element of this culture shock has been labelled 'friendsickness'. Friendsickness refers to a combination of the loss of friendship networks, which may have lasted many years throughout the student's time at both primary and secondary school, and homesickness. There is substantial research which shows that good social integration is key to retaining students and to them being successful at their studies, and also research indicating that law students suffer from higher levels of psychological distress and depression compared with students studying similar vocational subjects at university. It is therefore incumbent on universities to provide strong social support to new students, in particular to help them create learning communities for mutual support.

Our newly designed Foundation in Law was carefully designed, especially at the induction stage, to facilitate social interaction. Primarily between our foundation students, but also with undergraduate law students, and to help them develop into a learning community. Individual and small group examples of successful social integration were found. However, if continuation at university study is taken as a benchmark for successful social integration, then the Oxford Brookes Foundation in Law has been extremely successful. In our first year of delivery of the programme there was a non continuation rate of 0% compared to a national non continuation rate of 5.3%. However, this is clearly a small sample size and further research is needed.

[54] HESA, 'Table T3 – Non-Continuation Following Year of Entry 2014/15 to 2019/20' (2020) <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/non-continuation/table-t3> accessed 31 May 2023.

COMMON LAW NARRATIVES AND METANARRATIVES: ESCAPE ROOMS AS TOOLS FOR EXPLORING AND CHALLENGING

JAVIER GARCIA OLIVA and HELEN HALL***

INTRODUCTION

Since the mid-2000s, escape rooms have spread around the globe as a commercially available leisure activity.[1] These games require participants to complete a number of puzzles or tasks within a limited amount of time, in order to achieve a specified goal, which may or not literally be exiting from a locked room.[2] Most cities and towns have a variety of such venues, and they can be found nestled in retail units,[3] on board cruise ships[4] and even in caves.[5] Unsurprisingly, the possibilities of these experiences were quickly recognised by many within the education sector and are now employed in a wide variety of learning contexts.[6]

The manner in which they are applied, and the underlying pedagogical aims are as varied as the escape rooms themselves.[7] As Valdkamp, Van de Grint, Knippels and Van Joolingen argue, this renders it impossible to make a meaningful overarching assessment of their strengths and weaknesses, although research has confirmed that, as might be anticipated, the more effective the alignment of pedagogical approaches and game mechanics, the greater the chance of optimising success in learning outcomes.[8]

It is not surprising that the overwhelming majority of literature on the potential of escape rooms in education has focused on their capacity to build the knowledge base of learners, or to develop skills in critical thinking, problem-solving and collaborative working. See, for instance, the work of Rouse in the context of teaching history.[9] Neither is there any dispute that these attributes make well designed escape rooms a valuable resource within legal education.[10] However, this article focuses on a different type of benefit, particularly within common law settings: their potential for facilitating engagement with narratives.

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[1] Ellyssa Kroski, *Escape Rooms and Other Immersive Experiences in the Library* (1st edn, American Library Association 2018) 4.

[2] Guadeloupe Marina-Torres, Diana Cardona, Mar Requena, Miguel Rodriguez-Arrastia, Pablo Roman and Carmen Ropero Padilla, "The Impact of Using an Anatomy Escape Room on Nursing Students: A Comparative Study" (2022) 109 Nurse Education Today 105205

[3] Printworks Manchester, 'Escape Reality' (*Printworks Manchester*, 2023) <https://printworks-manchester.com/venues/escape-reality/> accessed 20 May 2023.

[4] Royal Caribbean Cruises, 'Escape Room: The Observatorium' (*Royal Caribbean Cruises*, No date) <https://www.royalcaribbean.com/cruise-activities/escape-room-the-observatorium> accessed 20 May 2023.

[5] Nottingham Escape Rooms, 'Cave Escape' (*Cave Escape*, No date) <https://www.caveescape.co.uk/escape-room-nottingham> accessed 20 May 2023.

[6] Eric Sanchez and Maud Plumettaz-Sieber, 'Teaching and Learning With Escape Games from Debriefing to Institutionalising Knowledge' (2019) Games and Learning Alliance, 242, 242.

[7] Brian Wesley Gilbert, Amber Meister and Christopher Durham, 'Retracted: Escaping the Traditional Approach: A Pilot Study of an Alternative Interview Process' (2019) 51(1) Hospital Pharmacy, 2.

[8] Alice Veldkamp, Liesbeth van de Grint, Marie-Christine Knippels, Wouter van Joolingen, 'Escape Education: A Systematic Review on Escape Rooms in Education' (2020) 31 Education Research Review 100364.

[9] Wendy Rouse, 'Lessons Learned While Escaping from A Zombie: Designing a Breakout EDU Game' (2017) 50(4) The History Teacher, 533, 533–564.

[10] Tes, 'Escape Room – Citizenship Law' (*Tes*, 21 October 2021) <https://www.tes.com/teaching-resource/escape-room-citizenship-law-12151136> accessed 20 May 2023.

In order to do this, we shall firstly address the reason why narrative is crucial to both the study and practice of law, and how an ability to critically assess accepted narratives is essential in the pursuit of justice and social inclusion. We shall then consider the relationship between narratives and escape rooms, and ways in which these tools might assist in the dissection and reconstruction of overarching assumptions, concluding our discussion with a case study of an escape room which we have designed and constructed.

NARRATIVE AND THE COMMON LAW

Narratives are of critical importance within all legal systems at what might be described as the macrolevel, the stories which underpin social and constitutional assumptions permeate the decision-making of both legislative and judicial actors. Equally, in common law contexts, the formal operation of precedent and law reporting means that narratives are crucial at a more granular level, effectively forming the building blocks of the legal system. For the purpose of our analysis, we shall term these twin facets of collective storytelling: metanarrative and narrative, and shall explore each in turn.

Metanarratives within the legal framework

Laws embody the values and norms of the society which enacts and applies them,[11] and it is possible to accept this contention whether the observer embraces the legal positivism of Hart,[12] or the natural law philosophy of scholars like Fuller.[13] Regardless whether laws can be assessed against any objective ethical yardstick, if they are incompatible with the prevailing cultural values of their context, their survival and enforcement will prove untenable.

For example, in the United Kingdom, legislation passed during the Government of Margaret Thatcher replacing local taxation based on house value with a flat rate, per capita charge, dubbed "the poll tax" by its opponents, met with such widespread and orchestrated resistance that councils struggled to administer it and its time on the statute book was short.[14] More recently, during the COVID-19 pandemic, public authorities around the world found it much harder to enforce restrictions on movement and social interaction within communities with high levels of scepticism about the necessity or appropriateness of such state action.[15]

Of course, the implications of civil disobedience vary wildly between jurisdictions, and outside of liberal democratic paradigms the consequences for individuals may be dire.[16] We are not suggesting that residents of oppressive regimes are complicit in the human rights perpetrated by the country's leadership, and the extent to which authorities can enforce unpopular measures through coercion is dependent upon the means at their disposal and willingness to use them. Yet, confining our focus to what might be loosely termed liberal democratic paradigms, it is reasonable to state that the

[11] Peter Elgin and Stephen Hester, *A Sociology of Crime* (1st edn, Taylor and Francis, 2015), 28.

[12] Herbert Hart, *The Concept of Law: With An Introduction by Leslie Green* (3rd edn, OUP, 2015), 185–212.

[13] Jeremy Waldron, 'Legal Pluralism and the Contrast Between Hart's Jurisprudence and Fuller's' in Peter Cane, *The Hart-Fuller Debate in the Twenty-First Century* (1st edn, Bloomsbury, 2010), 135–156.

[14] Simon Hannah, *Can't Pay, Won't Pay: The Fight to Stop the Poll Tax* (1st edn, Pluto Press, 2020).

[15] OECD, 'The Territorial Impact of COVID-19: Managing the Crisis across Levels of Government' (*OECD*, 10 November 2020) <https://www.oecd.org/coronavirus/policy-responses/theterritorial-impact-of-covid-19-managing-the-crisis-across-levels-ofgovernment-d3e314e1/> accessed 20 May 2023.

[16] Edmund Cheng and Ngok Ma, *The Umbrella Movement: Civil Resistance and Contentious Space in Hong Kong* (1st edn, Amsterdam University Press, 2020).

continuance of *any* law is contingent upon achieving at least acceptance from a critical mass of citizens.[17]

For instance, in September 2022 there were approximately 40.8 million licensed vehicles in the United Kingdom.[18] Given that modern police pursuits of drivers require multiple officers, as well as tactical and often air support, if even 10% percent of motorists decided that they were going to disregard all speed limits there would be little that public authorities could do about it.[19] The rules governing the road are dependent upon enough citizens opting into them, either through respect for the rule of law in broad terms, or a recognition that they exist to prevent avoidable death, injury and property damage. It is no coincidence that there are even greater difficulties in enforcing speed limits than laws against drink driving, given that the latter is seen as far more socially transgressive.[20]

The chances of new legal provisions gaining widespread acceptance is dependent upon what we have previously termed "Constitutional Culture": namely, the bundle of shared norms and expectations that govern the collective life of the State.[21] Some of these are "intra-legal", being contained within case law, statute and statutory instruments, whilst others exist purely in the political or social realm, and are thus "extra-legal". The extra-legal elements play a crucial role in the interpretation of intra-legal rules, not only by the judiciary, but all from the many other constitutional actors who are also routinely required to apply them, e.g. police-officers, social workers, doctors, civil servants and local government officers. For instance, whether an interaction between two individuals amounts to common assault,[22] or (if repeated) harassment,[23] is dependent upon what is considered to be within the bounds of culturally acceptable behaviour.

Differences in Constitutional Culture could mean that, in theory, identical legislative instruments could be drafted using the exactly same English words, but interpreted and applied differently in England, Wales, Australia, Canada or the United States. For example, whether particular language is considered offensive, objectifying or intimidating, or whether a physical touch is transgressive of social norms, is culturally determined, and shifts across time and geography. Therefore, a hypothetical provision prohibiting employees from being repeatedly subjected to "negative, objectifying or demeaning" words or conduct in the workplace on the basis of their gender, might conceivably be triggered in one context but not another.

Legal frameworks are highly complex, organic systems, and their functioning is determined by both internal and external factors. For this reason, the stories which a society tells itself are incredibly significant to their practical operation, and, as in other spheres of activity, Constitutions, and legal frameworks have embedded narratives which underpin collective self-understanding and cohesion. These deeply-rooted, overarching stories or metanarratives, naturally vary between jurisdictions, and evolve as society changes.

[17] Kenneth Bollen and Pamela Paxton, 'Subjective Measures of Liberal Democracy' (2000) 33(1) Comparative Political Studies, 58, 58–86.

[18] RAC Foundation, 'Mobility' (*RAC Foundation*, 2023) <https://www.racfoundation.org/motoring-faqs/mobility> accessed 25 May 2023.

[19] College of Policing, 'Police Pursuits' (*College of Policing*, 23 October 2013) <https://www.college.police.uk/app/roads-policing/police-pursuits> accessed 25 May 2023.

[20] Kate Skellington Orr, 'Prolific Illegal Driving Behaviour: A Qualitative Study' (Transport for Scotland, Edinburgh) 2013.

[21] Javier Garcia Oliva and Helen Hall, *Constitutional Culture, Independence and Rights: Insights from Scotland, Catalonia and Quebec* (1st edn, TUP, 2023).

[22] *Collins v Willcox* [1984] 3 All ER 374.

[23] Protection from Harassment Act 1997 s1(1)(b).

For instance, in the United Kingdom there is a perception that the jurisdiction has been a cradle of liberal democratic values, and that respect for individual rights has been a core part of its legal culture for centuries. This is expressly articulated through official channels, such as the UK Parliament website,[24] and is referred to in judicial *dicta*.[25] The framing of component stories within this broad basket feed into the metanarrative, such as King John being forced to sign the Magna Carta,[26] the trial and execution of Charles I for treason,[27] and the repugnance of chattel slavery to the common law.[28]

In the United States, there is a metanarrative that the powers of government must be kept in check, and that the Constitution acts as a bulwark against undue influence from the State in the private affairs of citizens.[29] Wills observes that nowhere in the text of the Constitution drafted by the founding fathers is there any mention of checks and balances, separation of powers or equality of branches, but that these ideas came later to be core to the understanding of what the document guarantees and symbolises.[30] Furthermore, numerous decisions of the Supreme Court have emphasised the importance of keeping governmental activity and interference within its appropriate remit.[31]

Needless to say, we are not suggesting that these metanarratives are universally or unquestioningly accepted. Sometimes there is very conscious re-examination and pushback, for example in relation to Britain's claim to have nurtured the development of human rights, in an era when it was actively engaged in colonialism and benefiting both directly and indirectly from the slave trade.[32] This may even result in counter-metanarratives, where a significant section of the community subscribes to an alternative perspective, either as a transitional phase to a new metanarrative being created, or in the longer term as two parallel worldviews prominent within the same constitutional context.

Neither, of course, is it necessarily the case that an individual has a binary choice between accepting or rejecting a metanarrative. For example, it is possible for someone to celebrate the positive contributions which seminal cases in British legal history have made to the development of human rights,[33] without glossing over the reality of colonialism, child labour and the entrenched oppression of women which also characterised the society from which they emerged.[34]

The case for metanarratives should not be misconstrued: they do not force the thought-patterns of constitutional actors to travel along specified train-tracks, but they certainly do influence approaches to legal dilemmas, both consciously and unconsciously. This consideration leads naturally to our second point, narratives within the common law.

[24] UK Parliament, 'A Beacon of Democracy' (*UK Parliament*, 2023) <https://www.parliament.uk/about/living-heritage/building/palace/big-ben/much-more-than-a-clock/a-beacon-of-democracy/> accessed 20 May 2023.

[25] *R (Evans) v Attorney General* [2015] UKSC 23, per Lord Neuberger para 53; *M v Home Office* [1994] 1 AC 377, per Lord Templeman 395.

[26] Stephen Church, *King John: England, Magna Carta and the Making of a Tyrant* (1st edn, Pan Macmillan 2015).

[27] Geoffrey Robertson, *The Tyrannicide Brief: The Story of the Man Who Sent Charles I to the Scaffold* (1st edn, Vintage, 2006).

[28] *Somerset v Stewart* (1772) 98 ER 499.

[29] NPR, 'Distrusting Government: As American As Apple Pie', *Morning Edition* (19 April 2010) <https://www.npr.org/2010/04/19/126028106/distrusting-government-as-american-as-apple-pie> accessed 20 May 2023.

[30] David Wills, *A Necessary Evil: A History of American Distrust of Government* (1st edn, Simon and Schuster, 2013) 57.

[31] *Kyllo v United States* (2001) 533 US 27; *New York Times v United States* (1971) 403 US 713.

[32] John Oldfield, 'Abolition of the Slave Trade and Slavery in Britain' (*The British Library*, 4 February 2021) <https://www.bl.uk/restoration-18th-century-literature/articles/abolition-of-the-slave-trade-and-slavery-in-britain> accessed 20 May 2023.

[33] *Entick v Carrington* (1765) 19 St Tr 1030.

[34] David Spadafora and James Spada, *The Idea of Progress in Eighteenth Century Britain* (1st edn, Yale, 1990).

Narratives within common law case law

As discussed above, metanarratives permeate constitutional frameworks and influence the decision-making of everyone with agency in the practical operation of legal principles, whether they are judges, public servants or private citizens weighing up whether or not they are prepared to comply with a particular demand. They also exist within all types of legal framework (common law, civil law, customary law, religious law or mixed).[35] In addition to this, however, within common law settings, with the unique operation of precedent, there is also the dynamic of narratives within case law itself. (For the avoidance of doubt, it is not our view that there may not be parallel forms of judicial narrative within at least some other models, but our focus here is upon the specific context of the common law).

In common law systems, as elsewhere, metanarratives infuse judicial thought and commentary, but alongside this, there is the influence of the narrative structure of case law itself. It is not accidental that technical words like "count" in many common law systems, have their origin in the Norman French "conte", meaning a tale or story,[36] and the complex interplay between fact and law is crucial to the operation of precedent. From the perspective of legal education, the skill of teasing out the *ratio decidendi* from the story in which it sits is one which must be developed.[37]

Sometimes students struggle to disentangle the factual and legal elements of a decision and will imply that a scenario will have the same outcome as a leading case, purely on the basis that it has a broadly similar fact pattern, rather than digging deeper to explore possible distinguishing features. The technique of extracting the legal principle nut from its narrative shell is one that takes practice to acquire, especially since the question is very often not clear cut, either in seminar problems or the real world. Arguments about whether a case should be followed or distinguished are part of the bread and butter of advocacy.[38]

In this sense, stories are the life blood of common law systems. Moreover, it would be difficult to deny that the narratives within case law are often memorable, and engage both students and more experienced lawyers intellectually and emotionally. Cases with dramatic fact patterns tend to be easily memorised, such as *Morris v Murray,*[39] in which the plaintiff had spent hours watching the defendant get progressively more and more drunk, before agreeing to get into an aircraft, piloted by the now reeling defendant. Tragically, but not surprisingly, the flight ended in a crash, which killed the defendant and seriously injured his passenger. At autopsy, the defendant was found to have had the equivalent of seventeen whiskeys in his bloodstream, and the plaintiff's unforced election to get into the plane with a pilot in that state allowed for a successful defence of *volenti non fit injuria* to be raised.

Tort law is an especially rich source of colourful fact patterns, and the narratives of these have become an integral part of grasping the beauties of the law, as well as the principles which underpin it. For instance, generations of students have learnt about the nightmare game of pass the parcel which ensued in *Scott v Shepherd* (the "flying squib case"), where the teenage defendant flung a firework into a market, causing panicked traders to throw it around until it eventually blew up an unlucky gingerbread seller.[40]

[35] Joseph Powderly, *Judges and the Making of International Criminal Law* (1st edn, Brill, 2020), 53.

[36] Alexander Mansfield Burill, *A New Law Dictionary and Glossary* (Law Book Exchange, 1998) 292.

[37] Stephen Wilson and Helen Rutherford, *English Legal System* (2nd edn, OUP, 2016) 154.

[38] See for example the differing approaches of the UK Supreme Court in *Fearne v Board of Trustees of the Tate Gallery* [2023] EWCA Civ 104.

[39] *Morris v Murray* [1991] 2 QB 6.

[40] *Scott v Shepherd* (1773) 96 Eng Rep 525.

Of course, the great *Donoghue v Stevenson*, the seminal decision for the modern law of negligence, is the archetypal example of this phenomenon.[41] Conn even goes as far as to argue that the way in which the facts of the case are expressed, especially when given as a synopsis, are laden with folkloric motifs.[42] He also highlights the ongoing fascination around the dramatis personae, and debates around what really did or did not befall at the now infamous Paisley café. Why did Mrs Donoghue not buy her own drink (had she done, needless to say, there would have been an action available in contract and nothing to talk about) and was her "friend" really a secret lover? Was the poor deceased snail actually in the bottle, or was it all a conspiracy? [43]

It is fair to observe that the existence of the rancid gastropod does not really have any material bearing on the neighbour principle as outlined by Lord Atkin, and therefore, at one level highlights the danger of getting too caught up in the human detail and backstory to decisions. There is certainly a danger of losing sight of the wood for the trees, a problem which can exacerbate difficulties in identifying the legal principles and isolating the *ratio*, especially for those who are new to legal analysis. There is also a risk of becoming fixated on aspects of the case which are tangential, or even wholly irrelevant, such as the moral character of the parties.

Yet the reality is that for good or ill, many landmark cases do capture the imagination of those who study them, and there is a degree of emotional and creative involvement in framing the narrative when the facts are retold. This applies whether the person summarising the case is a young academic giving their first seminars, or a senior member of the judiciary writing the leading judgment for a decision of the Supreme Court. Some judges become famous, or infamous, for telling stories in memorable and emotive ways, For instance, Lord Denning's celebrated ode to cricket in *Miller v Jackson*:[44]

> 'In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch. In the village of Lintz in County Durham they have their own ground, where they have played these last seventy years. They tend it well.'

The way in which the story is told sways the audience, and going forward, affects where their sympathies, ideas of social justice and public policy may lie. If those hearing or reading the retelling go on to read the original judgment, they will do so with the preconceptions that they are now carrying. Of course, if they never actually go on to engage with the original text, then the representation that they have received will be all that they have to work with, and the impact will be even more decisive. Thus, the process of transmission of case law itself moulds and changes perceptions.

Authors like Hutchinson have skilfully explored how the cultural baggage and preconceptions of the judiciary produce precedent shapes the evolution of the common law, and the often haphazard nature of attempts by lawyers and judges to satisfy changing social demands.[45] This is a critical point that should not be lost sight of, but it should be appreciated that the facts before a particular court and the societal concerns and pressures hedging the judges about at that moment are not the *only* relevant factor. When they come to examine the case law, the way in which they have received the raw materials will shape their response.

[41] *Donoghue v Stevenson* (1932) AC 562

[42] Joel Conn, 'Gingerlore: The Legends of Donoghue v Stevenson' (2013) 3 Jur Rev 265, 266–267.

[43] A Rodger, 'Mrs Donoghue and Alfenus varus', (1988) 41 Current Legal Problems, 2.

[44] *Miller v Jackson* [1977] EWCA Civ 6, per Lord Denning MR, para 1.

[45] Allan Hutchinson, *Is Eating People Wrong? Great Legal Cases and How They Shaped the World* (1st edn, CUP, 2012).

Of course, there is nothing revolutionary in this observation. The scholarly interest which has grown from the late twentieth century onwards in writing judgments from a feminist, LGBT+, Black or other marginalised perspective attests to the collective awareness of the importance of emphasis and position when it comes to telling a tale.[46] Furthermore, because of the vast diversity in experiences and outlook within any human society, there is no neutral standpoint towards which analysists can attempt to steer or revert.

Consider, for example, the spectrum of responses to *R v Brown*.[47] This well-known decision of the House of Lords concluded that an individual's consent to actual bodily harm or more serious injury was not legally operative, unless it took place within an activity recognised by the common law as an exemption to the general prohibition. Their Lordships further found that sexual relationships and gratification did not enjoy such exempt status, and anyone inflicting injuries in such a setting would, consequently, be liable to prosecution. Commentators like McArdle regarded the ruling as homophobic and irrational, arguing that there was no logical basis for criminalising consenting adults engaged in sadomasochistic activities, but permitting greater and more dangerous violence in sport.[48] Yet feminist authors like Edwards[49] and Wilson[50] took a more positive view of restricting personal autonomy and sexual freedom in this setting, highlighting the risk that introducing a defence of consent might pose to the safety of vulnerable women. Edwards observed that the rule of law exists not only to advance the interest and freedoms of the strong, but also to safeguard those unable to assert their own interests. Interestingly, as Hall discussed,[51] when a New Zealand appellate court criticised *Brown,*[52] it foregrounded the liberties of adults, and was willing to effectively dial down the protection offered to a non-white, female, recently arrived immigrant with mental and physical health problems and very limited ability to speak English. She was also economically and emotionally dependent on the pastor who beat her to death in the course of an exorcism ritual that he diagnosed her as needing. In the sphere of metanarrative, it appears that the court was influenced by the idea of the law existing to enable individuals to enjoy personal freedom and property rights, without unacceptable molestation from the State or third parties, in the tradition of John Locke.[53] It also appears that the template individual imagined by the court (as indeed by Locke) was an adult, educated, white, male with social and economic capital.

None of this is to negate the possibility that homophobic prejudices may have influenced the House of Lords in *Brown,* as McArdle suggested. At the time of the decision, less than thirty years had elapsed since the decriminalisation of homosexual activity between men,[54] and the age of consent for gay male sexuality activity was higher than

[46] Rosemary Hunter, Claire McGlynn, Erika Rackley (eds), *Feminist Judgments from Theory to Practice* (1st edn, Bloomsbury, 2010).

[47] *R v Brown* [1994] 1 AC 212.

[48] David McCardle, 'A Few Hard Cases? Sport, Sadomasochism and Public Policy in the English Courts' (1995) 10(2) Canadian Journal of Law and Society/La Revue Canadienne Droit et Société,109.

[49] S Edwards, 'No Defence for a Sadomasochistic L*ibid*o' (1993) 143 NLJ 406.

[50] William Wilson, 'Is Hurting People Wrong?' (1992) Journal of Social Welfare and Family Law 388.

[51] Helen Hall, 'Exorcism, Religious Freedom and Consent: The Devil in the Detail' (2016) 80(4) The Journal of Criminal Law 241.

[52] *R v Lee* (2006) 5 LRC 716.

[53] John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treaties of Government'* (7th edn, CUP, 1995).

[54] Sexual Offences Act 1967.

for heterosexual relationships or encounters.[55] The fact that in the mid-1990s a fifty year old man could lawfully have sex with a sixteen year old teenager, even if he had been their PE or geography teacher until a few months previously, but only on the proviso that the partner concerned was female rather than male, raises a multitude of questions about the way in which society perceived men, women and homosexuality.

The purpose of this article is not, of course, to launch into a socio-legal discussion of that topic, fascinating as it might be, but to highlight that how the narratives in cases are shaped, reshaped, read and re-read, always depends upon the perspective being brought to the paradigm. There will almost invariably be multiple, intersecting viewpoints and jostling sets of interests to consider. All of which leads us to the conclusion that an ability to enter into narratives from different angles, and to consider them with a fresh pair of eyes, is an invaluable tool for lawyers to have at every stage of their academic and professional journey.

LEGAL STUDY AND EXPLORING NARRATIVES

Having discussed both metanarratives within legal frameworks, and also narratives within case law, we can see the value for legal students, not only in engaging with the stories that suffuse their discipline, but finding ways to approach them which challenge their pre-existing perceptions and assumptions (some of which will be formed by their own background, characteristics and life experiences to date, while others will have been acquired from the textbooks, tutors and judgments with which they have interacted).

The truth is that the narratives are not true or untrue, neither are they necessarily readily amenable to categorisation into constructive or destructive camps, if measured against the objective of furthering justice and human rights within a legal democratic framework. Often the reading and telling of stories is highly subjective, and the trade-off between competing rights is inevitably complicated. In other words, there is no objectively "correct" answer to where a particular balance should be struck between, for instance, respect for autonomy and protecting the vulnerable.

Nevertheless, the value in lawyers intentionally approaching the narratives that are woven into the fabric of both the legal system and the case law that confronts them, is incalculable. There are a number of reasons for this:

1) Some metanarratives can exacerbate unconscious bias, and contribute to the continuing marginalisation of some groups within society.[56] For example, in the XIX century, it was axiomatic that the English and Welsh legal framework was Christian in character, and the concept of marriage within the civil family law was understood as needing to conform to this worldview (other faiths could be, and were, accommodated, but only to the extent that their conception of marriage was compatible with the Christian model).[57] Although there has been a paradigm shift over the last one hundred and fifty years, this pattern of thought has not yet been

[55] The Sexual Offences Act 1967 had set the age of consent at 21, this was reduced to 18 by the Criminal Justice and Public Order Act 1994 and finally brought into line with heterosexual activity in 2001. See further: UK Parliament, 'Regulating Sex and Sexuality: The 20th Century' (*UK Parliament*, 2023) <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/sexuality20thcentury/> accessed 25 May 2023.

[56] We acknowledge that the concept of "unconscious bias" and strategies sometimes implemented to combat it are not without controversy, see for example: Mike Noon, 'Pointless Diversity Training: Unconscious Bias, New Racism and Agency" (2018) 32(1) Work, Employment and Society, 198. The broad academic debate on the issue is beyond the scope of this article, but even those highlighting problems with some responses to unconscious bias do broadly recognise that assumptions and perceptions influence human interactions, even when the individuals are always aware of this.

[57] *Hyde v Hyde* (1866) LR 1 PD 130.

entirely eradicated from the law on voluntary adult partnerships, arguably to the detriment of some vulnerable people.[58]

2) Some counter-metanarratives can also unintentionally function in a similarly destructive way, privileging a new set of considerations and interests, and unintentionally excluding others. For instance, as discussed, they might push back against the old notion that the law should maintain monogamous, heterosexual relationships as normative and desirable, but not fully considering the potential jeopardy to the disempowered in relation to abuse. As discussed, this could be a possible downside of greater openness in relation to violence and consent, as shown by the reasoning of the New Zealand Court of Appeal in *R v Lee.* Even if no single solution to vying claims is optimal, stepping outside of metanarratives and counter-metanarratives can allow for a more holistic assessment of the needs and priorities.
3) At the level of narratives within case law, perceptions can be ossified or distorted by patterns of thinking in the transmission. Examining a case from a fresh standpoint may change our idea of where it fits into the wider scheme of precedent on a given issue, and assist in finding creative arguments and interpretation.
4) The stories embedded within case law bring creativity and vibrancy to the discipline, they assist in ensuring that both students and lawyers connect abstract principles to the lives of flesh and blood people. Although undue emotional investment can foster bias and impair critical thinking, developing an empathetic and nuanced understanding of legal problems can be beneficial in seeking creative solutions. There is also nothing inappropriate about acknowledging that for many lawyers, stories help to sustain interest and enjoyment, which in turn boosts performance and satisfaction in most learning environments.[59]

As a result, taking a deep dive into legal narratives offers a number of benefits, and it is argued that escape rooms present a wealth of possibilities in fostering this.

EXPLORING NARRATIVES THROUGH ESCAPE ROOMS

Escape rooms are ordinarily experiences embedded in narrative, this is essentially the facet of the experience which renders it something more than a race to solve a series of puzzles within a fixed span of time.[60] Part of the enjoyment of the game is to suspend disbelief and enter into a fictional world. There is, of course, nothing new about this as an approach to legal education or debate, it is an idea at the heart of Fuller's *Case of the Speluncean Explorers,*[61] but the means by which learners are able to immerse themselves in stories vary. Reading is an unavoidable part of legal study, but some students regard this as a necessary task, rather than a pleasure, especially if they have additional needs which render engagement with a text costly in terms of time and energy.

For example, in the case of students with dyslexia, Lane highlights the difficulty law students may experience in managing the quantity of reading expected of them, and in recalling cases presented exclusively in text form.[62] She suggests supplementing

[58] *Ahkter v Khan* [2020] EWCA 122.

[59] Keith Herman and Wendy Reiker, *Stress Management for Teachers: A Proactive Guide* (1st edn. Guildford Publications, 2014) 113.

[60] Joey Madia, 'Writing Escape Room Narratives as Contained Thrillers' (*ISA Insider*, 23 December 2021) <https://www.networkisa.org/screenwriting-articles/view/writing-escape-room-narratives-as-contained-thrillers> accessed 25 May 2023.

[61] Lon Fuller, 'The Case of the Speluncean Explorers' (1949) 62(4) Harvard Law Review, 616

[62] Jackie Lane 'Dyslexia in the learning of law: its meaning and its impact on student and teacher'. In: Learning in Law Annual Conference 2011: Experiencing Legal Education (University of Warwick, 2011).

traditional approaches with the use of diagrams, pictures, aural input and electronic media. Without doubt, for students already struggling to cope with the demands of their essential textbook and case law reading, being asked to process the arguments set out in the judgments of the five justices of the Supreme Court of Newgarth is unlikely to be conducive to facilitating fresh and creative interaction with legal ideas in an enjoyable and stress-free setting.

It goes without saying, that there are some well-established alternatives to simply giving students the task of reading a lengthy passage of narrative and using this as the basis of discussion and dialogue. Role-play and simulation exercises are possible ways forward, and research by authors like Phillips has identified a number of benefits to these approaches with undergraduate teaching, and advocates for greater incorporation of such techniques prior to the point of vocational training:

> 'It [role play and simulation] focuses on students' real knowledge and skills; it integrates reality and context with academic learning (including interviewing skills and practical advice-giving, as well as the ability to deal with the unexpected); and it effectively engages the student in the learning process. Moreover, since simulated learning almost always involves co-operative or peer-focussed activity, it nurtures a range of 'soft' skills (such as organisation and team-working, tactical/strategic selection) and the whole range of communication skills (language, articulation and presentation). Finally, it allows for student experimentation, something often ignored in legal education.' [63]

This commentator also observes that students often arrive at university with a deficit in soft skills, in concrete terms, use of language, articulation, critical thinking and innovation, and notes that role and simulation can be effective means of accelerating development of these attributes. None of this is disputed, and while our focus here is primarily on facilitating engagement with narrative, as opposed to building skills more holistically, a key part of the underlying purpose of this is to enable critical thinking and innovation when dealing with both case law and overarching analysis of the legal framework. Nevertheless, we identify some potential drawbacks with role play and simulation for achieving our current objectives.

As already stated, engagement with large passages of text can be challenging for some learners, and by their very nature, role play scenarios and simulations have to be set up, usually in a way that requires participants to receive and process information, often in written form. However, this can be minimised, and certainly does not need to be anything approaching the amount of reading required to approach Fuller's Speluncean Explorers. Perhaps more potentially problematic is the need to consciously step into a role and perform in front of peers, and frequently those in a teaching role as well. Social anxiety, often around speaking, is a challenge faced by a significant number of legal learners, and a conventional role play or simulation may present barriers for those in this situation.[64] As Brown argues, research has demonstrated that overcoming anxiety about public speaking in most case requires a gradual approach, and that students are more likely to "find their lawyer voice" if supported to work through their fears in workshops, rather than simply being expected to take the plunge and somehow overcome their difficulties with a sudden leap of courage, like a person steeling themselves to dive into cold water.[65] This being the case, role play in the

[63] Edward Phillips, 'Law Games: Role Play and Simulation in Teaching Legal Application and Practical Skills' (2012) 5 Compass: The Journal of Learning and Teaching at the University of Greenwich 1, 3–4.

[64] Jessica N Haller, 'Fear of Public Speaking' (*Best Practices for Legal Education*, 26 August 2019) <https://bestpracticeslegaled.com/2019/08/26/fear-of-public-speaking/> accessed 25 May 2023.

[65] Heidi Brown, 'Empowering Law Students to Overcome Extreme Public Speaking Anxiety: Why 'Just Be It' Works and 'Just Do It' Doesn't' (2015) 53 Duquesne University Law Review 181.

conventional sense will not be a mode of learning that all students will find it easy to access.

A further consideration is that role play and simulation based directly in real world, legal practice may have immediate and inevitable associations with formal learning, professional development and assessment. Of course, none of those considerations are in any way negative *per se*, but if the endeavour is to allow students to enter into a story and experience a narrative from a different perspective or perspectives, the traditional role play context may not be ideally geared to stepping away from their real persona and life as someone learning the law.

In light of all of this, we would argue that there are a number of distinct advantages offered by escape rooms as a tool for engaging with narratives: 1) mode of delivering information; 2) peer to peer interaction; 3) suspension of disbelief. We shall consider each of these in turn in the abstract, before assessing how they operate in an escape room learning experience devised by us.

Mode of Delivering Information

Escape rooms by their very nature deliver information in small chunks, and through a variety of formats, as the work of Cohen shows. This characteristic is key not only to the mechanics of the game, but also to encouraging effective team interaction in a teaching setting.[66] For our purposes, it also has the benefit of averting the risk of overloading learners with data and ideas, an issue which can be a constant challenge within the delivery of higher education, given the intrinsic need for students to absorb knowledge and concepts, often while critically evaluating the same.[67]

Ordinarily, preparing participants for an escape room only requires a short introduction to the scenario and context, which can be done orally and relatively briefly. After this point, the experience of the room will lead to a gradual drip feed of information, as more problems are solved, and more elements of the story are revealed in the process. This means that there is no need to engage with lengthy passages of text, or to absorb and record, remember or process a large quantity of input at the same time. Many modes of delivery (e.g. discovering or decoding writing on a hidden object) enable players to quickly and easily refer to the information as and when needed. They can also, of course, remind each other as the game progresses.

It is also common and natural to have the information accessed via a variety of means, many of which are low cost and readily available in a university context. There may be some written instructions, explanation or clues in the form or letters or notes, but there can also be diagrams, pictures, videos played on a laptop or messages accessed on voice-recorders. Furthermore, there may be a live human facilitator accompanying the participants, who will be expected to give clues or explanations at certain critical moments. Ordinarily, the flow of new ideas will be a steady stream as the game progresses.

On top of all of this, some of the key impressions and ideas which will help players immerse themselves in the narrative may be conveyed by the decoration and layout of the room itself. So, for example, all of the writing might be in an alien language, that none of the players can decipher, or it might be that all of the posters, photographs and books only feature women, or people with some particular physical characteristic. Obviously, this does not need to be addressed during the game itself, but will hopefully

[66] Tara Cohen, Andrew Griggs, Joseph Keebler, Elizabeth Lazzara, Shawm Doherty, Falisha Kanji and Bruce Gewertz, 'Using Escape Rooms for Conducting Team Research: Understanding Development, Considerations and Challenges" (2020) 51(4) Simulation and Gaming 443.

[67] J Anderson and A Graham, 'A Problem in Medical Education: Is there information overload?' 1980 14(1) *Medical Education,* 4.

trigger thoughts and conversations which can be undertaken afterwards (in this instance around marginalisation and inclusion). It goes without saying, when viewed as a means of constructing a narrative, an escape view is not "neutral", because its content will reflect the intentions and perspective of its designers. It would be, indeed, unrealistic to see it as a sterile space in this sense, but the participatory nature of the narrative experience does mean that learners can (and inevitably do) bring and incorporate their own ideas and viewpoint into the story.

Peer to peer interaction

In a conventional role play or simulation, participants are required not merely to speak in front of others, but effectively to act in a drama, a prospect which a significant number of students find daunting, as the work of Wright demonstrates.[68] An escape room does not demand any scripted performance or even improvision based on a scenario, which may induce anxiety, but does nevertheless encourage players to imagine themselves into characters to a certain extent. Such an imaginative leap is beneficial because it is likely to facilitate solving the problems in the room, as clues may relate to the theme. It is also a natural response to being placed within a physical scene, in keeping with the story which has been presented. This means that individuals are participating in a narrative, but without the pressure to perform in front of others.

An important feature of well-designed escape rooms is the inclusion of different sorts of challenges, so that team members with distinct strengths can all play a role in achieving the shared goal.[69] The exercise is a collaborative one, so no individual is singled out and required to answer a question or find a solution alone and under pressure. All problems are collective, they are to be resolved collaboratively, and the diversity of skills and thought patterns needed to conquer them in their entirety should ensure that every player is able to participate and share in the success at some stage (and frequently also to have some moments of vulnerability, as most people find some aspects of the challenges more demanding). Also, the fact that the room requires cooperation means that learners are incentivised to be constructive and supportive of one another.

For individuals who experience a degree of anxiety about social interaction, even with their peers, the dynamic of working together for common practical goals can be helpful, as the focus on exchanges can be on the task at hand, as opposed to searching for appropriate contributions to make to conversations or debate.

Suspension of Disbelief

Again, the context of a game assists with this process, the requirement is not to enter into a character in a vacuum. Moreover, some relatively basic decoration and recorded background sound effects can go a long way to creating an atmosphere which is conducive to the project of stepping into a radically different life and situation.

In contrast to role play or simulations, there is no necessity to make the backdrop realistic or familiar. There is, of course, nothing to prevent an educator from designing an escape room set in a solicitors' office, and to relate many of the puzzles closely to tasks or problems which might be encountered there, but it is equally possible to place the participants in an alien world, or under house arrest in the XVII century. When it comes in particular to deconstructing metanarratives and counter-metanarratives, a context which is significantly removed from everyday experience can enable players

[68] Peter Wright, 'The Thought of Doing Drama Scares Me to Death' (1999) 4(2) Drama Education, 227.

[69] Ellyssa Kroski, *Escape Rooms and Other Immersive Experiences in the Library* (1st edn, 1995, American Library Association) 61–97.

to think more radically, and also allow for sensitive or controversial topics to be approached in a manner which is less immediately personal, and therefore, potentially uncomfortable. This is, again, something which Fuller was seeking to achieve with explorers in the distant future, and it was a far less lurid context than the gory details of *R v Dudley and Stephens*, the events of which were still within living memory in the 1940s.[70] As noted above, however, taking contemporary students into such a paradigm via a lengthy text to read is not unproblematic, and an escape room potentially offers an accessible alternative.

Taking all of these three factors into account, it can therefore be seen that escape rooms offer a number of distinctive benefits with regards to engagement with narrative. In order to demonstrate how these abstract principles might function in a concrete setting, we shall now conclude our discussion with a brief, illustrative example of an escape room designed and constructed by us.

CASE STUDY

Themes for Reflection and Engagement

The focus on narratives as described means that in setting goals for evaluation, we approached the exercise in terms of themes for reflection and engagement, both in the course of the game play, and during the reflective session exercise afterwards. Our objective was to stimulate discussion of the following:

1) How laws made through democratic processes may reflect the short-term interests of the majority of a given population, but have a negative impact on minority groups, and/or negative longer term implications.
2) The challenges of umbrella legal frameworks (i.e. international law, federal systems or States which grant legislative capacity to substate entities) when it comes to striking a balance between respecting the autonomy of component parts, and maintaining collective standards or interests.
3) The complexity of moral dilemmas in relation to legal and political decision-making, and the difficulty in managing competing interests vested in different groups of vulnerable people.
4) The importance of free access to accurate information in the operation of democratic decision-making, and the scope for voters to be misled.
5) The operation of the rule of law, and whether moral considerations may sometimes justify, or even demand, breaking the law for the collective good.

Story

The escape room was set in "The Blazing World", a parallel universe described by the XVII century author Margaret Cavendish.[71] The Blazing World in the modern era still has a global Government, but operates a federal system, with component States having their own legislatures.[72] The world is inhabited by talking animals and mythical beings (e.g. centaurs, giants and satyrs) and the various species all have their own state territories.[73] Moreover, they have particular traditions in terms of professional strengths.

[70] *R v Dudley and Stephens* (1884) 14 QBD 273.

[71] Margaret Cavendish, (reprint, Lulu, 2017).

[72] Elizabeth Alber and Francesco Palmero, *Federalism and Decision-Making: Changes in Structures, Procedures and Policies* (1st edn, Brill, 2015).

[73] Margaret Cavendish, *The Blazing World* (reprint, Lulu, 2017) 34.

The polar bears are famous scientists, and also enjoy a way of life dependent upon current climate conditions being maintained, and in contrast, the dragon-like "worms" are renowned miners, engineers and experts in explosives. The Parliament of Wormlandia has passed legislation requiring all wind turbines to be decommissioned, and replaced with power stations burning fossil fuels, as this will generate new mining jobs and boost the economy. The standard of living in Wormlandia and average wealth is lower than in the territory of the polar bears.

The bears are challenging the new Wormlandian law as being incompatible with the Blazing World Charter of Fundamental Rights,[74] and they have reasons to believe that the worms are suppressing evidence in their possession about the damaging impact of fossil fuels. The players are secret agents who have been commissioned by the bears to burgle the office of President Eunice of Wormlandia and obtain four envelopes containing top secret findings.

Game Play

The scenario is introduced to the players via a short video. They are then blind-folded and led (holding a furry hand) into the room.[75] Inside the room there is a facilitator, playing the part of an inhabitant of the Blazing World.[76] This character can help to a certain extent, but has to be careful, as the consequences for them being caught are far more serious than those faced by the players, who would simply be deported back to Earth for their crimes.

In the course of the game, the players solve a series of puzzles to acquire the four envelopes, and in doing so, learn much about the world and its situation. If successful, they discover how dire the consequences of carbon emissions will be for the mammalian, insect and (sentient) plant life of the Blazing World. It is clear that the worms have been deliberately attempting to mislead the global Parliament and the Supreme Court, and it is also apparent that the worms are genuinely distressed by the poverty of some of their communities. No resolution is presented to this clash of interests, with the express purpose of leaving players to formulate their own response to the dilemma.

Reflection and Debrief

In the reflection and debrief afterwards, players spontaneously engaged with the target themes. They also drew parallels with real world contexts and dilemmas, e.g. debates as to whether the United Kingdom population was misled in the campaign period before the Brexit[77] vote and the extent to which some of the more radical action taken by Extinction Rebellion is reasonable.[78] Interestingly, they expressed concern and sympathy for worms living in cold burrows and struggling to feed their wormlets, despite not having previously understood why some communities in the USA were drawn to vote

[74] A document with which all other laws must comply, akin to the Constitution of the United States of America, or the Canadian Charter of Rights and Freedoms.

[75] Creating the appropriate atmosphere for players, and a conscious break from the outside, everyday world is a key part of setting up an immersive experience. See for example, Paige Lyman, *The Do-It-Yourself Escape Room Book* (1st edn, Skyhorse, 2021), 45.

[76] Facilitators are a common feature of both commercial and education escape rooms, see for example: Johan Jeuring, Remco CVeltkamp, Rosa Bottino, *Games and Learning Alliance, Fifth Annual Conference: Proceedings* (1st edn, Springer, 2016) 147.

[77] Darrin Baines, Sharron Brewer and Adrian Kay, 'Brexit Is a Policy Fiasco. Were Voters Deceived during the Referendum?' (*LSE BREXIT*, 9 March 2020) <https://blogs.lse.ac.uk/brexit/2020/03/09/brexit-is-a-policy-fiasco-were-voters-deceived-during-the-referendum/> accessed 8 June 2023.

[78] Anon, 'Jury Acquits Extinction Rebellion Protesters despite "No Defence in Law"' *The Guardian* (23 April 2021) <https://www.theguardian.com/environment/2021/apr/23/jury-acquits-extinction-rebellion-protesters-despite-no-defence-in-law> accessed 8 June 2023.

for Donald Trump because he promised to protect their environmentally destructive industries.[79] There was also reflection on the limitations of sovereign States in tackling global environmental problems.[80]

Outcomes

The escape room was extremely successful in enabling a discussion about complex issues around law and ethics. This was achieved without requiring learners to engage with copious written materials in advance, and have a fluency not typically seen with facilitated discussions in seminars.[81]

CONCLUSION

As we have outlined above, our proposal is that in some contemporary legal education contexts, escape rooms have a potentially valuable role to play in facilitating imaginative interaction with narrative. They enable the teachers designing them to present ideas and perspectives that learners have not necessarily previously encountered and invite them to consider them from the viewpoint of the characters in the fictional situation presented. There is no requirement for students to process large amounts of text, or indeed information in any format, as the input is fed incrementally as the game unfolds. Interactions are task focused and collaborative, and completing the room will require a range of skills and aptitudes, making it conducive to designing affirming and inclusive experiences.

Furthermore, there is no pressure for individuals to perform, or to speak in front of any audience or perceived audience, relieving some of the potential difficulties of conventional roleplay, and the reduction in anxiety, combined with the positive aspects associated with gameplay, help to generate a relaxed atmosphere in which participants can be free to be creative and explore new patterns of thought. For all of these reasons, we conclude that escape rooms have a contribution to make not merely in relation to legal education and skill building in broad terms, but in helping students to think in new and innovative ways about the stories which are central to their discipline.

In common with any creative pedagogy, this is intended to help enrich the experience of learners, and to further the goal of enabling individuals to realise their full potential, and engage with their discipline in a manner which is both sophisticated and satisfying.[82] Nevertheless, this is not the sole reason why facilitating new and diverse ways of interacting with legal narratives is so critical. As we have demonstrated, legal frameworks, and especially common law models, are built and held together with stories. There are the constitutional metanarratives suffusing the system as a whole, and also the narratives embedded within case law, as it is formulated and interpreted.

This, of course, is a long-recognised truth, as versions of it can be found in the style of argumentation adopted by thinkers like Dworkin, drawing an analogy between judicial interaction with precedent, and a group of writers collectively producing a chain novel,[83] or the conscious process of dismantling and reassembling undertaken by

[79] Salena Zito, 'Why Pennsylvania Miners Are Voting Trump — Even Though He Didn't Bring Jobs Back' *New York Post* (New York, 24 October 2020) <https://nypost.com/2020/10/24/why-pennsylvania-miners-are-voting-trump-even-though-he-didnt-bring-jobs-back/> accessed 8 June 2023.

[80] Vesselin Popovski (ed) *The Implementation of the Paris Agreement on Climate Change* (1st edn, Routledge, 2019) 1–5.

[81] Melanie Walker, *Higher Education Pedagogies* (2nd edn, McGraw Hill Education, 2006), 60.

[82] Anna Craft, Bob Jeffrey and Mike Liebling, *Creativity in Education* (1st edn, Springer, 2001), 106.

[83] Sanford Levinson and Steven Mailloux, *Interpreting Law and Literature: A Hermeneutic Reader* (1st edn, North Western University Press, 1988), 270.

scholars rewriting judgments from the perspective of the marginalised.[84] What is less often appreciated, however, is the importance of law students and legal education in the process of transmission, both of narrative and metanarrative. The way in which these stories are constructed, couched and spun by lecturers, textbooks and tutors moulds the manner in which lawyers understand the legal universe in which they are set.[85] How cases are pleaded depends upon the ideas and arguments that advocates are able to marshal, and the same principle holds true for anyone acting in a judicial capacity, whether at the lowest level or in the highest appellate court. Therefore, the patterns of thought established in undergraduate teaching rooms inevitably track through into the operation of the machinery of justice, and the experiences of citizens as claimants, defendants, victims or witnesses.

In and of itself, this is neither good nor bad, but an observable reality. Nonetheless, if the process of narrative transmission lacks opportunities to break with received perceptions and interpretations, it is inevitable that some tropes which are damaging (e.g. because they have a disproportionate negative impact on some sectors of the population, or are irrational or inefficient) will be perpetuated for longer than is necessary and desirable. As it is widely known, in biology, evolution is dependent upon genetic variation, and in a similar way, legal progress can only be advanced by shifting narratives.[86]

It goes without saying that questioning and deconstructing narratives can, and should, be done at all stages of a legal career, but undergraduates have time and space for experimentation and are still absorbing information and developing their own personal understanding of narratives and metanarratives. Consequently, these years are a particularly fruitful time to question and debate received wisdom and prevailing expectations. As a result the potential of escape rooms, and other tools which may be conducive to this process, extend beyond advancing the interests of learners, and also have the capacity to assist in reshaping law and legal frameworks.

[84] "Welcome to the Queer Judgments Project: An Emerging Global Collaboration" *Queer Judgments Project* https://www.queerjudgments.org/ accessed 8 June 2023.

[85] For a consideration of the impact of education on later professional practice, see for example: Maximillian Buja, "Medical Education Today: All That Glitters Is Not Gold" *BMC Medical Education* 19 (2019) 110

[86] Masatoshi Nei, *Mutation Driven Evolution* (1st edn, OUP, 2013).

BOARDGAMES AND LEGAL EDUCATION: INSIGHTS FROM *BRAVE NEW WORLD*

TOM LEWIS and HELEN HALL***

INTRODUCTION

John Locke is remembered as one of the foundational figures in the development of social contract theory, arguing *inter alia* that in their natural state individuals (or at least adult male members of society) were independent and equal, but formed civil society in order to ensure that their inherent rights were protected and that disputes were resolved in a rational manner.[1] He also believed that in certain circumstances, namely when government was effectively failing in this function and perpetrating or allowing tyranny, revolution was not merely justifiable but necessary.[2]

Locke's thought influenced some of the intellectual giants of his age, in particular Voltaire, and caught the imagination of many of the key players in the American Revolution.[3] Nevertheless, Locke and his successors acknowledged the catastrophic human cost of armed rebellion as a mode of restraining the abuse of power, a functional constitutional settlement was infinitely preferable to revolution.[4]

For Locke, achieving a just, and therefore cohesive, society was partly a question of the systemic legal and political arrangements in place, but also depended upon the moral actions of individuals, for which actors had personal responsibility.[5] In light of this, it is interesting to note that as well as his more famous reflections on political philosophy, Locke wrote a treatise on education.[6] It is likely that he acted as a tutor for the son of his wealthy patron, and certain that his thinking on the pedagogy was moulded by observation of children and their interactions with the world around them. While some of his suggestions are alarming from a 21st century perspective (and indeed caused their share of consternation even in the Early Modern period) overall,[7] there is an empathic, even fond, outlook towards young people displayed in '*Some Thoughts Concerning Education*'.[8] Locke stressed the importance of relationships, role-models and learning through play.[9]

One pivotal aspect of his philosophy was the idea that education and formation should not be geared towards short-term goals, with young people either seeking to avoid punishment or score a bribe. He rejected this kind of instrumentalism, and argued

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1 Geraint Parry, *John Locke* (Routledge 2004) 1–64.

2 Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton University Press 1986) 286–466.

3 Bernard Bailyn, *The Ideological Origins of the American Revolution* (1992, Belknap Press).

4 Jeffrey Tulis, 'Constitution and Revolution' in Robert George and Sotirios Barbern (eds), *Constitutional Politics: Essays on Constitution Making, Maintenance and Change* (Princeton University Press 2001) 124.

5 Ruth Grant, *John Locke's Liberalism* (University of Chicago Press 2010) 130.

6 John Locke, *Some Thoughts Concerning Education* (first published 1692).

7 For example, he anticipated trouble from mothers in particular in suggesting that it was good for children to have shoes thin enough to let water in. See *Ibid*, para 7: 'How fond mothers are like to receive this doctrine, is not hard to foresee. What can it be less than to murder their tender babes to use them thus? What! put their feet in cold water in frost and snow, when all one can do is little enough to keep them warm!'

8 See, for example, *Ibid*, para 130. Locke stressed the importance of helping children to make toys, and buying them toys of the kind which they could not be expected to make.

9 *Ibid* paras 41 and 130.

instead that individuals should be supported to develop a worldview which enabled them to make positive choices when in contexts free from coercion or artificial rewards, because they recognised the benefits of the principles and ideas transmitted to them.[10]

Both the political philosophy of Locke, and his meditation on education, naturally came to mind when three public law focused academics planned to create a resource to enable students to engage with ideas around constitutions, the social contract and fundamental rights. They were motivated by two primary objectives:

1) Removing some of the barriers faced by some learners within conventional modes of delivery, especially at the stage of transitioning into university from their previous educational context. These include anxiety around speaking and participating in group discussions, fears about a lack of prior knowledge in comparison with their peers, jeopardy delivering the wrong answers with an accompanying self-perception of failing, and unfamiliar terminology.[11]
2) Enabling students to appreciate the importance of robust human rights and equality protection within constitutional frameworks. Many of the pre-existing resources available to achieve this concentrated on providing information to learners with the aim of growing understanding. However, this approach is frequently tied to an instrumentalised view of learning, rather than providing space for individual growth and ethical development. Put starkly, the aspiration was to enable participants to gain insight into the value of human rights.

The *Brave New World* game was what emerged from this project. The purpose of this article is to analyse how the game not only came to address the twin aims of its creators, but also the ways in which this relates to the ideas of John Locke, and what wider insights on legal education might be drawn from this paradigm. As such, it is not our primary purpose to set out narrative account of what we did and why, but some background is a necessary starting point for the discussion that follows. We shall therefore begin with this explanation, before moving on to consider how the project met its overarching objectives, and the ways in which this relates to the Lockian themes identified.

THE *BRAVE NEW WORLD* PROJECT

The project was devised by three academics seeking to address the twin challenges of: 1) introducing basic concepts about the nature of constitutions, the rule of law and fundamental rights to learners in an engaging and inclusive way, reducing barriers to learning; and 2) enabling participants to reflect on the nature and importance of constitutions and fundamental rights guarantees, in a manner which went beyond a short term instrumentalised goal of studying for a specific assessment, but which enhanced rather than compromised academic progress. Rather than being a competing objective, the aspiration of enabling students to develop their personal response and worldview would only add nuance and sophistication to their engagement with public law and related subjects, thereby boosting their marks in conventional examinations and coursework.

The team were aware that many of the existing textbooks and other materials presented the topic of constitutions and human rights in an abstract fashion, divorced from everyday experience for the majority of people. The duty of states to safeguard fundamental rights and liberties was stressed, but in a manner that did not readily

[10] *Ibid* para 40 'imperiousness and severity is but an ill way of treating men, who have reason of their own to guide them'.

[11] Jesus de la Fuente, Douglas Kauffman and Meryem Soylu, 'Editorial: Achievement Emotions in University Teaching and Learning, Students Stress Achievement Emotions in University Teaching and Learning' (2022) 13 Frontiers in Psychology, article 9, 5–7.

inspire the emotions or imagination of learners. Furthermore, the didactic tone at times risked alienating participants, effectively packaging a moral message with the information being presented, telling students how they 'should' respond to the material. As Goodman demonstrates in relation to high school students, ethical values are not effectively transmitted or fostered if these are not underpinned by justifications which are meaningful to students.[12]

The possibility of using a boardgame presented a potential solution to both strands of the challenge, and this was therefore pursued. It was intended from the very outset that players would be permitted to experience an unjust society through the eyes of one particular member, attempting to maximise their opportunities for enhancing their personal wellbeing and living a fulfilled life. The nature of the play was such that they would also be acutely aware of the fortunes of other players, as they competed to be the first to fill their card with 'happiness tokens'. The idea was to be permit experiential learning and the organic development of empathy and insight, but without external direction, or even the explicit suggestion of ethical norms. *Brave New World* was therefore intended to cultivate empathy in at least two senses: as an emotion ¾ a feeling for the plight and misfortune of fellow players' characters ¾ and also, relatedly, as the more rational capability of stepping into the shoes of those very unlike oneself, and seeing the world from a different perspective, arguably an essential attribute for effective participation in society.[13]

The method adopted was relatively simple, and inspired by the philosophy of John Rawls, as well as, of course, Hobbes and Locke.[14] In setting out the basis of modern social contract theory, Hobbes considered that individuals submit themselves to a sovereign authority in return for protection, security and good social order. Without this, he famously warned that life in a state of nature would be 'nasty, brutish and short'.[15] Locke has a slightly less negative view of humanity, but accepted the basic premise that members of society submit themselves to laws and government, in order to exist in a stable and relatively harmonious context, with the end of enjoying their inherent and inalienable rights.

However, the writing of Hobbes and Locke leaves open the question of how the detail of societal rules should be determined. What protections should be afforded to individual members of the collective? The work of John Rawls seeks to answer this, by proposing the notion of the 'veil of ignorance'. In other words, what norms would a citizen wish to have in place if they were devising legal guarantees while unaware of their personal characteristics?

The veil of ignorance translates into the world of the game via the selection of the first Constitutional High Law. The players shake a dice and a leader is chosen according to the highest roll. This leader is then given a card showing a series of potential 'High Laws' and must choose one of these to govern the society. As might be anticipated, some of these laws are self-serving, effectively taxing different groups in society for the benefit of the leader. In contrast, others are altruistic, and provide a measure of protection for marginalised sectors of the community.

Play then commences, and participants travel around a board *Monopoly* style, collecting or losing happiness tokens as they pass various locations and events unfold. In the classic and best tested version of the game, action takes place in a fantasy world

[12] Joan Goodman, 'School Discipline in Moral Disarray' (2006) 35(2) The Journal of Moral Education 213.

[13] Martha Nussbaum, *Political Emotions: Why Love Matters for Justice* (Harvard University Press 2013).

[14] John Rawls, *A Theory of Justice* (first published 1971, Harvard University Press, 2005) 136–141.

[15] Thomas Hobbes, *Leviathan* (first published 1651).

inhabited by goblins. There are two races, greens and purples, and the numerically dominant and socially privileged greens oppress and discriminate against the purples. Goblin society is also patriarchal, and male goblins are significantly advantaged in comparison to their female counterparts.

A further layer of complexity is added by the religious divisions within goblin civilisation. There is a traditional religion to which many goblins belong, deriving comfort from worshipping at the Sacred Stones, in accordance with the customs of their ancestors. Equally, some goblins are atheist, and have no interest in or patience for faith related practices. Even amongst the religious goblins, there is a divide between the average believers and the especially intense spoon-carriers. The spoon-carriers are an especially devout sect, who believe that, in order adequately to honour their gods, they must visibly wear or carry a spoon at all times. Sadly, spoon-carriers are heavily stigmatised by the rest of goblin society. Non-religious goblins ridicule them as eccentric lunatics, and religious goblins sneer at them as 'holier-than-thou' extremists.

As game-play unfolds, lesser, non-constitutional laws are made whenever a player lands on a red space. A card is turned over to reveal what is contained in the latest decree of the Council of Goblin Elders (the legislative body in this universe). In common with the real world, the members of the legislature share the prejudices and assumptions of the society from which they are drawn, and laws often have a differential impact on marginalised groups. However, laws which are *incompatible* with whatever High Law is in force will be automatically struck down.

As the game play progresses, some players may become dissatisfied with the legal and constitutional framework in place, especially if they are members of a disadvantaged sector of goblin society and no relevant equality High Law is in place. This situation can be addressed via a revolution, and this mechanism is the engine which drives a substantial part of the learning and reflection. As political philosophers like Locke and Rousseau argued, and events such as the American and French Revolutions demonstrated, the possibility of a popular uprising is the ultimate enforcement mechanism for the social contract. If enough members of a society are dissatisfied with the ruling regime that they are prepared to reject its laws and resist its authority, the government will fall. The greater the number of disenfranchised individuals, the greater the probability of such a dramatic response.

Brave New World mirrors this reality, by enabling disenchanted members of goblin society to declare a revolution on their turn. The success of the coup is dependent upon a roll of the dice, and the score that a leader needs to achieve in order to successfully defend an uprising increases according to the number of players who are willing to support the first revolutionary. On the other side of the coin, revolution is a dangerous strategy in the game as well as in actual states. Failed attempts at insurrection lead to all players who joined the revolution being sent to the swamp, the goblin world equivalent of prison, for the following three turns.

However, in the event that the leader fails to score highly enough to successfully put down the coup, the player who instigated the revolution will become leader in their place. This means that all laws, both the standard edicts passed by the Council of Goblin Elders *and* the Constitutional High Law will be swept aside. The new leader is free to choose a new High Law, and play resumes.

Obviously, the Rawlsian veil of ignorance is only in place for the initial selection of a High Law. All subsequent goblin leaders will be aware of their own characteristics and those of the other players when making this decision. How players choose to use this knowledge is dependent upon the personalities around the table. In general terms, the

optimal strategy is to adopt a legal framework which has some equality law in force, as an embattled society rocked by a constant cycle of revolution makes it difficult for even the most advantaged players to further their objective and travel around the board and collecting happiness tokens.

It is also not infrequently observed, especially with players aged 8–12, that the participants opt for High Laws which are protective of oppressed minorities out of a sense of fairness and justice. Yet there is no external, moralising imperative to do this. Sometimes groups of players can, and do, become locked into a never-ending cycle of revolution and reprisals, or the green male goblins simply race among themselves to grab the available happiness tokens, leaving the purple and female goblins to their fate.

Nonetheless, it is key to stress that the *Brave New World* as a resource is intended to function as an introduction to facilitated discussion and reflection. The rules of the game are deliberately unfair, and from the very outset, the odds are stacked against some players achieving success. As such, it is a way into a conversation about wider issues. The nature and structure of this follow up depends upon the age of the participants and the academic context in which the resource is being used. The game functions effectively with undergraduates and other adult addressees, and in such cases illustrates fundamental constitutional principles e.g., the rule of law and separation of powers, as well as introduces ideas from Hobbes, Locke and Rawls. In contrast, with younger players, *Brave New World* can be a creative and enabling route into discussions about justice, equality and human rights at a more general level.

It can therefore be said that the game enjoys a high degree of flexibility in terms of its application as a teaching resource. However, we are left with the question of how it relates to the twin challenges that we have identified: 1) enhancing accessibility and enjoyment; and 2) enabling a non-instrumentalised attitude to learning. It is to these two questions that we now turn.

ENHANCING ACCESSIBILITY AND ENJOYMENT

In common with other forms of game-based learning, *Brave New World* taps into pre-existing knowledge and experience. At the most basic level, play is an essential element of human, indeed mammalian, life and necessary for all individuals to flourish. [16] Therefore, harnessing play as part of a learning context is by its very nature tapping into positive experiences.[17] Furthermore, boardgames are a very common aspect of childhood, family life and a popular adult pastime. While not absolutely universal, they feature in the vast majority of global cultures, and by the time that players are old enough to engage with *Brave New World* (at around the age of eight) most people will have encountered boardgames, if not at home, then at school or with friends.[18] Certainly, by the stage of reaching university, the vast majority of students will have encountered boardgames in some form.

Therefore, in presenting learners with a boardgame, *Brave New World* gives them the security of a familiar activity, and one that is frequently associated with play and leisure, rather than structured learning of assessment. This helps to create an expectation of an enjoyable and relaxed activity from the outset. The physical dynamics of *Brave New World,* and most other boardgames, are also conducive to fostering social interaction.

[16] Peter Smith and Jaipaul Roopnarine (eds) *The Cambridge Handbook of Play: Developmental and Disciplinary Perspectives* (Cambridge University Press 2018).

[17] Adam Peterson, *Teach, Play Learn! How to Create a Purposeful Play-Driven Classroom* (Dave Burgess 2020) 1–12.

[18] Damian Walker, *A Book of Historic Boardgames* (Lulu Publishing 2004) 13.

Players sit around the board, effectively in a circle, no one single individual is more exposed than the rest of the group. As Shor argues, although circle-based seating is by no means a new educational concept, it is one which is still by no means ubiquitous and yet is often received positively by learners when given some agency.[19]

The activity of playing itself requires a certain amount of dialogue, but this does not depend upon prior knowledge, problem solving or independently coming up with themes for conversation. The practical need to navigate moving the pieces, picking up and reading cards and negotiating about revolutions demands interaction, but in a way which is more natural and even less self-conscious than a small cluster of students placed together in a group and simply tasked with exchanging ideas on a topic or answering a problem question.

This is important, because anxiety about speaking in a group, particularly in a conventional seminar room style setting, can be an obstacle to learning for some individuals, especially where an interactive mode of delivery is being adopted in a highly discursive subject like law, as Finch and Fafinski argue.[20] By situating itself within the context of a familiar activity, frequently overlaid with positive associations e.g. playing a board game, *Brave New World* can remove a number of the obstacles to participation which some students can experience. There is no jeopardy of struggling to produce the correct answer or demonstrate any required prior learning, meaning that there is no risk of anxiety about perceived failure.

It should, of course, be acknowledged that there may be some elements of the game which certain students may find more challenging than others. For example, individuals with sight problems or dyslexia may struggle to read cards as quickly or fluently as some of their peers. However, the cooperative nature of even a competitive play helps to compensate for this, as Reid and Peer observe, and if appropriately used boardgames can foster inclusion rather than exclusion for individuals who find reading a challenge.[21] The creators of *Brave New World* have observed repeatedly in trials that where some group members are less comfortable reading cards when new laws are made, one or more of the other players simply picks the card and reads it instead. This usually goes unnoticed and is part of the normal social interaction around the table, all of the players have a vested interest in hearing the new law, and whoever is both sitting near to the pack of cards *and* inclined to pick them up, tends to read the card aloud. It is significant that discomfort in reading has not been reported in any of the written or oral feedback provided on the game, either from students or those delivering sessions. This is in sharp contrast to feedback frequently received in the context of legal education.

One highly positive dimension of this, and other aspects of the boardgame experience, is that the accommodation for a range of needs comes with limited or no trade-off between competing interests or vulnerabilities. The impetus to talk, even about legal issues, frequently goes unnoticed. For example, where there is some ambiguity about the meaning of a particular new law, the rules provide for this to be resolved by the players by discussion, and by vote if they cannot achieve consensus (the leader has the casting vote in the event of deadlock). This methodology is effectively enabling the players to carry out a judicial role in interpreting a legal text. The fact that this is happening in the safe space of a game, without the pressure and expectation that might come if students were to be given a conventional classroom exercise to practise this skill, does not make

[19] Ira Shor, *When Students Have Power: Negotiating Authority in a Critical Pedagogy* (University of Chicago Press 2014) 64.

[20] Emily Finch and Stefan Fafinski, *Legal Skills* (OUP 2019) 197.

[21] Gavin Reed and Lindsay Peer, *Special Educational Needs* (Sage 2020) 363.

the learning any less satisfying or fruitful for the participants who would feel equally comfortable and confident if given a passage from a judgment or contract. Stronger students are not suffering any detriment from this approach, and it will benefit others who might find more traditional classroom tasks challenging.

Therefore, it is clear that the more inclusive approach of a game is not operating to the disadvantage of students able to engage with comparable exercises in a conventional context. Furthermore, learners in this position will also benefit from the positive associations with play and boardgames. In short, this mode of delivery can make a significant contribution to reducing real barriers for some students e.g., those experiencing anxiety about group participation, whilst at the same time making learning a more enjoyable experience for their peers who do not face the same challenges. Many of the factors which enhance the fun of learning also dismantle obstacles, meaning that the boardgame environment can bring advantages in terms of both enjoyment and accessibility. However, can it make any discernible difference in relation to fostering a non-instrumentalised attitude to learning?

A NON-INSTRUMENTALISED ATTITUDE TO LEARNING

There is, of course, absolutely nothing problematic about students adopting a strategic approach to learning which attempts to maximise their performance in assessments and further career goals, in many ways this is highly positive. However, if taken to extremes, this outlook can hamper learning and growth in a more holistic sense. In Locke's view, menacing students with punishment or bribing them with short-term rewards was not conducive towards deep engagement with their subject or personal formation, and modern research supports this conclusion.[22]

In the specific setting of legal study, there can undoubtedly be practical drawbacks to an overly instrumentalised attitude towards study. For instance, if a student decides not to concentrate on specific topics within Contract or Property Law because they have identified them as unnecessary for their assessment in that subject, they may later discover to their chagrin that they need to revisit the material and gain and more rounded understanding if they are to be able to engage adequately with Family Law. Too much immediacy and thinking in silos will not be conducive to achieving a functional understanding of the legal framework as a whole.

Beyond this, however, an instrumentalised attitude towards learning can be deeply problematic when it comes to questions about human rights, equality and morality within the legal system. It is desirable if those studying law engage with these questions at a more profound level than aiming to complete an assessment. The deep questions of what law does and why, alongside the obligations that members of society owe to one another, need to be part of an adequate legal education. Yet achieving this level of profound engagement by intellectual study alone is difficult, even in the most favourable of circumstances.

The resource offered by *Brave New World* was designed with this in mind, and the objective of facilitating attitudinal shift as well as a more nuanced understanding. The game effectively offers a sandbox in which players can experiment with different modes of ordering a society and structuring a legal system, selecting inclusive or exclusive rules as they see fit, without any real-world consequences. Alongside this, it enables

[22] Simon Ellis and Janet Tod, *Promoting Behaviour for Learning in the Classroom: Effective Strategies for Personal Style and Professionalism* (Taylor and Francis 2014) 100.

conversations to take place which at least in the first instance are one step removed from reality, removing some of the social and emotional discomfort from the situation, and at the same time, enabling participants to understand the universal application of some of the principles.

Even more significantly, it allows for players to experience the world through the eyes of characters with needs, strengths and vulnerabilities very different from their own, and thereby to develop increased empathy for individuals in those circumstances. In contrast to many other resources for teaching about human rights and equality which attempt to explain why these issues are of profound importance, *Brave New World* lets players discover this for themselves.

This level of emotional investment and understanding that comes from personal experience shifts the focus from an instrumentalised approach to learning in order to achieve a set goal, to a more creative and far-reaching mode of engagement. It goes beyond absorbing knowledge or broadening a skill set, and moves into the territory of shifting personal metanarrative. To put it more directly, the way in which individuals see the world can be profoundly changed; specifically, their capacity to understand the inner world of others, and therefore their practical needs, can be developed through the opportunity to step into their shoes in a controlled and non-threatening environment.

This is undoubtedly of social benefit to students in terms of interacting with their immediate human community and environment, but it also enables to analyse the underlying objectives of the rule of law and constitutional frameworks. It has the power to convert questions which can appear intensely theoretical and removed from the practice of law, into profoundly practical matters which are earthed in immediate experience. It may not be instantly apparent to a student planning to spend their career in insolvency law, or mergers and acquisitions, that issues around equality and human rights have real relevance to their future working context. However, the role play of *Brave New World* reveals that the values inherent in laws infuse the entire legal system, and that unjust or irrational regulations are likely to be met with resistance.

It is difficult for any student of law to play the game and avoid the question of 'what are we doing, and why'? Not only is the importance of this brought home, this is achieved in a way which does not require learners to assail a fortress of unfamiliar terminology or intricate philosophical concepts as the starting point. Students can progress to more intricate academic questions, once the purpose and value behind the exercise has been established, and revealed to be something deeper than passing an assessment or avoiding academic detriment.

CONCLUSIONS

The *Brave New World* project demonstrates that the objectives of generating a positive and accessible environment for study, and fostering a non-instrumentalised attitude towards learning are attainable, and bring both short-term and long-term benefits for participants. Furthermore, it shows that other well designed boardgames have the potential to achieve this if appropriately applied in the context of legal education.

Boardgames in general have the capacity to remove some of the barriers to learning generated by anxiety about a seminar room environment, or social interaction more generally. This is achieved by tapping into the instinctive human drive to play, and the positive associations which this brings, alongside the structure and conventions that come with boardgame play. There are well established expectations governing interaction over a boardgame, these span many cultures and are likely to be very familiar

to the majority of learners in a university or law school. This gives the security of a known and positively regarded activity, and sets students free to discuss legal issues and problems without the pressures and expectations sometimes experienced with a more direct and conventional mode of delivery. Furthermore, this approach positively contributes to the learning experience of all students, and does not come at the cost of less appropriate provision for group members who may have differing needs from learners experiencing anxiety or concerns over their personal confidence at participating in seminar style exercises.

In addition to all of this, the specifically experiential and empathy building dimension of *Brave New World* moves the learning experience beyond the instrumental, into something which has the capacity to generate attitudinal shift and enhance studies beyond the immediate concern of constitutional law and human rights. It must be acknowledged that this would not be a necessary dynamic of all boardgames with a legal educational purpose, but does have potential to other boardgames, and indeed other resources which offer the same opportunity to step into the persona of another individual (e.g., role play both digital and non-digital, escape rooms and narratives delivered by video or audio).

It must be stressed, however, that in order for this to work, the setting must be safe and supportive, whilst allowing for sufficient freedom for experimentation without judgement from an external party. The dynamic of *Brave New World* allows players to make choices without a censorious response, but at the same time permits natural social consequences to operate. This is key to its success, and is a crucial feature in distinguishing it from other modes of delivery which aim to explain why human rights are of immense importance, but do not provide the experiential dimension which is needed for emotional as well as intellectual engagement at a deeper level.

Thus, as well as demonstrating the capacity to reduce barriers to learning, *Brave New World* and similar game-based learning experiences have the capacity to facilitate an approach to learning which steps away from undiluted instrumentalism, and offers the promise to enabling the kind of willing engagement with values championed by Locke.

EMBEDDING COMPASSION INTO LAW CURRICULA: THE ROLE OF COMPASSION PEDAGOGY

NOEL MCGUIRK, RAFAEL SAVVA** and LAURA HUGHES-GERBER†*

INTRODUCTION

The design and delivery of undergraduate and graduate programmes has long been a hotly contested issue. The COVID-19 pandemic and its aftermath have left many in higher education reconsidering how best to design and deliver their law programmes. In recent years, compassion pedagogy has gained significance in academic circles where greater notice is taken of distress and disadvantage experienced by students during their studies. The pandemic demonstrated the continual need for tutors to reinvent their teaching and assessments as well as how we offer student support. The challenges arising from the cost-of-living crisis and other emerging issues, such as ensuring the cultivation of sustainability in education, are further reminders of the continued need to re-evaluate our law curricula as well as our student support systems.

This paper evaluates how we might integrate compassion as a core component of the design, delivery and assessment of law programmes to support law students as we continue to evolve out of the COVID-19 pandemic. We view compassion pedagogy as being an approach to teaching and learning which emphasises the importance of consideration and empathy in education. The goal of compassion pedagogy is to create a learning environment that is supportive, inclusive, and respectful, where students and teachers are valued, and where their emotional well-being is taken into consideration. In this paper, we demonstrate how compassion pedagogy can be embedded in legal education in two principal ways: first, by introducing its tenets within the core of the principles animating the teaching of law as well as the design and delivery of student support systems for law students; and second, by encouraging students to exercise compassion either through or as part of their learning of the law and their personal development as students.

We draw upon a range of literature dealing with compassion pedagogy to demonstrate its potential. We refer to Noddings[1] care theory as well as the pedagogy of compassion developed by Vandeyar and Swart[2] to frame our understanding of it. Noddings, as one of the first to develop a care theory, presents an understanding of care premised on relationships viewing care as existing between 'care giver' and 'care receiver'. Although the labels of care giver and care receiver may not be helpful in the context of higher education, given the nature and scope of our roles as tutors, we use this understanding of care and its provision to appreciate the broad nature of our role as academics. Often, our roles encompass a teaching and a pastoral element, and in recent years the pastoral element has been growing significantly.

We also draw upon Vandeyar and Swart to present that compassion pedagogy involves at least three aspects; 'dismantling polarised thinking and questioning one's ingrained

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[1] N Noddings, *The Challenge to Care in Schools: An Alternative Approach to Education* (Teachers College Press, 1992). See also: N Noddings, *Caring, a Feminine Approach to Ethics and Moral Education* (University of California Press, 1994).

[2] S Vandeyar and R Swart, 'Shattering the Silence: Dialogic Engagement About Education Protest Actions in South African University Classrooms' (2019) 24(6) Teaching in Higher Education 772, 773.

belief system', 'changing mindsets' and 'instilling hope and sustainable peace'.[3] At first blush, it might seem that this approach is a step beyond the traditional role as lecturer or tutor. The role of the lecturer or tutor will likely align closely with our individual view on the purpose of education. We adopt a broad view on the purpose of education as being multidimensional (discussed further below), aimed at allowing students to gain their chosen qualification, to become part of a community of lifelong learning, and to facilitate their personal development so that they can become good citizens in taking their place in the world.[4] Our role as tutors in the design and delivery has a significant potential to use compassion to support students achieve their potential.

We first begin with an examination of the prevailing terrain in legal education and the legal profession to consider the impact of COVID-19 as well as some key changes in higher education over recent years and those looming on the horizon. A prelude of this sort helps us to frame the unique opportunities arising from the existence of permacrisis to redevelop and redesign law curricula. This is followed by an examination of care theory and compassion pedagogy to demonstrate how exercising compassion in our teaching and provision of student support can help students to become compassionate thinkers, and this can potentially enhance student experience during their law degree. The final section argues in favour of designing and delivering a law curriculum informed by compassion pedagogy, accompanied by a framework that may assist with embedding it within a law curriculum.

THE CURRENT LEGAL TERRAIN

The higher education landscape in England and Wales is going through a continuum of change that impacts the design and delivery of law programmes. There are some changes – such as the funding of universities through the introduction of student fees – presenting challenges where students are now likened to being consumers of education.[5] Sometimes, this can create a priority for investment on upgrading university facilities without the same level of investment in teaching and learning to support our students.[6] This also has arguably contributed to creating expectations about their learning as student-consumers which do not always align with quality, potentially leading to mixed results in the learning outcomes attained or student satisfaction premised on their treatment by higher education institutions.[7] Other changes have taken the form of the increasing metricisation of education resulting in universities competing for a top-ranking position in a burgeoning range of metrics.[8] In the first instance, universities seek top positions in the Research Excellence Framework (REF), the Teaching Excellence Framework (TEF), the Knowledge Exchange Framework (KEF). Additionally, there is a growing range of rankings for student experience, employability, international status, sustainability alongside many others. The underlying rational for metrics (such as REF, TEF and KEF) is to standardise education to improve consistency in research,

[3] S Vandeyar, 'Educational transmogrification: from panicgogy to pedagogy of compassion' [2021] Teaching in Higher Education 1, 3.

[4] G Biesta, 'What is Education for? On Good Education, Teacher Judgement, and Educational Professionalism' (2015) 50(1) European Journal of Education 75, 77.

[5] T Woodall, A Hiller and S Resnick, 'Making sense of higher education: students as consumers and the value of the university experience' (2014) 39(1) Studies in Higher Education 48, 50.

[6] R Brown and H Carasso, *Everything for Sale? The Marketisation of UK Higher Education* (Routledge 2013) 72–75.

[7] A Calma and C Dickson-Deane, 'The Student as Customer and Quality in Higher Education' (2020) 34(8) International Journal of Educational Management 1221.

[8] M Johnson, 'The knowledge exchange framework: understanding parameters and the capacity for transformative engagement' (2022) 47(1) Studies in Higher Education 194, 199.

teaching and engagement.[9] The relationship between the aims and objectives of these metrics to support student learning and development is not always clearly articulated.[10] It is legitimate to question the relationship between these metrics and your teaching practice, and whether metricisation creates a narrow focus in the design, delivery and assessment of law programmes. The need to pander to these metrics dogmatically can impact innovation in our teaching due to concerns that any change in the design and delivery of programmes could have a negative impact on these metrics, which in turn can impact student recruitment.

The routes to entry into the legal professions in England and Wales have also undergone a seismic shift in recent years, with the introduction of the Solicitors Qualifying Exam (SQE) in 2021,[11] and the consequent phasing out of the Legal Practice Course[12] (LPC), subjecting law schools to consider their educational offerings. Since 2019, the Bar Standards Board (BRB) have also introduced changes to the vocational component of training for those intending to qualify as a barrister.[13] We recognise that not all students have ambitions to enter professional practice and it has long been the case that students with law degrees enter a variety of professions. The changes to the world of work during the pandemic have been profound given the initial move to working from home and the continued retention of more flexible working practices in many professions. Our focus in designing and delivering law programmes needs to maintain the skills and expertise that make law graduates attractive to a broad range of non-legal professions.

At the same time, the impact of the COVID-19 pandemic upon educational settings has been acute, compelling higher education institutions to drastically shift from a face-to-face learning model to a temporary online learning model from March 2020.[14] Higher education institutions have now for the most part returned to their face-to-face default model, but the impact of the pandemic upon both student learning and student welfare continues to be felt acutely.[15]. The first UK lockdown, announced on 23 March 2020, in addition to the subsequent lockdowns which followed, had immediate consequences for the entire higher education sector. Universities were suddenly compelled to pivot from a face-to-face learning model deeply entrenched over centuries of practice towards a new and previously underexplored online learning model, which had thus far largely been restricted in remit to specific institutions, such as the Open University. The first lockdown impacted the tail end of the 2019/20 academic year, meaning many students suddenly had to adapt to leaving behind their familiar campus learning environment and returning home to an environment with – at least initially – only impaired access to the necessary learning resources.[16]

[9] A Gunn, 'Metrics and methodologies for measuring teaching quality in higher education: developing the Teaching Excellence Framework (TEF)' (2018) 70(2) Education Review 129, 130.

[10] F Maratos, P Gilbert and T Gilbert, 'Improving Well-Being in Higher Education: Adopting a Compassionate Approach' P. Gibbs (ed), *The Pedagogy of Compassion at the Heat of Higher Education* (Springer 2017) 263.

[11] Cf. Solicitors Regulation Authority 'Green Light for New Solicitor Exam' (*Solicitors Regulation Authority*, 28 October 2020) <https://www.sra.org.uk/sra/news/press/2020-press-release-archive/sqe-approved-lsb/> accessed 17 November 2022.

[12] Cf. Solicitors Regulation Authority, 'Transitional Arrangements' (*Solicitors Regulation Authority*, 20 July 2021) <https://www.sra.org.uk/become-solicitor/legal-practice-course-route/transitional-arrangements/> accessed 12 June 2023.15 November 2022.

[13] Cf. Bar Standards Board, 'Becoming a Barrister: An Overview' (*Bar Standards Board*, 2023) <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister.html> accessed 1 April 2023..

[14] See for example some approaches to learning in the COVID-19 Pandemic in M Smith, S Thackray & M Nolan, 'Transitioning residential schools online in a pandemic: social distancing and technology-based law teaching' (2022) 56(2) The Law Teacher 146.

[15] On addressing wellbeing issues in legal education in emerging contexts see, in general, G Ferris, 'Law-students wellbeing and vulnerability' (2022) 56(1) The Law Teacher 5.

[16] Cf. JISC, 'Student Digital Experience Insights Survey 2020/21; UK Higher Education (HE) Survey Findings' (JISC 2021) <https://repository.jisc.ac.uk/8487/1/Student%20DEI%20HE%20report%202021%20Final.pdf> accessed 5 December 2022, p 12..

The continued nature of the pandemic required multiple subsequent lockdowns, and this resulted in much of our teaching either remaining entirely online or partially online for an extended period during the 2020/21 academic year. This created many challenges for existing as well as new first year entrants into higher education. The new entrants in 2020/21 came from a challenging learning environment in school/college where most of their final stages of learning was online. In addition, previous year groupings also had lost significant learning that will continue to impact our student intakes for years to come. The cancellation of traditional assessments such as A-Levels in favour of teacher predicated grades resulted in grade inflation that questioned the integrity of these assessments to determine entry to university courses. In studies such as Finn *et al,* there was evidence of grade inflation arising from these teacher predicted grades.[17] For example, Finn *et al* found that in 2021 44.8% of students taking A-Levels were awarded an A* which compares with 25.2% in 2019 and 26.2% in 2018.[18] The impact of grade inflation is difficult to discern but at least one consequence could have been students uprating their course selections by going for more demanding subjects such as law. It is possible that a small proportion of students in the pandemic years have taken courses without fully thinking through their complexity, in combination with a very different student experience being predominately online and in isolation.

The impact of the COVID-19 pandemic and the lockdowns had a detrimental impact upon student wellbeing as students nationwide and on an unprecedented scale struggled with a wide range of wellbeing issues, including social isolation/loneliness,[19] poor mental health with impaired access to treatment due to the strains the pandemic placed upon the National Health Service,[20] family illness and bereavement, and difficulties adjusting to a home learning environment.[21] Law schools, as well as higher education establishments more broadly, were confronted with catering for heightened student support needs in a volume never seen before. At the same time, they were also compelled to find new ways to cater for such support needs given the face-to-face restrictions imposed as a result of the pandemic.

Student learning has for the most part returned to a default face-to-face model of delivery from 2021/22, but several of the impacts of the pandemic continue to resound and resonate with students. For example, Priestly *et al* conducted six co-creation panels with students on mental health provisions at university which identified that the demand for student wellbeing services has long been an issue, but the pandemic and its aftermath intensified that demand.[22] The intensification of the current cost-of-living crisis society amplifies further the severity of these issues, and introduces additional pressures to

[17] P Finn, R Cinpoes and E Hill, 'The impact of COVID-19 on A-Levels since 2020, and what it means for higher education in 2022/23' (*LSE British Politics and Policy* 2022) <https://blogs.lse.ac.uk/politicsandpolicy/impact-of-covid19-on-a-levels> accessed 1 April 2023.

[18] *Ibid*, 6.

[19] Cf. W Leal Filho and Others, 'Impacts of COVID-19 and social isolation on academic staff and students at universities: a cross-sectional study' (2021) 21(1213) BMC Public Health.

[20] Though, reportedly, low levels of wellbeing were already notable for law students. See Ferris (n 15). See also, in general, S B Shanfield and G A H Benjamin, 'Psychiatric Distress in Law Students' (1985) 35 Journal of Legal Education 65; and E G Lewis and J M Cardwell, 'A comparative study of mental health and wellbeing among UK students on professional degree programmes' (2019) 43 Journal of Further and Higher Education 1226. Low wellbeing was on a general level signified for students across several disciplines in UK institutions prior to the pandemic as well. See for example, Royal College of Psychiatrists, Mental health of students in higher education (2011) College Report CR166.

[21] See Leal Filho and others (n 19) 9 f; JISC (n16) 8 f.

[22] M Priestley, E Broglia, G Hughes and L Spanner, 'Student Perspectives on improving mental health support Services at university' (2021) 22(1) Counselling and Psychotherapy Research 1. See also: NHS England, 'NHS Helps Record Numbers of Young People with Their Mental Health as Students Return to Universities' (*NHS England*, 7 October 2022) <https://www.england.nhs.uk/2022/10/nhs-helps-record-numbers-of-young-people-with-their-mental-health-as-students-return-to-universities/> accessed 5 December 2022.accessed 05/12/2022.

students' wellbeing and their ability to attain the learning outcomes of their preferred course of study due to increased financial difficulties.

As we continue to transition out of the pandemic, we find ourselves with new and emerging considerations for legal education. This includes the prospect of updating legal curricula to align with the much-hoped-for provision of education for sustainable development, creating newly founded complications for law curriculum design, posing fresh issues that require consideration. As noted above, all these changes are suggestive of a continuous need for legal education to keep pace with prevailing circumstances, while remaining true to what it means to teach and learn about the law in a higher education setting. Many of these changes require rapid and effective changes in law curricula, and the increased consumerisation of legal education may prove fallacious in terms of introducing law curricula that actually and meaningfully attain their ultimate purpose. We are of the opinion that the literature is cognisant of the challenges these changes bring to legal education and the design of law curricula. While time is of the essence for responses, we should admit that these changes are posing challenges, as much as they provide opportunities for cogently thinking about the role of legal education. It is with this mindset we consider the role that compassion pedagogy can play in the design of law curricula as a starting point to deal with the persistent challenges highlighted.

THE ROLE OF CARE AND COMPASSION PEDAGOGY

At its core, compassion is a human emotional response to another's circumstances. We suggest that exploring these emotional responses becomes a way to begin understanding the nature of compassion. Compassion is defined in the dictionary as being 'moved by the suffering or distress of another, and by the desire to relieve it.'[23] This positions compassion as being linked to other emotions such as empathy and sympathy. Empathy is about sharing in the feelings of another by putting, or at least imagining ourselves in another's circumstances. This is where we acknowledge another's suffering because the other is important to us. For example, if your student experiences grief, then you will feel troubled because your student is important to you. There are at least two limitations here with this approach to understanding compassion.

First, it suggests that compassion is at least partially a passive response. We know as tutors that whilst we facilitate our student learning by guiding them through their studies, we often take positive steps to help students navigate difficult circumstances. For example, if your student misses an assessment deadline, the professional services team in your law school will likely write to you as their academic or pastoral advisor, to ask you to check in with the student to see what has happened. This highlights that compassion is not always passive but may have active dynamics.

Second, it also suggests that we can place ourselves in the circumstances of another. The difficulty with trying to place, or even imagining, ourselves in the circumstances of another is that often individual circumstances are unique. For example, a White male tutor cannot put themselves, or even imagine themselves, in the circumstances of a Black female student. We advocate that compassion should be viewed as being more than empathy, as it goes beyond our own feelings to recognise another's feelings implying that we give respect to another's circumstances. We suggest that when considering the relationship between compassion and empathy, it is best understood as appreciating another's circumstances with a desire to help students navigate this difficult terrain.

[23] Oxford English Dictionary, 'Compassion, n.' (*Oxford English Dictionary*, 2023) <https://www.oed.com/viewdictionaryentry/Entry/37475> accessed 20 April 2023..

Compassion is also connected with sympathy, which can traditionally be perceived as an expression of feelings of sorrow or pity for another's circumstances. The challenge with this perception of sympathy is that it implies a position of superiority, where we as tutors are above the student looking down on their circumstances to express sorrow or pity for those circumstances. This could lead to a circumstance where the student might respond by saying 'I don't want your pity'. We contend that a stronger view capable of capturing compassion beyond sympathy, pity or sorrow is that we identify with another's circumstances with a desire to help.[24] We are not suggesting, therefore, putting ourselves in the position of another, but rather to appreciate and acknowledge another's circumstances.

There are many views on what counts as compassion in the literature, and these are helpful to flesh out compassion in the context of our role as academics in higher education. A common theme in the literature is the construction of compassion as a relationship existing between spectators and sufferers. For instance, Berlant explains that 'there is nothing clear about compassion except that it implies a social relation between spectators and sufferers'.[25] Nussbaum also explains that compassion places an emphasis the amelioration of suffering.[26] Further, Gibbs advises that this social relation between spectator and sufferer requires more than offering sympathy or empathy by actively trying to reduce suffering.[27] The difficulty with this literature is that it tends to view compassion through a narrow lens that positions tutors as mere spectators in our students suffering.

We advocate that a stronger way of capturing the potential of compassion pedagogy in our academic roles is to focus on our willingness to appreciate the circumstances our students and have a heightened awareness of these circumstances to help students navigate their personal learning accordingly and in view of them. To support this view, we adopt Bein's definition of compassion: 'attentiveness to, and an agency, or willingness to alleviate the suffering of others to increase their chosen contentment can be considered compassion'.[28] This approach helps to present a working definition of compassion as a fluid concept coupled with the need for action to help ameliorate student challenges. This relates closely to Nodding's care theory explained in the introduction, where pastoral advisors take on some active dynamics in helping to support students through their difficult circumstances.[29]

This view exposes two questions related to understanding the potential of compassion in our law programmes: what is the purpose of education at higher level, and what is the role of the lecturer in our classrooms? Biesta contends that the purpose' of education is a 'multidimensional question' that has three interconnected 'domains' comprising 'qualification, socialisation and subjectivisation'. Qualification is concerned with knowledge transmission and attainment; socialisation is concerned with students becoming part of social, cultural, religious and political traditions and practices in helping to establish their identity. Subjectivisation concerns the impact of education on the individual which can be labelled the human dimension. These domains help further our understanding on the interconnected nature of education with an individual's personal development. It

[24] R White, 'Compassion in Philosophy and Education' in P Gibbs (Ed.), *The Pedagogy Of Compassion At The Heart Of Higher Education* (Springer, 2017) 20.

[25] L Berlant, *Compassion: The culture and politics of an emotion* (Routledge 2004) 1.

[26] C Nussbaum, 'Compassion: The basic social emption' (1996) 13 Social Philosophy and Policy 27, 30.

[27] P Gibbs, 'Higher Education: A Compassion Business or Edifying Experience' in P. Gibbs (ed), *The Pedagogy of Compassion at the Heat of Higher Education* (Springer 2017).

[28] S Bein, *Compassion and moral guidance* (University of Hawaii Press 2013).

[29] Cf. JISC (n 16).

aligns with a rights-based model of education that positions the value of the individual and their right to personal development above positioning the purpose of education as being predominately about a route to employment.[30] This view places care and compassion at the core of education so that it is 'not just about filling people with information but leading them out of the cave of ignorance, so that students can experience enlightenment, [and] orientation towards' their personal development as individuals to allow our students take their place in the world as engaged and concerned citizens.[31]

We understand that this view on the purpose of education is not universally accepted within mainstream university education. The business model that has emerged in education over the last two decades has focused on perceiving students as consumers who are effectively buying education services to ultimately increase their chances of obtaining employment.[32] This has created an expectation that university programmes will lead students to employment, and this emphasises the human capitalist model of education.[33] Davies suggests that the difficulty with this model is that it stresses 'fostering consumerism, over-reliance on technological solutions, competition and individualism' rather than equipping students to deal with current and future global challenges.[34] This position of compassion within education, and arguably within society, is generally lacking high regard given compassion is viewed as just a subjective emotion. Our view of the role of compassion helps to embrace Vandeyar and Swart's contention that it helps in 'dismantling polarised thinking and questioning one's ingrained belief system', 'changing mindsets' and 'instilling hope and sustainable peace'.[35]

These perspectives help to clarify that when referring to compassion, we actually refer to emotions beyond empathy and sympathy that are focused on exercising that heightened awareness of a student's circumstances and a willingness to help students take steps to ameliorate their challenges. We contend that compassion is exercising that heightened awareness by going beyond the ecosystem of student support already existing in your department that ranges from academic support to wellbeing to process capable of mitigating assessments for students experiencing difficulties.

RETHINKING LAW CURRICULA

Compassion pedagogy can play a significant role in law programmes. Nussbaum identifies that compassion has tended to exist at university in at least two ways.[36] First, compassion is sometimes presented as a professional trait necessary for professional practice.[37] For example, Self *et al* examine ethics and compassion in the medical profession to demonstrate that the demands of practising medicine require doctors to have compassion in how they treat their patients.[38] Second, compassion exists as the means

[30] I Robeyns, 'Three models of education: Rights capabilities and human capital' (2006) 4(1) Theory and Research in Education 69, 70–71.

[31] R White, '(n 24)19.

[32] Cf. R Brooks 'Students as consumers? The perspectives of students' union leaders across Europe' (2021) 76(3) Higher Education Quarterly 626.

[33] C Hanley-Maxwell and L Collet-Klingenberg, *Education* (Sage 2011) 21–22.

[34] K Davies, 'A Learning Society' in A Stibbe (ed), *The Handbook of Sustainability Literacy: skills for a changing world* (Green Books Ltd 2009) 215.

[35] Vandeyar and Swart (n2).

[36] B Maxwell and E Racine, 'Should empathic development be a priority in biomedical ethics teaching' (2010) 19(4) Cambridge Quarterly of Medical Ethics 433, 438.

[37] *Ibid*.

[38] D Self, G Gopalakrishna, W Kiser and M Olivarez, 'The relationship of empathy to moral reasoning in first year medical students' (1995) 2 Cambridge Quarterly of Healthcare Ethics 448, 451.

to encourage good citizenship by instilling empathy in the relationship between students and their interaction with the world around them.[39] Maxwell, however, argues that there is a further role that can be played by embedding compassion as an aim of higher education generally.[40] This would encourage compassion to be embedded within curricula.[41] In this section, we consider the ways in which compassion can be embedded within law curricula.

It is our view that compassion pedagogy holds a benefit for all in education, even those wedded to the human capitalist model of education.[42] This view is premised on the basis of a multilevel view of education from lecturer/student to programme/department level to university level as institutions need to maintain financially sustainable programmes. From a lecturer/student perspective, compassion affords lecturers the ability to support their students as individuals by allowing them to understand their needs, their strengths and their background to help their personal learning. From a programme/university level, embedding compassion within the law curriculum can help students not only settle into their studies by supporting them throughout their education, but it also can help to maintain individual programmes as being sustainable by helping to increase student retention. We can use compassion to help students settle into their studies in a number of ways and we use WESS to demonstrate a starting point to think about how to incorporate compassion.

Welcome Week	Having a range of department run activities during welcome week to help students settle into their new learning community.
Extended Introduction	Having a programme of induction that extends throughout the whole course of a student's degree.
Study Skills	Having a defined programme of study skills to help student gain the confidence in the study of law.
Self-Care	Having space for students to reflect on their self-care throughout the whole of their degree programme.

Figure 1 – WESS demonstration of compassion pedagogy

Recent developments affecting law curriculum design in UK law schools provide at least two key opportunities. The first is the promotion of research and innovation in teaching delivery tasked with preparing law students to become effective learners where they have the space to gain, develop and practise the skills and expertise that their future career will likely require them to possess.[43] The second is the simultaneous

[39] D Doukas, 'Where is the virtue in professionalism?' (2003) 12(1) Cambridge Quarterly of Healthcare Ethics 147, 150.

[40] B Maxwell, 'Pursuing the Aim of Compassionate Empathy in Higher Education' in P Gibbs (ed), *The Pedagogy of Compassion at the Heat of Higher Education* (Springer 2017) 34.

[41] M Nussbaum, *Upheavals of thought* (Cambridge University Press 2001) 24.

[42] For a critique of the model see H McDougall, 'The Rebellious Law Professor: Combining Cause and Reflective Lawyering' (2015) 65(2) Journal of Legal Education 326; and D Morrison & J Guth, 'Rethinking the neoliberal university: embracing vulnerability in English law schools? (2021) 55(1) The Law Teacher 42.

[43] Key work undertaken in the authors' institution on legal academic writing skills and advice which has been embarked on prior to the developments referred to above provide a key example. See C Griffiths, 'The law schools' 'easy win'? Improving law students' experience through embedded and non-embedded writing support (2021) 55(3) The Law Teacher 377.

development of initiatives combatting issues affecting student wellbeing arising from the study of law as well as those arising from events like the COVID-19 pandemic. We have made a case for the potential role compassion pedagogy has in the design of law curricula to harness these opportunities.[44] The analysis made so far leads towards supporting the introduction of compassion pedagogy in law schools to pursue a two-dimensional objective: the cultivation of the grounds for upholding and transmitting the development of pro-social behaviour and skills in the teaching and learning of law, and; the development of pedagogical discourses fundamentally inherent in delivering education capable of satisfying the provision of learning as a private good.

However, we should also be mindful of *how* compassion pedagogy is integrated into law curricula so that it is positioned to deliver its role in student support. We contend that each attempt to integrate compassion should have clearly defined objectives similar to any curriculum change as well as a means to monitor its contribution to the delivery of the curriculum. This will help to have a clear focus as well as creating specific monitoring points to reflect on the changes resulting from the incorporation of compassion into law curricula. Essentially, we are suggesting that compassion is an iterative process where its incorporation requires careful planning as well as monitoring to continuously improve its incorporation. There have been some studies conducted outside of the legal education discourse which analysed the integration of compassion pedagogy in various disciplines.[45] These studies have demonstrated mixed results about its effectiveness in delivering the outcomes intended even when the incorporation of compassion was made in the same/similar manner.[46] For example, psychological analysis on compassion pedagogy programmes have identified potential biases that may surface in programmes when adopting compassion pedagogical imperatives. This can in turn result in showcasing inabilities to reverse poor perceptions about compassion or an unwillingness to exercise compassion, let alone introduce care in educational curricula or the instillation of compassion onto students' learning psyche as part of what students need to 'learn' and 'exercise while learning'.[47]

In light of the above, there must be a careful and systematic approach to integrating compassion pedagogy, if it is intended to play a meaningful role in shaping and designing law curricula and the support it provides to students. We have argued previously that designing any system of student support requires a systematic approach by ensuring law programmes and student support are holistic to student need.[48] In our previous research, we developed a taxonomy charting a range of parameters (outlined below) that can be taken into account to assist creating a holistic approach in the delivery of student support, one of the first of its kind in the context of legal education.[49] A key feature of this taxonomy was the essentiality of treating student support holistically

[44] Although careful thought is required. Legal Design could be used as a means of understanding the way this could be incorporated. See M Doherty and T McKee, 'Service design comes to Blackstone's tower: Applying design thinking to curriculum development in legal education' in E Allbon & A Perry-Kessaris (eds) *Design in Legal Education* (Routledge 2022). See also generally: M Doherty, M Corrales Compagnucci, H Haapio, and M Hagan, 'A new attitude to law's empire: the potentialities of legal design' in M Corrales Compagnucci, H Haapio, M Hagan and M Doherty (eds) *Legal Design* (EE 2021).

[45] Maxwell (n40).

[46] *Ibid.*

[47] *Ibid*, 41, citing, *inter alia*, C D Batson, *Altruism in humans* (OUP 2011).

[48] L Hughes-Gerber, N McGuirk, R Savva 'Sculpting the Provision of Student Support for Law Students: the Blurred Line Between Academic and Pastoral Support' in J. Guth and J. McCloy (eds) *Supporting Law Students* (Routledge Forthcoming 2025).

[49] *Ibid.*

by avoiding the traditional division between academic and pastoral support roles.[50] In doing so, our taxonomy proposed approaching developing systems of student support based on five key dimensions determining its operability:

1.	The likely factors leading a law student or a provider of support to initiate the provision of support (either being academic support or pastoral care), triggered by factors ranging from students' academic performance to students' life experiences.
2.	The nature of the support needed.
3.	The level at which support will be accessed (either internally within the department, or externally, through procedures institutions have in place for assisting students on an institutional level).
4.	The provider of student support, and
5.	The timing of the support being provided.

Figure 2 Student Support Taxonomy[51]

This framework recognises the importance of professional services staff as holding a key role in administrating any system of student support departmentally and institutionally. Additionally, this framework also recognises that academic tutors, with a pastoral role, as having a significant position in the delivery of student support. The nature of academic and pastoral roles accounts for the respective and multifaceted roles academic members of staff hold in a law department: the role of the tutor, the academic advisor, the pastoral or academic disciplinary officer and many more.[52] If compassion pedagogy is intended to form part of the design of law programmes, it is submitted that any attempt to integrate compassion pedagogy requires due regard to these multifaced roles.

We view compassion pedagogy, as embodied in the taxonomy above, as having the potential to be an informative medium to engender the delivery of holistic support in conjunction with the design, development and delivery of a law curriculum. If we exercise compassion and train academic and professional members of staff premised on the core principles in compassion pedagogy, we can have a positive effect on the efficacy of support provided by colleagues relative to their role in a student support system. For example, professional services staff can monitor student attendance, general enquiries and assessment submission in their front facing role in law departments. Academic members of staff in their teaching and role in providing student support also have a front facing role in each student's learning at university. If professional services and academic colleagues work closely together, there is a potential dividend for student wellbeing by being able to intervene earlier in student issues before they have a longer term damaging effect on student progression. This positive effect can stretch beyond the standard approaches of determining when student support is required, such as being alert to the different student stress points in the academic year or the

[50] *Ibid*, citing J Buckley, 'The Case of Learning: Some Implications for School Organisation' in R Best, C Jarvis and P Ribbins (eds) *Perspectives on pastoral care* (Heinemann Educational 1980) 183; and E Jones, 'Transforming legal education through emotions' (2018) 38 Legal Studies 450; and K Galloway, R Bradshaw, 'Responding to Changed Parameters of the Law Student: A Reflection on Pastoral Care in the Law School' (2010) 3(1&2) Journal of the Australasian Law Teachers Association 101.

[51] *Ibid*.

[52] *Ibid*.

record of deadlines for completing assessments, or student attendance at scheduled learning events.[53] Compassion pedagogy can initiate a more fruitful provision of support through harnessing the use of formal and informally scheduled meetings (such as academic advisor meetings between tutor and student) throughout the year. This can provide the means to check in on students' progress, but also their welfare prior to the various stress points throughout the academic year with the aim of signposting students to the professional help that might be required by individual student.

However, at the same time, it is possible for compassion pedagogy to be used as a tool for providing support, whether in or outside of class. In previous literature on student support, we have developed a best practice guide (CADSIF) on how to approach the provision of student support.[54] Adjusted to compassion pedagogy imperatives, law curricula and systems of student support can be informed by the guide as follows:

1.	**Contact**: Depending on the role of the academic member of staff, the first step will usually involve establishing contact with their students. This can occur in many different circumstances, but often occurs as part of teaching, academic advisee/mentorship meetings, when students are identified as not submitting an assessment or prolonged absences in scheduled learning events. These trigger points will be informed by your department/institution's protocols for contacting students. This becomes the starting point for the colleagues to foster positive communication with the student and at this point compassion is about having an awareness of your role to help students find a solution to their challenge by being able to identify the source of the student's issue.
2.	**Assurance**: compassion pedagogy entails providing the grounds for exercising understanding towards the student and their circumstances. This is not about putting yourself in the student's circumstances but appreciating these circumstances so that you can offer assurance.
3.	**Dialogue**: the value of compassion pedagogy is its ability to encourage colleagues to listen, have awareness and exercise empathy towards their student's circumstances. At this point, we view compassion as having that heightened awareness by the tutor so that they listen patiently and sympathetically to student concerns and exchanging communication similarly. In certain contexts, students may find it difficult to open up, especially when personal traits or characteristics play a role in determining the progression of discussion. Compassion pedagogy's integration calls for fostering open and honest dialogue.
4.	**Signposting**: after listening to the student and engaging in a dialogue to explore the student's challenges, at this point it may be appropriate to signpost the student to appropriate professional support. This could involve signposting students to professional services such as mental health and wellbeing support, helping students to navigate the different terrain of assessment extension protocols as well as helping students to navigate exceptional or special circumstance protocols that may exist in your department.

[53] Cf Maxwell (n 40).

[54] L Hughes-Gerber, NMcGuirk, and R Savva, 'Looking Back to Look Forward: Mapping the Student Support Pathway for Law Students through the eyes of a Legal Academic' in L Bleasdale (ed) *How to Offer Effective Wellbeing Support to Law Students* (forthcoming, Edward Elgar, 2023).

5.	**Information**: this can involve giving students information on specific processes that you are recommending the student follow. This can include how to access wellbeing professional services, various forms and templates that will provide student extensions and more general information available that be specific to the individual challenges experienced by the student.
6.	**Follow-up:** we view this as an extra step that could involve checking in with the student some time after you have met with the student. This could involve the need for further information on other issues identified by the student accessing professional services. For example, if a student is signposted to wellbeing services who identify the student may need more time on an assessment, your role here could be providing extra support on assessment extension protocols.

Figure 3 CADSIF Student Support Framework

CONCLUSION

In this paper, we have identified an opportunity for reconsidering law curricula in light of the changes arising from the routes to professional qualification, as well as the student wellbeing challenges continuing to resonate as a result of the COVID-19 pandemic. This renders the case for the integration of compassion pedagogy into law curricula stronger than ever before as a potential means to enhance student support and student experience.

We presented the case that compassion in the context of our roles as academics and tutors in higher education, can be about having a heightened awareness of a student's circumstances coupled with a willingness to help student alleviate their challenges. This is going beyond commonly conflated emotions such as empathy and sympathy. It is also going beyond existing student support systems aimed at recognising and helping students manage distress in their learning such as extensions for deadlines or mitigation processes. Compassion is that piece of jigsaw that is embodied in the human dimension in departments (academic tutors and professional services colleagues) who are there to help students navigate the difficult terrain of their studies.

We have also demonstrated the need for care in *how* compassion can be utilised in the process of designing law curricula and student support systems. We have identified some of the ways compassion can help students settle into their learning community as well as their personal learning through WESS and how student support systems can be designed in a holistic way through our student support taxonomy. Our taxonomy has a basis to identify a range of different factors that impact student learning as well as providing a means to create and monitor a student support system. We also provided our CADSIF framework to help give structure to student support. These are all tools that we view as having the means to implement compassion in our interactions with our students to help students attain their potential and improve their student experience.

We recognise the need for further research in this area, but in this paper, we have highlighted the potential for compassion as a tool in law curricula. The continuum of change in higher education alongside the persistence of permacrisis is a unique opportunity we can use to reflect on our roles as academics/tutors as well as how we teach and support students through difficult terrains.

CENTRE FOR LEGAL EDUCATION CONFERENCE 2022

*PAMELA HENDERSON**

Summer 2022 saw the 10th anniversary of the Centre for Legal Education here at Nottingham Trent University, our 5th biennial conference, and an abundance of celebratory cakes. The conference theme was Community, Creativity and Culture in Legal Education, and we were delighted to welcome presenters and delegates from across the world, including the UK, mainland China, Hong Kong, Finland, Hungary, India, the Republic of Ireland, Nigeria, Poland, Saudi Arabia and Ukraine.[1]

Foluke Adebisi opened the conference with her keynote presentation on the future of law (and legal education) in an unequal and imperilled world. Foluke encouraged us to embrace the transformative potential of legal education, and its power to change, rather than entrench, current inequality and social injustice.

Social justice was also central to the presentation by Liz Curran, who examined emerging good practice in legal education for the community and multidisciplinary practice. Liz discussed how a grounding in legal rights and responsibilities for non-legal professionals can build capability and confidence, empowering communities to take action.

Luke Lynch presented data on law schools' legal work experience and mentoring programmes that suggests administering these on an open-access basis may impede social mobility and impact negatively upon social justice. Luke argued for an open conversation about radical reform of opportunity distribution in higher education, to achieve more equitable outcomes.

Community was at the heart of Hazel Dawe's presentation on helping students to cope with the transition from school to university. Hazel looked at the support students need to overcome 'friendsickness', and the building of learning communities, through the prism of creating a new foundation year law at Oxford Brookes, the launch of which coincided with the pandemic lockdown.

That same lockdown also had implications for Mathew Game, Peter Vaughan and James Ball, who were tasked with moving a regulated law firm online, while still managing to engage and supervise students working on live cases. They drew upon data to examine the impact this move had on widening participation among the student body, demonstrating benefits for distance learning, international and part time students in particular.

Sughanda Passi anticipated the current debate around the use of artificial intelligence in legal education, accelerated to an extent by the expansion in online teaching during the pandemic. While acknowledging that the Indian legal sector (like others) may still be relying on methods and solutions that were designed years ago, Sughanda explored how artificial intelligence is likely to play a big part in changing the way that lawyers and the law operate in India in future.

Sona Kumar argued for an approach to legal education that extends beyond traditional boundaries. Sona provided valuable insights into the close connections between law and social sciences, notably sociology, psychology, history and political science.

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[1] Many of the presentations are available at Centre for Legal Education, 'Community, Creativity and Culture in Legal Education' (*Centre For Legal Education – Nottingham Trent University*, June 2022) <http://www.nlscle.org.uk/conference/community-creativity-and-culture-in-legal-education-june-2022/> accessed 12 June 2023.

Demonstrating how each discipline influences and shapes the others, Sona argued that law cannot be separated from social sciences or studied in a vacuum.

In considering the impact on the built environment of increased population and economic expansion in Nigeria, Stephen Idowu Ilesanmi also argued for an interdisciplinary approach to legal education. Stephen discussed the needs for environmental law education, in particular, to take into account geographical characteristics, cultural heritage and inventive creativity.

Nandini Boodia-Canoo invited delegates to take a broader view of legal education and its potential for transformative experience. Nandini examined the role of the instructor in de-centring western viewpoints in legal education, in order to provide a more empowering, compassionate and holistic experience for students.

Yingxiang (Jo) Long also took a broader view of legal education, but in the context of international lawyers who may find themselves acting as lawmakers rather than law interpreters, because answers to legal questions may not lie in a single international jurisdiction, convention or custom. Jo explained how this makes creativity and intercultural skills fundamental for international lawyers.

With a focus upon the role of student support working alongside academic colleagues, Laura Hughes-Gerber, Noel McGuirk and Rafael Savva also argued for a more holistic approach in law schools. They highlighted gaps in the provision of support that have been exposed by recent changes to routes to professional qualifications, as well as the pandemic, and explored options for addressing these.

It was timely, then, to hear from Shrshtee Choudary, Aditi Paul and Ruchika Sharma on suicide laws in India, including how to help law students to recognise the importance of mental health awareness, as well as how suicide laws can be framed in a way that works for the betterment of the individual.

Support for students was also at the heart of Jenny Kemp's presentation on the vocabulary that international law students really need. Jenny reported on a study that identified a discipline-specific vocabulary core of words that are pervasive across all legal genres. The resultant list contains 1,026 words which would be considered associated with law, but which would not typically be explained or clarified in lectures or seminars.

Alina Hruba has undertaken a comparative analysis on the progressive approach taken to legal education in five Nordic countries. Alina emphasised the importance of sustainable development, equality, the conceptualisation of knowledge, e-learning and the use of artificial intelligence for law students.

Gábor Andrási challenged us to examine the role of legal education in a wider social context, but connected to professional identity. Gabor discussed how far social responsibility and sustainability have been integrated into higher education institutions, with a particular focus upon law school settings and the use of international accreditation systems.

Jane Jarman and Callum Scott also explored the formation of professional identity, in their case in the context of qualifying as a solicitor via the 'equivalent means' route. They considered how the flexibility inherent in this route, along with the requirement for written evidence of competence, may impact on the focus of the individual, and whether there are lessons to be learned that could have resonance for those seeking to qualify under the new arrangements.

Graham Ferris focused upon legal academics and undergraduate students in the light of changing institutions, practices, pressures, and ideologies of education and market on law as an academic discipline. Graham argued that the neo-liberal university is subject

to a wide range of pressures which combine to homogenise and standardise university education, thus undermining disciplinary independence.

Emma Flint was also concerned about the position of law schools in light of the Solicitors Qualification Examination, the Quality Assurance Agency Law Subject Benchmark review, and changes to the regulation of higher education. While arguing that creativity will be a key attribute of future law graduates, Emma questioned the extent to which law schools understand and promote it.

Doctoral candidates are not always the focus of presentations on legal education, so we were delighted that Gerard Maguire and Noelle Higgins considered the supervision experience from the perspective of both the supervisor and the supervisee. They highlighted the challenges and rewards encountered throughout the doctoral journey, and discussed how their personal experiences aligned with literature in the field.

We were very honoured that Jane Jarman agreed to give her inaugural professorial lecture during the conference. Jane's presentation – *Too cunning to be understood?" Text, context, and the poetic imagination in legal practice* – linked to our theme of creativity, and showcased Jane's characteristic originality, insight, and wit.

An extended lunchbreak on the final day of the conference offered everyone the chance to indulge in some creative activities, courtesy of Helen Hall and Kerry Truman. Helen brought a legal education game for delegates to play, *Brave New World*, which has been developed by herself and Tom Lewis, and exposed remarkably high levels of ruthless ambition in some quarters. Kerry surprised everyone by arriving with several large bundles of willow, which were soon reduced to twigs by delegates eager to make decorations to take home with them, by way of conference souvenirs.

Finally, thank you to John Hodgson, who closed the conference with his reflections upon 35 years in legal education. Thank you also to everyone who attended, presented, and helped with the organisation of the conference.