

LAW AT GRIFFITH UNIVERSITY: The First Year Of Study

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One very persuasive argument can be advanced for the creation of a new law school. In short, a new law school can provide legal educators with an ideal opportunity to change the direction of legal education significantly.¹ Sadly, much of the innovation in legal education in many law schools in Australia is content directed and thus, curriculum driven.² This type of reform is frequently achieved at the expense of good teaching practices and assessment strategies. Individuals who advocate, or merely adopt, such a narrow approach to change often overlook the interrelationship between content, assessment and pedagogy.³ To develop a sound educational programme, even in university law schools, course content, teaching practice, and assessment must act in harmony.

In this article I describe the first year of the study of law at Griffith University. The structure of the Griffith Law program⁴ is outlined to indicate the place of the first year course, Law and Legal Obligations, within the overall degree structure, and the program of teaching and assessment is detailed in order to provide an example of an attempt in Australia to design an interdisciplinary,⁵ holistic,⁶ integrated⁷ and student-centred,⁸ if not humanistic,⁹ approach to first year legal education.

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1 A new law school offers the perfect chance to test ideas about legal education in a relatively controlled environment in which later years of study can be integrated with earlier years to form an holistic degree program.

2 This is the case unless 'curriculum' has been defined in its broadest sense to embrace teaching and assessment as well as content.

3 Some scholars prefer to use the word 'andragogy' in preference to 'pedagogy' as the latter focuses on the teaching of children, while the former may be seen to address the particular concerns of the teaching of adults.

4 Information on the Griffith Law curriculum is provided in an appendix to the editorial. Further information can be obtained from the Law School, Griffith University, Nathan, Queensland, 4111.

5 Readings from economics, history, politics, sociology, etc are integral to the program.

6 An holistic curriculum is designed specifically so that each year of study builds upon earlier years in a 'self conscious' way. To illustrate - themes and questions raised in the first year are reconsidered and discussed in greater detail in later years of study.

For an example of an holistic approach to the design, implementation and evaluation of a clinical legal studies program for third year LL B honours students, see Kent, P., 'Instructional and Assessment Strategies in Law: An Holistic Approach', Paper, City Polytechnic of Hong Kong, 1991.

A Different Approach

The expression of dissatisfaction with the direction of legal education is legend. It has been catalogued in numerous law journal articles and government reports.¹⁰ Although much of the discontent may stem from the conceptualisation of law as a science and the contribution of positivism to legal epistemology,¹¹ and even though the nature of the criticism varies,¹² many writers have identified a sense of alienation as endemic to legal education in common law countries. A number of remedies have been offered to alleviate

7 See 'The Degree Structure' and 'Overall Aims and Objectives of the Degree Structure' below.

8 Johnstone uses the words 'student focused'. See Johnstone, R., 'Rethinking the Teaching of Law' (1992) 3 *Legal Education Review*, no 1, 17.

9 The Griffith curriculum incorporates some of the ideas espoused by humanistic legal educators. Although the banner 'humanistic' may embrace a number of ideas, the word is used to describe 'a *pedagogical movement*, not a new jurisprudential critique... Advocates hope humanistic legal education will provide a better way of training and educating lawyers. To be sure, humanistic principles are consistent with much anti-positivist ... thinking. Nevertheless, humanistic reform merely incorporates existing doctrinal criticism, *focusing on the system of legal education*, not the legal system.' (Steffey, M.S. and P.Wunsch, 'A Report on CUNY's Experiment in Humanistic Legal Education: Adrift Toward Mainstream' (1991) 59 *UMKC Law Review*, no 2, 155 at 158, (emphasis added)).

In a limited and selective fashion, humanistic legal education draws upon the resources of humanistic psychology which developed in response to the one-sided analysis of human behavior of Freudian psychoanalytic and behaviorist psychologists (Himmelstein, J., 'Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law' (1978) 53 *New York University Law Review*, 514 at 547-548). Rather than focusing on conditioning, reflexes, and the like, humanistic psychologists were concerned to examine the entire person and the place of affective as well as cognitive domains of experience. Thus the importance of responsibility and the growth of personal and interpersonal awareness were stressed and the value of experiential learning highlighted. Humanistic legal education is centred around the humanistic tradition which values regard for others, self-determination and self-expression, freedom, and personal autonomy (at 522).

10 See in particular the Pearce Report, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, A Summary and Volumes I-IV*, Canberra, AGPS, 1987. For an American account see, in particular, footnote 37 in Himmelstein, *supra* n 9.

11 The same issues recur. In 1978 Bellow stated that '[a]s formalism ceases to be credible and we are no longer able to explain and legitimate our legal institutions as a self-contained system, many scholars have looked to other bodies of thought not only for insights, but for a rationale for understanding and evaluating the kind of legal ordering in which our society is engaged.' (Bellow, G., 'The Limits of Humanistic Teaching' (1978) 53 *New York University Law Review*, 644 at 645).

12 They range from numerous critiques of the Socratic method to claims from staff and students that many traditional law classes silence women. See footnotes 1 and 2 in particular in Morgan, J., 'The Socratic Method: Silencing Cooperation' (1989) 1 *Legal Education Review*, no 2, 151.

student boredom and discontent,¹³ some of which are based upon radically different conceptions about the nature of the teaching and learning process and the notion of the person as learner.¹⁴ Although seldom acknowledged, how educators conceive of the learner does affect how they structure the educational process. Since there is considerable divergence in theories of teaching and learning, the approach advocated in this article is based on a metacognitive model which emphasises the social aspect of learning. It assumes that conceptual change in learners is self-directed because people are motivated to understand and explain their world.

Despite the acknowledgment of the complexity of the educational process by many academics, a number of problems recur in much of the current literature on tertiary education. Among them is the need to explore and close the gap between university and the world of work. Scholars are now considering how competent practitioners behave in order to better prepare students for employment.¹⁵ Hence teachers in tertiary institutions are increasingly encouraged to help students develop their abilities to assess their work and the works of others and to work cooperatively as well as independently. Writers such as Schon¹⁶ claim that if students learn to reflect on their own and others' performance as part of a continuing process of self and peer assessment,¹⁷

13 Glesner, B.A., 'Fear and Loathing in the Law Schools' (1991) 23 *Connecticut Law Review*, no 3, 627 catalogues student dissatisfaction and argues that law schools and staff have a responsibility to address the psychological aspects of legal education.

14 For an outline of the various approaches formulated from the relationship between psychology and education, see Glaser, R., 'Learning, Cognition, and Education: Then and Now', Draft paper presented to the University of Melbourne, 16 January 1991.

15 Boud, D., 'Assessment and the Promotion of Academic Values' (1990) 15 *Studies in Higher Education*, no 1, 101.

16 Schon, D.A., *Educating the Reflective Practitioner*, San Francisco, Jossey-Bass, 1987.

17 In self-assessment students identify standards which govern their work and judge their own learning. In peer assessment students judge the performance of others according to standards.

Although difficult to prove, there appears to be a relationship between the quality of students' work and students' abilities to assess themselves. Furthermore it appears that the ability to engage in self-assessment can be used to enhance student performance. (Boud, D. and N.Falchikov, 'Quantitative Studies of Student Self-Assessment in Higher Education: A Critical Analysis of Findings' (1989) 18 *Higher Education*, 529. See also Rawson, S. and A.L.Tyree, 'Self and Peer Assessment in Legal Education' (1989) 1 *Legal Education Review*, no 1, 135). If nothing else, including students in peer assessment exercise can be a positive experience as students begin to feel that they are participating in a worthwhile activity (Boud, D. and A.Tyree, 'Self and Peer Assessment in Professional Education: A Preliminary Study in Law' (1979) 15 *Journal of the Society of Public Teachers of Law*, no 1, 65).

Boud, D., 'Implementing Student Self-Assessment', *HERDSA Green Guide No 5*, 1986 provides guidance for implementing student self-assessment. For an example of peer assessment of an essay assignment, see Fox, D., 'Peer Assessment of an Essay Assignment', (1989) 11 *HERDSA News*, no 2, 6.

they will be better equipped to make the transition from the undergraduate to the professional. To facilitate this process, teachers must acknowledge that students approach learning in different ways¹⁸ and that the program of assessment can affect how students go about their learning. As a result of poor assessment practices, a student may be awarded good grades yet seriously misunderstand a subject of study. Thus the process of assessment itself can undermine genuine learning.

As part of their analyses some legal scholars have turned to the writings of psychologists as well as educators in an attempt to close any gap between genuine learning and what is assessed and to remedy the perceived dehumanising effects of legal education. Some legal scholars have claimed that teachers of law need to adopt a different emphasis, a person-centred approach to education.¹⁹ Thus they argue that students learn by doing. This is best facilitated in an atmosphere of trust and acceptance in which the students can learn without fear. As might be expected, the teacher's role in this educational scheme is that of a genuine facilitator and resource whose job is to create an appropriate climate for learning.²⁰

Some American legal educators have taken these observations seriously. For example, the City University of New York (CUNY) launched an ambitious law degree program which incorporated a humanistic, interdisciplinary, experiential approach to legal education in an attempt to address the problem of sterile law curricula²¹ and replace outmoded and ineffective teaching

18 'Classroom learning takes place in an interactive ecosystem, in which all components affect each other. Students adopt qualitatively different approaches to learning, depending in large part on how they react to that ecosystem (and are part of it).' (Biggs, J.B., 'Teaching for Better Learning' (1990-91) 2 *Legal Education Review*, no 2, 133 at 147).

Approaches to learning have been described as: 'deep', in which the student is intrinsically motivated to learn, is interested in what is taught, and works to understand; 'surface', in which the student's motivation is extrinsic and narrowly focused on learning without much understanding; and 'strategic' or 'achieving', in which the student attempts to compete for the highest grade and organises work appropriately.

19 Those who adopt an educational approach which places the human being at the centre of the educational process may be described as humanistic legal educators.

20 Several writers advocate the use of cooperative, as opposed to competitive, discussion techniques and highlight the importance of establishing a climate for learning. The findings of a survey of psychology undergraduates by Haines and McKeachie indicate *inter alia* that competitive conditions result in poorer achievement, greater tension, and less satisfaction than in cooperative environments. See Haines, D.B. and W.J. McKeachie, 'Cooperative Versus Competitive Discussion Methods in Teaching Introductory Psychology' (1967) 58 *Journal of Educational Psychology*, no 6, 386.

21 This sense of sterility is reflected in the words of Himmelstein, '[T]he phenomenon appears to be a growing one in our increasingly technological age - the professional's lack of full appreciation of his or her own humanness and the lack of realization of that humanness in professional life.' See Himmelstein, *supra* n 9 at 519.

practices²². On this side of the Pacific and, admittedly, less ambitiously, Griffith University Law School has undertaken a similar task in its first year of study. Aware of some of the criticism of a purely humanistic orientation,²³ Griffith has committed itself to an interdisciplinary and integrated approach by establishing a course of study which incorporates a student-centred educational philosophy. The overall program is designed to encourage the maturation of the undergraduate into the professional during the course of the degree by emphasising the learning of certain areas of law in a range²⁴ of learning situations by 'situating' the learning experience,²⁵ developing the skills of self

22 A degree program which is based primarily on experiential learning (learning by doing) requires considerable long term planning and staff expertise, which may be lacking at present in Australia.

23 Although admittedly attracted to humanistic claims, Bellow has criticised the approach as often 'psychologically reductionist', too simplistic, and unable to provide sufficient criteria beyond taste or appeal to enable legal educators to develop a better critique of legal education. (Bellow, *supra* n 11, at 646). See also the criticism by Gelhorn, W., 'Humanistic Perspective': A Critique' (1982) 32 *Journal of Legal Education*, 99; the rather scathing attack by Simon, W., 'Homo Psychologicus: Notes on a New Legal Formalism' (1979-80) 32 *Stanford Law Review*, 487 and the response to both by Steffey and Wunsch, *supra* n 9.

24 Planning for a diverse range of learning situations is important because there is no conclusive proof that one method of teaching is superior to the rest. Teachers need to offer a range of learning opportunities until there is a clearer understanding of the relationship between learning styles and teaching strategies. Educators should pay closer attention to the 'fine grain of teaching/learning transactions if we are ever to understand the highly personal and idiosyncratic character of what goes on in the classroom'. (Powell, J.P., 'Small Group Teaching Methods in Higher Education' in D.A. Bligh (ed) *Teach Thinking by Discussion*, Guilford, Society for Research into Higher Education and NFER-Nelson, 1986, at 35).

Thinking about developing a range of learning situations can act as a catalyst to teachers to reflect generally on teaching methods. It can also help to encourage them to try new approaches to solve common problems.

25 Many legal educators in Australia seem to assume that there is a real separation between 'knowing' and 'doing', in which 'knowing' is seen as 'an integral, self-sufficient substance' which is 'theoretically independent of the situations in which it is learned and used.' (Brown, J.S., A. Collins and P. Dugid, 'Situating Cognition and the Culture of Learning' (1989) 18 *Educational Researcher*, 32 at 32 (emphasis added)). Recent evidence into human cognition indicates that this understanding is erroneous; the ways in which knowing is developed and used cannot be separated from, nor be seen as subsidiary to, cognition and learning. Rather the activity in which knowledge grows is integral to what is learned. Thus, learning, cognition - even knowledge - are fundamentally situated.

This thesis has strong implications for the nature of teaching and learning. First, it emphasises the importance of *enculturation* as the *sine qua non* of learning. The importance of enculturation explains why the process of education is impeded if teachers restrict learning to abstract concepts and self-contained examples. Brown *et al* claim that enculturation is what in fact happens when individuals learn to speak, read, and write as well as become lawyers, teachers, and so on. By living *in situ*, individuals learn to act in accordance with the norms of a community. Although this process of 'picking up' what is a 'product of an ambient culture' (at 34) may appear easy, its significance must not be underestimated.

and peer assessment, and encouraging students to work independently and cooperatively as they themselves become self-motivated, autonomous, and lifelong learners of law.²⁶

The Development of Law at Griffith

The Degree Structure

The hallmark of the Griffith degree is its adoption of an integrated approach to the study of law. At present,²⁷ all students studying at Griffith Law School must enrol in one of four *integrated* degree programs: Law and Environmental Science (LLB, BSc); Law and International Business (LLB, BInt Bus); Law and Japanese (LLB, BA); and Law, Politics and Public Policy (LLB, BCom). The four programs are offered in cooperation with other academic faculties at Griffith University. Integrated degrees have been established, in particular, so that students can gain a broader understanding of law in context than arguably can be achieved within a combined or joint, degree program. As a result, the design of the curriculum reflects an attempt to integrate the knowledge and understanding of both disciplines of study.

Integration within each degree program is achieved on a number of levels over the five year course of study: within the degree structure itself;²⁸ by cross-teaching arrangements;²⁹ through the creation of separate tutorials for law students in non-law subjects and the establishment of the 'Offices';³⁰ and in the design of assessment tasks, which reflect academic issues that are relevant to each particular degree program.³¹ In addition, all students are expected to

According to Brown, Collins and Dugid, for learning to occur, students need exposure to 'the use of a domain's conceptual tools in authentic activity - to teachers acting as practitioners and using these tools in wrestling with problems of the world'. Authentic activity provides students with access to the standpoint that enables the practitioner to act in a meaningful and purposeful way. Since knowledge as well as learning is 'situated', the teachers' role is to promote learning by making their tacit knowledge of their disciplines explicit when appropriate and by modelling their approaches to dealing with problems for their students. Further development is then achieved by encouraging students to do the task themselves so that they themselves can learn to learn independently.

26 In addition to developing doctrinal knowledge and skills of analysis and evaluation, the first year course in particular is designed to help students become self-directed, self-motivated, responsible, adaptable, flexible, cooperative, and self-evaluative learners.

27 There are plans for the development of additional integrated degree programs at Griffith.

28 This is achieved in a number of ways. The co-operating faculties will design or modify their courses to complement some of the themes and topics discussed in the law subjects where possible, and law students will enrol in optional courses which emphasise the integration they have chosen.

29 Some classes will be taught jointly with staff from the cooperating faculties, who will also help develop course materials for the law students.

30 See 'Structure of Classes' in text below.

31 Students will complete a jointly supervised research project in their final year which is 'degree specific'. Other assignments throughout the degree, such as moots and essays, will be designed for the integrated programs.

complete a 'theory' subject, which will be taught jointly by law staff and staff from the relevant integrated degree, and a 'capstone' course, which is offered in the final year of study and which draws upon the full range of knowledge and skills that have been developed in the five years of study.

Overall Aims and Objectives of the Degree Structure

As part of its educational philosophy, the Griffith Law course is designed so that students can incorporate substantive knowledge of the law with the development - and continued growth - of appropriate skills and attitudes, which have been identified as essential for the law graduate in Australia. Thus, while becoming conversant in the law in their first year of study, students are introduced to the social, historical, philosophical, and economic contexts within which law operates, address broader questions about the nature of law and its place in society, and begin to develop skills which are at the heart of legal practice. Since student understanding of law increases with each year of study, the theoretical questions posed in the first year of the program are reconsidered throughout the degree and are the particular focus of inquiry in the fourth year theory course. In learning about and further developing particular skills throughout the five years of study, the teaching staff believe that students can readily 'situate' their learning and, thus, reach a more lasting understanding and appreciation of the law than can be gleaned from a more traditional approach to legal education.

The First Year Course: Law and Legal Obligations

The subject, Law and Legal Obligations, occupies the entire first year of study for all law students enrolled in 1992. In designing the program of study, current knowledge of educational theory and practice was discussed - and debated - over a period of seven months by the individuals who were to take primary responsibility for the teaching of the course.³² Issues of the relationship between course content, methods of teaching, modes of assessment, and the production of teaching materials were considered at length. The process of planning was long, exhausting at times, and rewarding. And, of course, the conception and teaching of the course

³² Considerable progress was made in 'brainstorming' sessions during which members of the teaching staff, G Airo-Farulla, M Le Brun and C Sampford, plotted the road map for the course. They worked from a chart which listed columns for areas which needed to be addressed: questions, themes and problems (eg nature of legal reasoning); theories (eg positivism, feminism); methods (eg role play); techniques (eg. open ended questions); skills (eg case analysis); affective domain (eg 'Is this case fair?'); motivation (eg focus on current newsworthy items as trigger for discussion); assessment (eg class presentation); content (cognitive domain issues); and texts available. The chart helped correlate and harmonise course content with the introduction and development of skills, assessment practices and andragogy and highlight staffing and resource implications if particular suggestions were implemented.

Given the importance of integrating learning *throughout* the degree, the entire five year curriculum had to be drafted in some detail so that the foundation first year program could be fashioned. Refinements in later year subjects often prompted a revision of the content of the first year of study in particular.

continues to be modified and refined as the teaching staff³³ reflect on its operation and reception by the students.³⁴

Law and Legal Obligations incorporates elements of subjects which are often offered under the more traditional subject classifications of Introduction to Law, Legal Process, Contract, Torts, Restitution, and Equity. The course has been designed to introduce students to the various interpersonal relationships which law regulates by concentrating on Contract Law as the backbone of the year of study. Contract operates as the lens through which students consider the nature of law, legal obligation, and the legal process as well as an area of study in its own right. Wherever possible, information about introductory legal concepts, illustrations of the process of law, and the development of legal skills appropriate to the first year of study flow from Contract Law so that students can integrate introductory and process knowledge with their increasing understanding of substantive law.

In addition, in order to minimise any propensity to 'pigeonhole' law,³⁵ students explore the nature, construction, and reproduction of legal knowledge while they learn about the interrelationship between contract, tort, restitution, and equity.³⁶ Thus, other areas of substantive law are introduced in relation to contract and its history. For example, torts is introduced, *inter alia*,³⁷ by tracing the development of a general duty of care from contract based obligations, while equity is discussed as a body of principles that has re-emerged from its earlier role as a brake on the apparent harshness of the common law.

33 The lecturing staff commonly refer to themselves as teachers rather than lecturers because the term is more accurate, especially as the teaching is not organised according to a traditional lecture format.

34 The process of integration requires effort, considerable goodwill between the participating faculties, and feedback from the students on the program. Formal and informal comments by the students on the course have proved invaluable. In an effort to enhance the level of integration, an informal committee of law school staff, representatives from the participating faculties, and student representatives has been formed to address student and staff concerns (eg work load, schedule of assessment, cross-teaching arrangements).

35 Perhaps as a result of the conceptualisation and the teaching of law as if it were comprised of discrete, independent, eternal, and everlasting areas of knowledge.

36 Chester and Alumbaugh argue for the restructuring of first year law curricula on the basis of underlying principles to replace the traditional categories. (See Chester, R. and S.E. Alumbaugh, 'Functionalizing First-Year Legal Education: Towards a New Pedagogical Jurisprudence' (1991) 25 *U C Davis Law Review*, no 1, 21). Thus, Contract, Torts, and Property could be rethought in terms of bargain, reliance, and status.

37 Students can be introduced in some detail to the law of negligence, for example when they consider the contract cases which raise issues of construction of terms.

Structure of Classes

Three types of classes are offered to introduce students to a range of learning situations and to maximise staff/student interchange: large group classes; small group classes;³⁸ and Offices. Each teaching week³⁹ is designed to be as self-sufficient as possible. Students are introduced to key concepts in large group classes on Monday and Tuesday. These concepts are further developed in small groups, which are held between Tuesday afternoon and Thursday evening. In the last large group class of the week, which is held on a Friday, the main points discussed in the week are then further refined and reviewed, and the topic for the following week is introduced.

Large group classes

The entire first year intake⁴⁰ are invited to attend large group classes. Three large group classes are offered each week. Classes on Monday and Tuesday meet for fifty minutes. A large group class of one to two hours⁴¹ is held on Friday after the Office meetings.⁴² As the purpose of this class is to complete discussion of the main topic for that week,⁴³ handle student queries on the subject matter, provide an opportunity for students to report back the deliberations of their Offices to the large group as well as introduce the topic for the following week, it is often difficult to gauge the exact amount of time required for the class. Moreover additional time on Friday is available for presentations by guest lecturers.⁴⁴

38 The names 'large' and 'small' group classes were adopted to reflect the divergence from the traditional lecture/tutorial format. Current educational theory indicates that the strict difference in approach to teaching which is manifested in traditional law lectures and tutorials is unnecessary. As the same teaching methods, techniques, and devices are used in all classes in Law at Griffith, irrespective of size, the difference in name reflects only differences in class size, not in teaching practice and approach.

39 There is some variation in this plan when classes are interrupted due to holidays, teacher absence, etc.

40 Seventy-seven first year students were enrolled at the cut-off date in 1992.

41 If the class is likely to continue for more than one hour, a short break is scheduled, based on the rule of thumb that few students can pay close attention in class for longer than fifty minutes.

42 See 'Offices' in text below.

43 This is difficult when large group classes are interactive. Interactive classes directly involve the students in their learning. The method of teaching in large group classes varies according to the aims and objectives of the course.

44 Similarly if a lecturer misses class for whatever reason, there is additional time available on Friday to 'catch up' within the weekly, modularised teaching program.

*Small group classes*⁴⁵

Since all students are expected to attend and contribute⁴⁶ to small group classes, attendance and meaningful participation are assessed accordingly.⁴⁷ The number of students per class varies from ten to sixteen, depending upon timetable clashes and the success of attempts to control group membership.⁴⁸ Small group classes are held in two sessions: one fifty minute class; and a one to two hour class. The flexibility in the small group schedule provides teachers with additional time to ensure that they have addressed all the questions which were planned for small group class discussion for that week so that the weekly modularised approach to the course is successful.

The use of small groups is integral to the development of skills, in particular, in the first year law program. Provided that a climate for learning has been

45 Newble and Cannon state that small group teaching has at least three characteristics: active participation amongst all students; face-to-face contact amongst all present which is usually achieved when participants sit in a circle; and purposeful activity which develops in an orderly way. (Newble, D. and R.Cannon, 'Teaching in Small Groups', in *A Handbook for Teachers in Universities and Colleges: A Guide to Improving Teaching Methods*, London, Kogan Page, 1989, at 40-41).

46 'Discussion is vital if students are to understand their subject. Meaning cannot be conveyed directly but needs to be constructed within each student. The negotiation of meaning which takes place in discussion is a very effective way of constructing meaning.' (Gibbs, G. and T.Habeshaw, 'Teaching Small Groups', in *Preparing to Teach*, Bristol, Technical and Education Services, 1987, at 75).

47 Grades are awarded on a sliding scale from 1 to 5 out of an overall 100 points depending upon the number of small groups classes each student attends. To illustrate, if a student does not attend three or less small groups s/he receives 5 points; if between four and six classes are missed the student receives 4 points.

48 Webb notes that a strong argument can be made for experimenting with the membership of groups. To equalise participation rates, he suggests, for example, that the more dominant students be grouped together. (Webb, G., 'The Tutorial Method, Learning Strategies and Student Participation in Tutorials: Some Problems and Suggested Solutions' (1983) 20 *Programmed Learning and Educational Technology*, no 2, 117, at 119). White however, cautions against certain groupings (eg students with low participation rates). Rather, White organises discussion groups on the basis of age, class, sex, course of study, grades, prior knowledge of the discipline, motives for enrolling in course, group leadership experience, and students' rating of their own participation in small group discussions. (White, G.D., 'Evaluation of Small Student-Led Discussion Groups as an Adjunct to a Course in Abnormal Psychology' (1978) 5 *Teaching of Psychology*, no 2, 95).

Originally it was hoped that each group would be as evenly balanced as possible in terms of gender, degree stream, prior law studies, and age (mature age entrants as opposed to school leavers). In particular, students who had completed legal studies at school or a course in a law-related subject were to be grouped together in order to build upon their prior knowledge of law and, in part, because I have noticed that their familiarity with law can inhibit the participation of others in class. Unfortunately, in 1992 this attempt proved more time consuming and difficult than originally anticipated.

developed,⁴⁹ small group classes offer a hospitable environment for the development of self and peer assessment skills, oral and written communication tools, and professional attitudes to work. Since students are asked to discuss their performance in small groups with their small group teachers during private consultation time at the end of Semester 1, further opportunity is provided for students to practice self assessment. The skills and attitudes cultivated in these classes will help bridge both the educational and social gap which educators have identified between the undergraduate and the graduate. Small group classes give students time to develop points discussed in large group classes, raise issues for elaboration and clarification, argue and justify their positions, and contribute to the performance of the class overall. In addition, small group classes can be used to assess the progress of the students,⁵⁰ to gauge how the students are enjoying the course, and to develop a productive teacher/student relationship. They also provide an opportunity for staff to assume additional roles as they shift from large to small group activities.

Offices

The Offices are a key part of the first year law program at Griffith University. The Offices incorporate some of the research findings about the quality of learning in groups which are not teacher dominated.⁵¹ They are based on the

49 By 'climate for learning' educators refer to a learning atmosphere in which the students are respected and allowed to express themselves freely and without judgment. Classes are designed with the students (rather than 'for' them) and the teacher works to create a warm, accepting, and non-threatening environment which is free of tension and strain to enable students to work without fear or defensiveness.

50 The importance of formative assessment, that is assessment for diagnostic purposes, as opposed to certification ('summative' assessment), should not be underestimated.

51 Of course, in times of dwindling resources, some educators cannot help but appreciate that the use of leaderless groups, peer teaching, self-steering seminars, and student-led discussions can solve some staffing problems.

The literature on leaderless groups (sometimes referred to as 'syndicates', (Collier, K.G., 'Peer-Group Learning in Higher Education: The Development of Higher Order Skills' (1980) 5 *Studies in Higher Education*, no 1, 55)) and student-led classes is considerable and varies in levels of sophistication and analysis. See, for example, Powell's persuasive argument for the use of leaderless groups (Powell, J.P., 'Small Group Teaching Methods in Higher Education' *supra* n 24, at 33). The limited study of verbal participation rates of graduate and undergraduate students under teacher-led discussions and student-led discussions by Phillips and Powers indicates that student response varies considerably depending upon the person leading the discussion; student-led sections had a considerably higher proportion of student participation than classes which were led by an instructor. (Phillips, H.J. and R.B.Powers, 'The College Seminar: Participation Under Instructor-Led and Student-Led Discussion Groups' (1979) 6 *Teaching of Psychology*, no 2, 67).

Similarly Webb's analysis of student participation in tutorials indicated that student participation is promoted when the tutor reduces her/his authority role, thus clarifying a useful distinction for teachers between being *an* authority and being *in* authority. (Webb, *supra* n 48). See summary of various experiments on student-led discussions cited in McKeachie, W.J., 'Student-Centered Discussion Methods', in

idea of 'Houses', which was developed at the City University of New York as part of CUNY's experiential approach to education⁵² and are a variation of the leaderless group classes⁵³ which have been used at the University of Adelaide Law School. Leaderless groups are used by educators to encourage student independence and confidence and assist with the development of leadership skills, often in a more relaxed atmosphere. They give students the chance to integrate their personal experiences with their materials and learn at their own pace free from the worry of having to answer questions which the teacher thinks are important. In addition, students seem more interested, work harder and with more productivity, and appear less reluctant to reveal their lack of understanding.⁵⁴ Overall, leaderless groups add variety to the classroom experience.⁵⁵

Each student is expected to attend one, fifty minute Office meeting during most weeks of the academic year.⁵⁶ Wherever possible the Office readings complement the topic under discussion in the large and small group classes and are specific to the students' degree programs. Occasionally all students read one article and answer related questions for report back to the large group on the Friday. In most weeks, though, each group has a different article and related questions⁵⁷ and has the opportunity to report back on the deliberations of their Office to the large group.⁵⁸ Again, as educational

Teaching Tips: A Guidebook for the Beginning College Teacher, 8th ed, Mass, D.C.Heath, 1986.

52 Students enrolled in the CUNY law program are members of 'Houses' which comprise about 20 students and one teacher each. The Houses are organised as law firms. They provide the basis for all experiential learning by integrating course materials with clinical teaching and lawyering skills.

53 Professor Michael Detmold of Adelaide University Law School has used leaderless groups as part of his Constitutional Law course for several years. I am grateful to Rosemary Owens, Lecturer in Law, University of Adelaide, for her insights into the use of leaderless groups in legal education.

54 Powell, *supra n 24*.

55 Disadvantages of leaderless group include: dominance by an ill-informed student; superficiality of discussion or lack of coverage of content; anxiety which may be generated if, for example, students do not understand the direction the course takes and no 'expert' is present to assist. (Powell, *supra n 24* at 33).

56 It appears that the optimum size for leaderless group work may be five to seven members. The Office program was interrupted during semester 1 because all law students were expected to attend three, three hour classes as part of a computer literacy program.

57 To be effective these questions should be central to the course of study, as 'real' as possible, and must be written in clear and simple language.

58 The functioning of the Offices will no doubt improve as the students evaluate their experiences of the Offices. In future we hope to assign a practitioner as well as an academic to act as 'consultants' to each Office. The academic will assist with 'house keeping' problems while the practitioner will act as a role (and motivational) model and provide assistance and insight into the practice of law.

studies indicate that students devote more time to tasks that are assessed, both Office attendance⁵⁹ and 'report backs' are awarded grades.⁶⁰

Although most students are assigned to particular Offices on the basis of their degree program, age, and gender,⁶¹ students are responsible for the work and output of their offices. They determine the organisation of their Offices and the procedures to be used for the completion of tasks by devising rules for the functioning of the Office.⁶² Since each Office develops its own practice shortly after the first Office meeting, students learn firsthand about teamwork as they themselves experience the operation of 'legal' rules. As the students then review the adequacy and completeness of their rules when they begin their analysis of the identification and the construction of terms in large and small group classes near the end of the first semester, they begin to appreciate the problems of language and meaning.

Offices serve a number of educational purposes within the Griffith curriculum. Offices facilitate the development of collegial attitudes and *esprit de corps* that one might find in a law office. They can, for example, be used as a base for study groups - and social activities. Offices provide students with insight into the workings of a community which is governed by rules that have been adopted by members of that community.⁶³ In addition, Offices offer students an opportunity to incorporate some of the knowledge they have gained from their integrated degree programs.⁶⁴

In their Offices students learn to work independently as well as cooperatively with their peers in a learning environment which is free from the control of a teacher. To operate successfully in their Office meetings, students must learn some of the basic tools of the legal practitioner - that of effective communication,⁶⁵ 'reflection in action',⁶⁶ and the provision of constructive

59 Grades are awarded on a sliding scale from 1 to 5 out of an overall 100 points depending upon the number of Offices each student attends (eg. If a student attends less than 23 but at least 20 offices, s/he receives 4 points).

60 Each student in each Office receive the grade (on a 1-5 scale out of an overall 100 points) which is awarded to the Office representative who reports the deliberations of the Office to the large group.

61 In an informal discussion on the use of leaderless groups, or syndicates, in Adelaide University Law School in 1991, Rosemary Owens advised that the students should be left to form their own groups. Nevertheless, we decided to try to structure the groups because few students knew one another at the beginning of the year and we wished to join together a diverse group of individuals so that they could learn to work together as a team might in a law firm.

62 Students read extracts from the descriptions of the creation of rule-based communities by Hobbes, Golding, Orwell, Rousseau, Rawls, and Swift, and write the rules which will govern their offices.

63 In addition the rules provide educational fodder to illustrate the difference between principle and rule.

64 To be effective, however, the reading material for office work must be well written, structured in form, and fairly brief, or at least well-edited. In addition, the goals set for the Office must be specific, clear, and attainable.

65 Communication involves more than speaking - for example, it embraces the ability to listen on a number of levels, explain, question, respond. Brown and Atkins

feedback. Successful Office work will help students hone their communication and feedback skills as the office experience helps lay the foundation for the development and refinement of techniques of self and peer assessment. These capacities are of obvious importance in the curriculum because in many of the Friday large group classes a few office representatives report to the large group on the deliberations of their offices.⁶⁷ In order to encourage the development of peer assessment skills, students in the large group listen to the reporter and then identify three good points in the presentation and three which need improvement.⁶⁸ Office work thus helps students begin to bridge the gap between the undergraduate and the professional for whom the process of self and peer assessment is integral to success.

Assessment

The assessment scheme⁶⁹ for Law and Legal Obligations is part of the overall teaching strategy; it tests what the teaching staff consider important, which is itself stated in the course synopsis and reading guides. The scheme reflects the philosophy and objectives of the course, is co-ordinated with the assessment schemes of the participating faculties, where practicable, and is broadly based in that students are expected to perform a number of different tasks which are assessed throughout the academic year.

describe various levels of listening: skim; surveying; search; and study listening which is the deepest level of listening and goes beyond the acquisition of information to hidden meanings and implications. (Brown, G. and M. Atkins, 'Effective Small Group Teaching', in *Effective Teaching in Higher Education*, London, Routledge, 1990, at 76).

66 A key element in the development of professionalism is the ability to assume a 'participant observer' stance in which the individual learns to alternate between action and self-reflection in order to learn from the consequences of the individual's actions. By conducting self and peer assessment work and feedback training in a functioning class, participants should become aware of the behaviour of others and their impact upon them (Andrews, J.D.W. and D.A. Dietz, 'The Self-Steering Seminar' (1982) 53 *Journal of Higher Education*, no 5, 552).

67 The groups are chosen by drawing lots each week. All offices hand in a written, one page summary of their group's deliberations to ensure that all groups are prepared each week. The teacher then skims these reports and returns them without awarding a grade. See also footnote number 59.

68 Feedback is given only if the student Office representative wishes to receive comments on her or his performance. An exercise of this nature should be used with some caution and only when a climate for learning has been established in which students feel sufficiently comfortable to undergo 'public' peer review.

69 Barnes lists nine basic principles which should form the basis of an assessment policy. (See Barnes, J.W., 'The Functions of Assessment: A Re-examination' (1990-91) 2 *Legal Education Review*, no 2, 177). The assessment should be: part of the teaching strategy; consistent with the philosophy and objectives of the course and correspond with the official curriculum; form part of an overall consultation process with students; be broadly based, co-ordinated, realistic and practicable; and reflect student achievement.

To assist the students with their processes of self and peer assessment,⁷⁰ the course synopsis provides, *inter alia*, information on the scope of the course, its aims, its objectives, the educational philosophy of the course of study as well as information on substantive content. Furthermore, each week's reading guide states the aims and objectives for that week, lists materials to be read, and outlines questions to be addressed in the small group classes so that students can assess their own progress on a week by week basis. As large groups and small groups are designed to facilitate interaction, students are expected to prepare for large and small group classes as well as for Offices. To help students plan for class, readings have been classified as: 'Introductory Reading' (resources which lay a general foundation for or provide further introduction to a topic), 'Prior Required Reading' (those which are to be read for class); 'Other Required Reading' (those which must be read at some time during the academic year); and 'Recommended Reading' (materials which may be of particular interest to the students).

To enable students to profit from assessment and organise their work more efficiently, the entire schedule of assessment is detailed, including the due dates for assignments and the dates when the graded work will be returned to the students.

At the beginning of the academic year students were asked to consider the characteristics which they thought were essential to work as a professional trained in the law. These attributes were listed on the whiteboard as they were described by the students. Fortunately the students identified the very same skills and attitudes around which the teaching staff had constructed the program of assessment for the year. As a result, to date there have been few complaints about the content of the assessment as the students themselves are able to see its relevance to their educational development.

Overall, the assessment attempts to achieve a balance between substantive knowledge as well as requisite skills and attitudes. The students are assessed as follows: attendance in Office meetings and small groups - 10%; moot presentation - 5%; reports back from Offices to large group class - 5%; participation in small groups - 5%;⁷¹ written exercises - 5%; extended essay -

⁷⁰ Boud states that, '(S)elf assessment is fundamental to all aspects of learning. Learning is an active endeavour and thus it is only the learner who can learn and implement decisions about his or her own learning...' (Boud, *supra* n 15, at 109).

⁷¹ The percentage is small due to the problems of reliability and the difficulty of both conducting classes as well as evaluating participation. Numerous articles have been written which address these problems (eg reliability can be improved if the classes are video or audio taped). For examples of constraints in grading performance see Clarke's summary and advice (Clarke, E.G., 'Grading Seminar Performance' (1985) 33 *College Teaching*, 129), and results of a study by Caproni *et al* which examines the impact of seating position, instructor eye contact availability, and student participation in a small seminar. (Caproni, V., D.Levine, E.O'Neal, P.McDonald and G.Garwood, 'Seating Position, Instructor's Eye Contact Availability, and Student Participation in a Small Seminar' (1977) 103 *Journal of Social Psychology*, 315).

15%; mid year examination - 20%; and final examination - 35%. Students must complete several short assignments on a 'write rewrite'⁷² basis. These include library exercises, a rule synthesis,⁷³ a draft letter and accompanying advice on a point of law, an answer to a hypothetical problem, and a draft of definitional provisions for a hypothetical statute. In addition, numerical grades are awarded for completion of a short contract, a draft piece of legislation, and a client interview sheet. Both the mid year and final examination reflect the balance accorded to theory and doctrinal law in the syllabus.⁷⁴

Conclusion

The establishment of new law schools in Australia seems almost commonplace, despite the current fiscal crisis.⁷⁵ There is now considerable scope for legal educators to test new ideas about legal education which excite and challenge both staff and students alike. Nevertheless, one must not forget that programs such as those established at the City University of New York and at Griffith University require considerable personal commitment and institutional support. Degree programs which focus on the skills and attitudes which encourage the development of law students into professionals from the first year of study are rare. Many law schools prefer to devote time, money, and staff expertise to the final undergraduate and graduate years of study. Sadly, some students become so disenchanted during the first years of study that they never profit from this largesse. It seems that few law schools willingly devote many of their resources to the first year of study - after all, how many professors choose to teach first year students? Yet if education is a process in which individuals make their own meaning and in which the modelling of the professional is part of the growth of the student, the first year is where our curriculum initiatives, our finances - and our professors - should be.

For an exploration of the issue in general see Armstrong, M. and D. Boud, 'Assessing Participation in Discussion: An Exploration of the Issues' (1983) 8 *Studies in Higher Education* no 1, 33.

⁷² The student rewrites the assignment until such time as it meets the approval of the small group teacher.

⁷³ Students are given three cases to read and are asked to generate a rule for the three.

⁷⁴ For example students are expected to attempt four questions, each worth 25% for the mid year examination. Question 1 is a compulsory theory question which spans all topics discussed in Semester 1. Question 2 presents students with a choice from two additional theory questions. In questions 3 and 4 students answer a hypothetical problem with related questions (eg. 'Would your advice be different had...').

The answers given in Question 1 provide a reference against which students can be compared with one another. Question 2, in particular, allows some scope for individuals to pursue a topic of their choice.

⁷⁵ ... or perhaps because of it?

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