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Setting up a Pilot Peer Mentoring Programme in the Online Environment

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Editorial

This edition of the *Journal of Rights and Justice* brings together a collection of articles that focus on how we, as educators, can bring an awareness of human rights and justice into our curriculum. The articles explore ways of teaching where the praxis of education and practice need to be relevant. Some of the articles look at ways to better support students and build their resilience and enable them to connect in new ways to the traditional mode of face-to-face learning. Others look at the values of deepening emotional intelligence and interdisciplinary cross-over where, as educators, we can equip students for future regulatory adherence and honouring of professional duties.

An example of this is in the first article in the collection by Carol Edwards, Lorraine Gregory and Liz Hardie. They offer practical insights on mentoring students online. This is especially important as, in times of crisis, such as in a pandemic, we can better support students who are remote not just in their learning, but on so many different levels. What is implicit in the article is that, by mentoring each other, the students learn critical skills in self-determination, collaboration and coaching others.

Once law students leave law school, one of the things that they may be expected to do is to supervise their junior colleagues. For this reason, this article is a valuable contribution as it explains how a pilot programme, run during a pandemic, harnessed the energy of students in co-designing a mentoring programme. It also shares, honestly, some of the lessons learned and thoughts for other law schools running similar mentor programmes. Methods of connecting with students, facilitating rich, safe, fun and interactive ways of engaging with their legal studies outlined in this article are very useful. The Open University's experience of setting up a pilot online peer mentoring scheme for law students in 2020 is an important contribution given the limited experience and understanding of peer mentoring schemes within an online, distance learning environment.

The article canvasses the already difficult journey for many students including disorientation and impacts on wellbeing and mental health. This is made even more complex with the Open University's diverse student base and an online mode of delivery. What is helpful is the sharing of how they went about their peer mentoring pilot, met the challenges and progressed having a blend of more experienced with less experienced student support. The old adage, we 'learn by doing' is very apposite for the approach taken. This enables self-determination, guidance and the development of 'communities of practice' which have become so critical, not just in educational contexts during COVID-19, but also in service delivery. The peer mentoring model unpacked in the article shows how peer mentoring enables a rich sharing of experience and expertise and debrief opportunities, which, as their article highlights, need to be facilitated in a deliberate, mindful and reflective way. The authors share what they learned and how they need to adjust settings informed by the evaluation and experience of the pilot. These lessons provide useful information for other educators, not just in running peer mentoring, but for student engagement more generally.

Two of the articles in this journal's collection are critical of law curricula which has its emphasis on the theoretical. They explore the importance of the practical and the need for problem-solving and interpersonal skills to be developed in students while at law school. Gabor Andras examines the Hungarian context and concludes, by comparing it with legal education in the United States of America, that legal education

is under-researched, and law curricula are very theoretical in Hungary. He examines 'management education' including training covering business knowledge and both 'hard' and 'soft' skills. He observes there is a dearth of academic literature and professional reports examining the status of legal education in Hungary by academicians and practitioners; representatives of legal profession(s) or by government - which are common in the UK or in the USA - and so, he fills this vacuum. He notes that Hungarian law graduates are expected to have knowledge of management (organisational issues) as well as leadership skills. Interestingly, these are not listed among the compulsory topics, except for the economic context. He asks how law schools address these expectations in their curricula. He also laments that there is an expected high level of theoretical knowledge ("70-80%") which makes practice-oriented education very difficult.

He makes some suggestions including the proposal that clarification of expectations would help law schools in developing their curricula in Hungary and for the sharing of "know-how, collaboration with business schools and any other innovative approaches".

Similarly, the article by MS Sharmila also raises concerns about the overly theoretical nature of some law curricula, with a focus on India. The author grapples with a universal theme that some law schools ignore, namely, the importance of professional effectiveness as a desirable outcome, so neglecting the sort of training that enables professional effectiveness. Specifically, the article examines the importance of training that does not ignore or neglect the human aspects of lawyering which are so important in problem-solving.

The article argues that by incorporating instruction about emotional intelligence competencies into the existing law school curriculum it can strengthen an ethos of professionalism among law students and better support the profession's efforts to increase the professionalism of lawyers. This is a timely discussion as research is emerging that suggests lawyers need to be educated differently to better meet the changing world in which we live, if the profession is to be relevant. In terms of honouring human rights and justice, which is the theme of this journal, by developing skills in law students beyond their legal technical expertise, the critical understanding of the context within which our clients exist and the causes of problems can inform human rights and justice paradigms. Students will be the future professionals and such considerations move the law beyond merely procedural adherence to substantive examination. Lawyers can develop the critical skills to unpack the critical elements needed for justice and human rights adherence. This article adds the critical dimension of understanding humanity and compassion to such substantive legal analysis for the future lawyer's repertoire. Dr Sharmila examines innovative clinical offerings including the long-standing citizen participation clinic at Jindal Global Law School. These support students' understanding of how law is experienced by clients and community and do not ignore the emotional toll and impacts of the social determinants of health resulting from the poor decision-making and systemic problems that disadvantage people experiencing poor human rights and justice outcomes.

A valuable contribution to this edition's collection is the discussion of the important interplay between the law and its application and its valuable use by other professions in supporting their clients and in the community. This is an area that is often overlooked but is important for educators from different disciplines - including the law - to engage in. Building professional expertise to enable ethical practice and client care by equipping non-legal professionals to be able to navigate often complex and

challenging regulatory and ethical standards is critically important. The idea is that it introduces the notion of professions needing to learn about legal contexts and from each other. It also opens up possibilities for a much-needed dialogue in the United Kingdom. The article by Machin and Benbow explores the issue of wellbeing in a social work legal context. The article considers interdisciplinary exchanges and capacity building specifically in the way they can improve the well-being of those involved in complex and challenging work. In this context uncertainty as to how they need to manage their obligations can be vexing and distressing, thus raising levels of anxiety or stress which can impact on good decision-making.

Social workers in adult practice have duties shaped by statutory roles. The article highlights how professions have much to offer each other in enabling client-focused and ethical adherence. The authors explore the tension between the power to detain, and the duty to protect and promote individual rights and autonomy which are embedded in the social work profession. They do so in the context of the challenges educators face in equipping Approved Mental Health Professionals with the necessary legal knowledge and capabilities, whilst also ensuring they are able to enact these in an ethical manner which is respectful of, and sensitive to, the needs of the service-user. This is something also that many legal educators might find enlightening.

Law students, rather than just identifying and applying the law, also need to think deeply about their clients' contexts. In this way, this article also follows the theme of this collection of articles around the need to shift from theoretical to practical and contextual issues. This is something the social work training does well. For this reason, this article enlightens legal educators about how they can learn from the social work profession alongside canvassing the role of law in regulating social work. The MHA Code of Practice contains Guiding Principles when making decisions under the Mental Health Act. These include least restrictive options and maximising independence; empowerment and involvement; respect and dignity; purpose and effectiveness; efficiency and equity. The authors note that their inclusion in the Code offers a reference point for good practice, although it is not easy.

Machin and Benbow stress that it is critical in this context not to avoid discussion around the complex issues of mental health and entitlement to social security that inevitably raise risks to client confidentiality. They are proponents for advocacy and argue that identifying advocacy strategies is a key way in which social workers can promote social justice and assist service users with complex legal processes. This resonates with the article on the development of clinical models in India where there is a call for legal educators to look to the human impacts that flow from the law. If lawyers were more involved in common issues of concern, such as this two-child rule, then, perhaps, the disciplines could work together, combining their different professional skills and discipline expertise. Together, they could argue for policy reform that respects the right to income security of families and avoids the spiral into poverty that Machin and Benbow are concerned about.

Gabor Andrasi argues that one of the most important message of management education research is perhaps, the need for a constant dialogue between academia and practice, faculty and industry to continuously develop programmes preparing students for the world they will encounter upon graduation. This comment not only resonates for management education but is evident throughout all the articles in this collected edition. By doing as he suggests, we may also lay the groundwork to facilitate a praxis that positions future lawyers to deepen their understanding of the law and its

application, its impact on human lives and, by doing this, improve the ways in which we can work towards human rights and justice.

Dr Liz Curran, June 2021

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SETTING UP A PILOT PEER MENTORING PROGRAMME IN THE ONLINE ENVIRONMENT

CAROL EDWARDS,* LORRAINE GREGORY
AND LIZ HARDIE*****

ABSTRACT

Many universities use peer mentoring schemes for students at the start of their undergraduate studies as a way of supporting their transition from school to university. As law schools face the challenges of how to adapt their teaching in a time of restrictions imposed due to COVID-19, this article explores a pilot online peer mentoring project which offers the opportunity to provide peer support to students in an online environment.

The article starts by setting out some of the reasons why a peer mentoring project can benefit law students. As well as support in transition, it explores the wider contributions peer mentoring can offer in improving student wellbeing, encouraging the formation of communities of practice, providing the opportunity to improve skills and enhancing student retention. It adopts a case study approach by reflecting on the Open University's experience of setting up a pilot online peer mentoring scheme for law students in 2020. The article considers the practicalities of setting up an online peer mentoring scheme, the use of co-creation in the project, some of the challenges involved in an online scheme and how these were overcome and provides an initial evaluation of the project. This article aims to provide some helpful insights and suggestions for colleagues in law schools who are considering how to provide student support activities such as peer mentoring to their students online.

INTRODUCTION

Research has shown that students can suffer from disorientation in the first few weeks at university.¹ This is very likely to be compounded when the course is distance learning and online.² As a leading provider of distance higher education, the Open University (OU) has been providing an online distance learning law degree for over twenty years. Due to COVID-19, many universities had to move rapidly to an online model in 2020. As well as the provision of lectures and other formal teaching online, there are other factors affecting student attainment that need to be considered when

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¹ K Ragavan 'Acquiring Skills for a Globalised World Through a Peer Mentoring Scheme in a UK Law School Experience' (2012) 6(1) *Law Teacher* 15.

² G Motteram and G Forrester 'Becoming an Online Distance Learner: What can be learned from students' experiences of induction to distance programmes?' (2005) 26(3) *Distance Education* 281.

working in an online environment. It is recognised that distance higher education can be isolating and, at the OU, students also report isolation and negative impacts on student wellbeing.³ Peer mentoring can be of value to support students, particularly in their first year at university, but there are challenges setting up a peer mentoring project online.

The OU is one of the largest providers of online distance education. Our students come from a range of backgrounds and life experiences and most will be combining study with employment or caring responsibilities. In 2018-2019 the Law School started a wellbeing support project which involved collecting data via focus groups from first year students currently studying law and business introductory modules. The data focused on how the business school and law school could support students with their wellbeing during study. Many students provided similar feedback about the need for a peer mentoring project which they felt would be beneficial to their wellbeing as it would enable them to meet other students, something which can be difficult in an online environment. Recognising the need to respond to the students' feedback, research was carried out into online peer mentoring but there was little available information. This meant that starting a peer mentoring project online was challenging as most existing projects and evaluations were based on a face-to-face project.

As a result of COVID-19, more universities are moving to online delivery. It might therefore be useful to share our journey of setting up and evaluating our pilot peer mentoring project to allow other law schools to learn from our experiences.

PEER MENTORING

There is much debate on what a mentor is, and this is compounded by the blurring of the mentoring relationship with other supportive roles, for example, coaching.⁴ There are many definitions of a mentor, however, common themes which are identified across definitions include advisor, trusted, experienced guide and developer of skills.⁵ Corsby identifies taking an interest in a less experienced individual as a key characteristic of a mentor.⁶

Equally there are many different definitions of peer mentoring; a widely accepted definition is that it involves a deliberate pairing of a more skilled or experienced person with a lesser skilled or experienced one, with the agreed upon goal of having the lesser skilled person grow and develop specific competencies.⁷ In the university context, peer mentoring typically involves a "supportive relationship between the student and another person (e.g. older student) of greater ability and experience".⁸ Having read relevant literature, we have drawn together ideas to reach our own definition of peer mentoring and for the purpose of this project, we have defined peer mentoring as 'a more experienced student providing guidance and support to a new student'. Peer

³ C Heaton-Shrestha, S May and L Burke 'Student retention in higher education: what role for virtual learning environments?' (2009) 33(1) *Journal of Further and Higher Education* 83.

⁴ N Mertz 'What's a Mentor, Anyway?' (2004) 40(4) *Educational Administration Quarterly* 541.

⁵ M Wood 'Learning to Leap from a Peer: A research study on mentoring in further education and higher education' (2001) 6(1) *Research in Post Compulsory Education* 97; N Mertz 'What's a Mentor, Anyway?' (2004) 40(4) *Educational Administration Quarterly* 541.

⁶ Cited in N Mertz 'What's a Mentor, Anyway?' (2004) 40(4) *Educational Administration Quarterly* 541.

⁷ H Colley *Mentoring for Social Inclusion* (Taylor & Francis Group 2003).

⁸ K J Topping 'The effectiveness of peer tutoring in further and higher education: A typology and review of the literature' (1996) 32(3) *Higher Education* 321.

mentoring programmes have been adopted by universities, usually to enhance the experience of first year students to assist them in making the transition from school to university.⁹ However, there is limited experience and understanding of peer mentoring schemes within an online, distance learning environment.¹⁰ And yet it is acknowledged that part-time distance learners are especially vulnerable to isolation and the competing demands of work, life and study, often resulting in poor retention and a lack of self-confidence in their abilities to succeed.¹¹

Due to the remote nature of studying online, students can lack the opportunity to form support communities, or communities of practice where individuals join in a common goal which will support them in their studies. It has been established that communities of practice can enhance learning.¹² The combination of study disorientation and isolation can impact negatively on some students' wellbeing.

Wellbeing has been highlighted as a key issue for law students. The Mental Health Foundation investigated adult mental health and drew the conclusion that at any one time one in six of adults are suffering with mental health issues.¹³ Therefore, university lecturers can assume, even before looking at the disability profiles of the students, that some of the students will have mental health issues. However, the issue of wellbeing is particularly relevant to students studying law. A recent study showed law students had one of the highest rates of mental health issues while studying.¹⁴ The discourse on wellbeing of lawyers and law students over recent decades is advanced and robust and has enjoyed support within most of the legal profession and academia. For more than a decade, researchers have evidenced issues for concern, criticised current practices in legal education and legal practice, and lobbied for changes towards best practice in sustaining and enhancing the overall wellbeing of law students and lawyers.¹⁵

Skread and Rogers found that students who had a sense of belonging to their institution or year group had lower incidences of depression, anxiety and stress.¹⁶ Jones suggested that a study buddy system between students of different years could

⁹ R Hall and Z Jaugietis 'Developing Peer Mentoring through Evaluation' (2011) 36(1) *Innovative Higher Education* 41.

¹⁰ R Collings, V Swanson and R Watkins 'The impact of peer mentoring on levels of student wellbeing, integration and retention: a controlled comparative evaluation of residential students in UK higher education' (2014) 68(6) *Higher Education* 927.

¹¹ J Robson *Online Peer-Mentoring Scheme at scale in the STEM Faculty; Preliminary Evaluation and a Resource Pack* (Open University 2019); E Jones 'Connectivity, socialization and identity formation. Exploring mental well-being in online distance learning law students' in R Field and C Strevens (eds), *Educating for Well-Being in Law. Positive Professional Identities and Practice* (Routledge 2020).

¹² E Wenger *Communities of Practice – Learning, Meaning and Identity* (Cambridge University Press 1998); J Lave and E Wenger *Situated Learning – Legitimate Peripheral Participation* (Cambridge University Press 1991); V Farnsworth, I Kleanthous and E Wenger-Trayner 'Communities of Practice as a Social Theory of Learning: a Conversation with Etienne Wenger' (2016) 64(2) *British Journal of Educational Studies* 139.

¹³ Mental Health Foundation *Fundamental Facts About Mental Health* (Mental Health Foundation 2016).

¹⁴ E Jones 'Connectivity, socialization and identity formation. Exploring mental well-being in online distance learning law students' in R Field and C Strevens (eds), *Educating for Well-Being in Law. Positive Professional Identities and Practice* (Routledge 2020).

¹⁵ C James 'The Ethics of Wellbeing' in R Field and C Strevens (eds), *Educating for Well-Being in Law. Positive Professional Identities and Practice* (Routledge 2020).

¹⁶ Natalie Skread and Shane L Rogers, 'Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing' (2014) 40 *Monash U L Rev* 565.

help a student's wellbeing.¹⁷ Notwithstanding the mental health benefits peer mentoring may bring, it also offers the opportunity for students to actively participate in their education. Learning can take place in many different settings and it is something that goes on beyond the classroom.¹⁸ Peer mentoring offers students a safe place to discuss their learning with their peers in the absence of a formal authority figure. To do this they have to take responsibility for their learning and proactively reflect on their studies and ask questions to consolidate their knowledge. Actively participating in learning can therefore be a key method of developing understanding.¹⁹ Wilson established that peer mentoring positively influenced student progression.²⁰ Peer mentoring in a face-to-face context has become more common within university education over the last twenty years and is seen as offering other educational benefits including developing teamwork skills, reflective and active learning and supporting transition.²¹

There are a number of acknowledged benefits to peer mentoring including formation of communities of practice, a method of addressing isolation and improving wellbeing and developing key skills. These appeared to offer significant benefit to our distance learning students and we therefore decided to implement a pilot online peer mentoring project for our first year law students in 2019-2020.

SETTING UP OUR MENTORING PROJECT

Our vision was very clear; we wanted first year students to be mentored by former students who had successfully completed the introductory law module (or course) in the last couple of years. Students who had successfully completed this module were in the best position to understand the challenges and concerns studying this module can bring. Furthermore, students are often more willing to listen to advice from peers. The scheme would therefore be run by students for students.

Looking at face-to-face peer mentoring schemes, there are wide variations in terms of how peer mentoring is organised. Variations include timing (from a one-off meeting to a series of contacts over one year), the way in which the programme is organised (one mentor to one mentee, one mentor to many mentees, many mentors to many mentees), the way in which interactions take place (drop-in only, face-to-face group meetings, face-to-face individual consultations, e-mail communications, on-line forums only) and programme participants (all first year students or students with particular backgrounds such as mature age students, students from particular ethnic group or gender, students from remote geographical areas or international students).²²

Given the concerns noted above about wellbeing, enabling transition, addressing issues of isolation, and encouraging communities of practice we decided to adopt a

¹⁷ E Jones 'Connectivity, socialization and identity formation. Exploring mental well-being in online distance learning law students' in R Field and C Strevens (eds), *Educating for Well-Being in Law. Positive Professional Identities and Practice* (Routledge 2020).

¹⁸ J Hughes, N Jewson and L Unwin *Communities of Practice – Critical Perspectives* (Routledge 2007).

¹⁹ J Lave and E Wenger *Situated Learning – Legitimate Peripheral Participation* (Cambridge University Press 1991).

²⁰ A Wilson *Study Buddies Literature Review* (Open University 2017).

²¹ J Finlay-Jones and N Ross 'Peer Mentoring for Law Students — Improving the First Year Advocacy Experience' (2006) 40(1) *Law Teacher* 23.

²² R Hall and Z Jaugietis 'Developing Peer Mentoring through Evaluation' (2011) 36(1) *Innovative Higher Education* 41.

one mentor to many mentees approach. This would enable a more experienced mentor to support a small group of students at the start of their studies whilst encouraging the student group to develop relationships which would enable them to continue as a self-help student study group towards the end of their first year of study into subsequent modules. The aim was for the groups to become more self-sustaining with the mentor taking less of a role as the group developed into a supportive study community of students as a result of shared experiences.²³ By developing this supportive community, it was hoped that this would address some of the isolation issues and hopefully improve retention and progression, as well as enhance the student experience.

The mentoring would take place in small groups through online small group sessions and asynchronous forums, which would allow community development. To allow time for student relationships to develop, the mentoring project ran for the six months of the module from February to September 2020. The students on the introductory law module are likely to be new to study and many will have been away from education for some time. From both student and tutor feedback we know many of these students feel apprehensive about their studies.

The peer mentoring was available to all students in specific geographical areas on the module. The module is very large with over 1000 students, so in order to have a manageable number of students we piloted the peer mentoring in two areas, East of England and Yorkshire (the OU operates on geographical regions to manage the student numbers and so administratively it was easier to use regions to set up the pilot scheme). These areas were selected because of their diverse nature, some large towns and cities and very small rural communities.

Having decided on the peer mentoring method and gained approval from the Law School and faculty, the next step was to recruit our mentors. All students who had successfully completed the module within the last two years were contacted by email and asked to express an interest in this voluntary role. Applicants were asked to explain what they could bring to the role and how they would develop from participating. A word limit of 200 words was set to ensure selecting the students was a practicable task. Taking this application-based approach was also an occasion for the students to develop employability skills and to enhance this opportunity developmental feedback was offered to unsuccessful applicants. There were concerns about whether students would apply for this role, particularly as it was a voluntary, extracurricular opportunity with no reward or incentive for taking part. However, there were over 50 applications from which 10 mentors were appointed from diverse backgrounds, all of whom accepted the offer to take part in the project.

Once the mentors were appointed, a further email was sent to advertise the possibility of a mentor to students studying the introductory law module in the two geographical areas which formed part of the pilot project. Students were asked in their expression of interest to explain why they felt they would benefit from the peer mentoring scheme. A range of students applied to be part of the project and all 42 students who did so were offered a mentor. Their reasons for wishing to be part of the scheme included the opportunity to meet people and gaining help to 'get to grips with' the module. The mentoring project was set up and ready to start by the module start date.

²³ E Wenger *Communities of Practice – Learning, Meaning and Identity* (Cambridge University Press 1998).

The project provided the student mentors with a valuable opportunity to evidence their skills for their CV. Mentors subsequently identified that through the project they developed their team working, communication, negotiation and presentation skills. However, the project team also knew that in selecting the mentors it was important to identify students with a general interest in mentoring as many students would want to strengthen their CV rather than having the motivation and commitment to support their fellow students.²⁴

CO-CREATION OF THE PROGRAMME

One of the key decisions made about the mentoring programme was it would be designed by the students as they were the best people to understand the challenges of studying the introductory law module. Funding was given for a face-to-face mentor training and co-creation day which all the mentors attended. Prior to the event they were asked to complete an online module on safeguarding to ensure they were fully aware of these issues and the action to take if there were concerns about safeguarding issues relating to the mentees, for example evidence of possible harm to the children of the student mentees or other vulnerable adults.

Our training day was divided into two sections. The morning was spent giving information and introducing the students to the technology they would be using (for example hosting an online meeting and moderating an online forum). There was also a discussion about the mentoring role so that the students fully understood their responsibilities and the limitations on the support they could provide within this project. A key limitation was that they were not able to give subject or assessment advice, and discussions took place on strategies to deal with this should mentees request this.

The afternoon was spent designing the structure of the programme. As noted above, the mentors took the lead in designing as well as implementing the programme. This co-creation approach, working in partnership with the students, was in order that the mentors felt more engaged on the project as they had a real stake in the success of the project.²⁵ Mentors were encouraged to feel empowered and challenged to devise a programme that built on their own experiences. Allowing the mentors to take control of the design allowed participatory action research to take place. Many of the priorities identified by Lawson et al for participatory action research were achieved, for example, there was democratic problem solving by people who are not trained in research methods and new knowledge and understanding was made by their work.²⁶ The mentees would also see that the mentors had a “legitimacy of developer” due to their previous study of this module and the way their experiences were used to shape the project.²⁷

²⁴ E Jones, N Graffin, R Samra and Mathijs Lucassen *Mental Health and Wellbeing in the Legal Profession* (Bristol University Press 2020).

²⁵ Higher Education Academy ‘Framework for partnership in learning and teaching in higher education’ (HEA, 2014) <https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/resources/hea_framework_for_partnership_in_learning_and_teaching_1568036621.pdf> accessed 6 November 2020.

²⁶ H J Lawson, J C Caring, L Pyles, J M Jurkowski and C Y Bozlak *Participatory Action Research* (Oxford University Press 2015).

²⁷ C Grant, E Widnall, L Cross, E Simonoff and J Downs ‘Informing the development of an E-Platform for monitoring wellbeing in School: involving young people in a co-design process’ (2020) 6(1) *Research Involvement and Engagement* 1, 8.

Co-creation is becoming increasingly popular within education. Most educational processes treat students as participants where the teaching is done for them and they experience it as passive recipients. Co-creation allows students to be active partners in the process by encouraging them to take responsibility for and actively develop their learning. Students will therefore be able to influence projects by using their own experiences.²⁸ This co-creation approach to the peer mentoring scheme aligned with the wider vision of 'by students for students'. A secondary benefit was that a co-creation project can also help create the sense of community the project was designed to establish.²⁹ Through designing the programme and resources used with the mentees, our mentors developed a community of practice within their own group which was an unexpected but very positive development.

The programme devised by the mentors included an online forum which was available to students throughout their study of the module, moderated by the mentor. There were also three online sessions. Each session had a clear theme; session one was delivered at the start of the module, session two just before the first assignment was due and session three after the scheduled date for feedback on the first assignment. The mentors would have willingly provided more online sessions but accepted the concerns of the project team to ensure there was a balance between their mentoring commitments and their own studies. The mentors worked together as a group to design the materials for the sessions along with the welcome messages for the forums. The sessions were all based on the personal experiences of the mentors; they asked themselves 'when did I need most support' and then translated the answers into the programme.

The training and co-creation day was extremely productive for both students and the project team. There was a lot of positive feedback from the mentors, for example "a wonderful day and I have made friends for life" and "fabulous experience". From a teaching perspective, it was interesting to see the consensus of key moments, for example the worry of submitting the first assignment, and then understanding what to do with feedback.

However, there are wider implications to using co-creation. The project team had to be confident to let go of the project while being mindful that students will look to the team for direction. Understandably students can find it challenging to take responsibility and not be directed by the project team. Some students can also find the lack of clear direction quite uncomfortable to deal with. To address this, it was important to always use the language of partnership, to empower the mentors (for example, by positive feedback) and allow them the opportunity to discuss and develop their ideas, make decisions and experience failure as well as success.

THE CHALLENGES

While there was a very clear vision of how the project would be designed and the benefits of an online peer mentoring scheme, there was some concern about possible challenges which might impact negatively on the project. Prior to starting the project,

²⁸ E Jones, M Pride, C Edwards and R Tumilty 'Challenges and opportunities in co-creating a wellbeing toolkit in a distance learning environment: a case study' (2020) 6(1) Journal of Educational Innovation, Partnership and Change.

²⁹ Ibid.

there was much discussion about how to prevent potential problems and address any issues that arose.

Considering first the concerns which may arise regardless of whether the scheme involves face-to-face or online peer mentoring, there was a need to ensure support from all relevant stakeholders including from leadership within the faculty, Law School and from those running the introductory law module. As there were not many examples of peer mentoring schemes within the online environment, some concerns were raised around how to ensure vulnerable students were kept safe and that appropriate measures were in place if safeguarding or bullying issues arose in the online environment. These concerns were alleviated through a careful selection process for mentors and training on safeguarding and appropriate online behaviour in the training day. The mentors also signed an agreement which set out the expectations of the role and monitoring of the online forums. Allied to these concerns, there was also a requirement to ensure the confidentiality of student contact information due to data protection requirements. This was resolved by ensuring that all contact took place through an online forum and online rooms on the virtual learning environment. There was therefore no need for either mentors or mentees to share contact information with each other. Mentees were reminded at the start of the project that they needed to comply with the OU's Code of Conduct as set out in the student computing policy which sets out the students' responsibility to abide by the OU's social networking guidance and standards of behaviour.

Some of the anticipated challenges did not come to pass. There were concerns about whether it was possible to recruit sufficient mentors, but as noted above, this was unfounded. There was also concern that mentors might not understand or keep within the scope of their role. Their role was to offer only pastoral support rather than any form of peer teaching. A 'job description' was provided to all mentors and they were asked to sign an agreement which set out their role and the support they would receive from the Law School. This was also discussed at the training day and a supervising tutor was appointed whom the mentors could approach either by email or via a mentors' forum with any questions as the project progressed. At the end of the project there was no suggestion from mentors or the supervising tutor that the mentors had exceeded their expected role or attempted to work outside the boundaries set for them.

There were some specific concerns arising out of the online nature of the programme. Some were technical; ensuring there were suitable online tools where the students could interact and that the IT systems could allocate students to the right tools and platforms. If the project were repeated, one recommendation would be to involve IT at a much earlier stage. The pilot project was based on the platforms students would be using as part of their online distance learning, thus reducing the number of unfamiliar tools they would experience in their legal studies. Unfortunately, this did cause technical issues as these forums and rooms had to be set up on the virtual learning environment separately and mentees and mentors needed to be manually allocated to the correct platforms.

The fact the project ran online meant decisions needed to be made on whether to use all the technological resources available to monitor the online interaction between mentors and mentees. The project team were mindful of the need to create an environment where the students felt comfortable discussing issues with their mentor without a fear of being observed. It was therefore agreed that the online meetings would not be recorded. Whilst the supervising tutor moderated the individual

mentor forums, in order to empower the mentors, she contacted the mentors directly if there were any concerns and allowed them to remedy the situation. During the project no issues or concerns were raised, thus suggesting there was no requirement for a higher level of monitoring. The agreed management of the boundaries between monitoring and independence of the mentors went well and the mentors were comfortable with the approach. There were some challenges relating to the need to upskill the mentors to use the online tools required in the project. Mentors were given enhanced permissions in forums and online rooms to enable them to run the project and there were concerns about how easily they would acquire the skills needed to use the online rooms and forums. This was addressed in the training day, as well as through the provision of written guidance afterwards. The mentors quickly acquired the necessary skills and no concerns were raised by mentors or mentees regarding this issue.

Unfortunately, the online nature of the mentoring scheme did cause some problems regarding student engagement. Students who have not met can find it harder to build trust and co-operation and in a virtual environment you can miss non-verbal clues.³⁰ There were concerns that students would read posts on the forums but not actively engage in the discussions or attend small group meetings. To address this the students were asked to actively apply to be part of the project. As a result of this application process it was hoped to recruit students who were more likely to participate. Whilst a number of students did take part in forum discussions and meetings, a substantial majority of students were 'lurkers' and did not actively engage.³¹ Mentors were reminded that lurkers could still gain benefits from reading the forum and were encouraged to continue to post even where there was limited response from students.

INITIAL EVALUATION

As the pilot drew to a close, the project was evaluated using focus groups and individual interviews. Both had a set of scripted questions which were mainly open in nature which allowed the participants to develop their answers thus providing richer data. The researcher was asked to follow up any unclear answers or points where development would be of interest. Both mentees and mentors were interviewed in separate focus groups, while the mentors had an additional opportunity to take part in an individual interview.

We decided on this research approach because we felt this methodology would enable us to gain the best data and allow for follow up questions. Both the interview and the focus group allowed for conversation thus emphasising the social situation of the research.³² The focus groups provided the opportunity to generate discussion and the exchange of ideas and viewpoints. Having obtained the participants' consent, all events were recorded and then transcribed, and the research team are taking a thematic approach to the analysis of the recordings.

Work is ongoing to review the quantitative and qualitative data to draw overall conclusions. However, a key message that came from both the mentors and mentees

³⁰ Z Bauman *Postmodern Ethics* (Blackwell 1993); L K Long and P A Meglich 'Preparing students to collaborate in the virtual work world' (2013) 3(1) Higher Education, Skills and Work-Based Learning 6.

³¹ G Salmon *E-Moderating: The Key to Teaching and Learning Online* (Routledge 2004).

³² S Kvale *Interviews – an introduction to qualitative research interviewing* (Sage Publications 1996).

was that the opportunity to work with a mentor was of great benefit. Mentees have discussed how they found the programme of value (for example a safe space to ask questions, opportunities to meet and form support groups) and this has informed practice moving forward. The mentees have commented on the opportunity provided to meet people, the benefits of talking to a student who has already completed the course and the value of gaining little study tips from the mentor. Jones suggested this kind of companionship can have a positive effect on wellbeing, which can only be a positive, particularly in the current COVID-19 pandemic.³³ Mentors enjoyed the experience and talked about the community of practice they have formed. They described building a strong and supportive community which goes beyond the project using social media. Mentors felt this was of particular benefit as it offered support during the very challenging COVID-19 pandemic. They also thought they had developed employability skills to enhance their CV.

However, feedback also indicated that the programme was not completely right to meet student need. Both mentees and mentors indicated some concern about the lack of engagement on the forums which meant there was not a critical mass of engaged students to enable sustained and supportive discussions to take place. The small size of the groups also meant that in each group there was not always more than one student with the same background (for example ethnicity, educational background, age or other shared characteristic). Students were therefore unable to share common experiences and support other students with the same or similar circumstances.

Early indications therefore show that the project had some partial success in encouraging students to form communities of practice; the student mentors described a strong community which provided support beyond the mentoring project in their own studies. However, the evidence for sustained communities of practice amongst the student mentees is more limited with initial qualitative feedback suggesting that the small number of students involved in the pilot project limited the amount of active engagement amongst the mentees themselves. With regards to the improvement of skills such as teamworking and reflection, again the initial evidence suggests that the mentoring project gave mentors the opportunity to improve these skills and the mentors felt they had developed a range of skills including communication, reflection, presentation and negotiation skills. However, there is not such strong evidence on skills improvement immediately apparent for student mentees and further evaluation is needed on this.

Initial student feedback suggested the project did improve the student mentors' and mentees' sense of belonging to an academic community and students commented on how this project encouraged them to become involved in other aspects of academic life. As noted above, both mentors and mentees felt less isolated as a result of being part of the project, which provided companionship and a safe space to discuss their studies. The mentoring project therefore has the potential to impact positively on wellbeing, though further evaluation is needed. Finally, there was a strong correlation between participation in the mentoring project and successfully completing the module; further investigation of the statistics is needed before we can give further details. As noted above, assessment of the quantitative and qualitative data is still ongoing and we expect further insights once the evaluation is completed.

³³ E Jones, N Graffin, R Samra and Mathijs Lucassen *Mental Health and Wellbeing in the Legal Profession* (Bristol University Press 2020).

As a result of this initial appraisal of the feedback, an early decision was made to change the organisation of any future peer mentoring scheme to a 'many mentors to many mentees' approach. This will allow larger groups to be set up which will hopefully address some of the concerns raised by mentees that the groups were too small to enable active and effective student engagement and interaction between the student mentees on the forums. It is hoped that this will encourage students actively participating in the forum to form their own self-help study groups, thereby encouraging enduring communities of practice amongst the student mentees. It will also allow the student mentors to continue to work together to support the mentees and so benefit from the strong community established amongst the mentors. Larger groups will also enable student mentees to have contact with other students from a similar background to their own, thus providing support from both mentors and mentees to specific cohorts of students.

Funding has now been given for a second pilot for all law students across the UK on the introductory law module in the 20/21 academic year, a total of 2,500 students. The delivery has changed to focus on the asynchronous forums supplemented by online sessions. The UK will be divided into four geographical regions with four mentors in each region, each with an online room and forum.

CONCLUSION

The project team have found this a very rewarding project to work on. When setting it up, the global pandemic could not have been foreseen, nor the increase in isolation for many mentors and mentees which resulted from this. It was rewarding to see communities of practice develop and the support some less confident students gained from being part of this pilot. The use of co-creation empowered the mentors and led to a significantly enhanced peer mentoring programme which was focused on the mentees' needs using the mentors' previous experiences.

The initial pilot project demonstrated the value of peer mentoring in addressing issues of isolation and wellbeing in an online environment. Initial feedback from mentors and mentees was positive and the project appeared to improve student retention and progression. However, concerns were raised regarding the size of the groups and the need to better support the mentors and therefore changes were made prior to a much larger second pilot in the 20/21 academic year. As work continues on this the UK is once again in lockdown or restrictions depending on where the student is based. We look forward to disseminating the evaluation of our second pilot in due course but hope that sharing our early experiences will help other law schools who may be considering establishing an online peer mentoring scheme in response to COVID-19.

EXPECTED BUT NOT TAUGHT? TEACHING MANAGEMENT AT LAW SCHOOLS IN HUNGARY AND IN THE U.S.

GABOR ANDRASI*

ABSTRACT

According to Hammond, “business and law are inextricably bound in such ways that teaching either separately without the other is inadequate”. The author of this article agrees with this statement and attempted in this article to explore this link between business and law in Hungarian legal education. The accreditation expectations related to Hungarian law programmes refer to the incorporation of management knowledge and skills, which normally belong to business education. However, there is no tradition and no discourse about these expectations, which seemingly are just partly covered by Hungarian law schools. In the US, which dominates the global markets of legal education and legal services, management is also part of the outcomes expected by the accrediting body. Still, there is no consensus about what should be taught. This article reviews first the related expectations of the Hungarian accreditor and the curricula of the Hungarian law schools. Then it looks at the relevant US law school accreditation standard and its interpretation, and the academic literature on teaching management at American law schools. The article concludes with a summary of recent management education literature on what the possible objectives of teaching management could be and how these could be achieved in the context of Hungarian legal education.

INTRODUCTION

This article is an expanded version of a presentation delivered during the International Conference on Impact and Wellbeing, organised by the Centre for Legal Education of Nottingham Law School, Nottingham Trent University.¹ The conference was related to impact and wellbeing, as these are concerns across the globe in legal education. Legal educators, researchers and practitioners are working hard to both make and measure impact, as well as to incorporate related issues into the curriculum and communal life of law schools. There is impact inside and outside academia, which can be achieved both through research and education. Incorporating a concern with wellbeing in the curriculum, whether through attention to ‘soft skills’ or collaborative inquiry, or

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¹ Centre for Legal Education, ‘Impact and Wellbeing - June 2020’ (*Centre For Legal Education - Nottingham Trent University*) <<http://www.nlscl.org.uk/conference/impact-and-wellbeing-june-2020/>> accessed 13 December 2020.

experiential learning, or through building relationships was one theme of the conference. This article is related to the theme of “The impact of legal education on individuals, professions, employing organisations, legal practice and society”. The starting point of this article is that helping law graduates to learn management and develop management skills would support lawyers in being successful, regardless whether they work in private practice or not. Thus, teaching management at law schools could definitely make an impact on lawyers (on their wellbeing, for instance) and also on the legal profession and on society. According to Hammond, “business and law are inextricably bound in such ways that teaching either separately without the other is inadequate”,² referring to the importance of understanding the context of transactions when teaching the topic in US law schools. In agreement with Hammond’s statement the author intends to explore how business and management topics appear in Hungarian law curricula, contrasted with solutions in the US. Accrediting bodies in Hungary and also in the US expect that law graduates learn management and develop management skills, but law schools’ practices vary, to say the least, in meeting this expectation of the accreditors. The article commences with the Hungarian practices, followed by a review of the solutions in the US, where the topic has been investigated by researchers. The article then provides insights into current thoughts about teaching management and ends with conclusions and recommendations for further steps both in education and research.

The author of this article is a lawyer educated, qualified and having practised in Hungary, with experience in international business and management education. His previous research highlighted that Hungarian legal education is under-researched, and law curricula are very theoretical.³ Leveraging this background and expertise, this article aims to fill a gap in the academic literature on teaching management in Hungarian legal education, as well as to provide an overview of contemporary issues which could be of importance in any jurisdiction considering incorporating management into the curriculum of local law schools. The article does not intend to suggest that it provides a full picture of the status of teaching management in Hungarian legal education, or of all issues to be considered when it comes to incorporation of management into a law curriculum. Instead, it complements academic sources emphasising the importance of the topic and calls for a related academic discourse and further research both in Hungary and elsewhere. The topic is, for example, of relevance in England and Wales where the 2019 QAA Subject Benchmark Statement for undergraduate law expects that relevant “economic norms” and “self-management” are included in the curriculum,⁴ and where major changes are expected in the vocational stages of legal education for the solicitors’ profession.⁵

² Celeste M Hammond, ‘Borrowing from the B-schools: the legal case study as course materials for transaction oriented elective courses: a response to the challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on legal education’ (2009) 11 Transactions: The Tennessee Journal of Business Law 9, 32.

³ G Andrasi, ‘A Comparison between Hungarian and Anglo-American Approaches to Ethical Legal Training at Different Stages of the Educational Continuum’ (PhD, Nottingham Trent University 2020) <<https://irep.ntu.ac.uk/id/eprint/41956/>> accessed 11 May 2021.

⁴ Quality Assurance Agency, ‘Subject Benchmark Statement: Law’ <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16> accessed 13 December 2020.

⁵ Jane Ching, ‘Multiplicity And Mutability In Professional Legal Education In England And Wales’, *Rechtslehre. Jahrbuch der Rechtsdidaktik* (Berliner Wissenschafts-Verlag 2017), 279.

DEFINITIONS AND SOURCES USED

Since the article is about teaching management, it is important to define this term, as well as looking at the meaning of management education. As Elmuti pointed out, there is no consensus about the definition of 'management',⁶ but most sources refer to planning, leading, organising and controlling of resources to achieve organizational goals effectively and efficiently. An inherent ongoing discourse is about the distinction between leader and manager, but for this article leadership is included in the term 'management'. Further discourses exist about 'management education', which is here used as training that includes business knowledge and management skills. As for the latter, there is another discourse about 'hard' versus 'soft' skills, which differentiates between analytical and intra- and interpersonal skills.⁷ In this article where the term 'management education' is used, it includes training covering business knowledge and both 'hard' and 'soft' skills.

The article uses a variety of sources to identify a gap in the literature, as well as to propose further research. Concerning management education, the article relies on recent academic literature only. As for the status of teaching management in US legal education, the respective accreditation standards and professional literature complement the academic sources. With regard to teaching management in Hungarian legal education, no sources were identified, and as to Hungarian legal education in general, there is a dearth of literature both in Hungarian and in English. There are no professional reports examining the status of legal education in Hungary by academicians and practitioners, representatives of legal profession(s) and government either, which are common in the UK or in the US (see later). Henceforth the Hungarian practices are investigated by using accreditation standards, which are issued in the form of black-letter law (see later), academic literature, and publicly available information on the websites of Hungarian law schools.

TEACHING MANAGEMENT AT HUNGARIAN LAW SCHOOLS: CURRENT ACCREDITATION STANDARDS AND INSTITUTIONAL PRACTICES IN 2019-2020

Accreditation standards

The Euridyce portal of the European Commission notes that in the Hungarian higher education system there are undivided programmes where the students may obtain a master's degree only, and those programmes include the law programme.⁸ This means that after secondary education students are admitted directly to this undivided master's programme in the law school (doctor juris), there is no separate or interim bachelor degree in law in Hungary. The content and structure of Hungarian academic programmes (not just in the field of law but also in other disciplines) are regulated by a binding administrative order. The branch of the government responsible for the area

⁶ Dean Elmuti, 'Can management be taught?' (2004) 42 (3/4) Management Decision 439.

⁷ Ibid, 451.

⁸ Anonymous, 'Hungary' (*Eurydice - European Commission*, 9 October 2017) <https://eacea.ec.europa.eu/national-policies/eurydice/content/hungary_en> accessed 13 December 2020.

(i.e. the Ministry of Education, now called Ministry of Human Capacities) is entitled by the Higher Education Act to issue or amend a decree on the programme learning outcomes and topics expected to be covered in the curriculum. The current standards were issued in 2016. For each academic programme the higher education providers can offer, the current standards contain generic and programme specific expectations on programme content with credit ranges and lists of the expected competencies of graduates in separate appendices. Compared to US practices and those of England and Wales, the Hungarian approach is more prescriptive and provides higher education institutions with less flexibility in curriculum design. Institutional autonomy in this regard means that the institutions are constrained in the allocation of credits when designing courses: they need to include all expected modules and cover all expected topics in their curricula, with little room for variation,⁹ as detailed below.

The Decree No 18/2016 issued by the Ministry of Human Capacities on programme learning outcomes stipulates that the doctor juris programme is five years long with nine taught and one internship semesters. The decree stipulates that the law programme has a total of 300 credits, out of which 70-80% are theory-related, the dissertation is worth 30 credits and there should be electives for a minimum of 15 credits. Within the programme learning outcomes the following elements were identified by the author of this article as related to management:

Section 7.1.1.a) related to the knowledge of graduates contains the expectation that the graduate “knows the basic characteristics of an organization, organizational culture and work within an organization”.

Section 7.1.1.b) related to capabilities of graduates states that the graduate “perceives the changes of the (legal, institutional, economic, political and social) environment and relates to them adaptively” and is “capable of leading a team of professionals”.

Section 7.1.1.d) related to the expected autonomy and responsibility of graduates states that the graduate “accepts the frameworks of professional cooperation, his roles and functions, and responsibility arising from cooperation”.

Section 8.1.1. lists the areas expected to be covered by the programme. The three main groups are the following:

- a) social sciences (70-110 credits, out of which 50-70 credits are related to legal theory and legal history, and 25-40 credits are related to general knowledge related to social sciences such as legal ethics, legal IT, legal foreign language);
- b) specific legal areas, including private law (civil law, commercial law, labour law), state science, public law (constitutional law, public administration law, financial law), criminal law, international and EU law, international private law, environmental law, procedural law and comparative law between 115-150 credits; and
- c) electives. This latter group contains legal institutions and their operations, legal rhetoric and legal practice, application of the law and legislation, and analysis of the economic, social, political, cultural environment of legal institutions and their interlinkages, between 35-50 credits.¹⁰

⁹ Andrasi (n 3) 112.

¹⁰ Ministry of Human Capacities Decree No. 18 of 2016 on programme learning outcomes <<https://net.jogtar.hu/jogszabaly?docid=A1600018.EMM&txtreferer=00000001.txt>> accessed 24 April 2021.

To summarise the programme learning outcomes, Hungarian law graduates are expected to have knowledge of management (organisational issues) as well as leadership skills. Interestingly, these are not listed among the compulsory topics, only the economic context is mentioned. This finding raises the question how law schools address these expectations in their curricula.

Institutional practices and evaluation of the status of teaching management in Hungarian legal education

Having reviewed the curricular details available on the websites of the eight accredited Hungarian law schools, the author of this article found the following relevant modules offered by these law schools for the academic year 2020-2021: only an “Economics” compulsory course was offered by six out of the eight law schools, usually during the first year of studies;¹¹ one law school offered a compulsory “Fundamentals of Social Sciences” course in addition to “Economics”;¹² and one law school’s curriculum included an elective titled “Management”, in addition to the “Economics” module.¹³ The compulsory modules mostly covered theoretical issues related to macro- and microeconomics.

In relation to these programme accreditation standards and institutional practices, a number of issues were identified by the author of this article as problematic. First of all, the lack of information about the standards is of concern. No further details are available about the meaning of the programme-level outcomes or how they should be met. The dearth of reports and related academic or professional literature means that there is no publicly available information for existing or future providers, or for prospective and current students. The wording of the accreditation standards themselves also raises two issues. First, the reference to the expected high level of theoretical knowledge (“70-80%”) makes practice-oriented education very difficult, developing skills or, as the standards call it, capabilities, seems to be in the remaining 20% only. The major characteristic of the Hungarian doctor juris programme is its theory-centredness, which raises the issue of (in)compatibility with the various practical programme outcomes. Further research would be needed to investigate how

¹¹ ELTE, ‘Law school model curriculum’ (Lorand Eotvos University, Budapest, 2021) <https://www.ajk.elte.hu/dstore/document/1864/Jogasz_oszt_tantervi_halo.pdf> accessed 24 April 2021; KRE, ‘Law school model curriculum’ (Karoli University of the Reformed Church, Budapest, 2021) <http://www.kre.hu/tajekoztato_kiadvany2020/ajk/kepzesek/AJK_Tanulmanyi_tajekoztato_Jogasz.pdf> accessed 24 April 2021; University of Debrecen, ‘Law school model curriculum’ (University of Debrecen, 2021) <https://maddock.hatter.it.unideb.hu/portal/displayDocument/Szervezeti%20%C3%A1rak/Kari%20%C3%A1rak/AJK/Dokumentum%C3%A1r/Oktat%C3%A1s/Mintatantervek/Jog%C3%A1sz_mintatantervek.pdf> accessed 24 April 2021; University of Győr, ‘Law school model curriculum’ (University of Győr, 2021) <<https://dfk.sze.hu/tanulmanyi/show/filter/eyJha3RmZWxldil6ljwMjEtMDItMDEiLCJha3RzemFrljoiQUpJTl9KT0ciLCJha3R0YW50ZXJ2ljoQUUpJTl9KT0dfNCIsImFrdHN6YWtpcil6lkFKSU5fSk9HliwiYWt0dGlwdXMiOiJ0YXJneWxpc3Rhln0=/m/8677>> accessed 24 April 2021; University of Miskolc, ‘Law school model curriculum’ (University of Miskolc, 2021) <https://jogikar.unimiskolc.hu/jogasz_tematikak> accessed 24 April 2021; University of Pécs, ‘Law school model curriculum’ (University of Pécs, 2021) <<https://ajk.pte.hu/hu/hallgatoknak/jogasz-osztatlan-nappali/2019-2020-tanevtol/tantargyak/kotelezo-2020-2021-1>> accessed 24 April 2021.

¹² University of Szeged, ‘Law school model curriculum’ (University of Szeged, 2021) <<http://www.juris.u-szeged.hu/download.php?docID=111325>> accessed 24 April 2021.

¹³ PPKE, ‘Law school model curriculum’ (Peter Pazmany Catholic University, Budapest, 2021) <[https://jak.ppke.hu/uploads/articles/12158/file/JO_J-JOG%20MINTAT.%202020_21-%C5%91%20kezd\(1\).pdf](https://jak.ppke.hu/uploads/articles/12158/file/JO_J-JOG%20MINTAT.%202020_21-%C5%91%20kezd(1).pdf)> accessed 24 April 2021.

these theory-centred modules incorporate skills development and if these are related to management skills.

The second issue is the discrepancy mentioned earlier: whilst the long ‘wish list’ of practical programme outcomes contains management issues in Section 7, the areas expected to be covered by the programme (Section 8) do not include them. The respective outcomes related to management, such as the relevant knowledge about organizations and leadership skills do not fit with the topics, where only economics is mentioned and only as an elective. The review of institutional practices above shows that Section 8 is regarded as paramount in curriculum development, since the majority of law schools simply just added a compulsory Economics module to their curricula to meet the standards. The rest of the curricula contain no modules where management issues might be covered, and there is no information available about covering management knowledge and skills incorporated into law modules. It seems that teaching management is expected but expressed in such a way by the Hungarian accreditation standards that results in no management education at law schools. The first part of the title of this article, expected but not taught (or partly taught, at best), seems to fit with the Hungarian practices. This raises the question whether the expectations and the institutional practices are clear and compatible with each other elsewhere. The next section looks at legal education in the US, to see how management is regarded and incorporated into the law curriculum.

TEACHING MANAGEMENT AT US LAW SCHOOLS

The current law school accreditation standard 302 and its interpretation

In the US, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA) is the recognized agency of “accreditation throughout the United States of programs in legal education that lead to the first professional degree in law”.¹⁴ The ABA accreditation standards for the approval of law schools contain the expectations of the law schools in terms of resources, operations and the content of law degree programmes (called Juris Doctor or JD programmes).

Within the current ABA standards related to the JD programmes, Standard 302 is related to their content. With regard to learning outcomes, section (d) of this standard stipulates that law schools should develop and deliver a JD programme, during which students can learn “other professional skills needed for competent and ethical participation as a member of the legal profession”. The ABA also issued interpretations of the standards, and the relevant interpretation, Interpretation 302-1 contains the following about Standard 302(d): “other professional skills are determined by the law school and may include skills such as (...) organization and management of legal work, collaboration, cultural competency, and self-evaluation”.¹⁵ The related ABA

¹⁴ US Department of Education, ‘Database of accredited postsecondary institutions and programs’ (USDE, 2019) <<https://ope.ed.gov/dapip/#/agency-list>> accessed 7 September, 2020.

¹⁵ ABA, ‘Standards 2019-2020’ (ABA, 2019) <https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf> accessed 17 June, 2020.

Guidance explains that the decision on developing these other professional skills is up to the institution, it depends on the law school's mission.¹⁶

Academic sources on teaching management at US law schools

Researchers in the US confirm that teaching management is an important element in legal education, as this assures high-quality client service¹⁷ and helps professional identity formation.¹⁸ Exposing students to some of the critical business issues they will confront in the practice of law is deemed necessary by the ABA, too, evidenced by a large section on its website devoted to law management issues.¹⁹ Teaching management issues prepares graduates for forthcoming career challenges, such as the extremely competitive market with disruptive technology,²⁰ where they will need leadership skills and emotional intelligence.²¹

However, researchers do not find the practices of US law schools satisfactory in this regard. Their critique includes arguments that curricula cover management issues insufficiently,²² and that there should be more collaborative tasks.²³ They recommend teaching marketing, HR, finance and organisational issues relevant to legal practice;²⁴ business development and long-range strategic planning, as well as information systems technology for lawyers;²⁵ time management and communication skills;²⁶ creation and operation of a sustainable law firm, entrepreneurial skills, project management, outsourcing;²⁷ and quality management (continuous improvement).²⁸ With regard to pedagogy, they suggest teaching management both in separate courses which focus on business and management knowledge, and also by integrating it into other law courses, where skills, such as teamwork and communication can be developed.²⁹ The need for looking at solutions elsewhere in academia and

¹⁶ ABA, 'Guidance on learning outcomes' (ABA, 2015) <https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.pdf> accessed 17 June, 2020.

¹⁷ R Lisle Baker, 'Enhancing professional competence and legal excellence through teaching law practice management' (1990) 40(3) *Journal of Legal Education* 375.

¹⁸ Charlotte S Alexander, 'Learning to be lawyers: professional identity and the law school curriculum' (2010) 70 *Maryland Law Review* 465; Michael R Cassidy, 'Beyond practical skills: nine steps for improving legal education now' (2012) 53 *Boston College Law Review* 1515.

¹⁹ ABA, 'Practice Management' (ABA, 2021) <<https://www.americanbar.org/topics/lpm/>> accessed 22 May 2021.

²⁰ Richard S Granat and Stephanie Kimbros, 'The teaching of law practice management and technology in law schools: a new paradigm' (2012) 88(3) *Chicago-Kent Law Review* 757.

²¹ Michael J Madison, 'An invitation regarding law and legal education, and imagining the future' (2018) *University of Pittsburgh Legal Studies Research Paper* 3.

²² *Op cit*, 15; Debra Moss Curtis, 'Teaching law office management: why law students need to know the business of being a lawyer' (2008) 71 *Albany Law Review* 201; Doris Del Tosto Brogan, 'Stories of Leadership, Good and Bad: Another Modest Proposal for Teaching Leadership in Law Schools' [forthcoming, 2021] *Journal of the Legal Profession* <<https://papers.ssrn.com/abstract=3784832>> accessed 11 May 2021.

²³ *Op cit*, 17.

²⁴ *Op cit*, 17.

²⁵ *Op cit*, 15.

²⁶ *Op cit*, 21-2.

²⁷ *Op cit*, 18.

²⁸ William D. Henderson, 'Three generations of U.S. lawyers: generalists, specialists, project managers' (2010) 70 *Maryland Law Review* 373.

²⁹ *Op cit* 2, 17, 18, 20, 21-2, 27; Stephen Gerst and Gerald Hess, 'Professional skills and values in legal education: the GPS model' (2008) 43(2) *Valparaiso University Law Review* 513; Gerald F Hess, 'Heads

incorporating them from outside law school is emphasised,³⁰ and the adoption of business school practice is even suggested, such as combination of the law programme with a Master of Business Administration or another postgraduate business-related degree and as well as developing an executive education model for law graduates.³¹

Based on these critiques and suggestions, the status of teaching management at US law schools can be summarised as follows. The topic is regarded by the accrediting body, the ABA, which represents the legal profession, as important. However, the relevant accreditation standard is vague, and the related interpretation only recommends the topic to be included in the law school curriculum. According to the ABA guidance it is up to the law school, more precisely according to its mission, to decide how to incorporate management into the law curriculum. This would raise the issue of investigating law school mission statements and their links with the curriculum in this regard as a potential research area. Compared to the Hungarian practices, there is at least some publicly available information from the accrediting body on the management-related learning outcomes. Contrary to the position in Hungary, an academic discourse already exists about the topic. Researchers in the US advocate for better and wider coverage of management, as well as learning from other schools, especially business schools.

THE POSSIBLE OBJECTIVES OF MANAGEMENT EDUCATION AND HOW COULD THESE BE ACHIEVED

Following the recommendation of the US researchers discussed above, a consideration of the recent management education literature, shows that there is a variety of approaches to management development and an ongoing discourse about their impact.³² Contemporary management education research enumerates several challenges which should be addressed by educators. These include the domination of 'hard' skills over 'soft' skills in business school curricula, which led to the need for holistic and humanistic approaches to management, and active teaching and learning methods,³³ for developing capability to adapt and to think creatively,³⁴ for a digital

and hearts: the teaching and learning environment in law (2002) 52 *Journal of Legal Education* 75; Joshua D Rosenberg, 'Interpersonal dynamics: helping lawyers learn the skills, and the importance, of human relationships in the practice of law' (2003) 58 *University of Miami Law Review* 1225; Janet Weinstein et al, 'Teaching teamwork to law students' (2013) 63(1) *Journal of Legal Education* 36.

³⁰ Peter Toll Hoffman, 'Teaching theory versus practice: are we training lawyers or plumbers?' (2012) *Michigan State Law Review* 625.

³¹ Eric C Chaffee, 'Answering the call to reinvent legal education: the need to incorporate practical business and transactional skills training into the curricula of America's law schools' (2014) 20(1) *Stanford Journal of Law, Business & Finance* 121.

³² Fevzi Okumus and Kevin Wong, 'A critical review and evaluation of teaching methods of strategic management in tourism and hospitality schools' (2004) 16(2) *Journal of Hospitality & Tourism Education* 22; Laura L Paglis, 'A review of managerial skills training in the classroom' (2012) 37(4) *Journal of Management Education* 472.

³³ Filipe Sobral and Liliene Furtado, 'Post-heroic leadership: current trends and challenges in leadership education' (2019) 59(3) *RAE - Journal of Business Management* 209.

³⁴ Alberto Carneiro, 'Teaching management and management educators: some considerations' (2004) 42(3-4) *Management Decision* 430.

mindset and “tech literacy”,³⁵ and for fostering an entrepreneurial mindset and entrepreneurial behaviour, including emotion and inspiration.³⁶

In order to address these challenges, researchers recommend a holistic approach towards management education, which includes not just the cognitive understanding of concepts and the development of both hard and soft skills, but also a reflective component to integrate the emotional, social and ethical needs of learners.³⁷ A suggestion for cooperation between business and non-business students³⁸ is an opportunity for US legal education to incorporate recent practices of management education. Using collaborative tasks and visual media³⁹ or contextualizing local and international issues to develop global competencies⁴⁰ are recent additions to ‘classic’ recommendations, such as using the seminal thinkers in understanding the multiple theories and “schools of thought” in management⁴¹ or integrating skills into all modules of any academic programme.⁴²

The various recommendations of management education researchers demonstrate ongoing developments regarding teaching management and developing management skills. The most important message of management education research is perhaps the need for a constant dialogue between academia and practice, faculty and industry to continuously develop programmes preparing students for an unknown future of fluid business environments.⁴³ This dialogue could be adopted by legal educators to include experts in fields other than law when revising and developing law curricula, as suggested by some of the researchers advocating for better and wider coverage of management at US law schools.⁴⁴

CONCLUSION AND RECOMMENDATIONS

The starting point of this article was that helping law graduates to learn management and develop management skills would support lawyers in being successful, whether

³⁵ Scott J Allen, ‘On the cutting edge or the chopping block? Fostering a digital mindset and tech literacy in business management education’ (2020) 44(3) *Journal of Management Education* 362.

³⁶ Marta Charrón Vías and Beatriz Rivera-Cruz, ‘Fostering innovation and entrepreneurial culture at the business school: A competency-based education framework’ (2020) 34(3) *Industry and Higher Education* 160.

³⁷ Nathan S Allen, Scott J Hartman and Rosanna F Miguel, ‘An exploration of teaching methods used to develop leaders - leadership educators’ perceptions’ (2015) 36(5) *Leadership & Organization Development Journal* 454; Ann-Louise Holten, Anne Bøllingtoft and Inge Wilms, ‘Leadership in a changing world: developing managers through a teaching and learning programme’ (2015) 53(5) *Management Decision* 1107.

³⁸ Maryse Brand, Ingrid Wakkee and Marijke van der Veen, ‘Teaching entrepreneurship to non-business students: Insights from two Dutch universities’ in Alain Fayolle, *Handbook of Research in Entrepreneurship Education: Contextual Perspectives*, 2’ (Edward Elgar Publishing, 2007) 52.

³⁹ Ricardo Sosa and David Kayrouz, ‘Creativity in graduate business education: constitutive dimensions and connections’ (2020) 57(4) *Innovations in Education and Teaching International* 484

⁴⁰ Nattavud Pimpa and Margaret Heffernan, ‘Challenges in transnational business education: learning and teaching perspectives from Australia and Singapore’ (2020) 10(2) *Journal of International Students* 226.

⁴¹ David J Lemak, ‘Leading students through the management theory jungle by following the path of the seminal theorists: A paradigmatic approach’ (2004) 42(10) *Management Decision* 1309.

⁴² John A Drexler Jr. and Ilene K Kleinsorge, ‘Using total quality processes and learning outcome assessments to develop management curricula’ (2000) 24(2) *Journal of Management Education* 167.

⁴³ Desireé Scholtz, ‘Qualifications development for an unknown future’ (2020) 52(3) *Journal of Curriculum Studies* 413.

⁴⁴ Op cit, 28, 29.

they work in private practice or not. The literature supported this assumption, as a variety of researchers focusing on US legal education are advocating for better and wider coverage of management at law schools. The review of US practices revealed that the accreditation standards need to be clear and to support an integrated approach towards incorporation of management issues into the JD programme. The brief insight into recent management education research showed that management is a complex, interdisciplinary topic, which needs the use of a variety of pedagogic tools and methods.

Concerning Hungary, the following two recommendations can be drawn from the findings about the standards and institutional practices, and the conclusion above in relation to legal education in the USA. First, detailed interpretation of the standards related to management by the lawmaker and the accrediting body would be welcome. A possible solution would be to use the US approach and list management explicitly in the compulsory areas. This clarification of the expectations would help law schools in developing their curricula. The second recommendation is related to curriculum development: starting an academic discourse on the topic. Investigation of institutional practices, sharing know-how, collaboration with business schools and any other innovative approaches that allow academics to conduct further research on teaching management at Hungarian law schools would contribute to curriculum development and better preparation of graduates for forthcoming career challenges.

TOWARDS AN INTEGRATED LEGAL EDUCATION: A CONSCIOUS WAY OF STRENGTHENING THE WELLBEING OF LAW STUDENTS AND LAWYERS IN INDIA

M S SHARMILA*

ABSTRACT

Conventional law schools prioritize 'legal analysis' and emphasize how to think like a lawyer, focusing excessively on predictors of academic performance, ignoring the importance of professional effectiveness as a desirable outcome. Research suggests that intelligent quotient (IQ) is a poor indicator of legal performance. It states that a high IQ helps lawyers get employment, while emotional quotient (EQ) helps them endure and thrive. The new challenges and dimensions of educating law students need a focus on the integrated approach of both analytical and emotional skills of lawyering. Integrated legal education has wider goals of enabling law students to understand and assimilate responsibilities as a member of a public service in the administration of the law, in the reform of the law, in the protection of individual rights and public interests and in upholding the basic elements of professionalism. This article presents a content analytic approach of the professional development programmes offered in Indian law schools incorporating emotional intelligence (EI) around experiential student learning. The aim is to identify and gather information on approaches being utilized by law schools in India to introduce these skills in professional development. The result indicated that the professional development programme is designed to help law students become sufficiently grounded in these insights and continue their learning after law school for their wellbeing in the legal profession.

INTRODUCTION

"Educating the mind without educating the heart is no education at all" Aristotle

The new challenges and dimensions of legal education for the millennium need a focus on the human aspects of lawyering. Legal education is a human science which should extend beyond techniques, skills and competences, to encompass the basic philosophies, ideologies, critiques and instrumentalities required for the creation and maintenance of a just society.¹ Law is a subject of great importance in view of its dynamic role in moulding and envisioning the legal system of the country, thus being instrumental in the accomplishment of the cherished objectives enshrined in the

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¹ The Curriculum Development Centre in Law, 'Report UGC', (UGC 2000) p 12.

preamble of the Indian Constitution. The National Knowledge Commission² in its recommendations has stated that legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practising in courts, but also as academics, legislators, judges, policymakers, public officials, civil society activists as well as legal counsel in the private sector, maintaining the highest standards of professional ethics and spirit of public service.

Much of Indian law schools' pedagogical activity in undergraduate and vocational courses focuses on analytical reasoning, less on the professional skills and values required to operate in a dynamic work environment. 'Thinking like a lawyer' often entails looking at the dark side of life. Such thinking leads to a pervasive pessimism that contributes to the high levels of depression and drug abuse within the profession.³ The Carnegie Foundation for the Advancement of Teaching, in its 2007 monograph, *Educating Lawyers*, argues that legal education needs a more integrated, holistic approach towards the education of lawyers.⁴ The concerns and challenges articulated in the Carnegie Report resulted in the introduction of an integrated five-year LLB programme in India on an experimental basis.⁵ Integrated apprenticeships of knowledge, practice and professional identity, if combined in a law school curriculum, would more efficiently educate students for a competent professional approach to practice than the current analytically focused approach. A promising opportunity to strengthen the professionalism of lawyers now exists in an unlikely vehicle: the concept of emotional intelligence (EI).⁶ Modern psychology teaches us that emotions help professionals focus, make decisions, enhance memory, provide vital social cues, and embrace change.⁷ Research outcomes in social and biological sciences evidence the critical role emotions play in performance,⁸ health,⁹ and overall success.¹⁰

² Working Group on Legal Education, 'Report National Knowledge Commission', (National Knowledge Commission, 5 March 2007) <<http://knowledgecommission.gov.in/downloads/documents/wglegal.pdf>> accessed 30 September 2020.

³ Susan Swaim Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association 2004), 8-13.

⁴ William M Sullivan and others, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007), 14.

⁵ NR Madhava Menon, 'Training In Legal Education: Some Comparative Insights From Indian And American Experience' (2007) 49 *Journal of the Indian Law Institute* 399.

⁶ For representative studies, see generally Rebecca Abraham, 'Emotional Competence as Antecedent to Performance: A Contingency Framework' (2004) 130 *Genetic, Social, and General Psychology Monographs* 117; Julian Barling, Frank Slater and E Kevin Kelloway, 'Transformational Leadership and Emotional Intelligence: An Exploratory Study' (2000) 21 *Leadership & Organization Development Journal* 157; Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9 *e-Journal of Business Education and Scholarship Teaching* 56; Chris Dulewicz, Mike Young and Victor Dulewicz, 'The Relevance of Emotional Intelligence for Leadership Performance' (2005) 30 *Journal of General Management* 71; Victor Dulewicz and Malcolm Higgs, 'Emotional Intelligence – A Review and Evaluation Study' (2000) 15 *Journal of Managerial Psychology* 341.

⁷ Richard D Lane and others, 'Neural Correlates of Levels of Emotional Awareness: Evidence of an Interaction between Emotion and Attention in the Anterior Cingulate Cortex' (1998) 10 *Journal of Cognitive Neuroscience* 525, 529.

⁸ Dana L Joseph and others, 'Why Does Self-Reported Emotional Intelligence Predict Job Performance? A Meta-Analytic Investigation of Mixed EI' (2015) 100 *The Journal of Applied Psychology* 298, 309.

⁹ Nicola S Schutte and others, 'A Meta-Analytic Investigation of the Relationship between Emotional Intelligence and Health' (2007) 42 *Personality and Individual Differences* 921, 927.

¹⁰ Emily Amdurer and others, 'Long Term Impact of Emotional, Social and Cognitive Intelligence Competencies and GMAT on Career and Life Satisfaction and Career Success' (2014) 5 *Frontiers in Psychology* 1447.

Although extensive academic research has explored the dynamics of emotions in legal process,¹¹ much less research has investigated the relevance and incorporation of EI into legal education.¹² Law schools which emphasize only rational, analytical discourse and the Socratic Method all contribute to the devaluation and denial of emotional processes and influences.¹³ However, this deficiency takes its toll, leading to disproportionately high levels of stress, substance abuse, and depression among lawyers.¹⁴

Against this background, the purpose of this article is to assess the usefulness and applications of EI in legal education. More specifically this article has two objectives:

1. To explore the benefits of EI that will enhance the wellbeing of lawyers and law students.
2. To examine the professional development programmes offered in Indian law schools incorporating EI around experiential student learning.

Essentially, this research responds to the call for consideration of the importance of EI and draws inspiration from Montgomery¹⁵ and from Salovey and Mayer¹⁶ who have stressed the need for incorporating EI in legal education. The article has four parts; the first part defines EI and demonstrates its importance in legal education. The second part explores lawyers' distress and well-being. The third part examines the professional development programmes offered in Indian law schools incorporating EI around experiential student learning. The article concludes by offering suggestions on conscious integration of the rational and emotive processes. These ideas range from relatively minor shifts on emphasis in doctrinal and lawyering skills classes to the addition of programmes focused exclusively on developing the emotional competencies that are required skill-sets in legal practice. Thus, incorporation of EI competency skills would enrich both the law school curriculum and law student experience with potential for long-term positive impact on the legal profession in India.

¹¹ Ann Juergens, 'Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching', (2005) 11 *Clinical Law Review* 413; Therese Maynard, 'Teaching Professionalism: The Lawyer as a Professional' (1999) 34 *Georgia Law Review* 895; Carrie J Menkel-Meadow, 'When Winning Isn't Everything: The Lawyer as a Problem Solver' (2000) 28(4) *Hofstra Law Review* 905; Leonard L Riskin, 'Mindfulness: Foundational Training for Dispute Resolution', (2004) 54 *Journal of Legal Education* 79; Leonard L Riskin, 'The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients' (2002) 7 *Harvard Negotiation Law Review* 1, Kandis Scott, 'Non-Analytical Thinking in Law Practice: Blinking in the Forest', (2006) *Clinical Law Review* 687; Marjorie A Silver, 'Emotional Competence, Multicultural Lawyering and Race', (2002) 3 *Fla Coastal LJ* 219; Barry Sullivan and Ellen S Podgor, 'Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment', (2001) 15 *Notre Dame J L Ethics & Pub Pol'y* 117.

¹² Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 42 *Law Teacher* 85; Emma Jones, 'One Size Fits All? Multiple Intelligences and Legal Education' (2017) 51 *The Law Teacher* 56; Emma Jones, *Emotions in the Law School: Transforming Legal Education Through the Passions* (Routledge 2019).

¹³ Peter Salovey and John D Mayer, 'Emotional Intelligence' (1989) 9(3) *Imagination, Cognition and Personality* 185.

¹⁴ Steven Keeva, 'Beyond the Words: Understanding what your client is really saying makes for successful lawyering' (1999) *ABA Journal* 60.

¹⁵ John E Montgomery, 'Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students', (2008) 39(2) *University of Toledo Law Review*, 323.

¹⁶ *Op cit*, n 13.

EMOTIONAL INTELLIGENCE

Emotion is one dimension of any human relationship. Legal education excels at many things, but it is also lacking in significant ways. Legal educators often fail to address or ameliorate lawyer unhappiness, lack of empathy skills in students, and the excessive stress law students and lawyers will face throughout a lifetime.¹⁷ Legal education should prepare students for the emotional dimensions of lawyering. We fail our students if we fail to prepare them for the impact of their emotional lives, as well as those of their clients, on the practice of law.

Emotional Intelligence (EI), the phrase developed by Daniel Goleman in his internationally acclaimed book *Emotional Intelligence*¹⁸ refers to the ability of people to become talented in any field through self-awareness, self-regulation, awareness of the feelings and reactions of others and highly effective communication skills, all critical to the modern practice of law. Empirical data shows that people with high EI scores excel in leading others as compared with people with lower emotional quotient (EQ.)¹⁹ Data also shows that with training, EQ skills can improve over time.²⁰ Considered an actual form of intelligence and not merely a set of interpersonal skills, EI, unlike intelligent quotient, can be taught and learned.²¹ Emotion, or the emotional dimension of human experience, is likewise an important consideration for legal education and practice. Spielberger identifies three categories of models of EI from the literature: the ability model, the trait model, and mixed models.²² Goleman's model identifies EI as a range of competencies and skills that drive performance. Five dimensions of EI are categorized into two areas, namely, personal competence, which encompasses self-awareness, self-regulation and motivation, and social competence, which includes empathy and social skills. Advocacy, negotiation and counselling all rely heavily on these skills.²³

EI also encompasses empathetic awareness and the ability to understand and act on the basis of another's situation. Incorporating instruction about EI competencies into the existing law school curriculum can strengthen an ethos of professionalism among law students and better support the profession's efforts to increase the professionalism of lawyers.²⁴ It is readily adaptable because it identifies components of EI as competencies that can be learned and demonstrated. Whichever model is ascribed to, EI is foremost about feelings. It is an ability to monitor feelings, our own and those of others, and to use this information to respond in appropriate and effective ways.²⁵ Thus, EI is recognized as a set of learned skills that can be incorporated into educational programmes, including legal education.

¹⁷ Nathalie Martin, 'Think like a (mindful) lawyer: Incorporating mindfulness, professional identity, and emotional intelligence into the first year law curriculum.' (2014) 36(3) University of Arkansas at Little Rock Law Review 413.

¹⁸ Daniel Goleman, *Emotional Intelligence* (Bantam 2005), xv.

¹⁹ Parvesh K Chopra and Gopal K Kanji, 'Emotional Intelligence: A Catalyst for Inspirational Leadership and Management Excellence' (2010) 21 Total Quality Management & Business Excellence 971.

²⁰ Op cit n 16, p 13.

²¹ Op cit, n 13, p 323.

²² Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9 e-Journal of Business Education and Scholarship Teaching 56.

²³ Op cit, n 18.

²⁴ Op cit n 5, p 399.

²⁵ Op cit n 18.

AN OVERVIEW OF LAWYERS' DISTRESS AND WELLBEING

Wellbeing is generally equated with psychological wellbeing and a lack of wellbeing with psychological distress, exhibited by depression, anxiety and stress. Wellbeing involves positive emotional states such as happiness, excitement and satisfaction. For the past decade a unanimous call for a greater understanding of the occupational stress has echoed worldwide. Social, psychological factors, individual factors and one's perception are also factors in occupational stress.²⁶

Law school in a common law jurisdiction also introduces students to the adversarial system, a win-loss game, which if extended outside litigation has deleterious consequences for well-being and relationships with clients, colleagues, and adversaries.

Research data from the USA reveals that of all the professionals, lawyers are the most prone to stress, depression and alcohol problems.²⁷ When lawyers address stress, they pinpoint constant pressure, office problems, dealing with difficult clients, exhaustion and loss of control while preparing and trying cases. When you practise law, stress comes within the territory. Recent surveys have indicated that lawyers' dissatisfaction with the practice of law is on the increase.²⁸ The fact that lawyers and law students experience significant psychological distress points to the neglect of emotion in the law.²⁹ Much of what is missing from legal education falls within the domain of "EI", an aptitude that assumes increasing importance over one's career.³⁰

INCORPORATION OF EMOTIONAL INTELLIGENCE IN LEGAL EDUCATION AND PRACTICE

This article argues that incorporating instruction about EI competencies into the existing law school curriculum can strengthen an ethos of professionalism among law students and better support the profession's efforts to increase the professionalism of lawyers. It can be accomplished in a variety of ways, none involving significant problems in terms either of pedagogy or of resources. Instruction can be incorporated

²⁶ Maria Platsidou and Layla Salman 'The role of emotional intelligence in predicting burnout and job satisfaction of Greek lawyers (2012) 1(1) *International Journal of Law, Psychology and Human Life* 13.

²⁷ R Lisle Baker and Daniel P Brown 'Engagement: Learning to pay attention' (2014) 36 *University of Arkansas Little Rock Law Review* 337, 447.

²⁸ Jerome M Organ 'What Do We Know about the Satisfaction/Dissatisfaction of Lawyers-A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being' (2010) 8 *University of St Thomas Law Journal* 225.

²⁹ Nigel Duncan, Caroline Strevens and Rachael Field, 'Resilience and Student Wellbeing in Higher Education': (2020) 1 *European Journal of Legal Education* 83; Rachael M Field and James Duffy, 'Law Student Psychological Distress, ADR and Sweet-Minded, Sweet-Eyed Hope' (2012) 23 *Australasian Dispute Resolution Journal* 195; Norm Kelk and others, 'Courting the Blues: Attitudes in Australian Law Students and Lawyers' (Brain and Mind Research Institute, University of Sydney 2009; Caroline Strevens and Rachael Field, *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge 2019); Penelope Watson and Rachael Field, 'Promoting Student Well-Being and Resilience at Law School' in Sally M Kift and others (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis Butterworths 2011).

³⁰ Op cit n 27, p 337.

into substantive courses that have a skills component or into skills courses, which are a better fit.

There are at least three advantages to including EI in legal education and practice. First and foremost, EI centralizes emotion. It recognizes the emotional dimension of human experience and endeavour and, as such, confirms its relevance to the business of legal practice. This recognition reflects a growing awareness of the role of emotion in client satisfaction and its incorporation as an important element in expanding approaches to practice. In the negotiation literature, for example, Shapiro argues that negotiators need to demonstrate EI in order to satisfy the goals of parties, which are both affective and instrumental.³¹ Negotiation is an essential skill for lawyers but is not taught as a core compulsory component. Emotion is well recognized as a consideration in Alternative (or Appropriate) Dispute Resolution (ADR) processes.³² Mayer, a leading practitioner and writer in the field, identifies three dimensions of conflict and conflict resolution, namely, cognitive (perception), emotional (feeling), and behavioural (action) dimensions.³³ ADR is increasingly relied upon in our justice system and, as a result, there are calls for its inclusion as a mandatory component of study. EI has been identified as an important competency in the most often used form of ADR, namely, mediation.³⁴

Non-adversarial justice³⁵ and the comprehensive law movement³⁶ incorporate an appreciation of the role of emotion in defining legal problems, engaging processes of resolution and achieving legal outcomes. These newer approaches, which include ADR, problem-solving courts, indigenous sentencing courts, diversion programmes, holistic law, preventive law, procedural justice, creative problem solving, restorative justice and therapeutic jurisprudence have expanded and refocused traditional views of our justice system and consequently challenged conventional understanding of 'thinking like a lawyer'. Restorative justice, for example, is premised on an understanding that a legal wrong may cause emotional as well as physical and or material harm that needs to be addressed if problems are to be resolved. Therapeutic jurisprudence "examines the law's effect on the wellbeing – including the emotional wellbeing – of its subjects".³⁷ A key tool in these non-traditional approaches has been identified as EI.³⁸ A separate programme on emotional empowerment well placed in the curriculum can be an asset to students, clients and the legal community. These ideas range from relatively minor shifts in emphasis in doctrinal and lawyering skills

³¹ Daniel L Shapiro, 'Negotiating Emotions' (2002) 20 Conflict Resolution Quarterly 67.

³² Kathy Douglas and Becky Batagol, 'ADR and Non-Adversarial Justice as Sites for Understanding Emotion in Dispute Resolution: Reporting on Research into Teaching Practices in Selected Australian Law Schools' (2010) 20 Journal of Judicial Administration 106.

³³ Bernard S Mayer, *The Dynamics of Conflict Resolution A Practitioner's Guide* (Jossey Bass 2000).

³⁴ James Duffy, 'Empathy, Neutrality and Emotional Intelligence: A Balancing Act for the Emotional Einstein' (2010) 10(1) QUT Law and Justice Journal 44.

³⁵ Emma Jones and Anna Kawalek, 'Dissolving the Stiff Upper Lip: Opportunities and Challenges for the Mainstreaming of Therapeutic Jurisprudence in the United Kingdom' (2019) 63 International Journal of Law and Psychiatry 76; Michael S King 'Non-Adversarial Justice and the Coroner's Court: A Proposed Therapeutic, Restorative, Problem-Solving Model' (2009) 16 Journal of Law and Medicine, 442.

³⁶ Susan Daicoff, 'Law as a healing Profession: The Comprehensive Law Movement', (2005) 6(1) Pepperdine Dispute Resolution Law Journal 1.

³⁷ Michael S King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice', (2008) 32 Melbourne University Law Review 1096.

³⁸ Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9 e-Journal of Business Education and Scholarship Teaching 56.

classes to the addition of programmes focused exclusively on developing the emotional competencies that are required skill-sets in modern legal practice.

Table: 1 Outline of an Emotional Empowerment Programme³⁹

Five Steps	Core Topics for Exploration
1. Self-Awareness	Dreams and Dream Interviewing, ⁴⁰ Feeling Management, Human diversity paradigms as a context, Communication: verbal and nonverbal
2. Self-Development	Identity definition and evolution, change from conflict, ⁴¹ failure, success and opportunity; grief, loss, letting go and moving on, taking charge: ABC of Decisions Dependency Issues: independence, dependence and interdependence, balance in life
3. Relationships	Relationship management overview of interpersonal transactions, step by step "Quick learning:" for rapid data assimilation and interpersonal adjustments, facets of relationships ⁴² .
4. Self-Responsibility	Autonomy and self-reliance plans and structure, Self-assessment with honesty, accuracy and kindness, Leadership values, Judgment and judgments, Spirituality & Religion, Health: mental and physical interface, ⁴³ prevention, maintenance and treatment.
5. Reflection	Integrating the emotional empowerment course ⁴⁴ with life experience periodic journal reviews.

The table highlights the essentials and core topics of an emotional empowerment programme. Moreover, this programme would further be developed in a number of areas relevant to legal practice: communication, balancing and maximizing the number of needs, clarifying values, and leadership.

PROFESSIONAL DEVELOPMENT AND EXPERIENTIAL LEARNING PROGRAMMES IN INDIA

The great minds in India since independence have struggled to improve the legal system and especially its law schools. The legal aid movement and various legal aid committees' reports in the 1970s started to draw attention to the importance of

³⁹ Adapted from Goleman, op cit n 16, 3.

⁴⁰ Gregory L White and Laurel Taytroe, 'Personal Problem-Solving Using Dream Incubation: Dreaming, Relaxation, or Waking Cognition?' (2003) 13 *Dreaming* 193.

⁴¹ JE Zull, *The art of changing the brain. Enriching the practice of teaching by exploring the biology of learning* (Stylus Publishing 2003).

⁴² SB Wolff, AT Pescosolido, VU Druskat 'Emotional intelligence as the basis of leadership emergence in self-managing teams' (2002) 13 *The Leadership Quarterly* 505.

⁴³ H Gardner, *Frames of mind: the theory of multiple intelligences* (Basic Books 1983).

⁴⁴ Peter Salovey and others, 'The Positive Psychology of Emotional Intelligence' in Shane J Lopez and CR Snyder (eds), *The Oxford Handbook of Positive Psychology* (1st edn, Oxford University Press 2002)

experiential learning. The Law Commission of India in its 184th Committee Report⁴⁵ laid emphasis on legal skills and values as adumbrated in the MacCrate report of the USA.⁴⁶ According to the MacCrate report, the professional values include training in professional responsibility and the model rules of professional conduct; and to encompass the values of the profession including the obligations and accountability of a professional dealing with the lives and affairs of clients. In India consistently there were efforts in the development of a skills-based curriculum. The Bar Council of India issued a directive in 1997 that requires law schools to include certain classes focused on practical training.⁴⁷ All law schools are now required to have legal aid clinics, and today there are a number of law schools where students, largely without faculty guidance or supervision, provide direct legal services to individuals.⁴⁸ There are many institutions delivering legal education, and, while the majority are private colleges affiliated to some state universities, there are also deemed universities, public universities, premier law schools and autonomous colleges. Depending upon the structure and capacity of each institution, different teaching methods are chosen. In accordance with the directions of the Bar Council's Practical Paper requirements,⁴⁹ students are required at law universities to spend time in practice settings in four of their five years.⁵⁰ The placements have the potential to allow students to interact with the legal community and experience the law in context. Skill development programmes are contingent on factors including the communities in which law schools are located, government, and size of the student body, proximity to the client communities, demographics, and history. Law schools are also launching experiential education courses and development programmes, including a greater number of externships (placements external to the law school with pedagogical and sometimes administrative support from the law school).⁵¹ National law schools are partnering with a variety of groups including the Human Rights Legal Support Centre and Disability Law Centre. Many law schools have further established innovative clinical offerings that are unique to their schools, such as the long-standing citizen participation clinic at Jindal Global Law School,⁵² which describes the role of clinical and legal education in

⁴⁵ Indian Law Commission, 'The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956' (Law Commission 2002) No 184, pp 58-59.

⁴⁶ Robert MacCrate and others, 'Legal Education and Professional Development - an Educational Continuum' (American Bar Association Section of Legal Education and Admissions to the Bar 1992).

⁴⁷ Bar Council of India, Circular No. 4/1997. See United Nations Development Programme India, *A Study of Law School Based Legal Service Clinics 2* (UNDP 2011), <https://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_school_based_legal_services_clinics.html> accessed 22 June 2021 (covering seven major states: Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, and Uttar Pradesh).

⁴⁸ Ibid.

⁴⁹ The Bar Council has required all Indian law schools to include the four Practical Papers in their curricula since 1998.

⁵⁰ This is consistent with the model instituted by Dr Menon. Referring to the establishment of the first law university, the National Law School at Bangalore, Professor Krishnan noted, "Menon institutionalized into the curriculum a mandatory two-month internship that students would need to complete every year during their holiday period".

⁵¹ Pune University, 'Skill Development Courses for Law' (Pune University 2014) <http://www.unipune.ac.in/Syllabi_PDF/revise_2014/law/Law_skill_Development_%20syllabus_12-7-14.pdf> accessed 2 June 2021.

⁵² Sital Kalantry, Elizabeth Brundige and Priya S Gupta, 'Promoting Clinical Legal Education in India: A Case Study of the Citizen Participation Clinic' (Social Science Research Network 2012) SSRN Scholarly Paper ID 2112429 <<https://papers.ssrn.com/abstract=2112429>> accessed 2 June 2021. The Citizen Participation Clinic is a semester-long, for-credit course at Jindal taught by Professor Pandey, in which

“understanding legal needs in society”, especially within marginalized populations, supporting students’ understanding of how law is experienced, and increasing knowledge of policy advocacy. It encourages personal reflection, critical thinking, social awareness and professional identity development⁵³ and, more recently, law schools have begun developing innovative experiential courses, taught as separate courses or attached to courses taught by podium faculty, sometimes referred to as practicum or lab courses.⁵⁴ Educators are optimistic that the walls in legal education are coming down and that innovative, integrated curricular and pedagogical reforms are at hand.⁵⁵

CONCLUSION

This article has drawn on an extensive literature to assess the usefulness and applications of EI in legal education and how it enhances the wellbeing of lawyers and law students. The literature supports the idea that incorporating EI in the curriculum will encourage students’ propensity to practise mindfulness, which will benefit both cognitive performance and self-awareness.

Self-awareness is the core of high EI: if you do not analyse and understand your own motivations and behaviours, it is highly improbable that you will develop an understanding of others. A lack of self-awareness can also impair your ability to think rationally and apply technical capabilities.

There is room in the legal profession for thinkers and feelers, and we should aspire to cultivate thinking and feeling. Legal education must be responsive to all appropriate varieties and styles of lawyering by helping cultivate EI, as well as analytical skills. Certain aspects of legal education need to be fundamentally designed in order to facilitate conscious integration of the rational and emotive processes. Therefore, incorporating EI competencies into legal education can help develop these skills. It can increase the capacity in important skills, strengthen respect for others, and facilitate awareness of the profession’s public obligations. These are lifelong skills that will make their work as lawyers more rewarding and beneficial to their clients and communities.

law students participate in classroom-based weekly seminars, attend weekly sabhas (meetings) with community members, and work on projects with individual community members.

⁵³ Indian National Bar Association, ‘Soft Skill Programme for Legal Professionals’ (Indian National Bar Association, no date) <<https://www.indianbarassociation.org/inba-academy/soft-skill-program-for-legal-professionals-effective-soft-skills-development/>> accessed March 2021.

⁵⁴ Rahunandha Reddy, ‘Law Teaching Methods and Techniques: A Critique with Special Reference to India’, (2001) AIR (J) 73.

⁵⁵ Anon, ‘New Legal Education Policy Vis-a-Vis NEP 2019’ *Daily Excelsior* (13 June 2020) <<https://www.dailyexcelsior.com/new-legal-education-policy-vis-a-vis-nep-2019/>> accessed 2 June 2021.

LEGAL EDUCATION AND WELLBEING: CONSIDERATIONS FOR STUDENT SOCIAL WORKERS

RICHARD MACHIN* AND PETER BENBOW**

ABSTRACT

This article explores the challenges of delivering legal education to social work students, while at the same time promoting wellbeing. Social work degrees should produce compassionate individuals who are able to make decisions based on legal provisions. It is the responsibility of social workers to safeguard the needs of some of the most vulnerable groups in society, but ethical dilemmas and challenges to wellbeing can be evident when legislation is not always aligned to core social work values. A key role of social work education is to provide students with the coping strategies to deal with the pressure of the job. However, working in a complex and often-stressful environment can challenge wellbeing.

Two specific areas of UK legislation will be discussed to explore the issue of wellbeing in a social work legal context. Firstly, the Mental Health Act 1983 (MHA) will be analysed. The MHA gives significant powers to the Approved Mental Health Professional implementing it. Decisions are made on whether to apply the MHA and compulsorily detain someone against their wishes. Secondly, the Welfare Reform and Work Act 2016 will be discussed. This introduced a two-child limit for means-tested benefits in the UK. This raises ethical questions as entitlement to state benefits is based on the size of the family rather than the needs of the family. There are a number of exceptions to this provision, most controversially the so called 'rape clause'.

WELLBEING IN A SOCIAL WORK CONTEXT

There has been an increased focus on the concept of wellbeing in both academic and professional circles over the last two decades.¹ Much attention has been placed on how wellbeing can be achieved and on definitions of wellbeing itself. A prominent multi-disciplinary review of wellbeing proposed that wellbeing should be considered as "a state of equilibrium or balance that can be affected by life events or challenges".² The importance of wellbeing has also been recognised by leading international organisations such as the United Nations (UN) and Organisation for Economic Co-operation and Development (OECD). The UN Sustainable Development Goal 3 "Good

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¹ Martin Seligman, *Flourish, A new understanding of happiness and well-being – and how to achieve them* (Nicholas Brealey Publishing, 2011).

² Rachel Dodge, Annette Daly, Jan Huyton, and Lalage Sanders 'The challenge of defining wellbeing' (2012) 2(3) *International Journal of Wellbeing*, 222.

Health and Wellbeing” emphasises that prosperous societies rely on healthy lifestyles and the promotion of wellbeing.³ Similarly, the OECD, in developing the “Better Life Index”,⁴ acknowledge that the wellbeing of individuals is key to the effective functioning of modern societies. This index allows the measurement of wellbeing across a population and reveals where there are wellbeing inequalities (for example by gender, age or ethnicity).

Wellbeing is also an important principle in the social work profession. A global definition of Social Work adopted by the International Federation of Social Workers states that “social work engages people and structures to address life challenges and enhance wellbeing”⁵. The British Association of Social Workers (BASW) endorses this definition in the UK. Furthermore, the Professional Capabilities Framework (PCF),⁶ a set of knowledge, skills and behaviour competences developed by BASW, embodies these wellbeing principles in its nine domains. The PCF underscores the importance of wellbeing alongside the fundamental principles of human rights and social justice.

The prominence of wellbeing in these professional benchmarks for social work is reflected in the important role that it plays in the education of student social workers. Research by Grant and Kinman has emphasised the importance of helping student social workers to develop a “tool-box of coping strategies” to help to deal with the pressures of the job.⁷ They argue that wellbeing will not be achieved in a social work environment without an acknowledgement of the structural causes of stress and that emotional intelligence, empathy, and resilience are important elements of wellbeing. Similarly, it has been suggested that the development of an “emotional curriculum” can only be achieved with a high level of reflective practice and mindfulness.⁸ Research indicates that the promotion of wellbeing amongst social workers who have experienced trauma in their own lives is particularly important as they may over-empathise with service users.⁹ Shier and Graham have also highlighted the connections between wellbeing and mindfulness.¹⁰ They found that work-life balance, being able to reflect on key experiences in life and openness are central components of wellbeing and that these issues should be a focus of professional supervision and reflective exercises.

THE MENTAL HEALTH ACT 1983

³ United Nations, ‘Good Health and Wellbeing: Why It Matters’ (United Nations No date) <https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/03/3_Why-It-Matters-2020.pdf> accessed 1 April 2021.

⁴ OECD, ‘OECD Better Life Index’ (*OECD Better Life Index*, No date) <<http://www.oecdbetterlifeindex.org/#/111111111111>> accessed 1 April 2021.

⁵ International Federation of Social Workers, ‘Global Definition of Social Work’ (*International Federation of Social Workers*, 2021) <<https://www.ifsw.org/what-is-social-work/global-definition-of-social-work/>> accessed 1 April 2021.

⁶ British Association of Social Workers, ‘Professional Capabilities Framework (PCF)’ (*BASW*, 6 April 2018) <<https://www.basw.co.uk/social-work-training/professional-capabilities-framework-pcf/>> accessed 1 April 2021.

⁷ Louise Grant and Gail Kinman, ‘Enhancing Wellbeing in Social Work Students: Building Resilience in the Next Generation’ (2012) 31(5) *Social Work Education* 605.

⁸ Louise Grant, ‘Hearts and Minds: Aspects of Empathy and Wellbeing in Social Work Students’ (2014) 33(3) *Social Work Education* 338.

⁹ Victoria MacRitchie and Stacey Leibowitz, ‘Secondary Traumatic Stress, Level of Exposure, Empathy and Social Support in Trauma Workers’ (2010) 40 *South African Journal of Psychology* 149.

¹⁰ Micheal L Shier and John R Graham, ‘Mindfulness, Subjective Well-Being, and Social Work: Insight into Their Interconnection from Social Work Practitioners’ (2011) 30(1) *Social Work Education* 29.

The Mental Health Act 1983 (MHA), amended by the 2007 Act,¹¹ allows for the assessment and possible compulsory admission to hospital for people experiencing mental health problems. Chapter 2 of the MHA confers statutory powers on social workers, one of which is the creation of specialist mental health professionals who make decisions alongside doctors in the assessment and treatment of people under the Act. Created through the 2007 amendments, the Approved Mental Health Professional (AMHP) replaced an earlier incarnation of this role (the Approved Social Worker) and was made open to other professionals, such as nurses, occupational therapists and psychologists, although it is still social workers who make up the vast majority of practising AMHPs, with only 5% of AMHPs coming from non-social work professions.¹²

The provision of AMHPs is under the control of local authority social services departments (MHA, s 114) which must make available sufficient numbers to provide a 24-hour service, as stipulated in DoH Circular (93) 10 and the Mental Health Act 1983 Code of Practice.¹³

AMHPs undertake key duties within the MHA assessment process, as set out in the Mental Health Act Code of Practice.¹⁴ These include responsibility for setting up and coordinating the assessment, arranging for medical assessment, and identifying and liaising with the person's nearest relative.¹⁵ Most importantly, the AMHP makes an application for compulsory admission to hospital if they are satisfied that the statutory criteria for detention have been met, and that admission to hospital is the most appropriate manner of intervention.¹⁶ In undertaking this role, the AMHP must act independently and exercise their own judgement; they cannot take instructions from their employer (the local authority) despite acting on their behalf.¹⁷

Social workers in adult practice have increasingly found their duties shaped by statutory roles.¹⁸ With regards to mental health, the AMHP role takes place in a national context that has seen a steady rise in compulsory admissions under the MHA over recent years, representing increased pressure on AMHP services. The last report by the Care Quality Commission noted a 40% increase in use of the MHA between 2005/06 and 2015/16.¹⁹ Legislative developments appear to have contributed to this

¹¹ Mental Health Act 2007.

¹² Association of Directors of Adult Social Services, 'AMHPs, Mental Health Act Assessments & the Mental Health Social Care Workforce' (ADASS Benchmarking Network 2018) <<https://www.adass.org.uk/media/6428/nhsbn-and-adass-social-care-national-report.pdf>> accessed 5 May 2021.

¹³ Department of Health, 'Code of Practice: Mental Health Act 1983' (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, paragraph 4.33.

¹⁴ Ibid, paragraphs 14.49 to 14.56.

¹⁵ Mental Health Act 1983, s 26.

¹⁶ Ibid, s 13 (2).

¹⁷ Department of Health, 'Code of Practice: Mental Health Act 1983' (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, paragraph 14.52.

¹⁸ Emad Lilo and Colin Vose, 'Mental Health Integration Past, Present and Future A Report of National Survey into Mental Health Integration in England' (Mersey Care NHS Trust, NHS North West Health Education 2016) <<https://londonadass.org.uk/wp-content/uploads/2017/01/MH-Integration-Past-Present-Future.pdf>> accessed 5 May 2021.

¹⁹ Care Quality Commission, 'Mental Health Act The Rise in the Use of the MHA to Detain People in England' (Care Quality Commission 2018)

rise. There is now an increased awareness of the position of service-users who may lack the capacity to agree to informal admission; this is as a result of the Bournemouth judgment (*HL v UK*)²⁰ and subsequent case law. Furthermore, following the Supreme Court judgment (*Cheshire West and Chester Council v P*)²¹ on the definition of “deprivation of liberty” there has been a decline in the number of voluntary or informal service-users. The resulting national picture can be viewed as “a costly and coercive approach to psychiatric care”.²²

The AMHP therefore exercises considerable power, in what can be challenging and distressing circumstances, at a time of increased demand on their services. Alongside deciding whether to remove a child from its parent(s) or carer(s), this is possibly the clearest and most high-profile example of social work’s ‘difficult decisions’. With regards to the role of the AMHP, it has been argued that undertaking this function of social control amounts to “dirty work”.²³

Promoting service-user well-being within this framework is a challenge. There is an obvious tension between the power to detain, and the duty to protect and promote individual rights and autonomy which are embedded in the social work profession; “...the very idea of coercion in social care seems contradictory, and, to many, even abhorrent”.²⁴ Ethical opposition to enforced treatment of people via legislation has been well documented. The use of coercion through the MHA runs counter to promoting the principles of autonomy and freedom which are central to UK legislation and health care practice.²⁵ Moreover, in a departure from most legislation governing harm, the MHA can be applied on the basis of predicted acts of harm as opposed to instances of harm which have occurred.²⁶ The difficulty of harm prediction is widely recognised, especially for statistically rare events such as homicide²⁷ but also for more frequent events such as suicide.²⁸

Educators thus face the challenge of equipping AMHPs with the necessary legal knowledge and capabilities, whilst also ensuring they are able to enact these in an ethical manner which is respectful of, and sensitive to, the needs of the service-user. Social Work England, the regulatory body for social work, has established guidance for the education and training of AMHPs which reflects the complex nature of the role. These are based on standards laid out in Schedule 2 to the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008.²⁹ Knowledge of “legislation, related codes of practice, and national and local policy and guidance

https://www.cqc.org.uk/sites/default/files/20180123_mhadetentions_report.pdf accessed 5 May 2021.

²⁰ 45508/99 [2004] ECHR 471.

²¹ [2014] UKSC 19.

²² Alice Wickersham, Shilpa Nairi, Rebecca Jones and Brynmor Lloyd-Evans, ‘The Mental Health Act Assessment: Process and Risk Factors for Compulsory Admission to Psychiatric Hospital: A Mixed Methods Study’ (2019) 50(3) *British Journal of Social Work*, 642.

²³ Lisa Morriss, ‘AMHP Work: Dirty or Prestigious? Dirty Work Designations and the Approved Mental Health Professional’ (2015) 46(3) *British Journal of Social Work* 703.

²⁴ Alison Brammer and Jane Boylan. *Critical issues in social work law* (Red Globe Press, 2017), 59.

²⁵ Alastair Morgan, Anne Felton, Bill Fulford, Jayasree Kalathil and Gemma Stacey, *Values and ethics in mental health* (Palgrave Macmillan, 2016).

²⁶ *Ibid* 17.

²⁷ George Szumkler, Rowena Daw, and John Dawson, ‘A model law fusing incapacity and mental health legislation’ (2010) 20 *Journal of Mental Health Law* 11.

²⁸ Sonya Stanford, Elaine Sharland, Nina Rovinelli Heller and Joanne Warner, *Beyond the Risk Paradigm in Mental Health Policy and Practice* (Palgrave, 2017).

²⁹ Schedule 2 to the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008, SI 2008/1206.

applicable to the role of an AMHP” highlights the legal aspects of required knowledge acquisition.³⁰ Other key learning requirements illustrate the complex arena where this knowledge must be applied. Hence, the following also appear as learning criteria categories:

- Autonomous Practice;
- Informed Decision-making;
- Equality and Diversity;
- Collaborative Working.

Qualification to become an AMHP is configured into a post-graduate level qualification, reflecting the demanding nature of the role. As part of this training, practice placements are “integral”,³¹ allowing trainee AMHPs to have protected learning within a dedicated AMHP practice setting. Ethical principles can be a key source in promoting wellbeing, and for social work practice are found within both the regulatory body (Social Work England) and the professional body (British Association of Social Workers).³²

Given the potentially repressive outcomes of decisions being taken at an MHA assessment, and the vulnerable position of mental health service-users who find themselves as the subject of these decisions, AMHPs’ legal and practice knowledge needs to be combined with an understanding of, and a commitment to implementing, a clearly defined set of values.

The MHA Code of Practice contains Guiding Principles, which are to be used when making decisions under the MHA:

1. Least restrictive option and maximising independence;
2. Empowerment and involvement;
3. Respect and dignity;
4. Purpose and effectiveness;
5. Efficiency and equity.³³

These Principles are not statute but are present in the Code of Practice and professionals have a duty to observe them.³⁴ The Code states that they should always be taken into consideration, although the “weight given to each principle in reaching a particular decision will depend on context and the nature of the decision being made”.³⁵

Whilst wellbeing as a term is not overtly promoted as a concept in the MHA, it could be argued that the first three of these principles match closely to the promotion

³⁰ Social Work England, ‘Education and Training: Approved Mental Health Professions (AMHP) Guidance’ (Social Work England 2020) <<https://www.socialworkengland.org.uk/media/3487/amhp-guidance.pdf>> accessed 6 December 2020, 11.

³¹ Ibid 21.

³² Social Work England, ‘Professional Standards’ (*Social Work England* no date) <<https://www.socialworkengland.org.uk/standards/professional-standards/>> accessed 1 May 2021; British Association of Social Workers, ‘Code of Ethics’ (*BASW*, 6 April 2018) <<https://www.basw.co.uk/about-basw/code-ethics>> accessed 29 April 2021.

³³ Department of Health, ‘Code of Practice: Mental Health Act 1983’ (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, section 1.1.

³⁴ Ibid, paragraph 22.

³⁵ Ibid.

of individual wellbeing.³⁶ However, though their inclusion in the Code offers a reference point for good practice, the application of these principles is far from straightforward. To take Principle 1 as an example; this may be simple to understand but is vulnerable to being overlooked in practice. This is a requirement to use the powers of the MHA only if necessary, and whenever possible to utilise community services instead to provide alternatives to hospital admission. However, providing alternative care can be dependent on resource availability and the agreement of other professionals to take on what could be seen as the additional risk of supporting a vulnerable person to remain in the community. Interestingly, this difficulty in securing alternatives to admission is cited as a key factor in stress and poor morale amongst the AMHP workforce.³⁷ Similarly, Principle 3 states that practitioners should recognise and respect the individual differences and background of service users, ensuring that there “must be no unlawful discrimination”.³⁸

It is noteworthy that the introduction to the MHA Code of Practice references the more recent Care Act 2014, which does explicitly have the promotion of service-user wellbeing as a core principle in s 1(1). The MHA Code of Practice creates a clear link to this:

“In addition to the requirements of the Act, relevant professionals (particularly those involved in discharging or treating patients in the community) should also consider the general responsibilities of local authorities under Part 1 of the Care Act 2014”.³⁹

Wellbeing is described in the Care Act as relating to a broad range of concepts, including personal dignity, physical and mental health and wellbeing, control over day-to-day life and family and personal relationships.⁴⁰ Evidence shows that mental ill-health, and associated factors (such as discrimination and economic disadvantage), have significant negative effects on wellbeing.⁴¹ Statistics demonstrate rates of detention for those people from a “Black and Black British” group are still over four times those of people from a “White” background.⁴² This illustrates the challenging context in which AMHPs must look to promote wellbeing. Hence, the inclusion of the wider Social Work England learning criteria noted above (Autonomous Practice,

³⁶ Simon Abbott, ‘Navigating practice at the interface between mental health and social care law’ in Suzy Braye and Michael Preston-Shoot (eds) *The Care Act 2014: Wellbeing in Practice* (Learning Matters. 2020).

³⁷ Mithran Samuel, ‘Councils urged to tackle AMHP salary disparities and stress in national workforce plan’ (*Community Care* November 11, 2019) <<https://www.communitycare.co.uk/2019/11/11/councils-urged-tackle-amhp-salary-disparities-stress-national-workforce-plan/>> accessed 1 May 2021.

³⁸ Department of Health, ‘Code of Practice: Mental Health Act 1983’ (The Stationery Office 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF> accessed 5 May 2021, para 1.4.

³⁹ *Ibid*, paragraph 20.

⁴⁰ S 1(2).

⁴¹ Department of Health and Public Health England, ‘Improving the Physical Health of People with Mental Health Problems: Actions for Mental Health Nurses’ (Public Health England 2016) Gateway Reference 04603 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532253/JRA_Physical_Health_revised.pdf> accessed 1 May 2021.

⁴² NHS Digital, ‘Mental Health Act Statistics, Annual Figures England, 2019-2020’ (NHS Digital 2020) <<https://files.digital.nhs.uk/99/3916C8/ment-heal-act-stat-eng-2019-20-summ-rep%20v1.1.pdf>> accessed 30 April 2021.

Informed Decision-making, Equality and Diversity and Collaborative Working) as crucial to AMHP practice development.

The AMHP role represents a clear challenge to practitioners. They are expected to manage the expectations of various stakeholders: the service-user, their family, the state and the public. Further pressures have been created by a shortage of AMHP practitioners nationally.⁴³ Educating the AMHP to critically appreciate how their role sits within a complex web of “legal, organisation and human systems” is key to enabling them to manage the unique tensions of the role and continue to promote wellbeing amongst mental health service-users.⁴⁴

THE WELFARE REFORM AND WORK ACT 2016: LIMITING BENEFIT ENTITLEMENT TO THE FIRST TWO CHILDREN IN A FAMILY

In March 2016, the Welfare Reform and Work Act (WRWA) received royal assent and instituted four significant changes to the UK social security system. These amendments introduced stricter rules for Employment and Support Allowance which is the main welfare benefit in the UK for people who are unfit for work;⁴⁵ placed a benefit freeze on most working-age benefits for a period of four years⁴⁶ and reduced the level of the existing benefit cap which limits the total income derived from social security benefits that a household is entitled to.⁴⁷ This article focuses on the impact of the fourth change which introduced a two-child limit to the UK’s main means tested benefits.⁴⁸ The child elements of Universal Credit and Child Tax Credit are no longer awarded for the third or subsequent child born on or after 6 April 2017. Sections 13 and 14 of the WRWA apply to single people who form a new family unit with three or more children, but ignores any children born before 6 April 2017:

"(3A) Subsection (3B) applies in the case of a person or persons entitled to child tax credit where the person is, or either or both of them is or are, responsible for a child or qualifying young person born on or after 6 April 2017.

(3B) The prescribed manner of determination in relation to the person or persons must not include an individual element of child tax credit in respect of the child or qualifying young person unless –

(a) he is (or they are) claiming the individual element of child tax credit for no more than one other child or qualifying young person, or

(b) a prescribed exception applies."⁴⁹

⁴³ All-Party Parliamentary Group on Social Work, ‘Social Workers and a New Mental Health Act Final Report’ (All-Party Parliamentary Group on Social Work 2019) <<https://www.basw.co.uk/system/files/resources/Inquiry%20Report%20-%20APPG%20on%20Social%20Work%20-%20Social%20Workers%20and%20A%20New%20Mental%20Health%20Act..pdf>> accessed 30 April 2021.

⁴⁴ Jim Campbell ‘Deciding to Detain: The Use of Compulsory Mental Health Law by UK Social Workers’ (2010) 40(1) British Journal of Social Work, 328.

⁴⁵ Ss 15 and 16.

⁴⁶ Ss 11 and 12.

⁴⁷ Ss 8 and 9.

⁴⁸ Ss 13 and 14.

⁴⁹ S 13.

There are special circumstances where the two-child limit does not apply:

- When a third or subsequent child is born as part of a multiple birth.
- When a third or subsequent child is “likely to have been conceived as a result of a non-consensual sexual act (including rape), or at a time when the claimant was subject to ongoing control or coercion by the other biological parent of the child”.
- When a child is adopted.
- When a child is living with family or friends in a non-parental caring arrangement, whether formal, such as through a Guardianship Order, or informal, where “it is likely that the child would otherwise be looked after by a local authority”.
- When a child for whom the claimant is responsible has their own child.⁵⁰

The two-child limit is one of the most controversial elements of the UK government’s decade long programme of welfare reform. Strong criticism has come from academia (“the worst social security policy ever”⁵¹) and the social welfare law sector (“you could not design a policy better to increase child poverty than this one”⁵²). As there is no retrospective application of this policy, the Institute for Fiscal Studies estimate⁵³ that the full impact of the two-child limit will not be felt until the mid-2030s; projections indicate that 700,000 families will experience a reduction in benefit entitlement, with average annual losses of £3,000. Since the policy was introduced, we can see a steady increase in the numbers affected, with the latest figures demonstrating that 911,000 children live in households affected by the policy.⁵⁴

The government’s rationale for the two-child limit is to create parity between those receiving benefit and those in work:

“Benefit entitlement adjusts automatically to family size, whilst families supporting themselves solely through work do not see their incomes rise in the same way when they have more children”.⁵⁵

⁵⁰ Reg 9(2) Child Tax Credit Regulations 2002 SI 2002/2007, as amended by SI 2017/387 and Reg 40(2), Universal Credit Regulations 2013 SI 2013/ 376, as amended by SI 2017/376.

⁵¹ Jonathan Bradshaw, ‘The Two Child Policy Is the Worst Social Policy Ever’ (*Social Policy Association*, 1 November 2017) <<http://www.social-policy.org.uk/50-for-50/two-child-policy/>> accessed 5 May 2021.

⁵² Josephine Tucker, Senior Policy and Research Officer at Child Poverty Action Group (CPAG), in House of Commons and Work and Pensions Committee, ‘The Two-Child Limit’ (House of Commons Work and Pensions Committee 2019) HC 51 <<https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/51/51.pdf>> accessed 5 May 2021.

⁵³ Tom Waters, ‘Reform to Two-Child Limit Addresses Retrospection, but Does Not Change Long-Run Cut to Support for Big Families’ (*Institute for Fiscal Studies*, 11 January 2019) <<https://www.ifs.org.uk/publications/13804>> accessed 5 May 2021.

⁵⁴ HM Revenue and Customs and Department for Work and Pensions, ‘Child Tax Credit and Universal Credit Claimants: Statistics Related to the Policy to Provide Support for a Maximum of 2 Children, April 2020’ (HM Revenue and Customs, Department for Work and Pensions 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900788/Two_children_and_exceptions_in_tax_credits_and_Universal_Credit_April_2020.pdf> accessed 5 May 2021.

⁵⁵ Department for Work and Pensions, ‘Exceptions to the Limiting of the Individual Child Element of Child Tax Credit and the Child Element of Universal Credit to a Maximum of Two Children Public Consultation’ (Department for Work and Pensions 2016)

The distinction that the government makes is a false one as the UK social security system has long been used as a mechanism to provide 'top-up' income for those in low-paid work. Currently 60% of households affected by the two-child policy contain an adult who is in employment. The two-child limit moves the emphasis of the UK social security system away from meeting the financial needs of individual children, and towards a system based on judgement about appropriate family size. This significant ideological shift presumes that families are always able to make informed choices about how they will provide an income to support children. It neglects to acknowledge a wide variety of unforeseen circumstances in life which could mean a family needs to make a claim for a means-tested welfare benefit, for example bereavement, separation, or unwanted pregnancy. The COVID-19 pandemic has emphasised the unpredictability of life and the fact that benefit claimants are not a static population. The need for a functioning welfare safety net to compensate people in uncertain times has become even more apparent. In the two months that followed the first UK coronavirus lockdown in March 2020, nearly 2.5 million people made a claim for Universal Credit.⁵⁶

The government's rationale for this policy is also challenged by the disproportionate impact that it has on some groups in society and the strong arguments that it breaches human rights law. Faith based organisations argue that the policy can be classed as 'anti-family', disproportionately affecting those with larger families due to religious conviction.⁵⁷ Women are more likely to be affected by this policy, particularly those from certain ethnic groups and those who have moved to the UK from abroad. O'Brien argues that the policy is "the most significant violation of human rights that has yet been written into the fabric of the UK social security".⁵⁸ She argues that the two-child limit conflicts with the UK's legal obligations as set out in the UN Convention on the Rights of the Child (UNCRC). She argues that the policy is "patently opposed" to the best interests of the child which were barely considered during the formation of the policy, and that it discriminates on the grounds of family size, ethnicity and religion.⁵⁹

The two-child limit is the subject of a legal challenge to the Supreme Court; a remote hearing was heard on 20-22 October 2020: *SC, CB and 8 children (Appellants) v Secretary of State for Work and Pensions and others*.⁶⁰ Two lone parents who both had a third child born after 6 April 2017 have brought the case. The first appellant has a range of physical and cognitive health problems which make the use of contraception problematic; her third child was unplanned. The second appellant left an abusive relationship and then fell pregnant despite using the contraceptive pill. Neither woman

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561641/exceptions-to-the-limiting-of-the-individual-child-element-of-child-tax-credit-and-the-child-element-of-universal-credit-to-a-maximum-of-2-children.pdf> accessed 14 November 2020.

⁵⁶ Department for Work and Pensions, 'Universal Credit Statistics: 29 April 2013 to 8 October 2020' (GOV.UK) <<https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-8-october-2020/universal-credit-statistics-29-april-2013-to-8-october-2020>>.

⁵⁷ Harriet Sherwood, 'UK Faith Leaders Unite to Challenge Welfare Penalties on Larger Families' *the Guardian* (10 November 2015) <<http://www.theguardian.com/politics/2015/nov/10/uk-faith-leaders-unite-to-challenge-welfare-penalties-on-larger-families>> accessed 29 September 2020.

⁵⁸ Charlotte O'Brien, 'Done because we are too mummy: the two-child rule promotes poverty, invokes a narrative of welfare decadence, and abandons children's rights', (2018) 26 *International Journal of Children's Rights* 700,731.

⁵⁹ *Ibid* 753.

⁶⁰ UKSC 2019/0135 (unreported).

was prepared to have an abortion on moral grounds. The legal challenge argues that the two-child limit unlawfully discriminates against women, children, large families, children with multiple siblings and those with a moral or religious opposition to birth control. It is argued that the policy is a breach of article 14 of the European Convention on Human Rights (Prohibition of discrimination), article 8 (Right to respect for private and family life) and protocol 1 of article 1 (Peaceful enjoyment of possessions). If the appeal is allowed the two-child limit will be ruled incompatible under Section 4 of the Human Rights Act 1998.

For social work students the two-child limit presents a number of ethical challenges which must be reflected on in a sensitive manner.⁶¹ The overriding tension, and challenge to wellbeing, comes from developing appropriate ways to support service users who may be subject to the two-child limit, when the ethos and ideology of this policy clashes with established social work values. Two of the nine competencies of the PCF are of particular relevance when exploring the ethical dilemmas of the two-child limit. Domain 2 “Values and Ethics” places an expectation on social workers to promote human rights and social justice, to manage conflicting or competing values, and to promote individuals’ privacy and confidentiality. Domain 4 “Rights, Justice and Economic Wellbeing” obligates social workers to understand and address the effects of oppression, discrimination and poverty. It emphasises the importance of understanding how policy can constrain people’s rights and to promote a service user’s economic status by accessing welfare benefits.

Without doubt, the most controversial element of the two-child limit is the exception commonly referred to as the ‘rape clause’. This exception has drawn strong criticism from many groups in the social welfare sector (e.g. Child Poverty Action Group)⁶² and women’s advocacy groups (e.g. Engender).⁶³ This exception applies where a third or subsequent child is conceived as a result of rape or if the claimant was in an abusive relationship and subject to coercion and control. This exception has significant implications as a third-party evidence system requires professionals such as social workers to verify that a claimant’s circumstances are consistent with the exception being applied for. Under the third-party evidence system social workers are not required to provide evidence but must confirm that the rape or coercion has been reported to them. Clearly, this has the potential to change the social worker-service user dynamics and to shift the role of a social worker from that of an enabler to a gatekeeper. There is a risk that this may affect a social worker’s reputation and professional standing, and as a consequence almost certainly impact on professional wellbeing.

Trust is a key element to social work practice and concerns have been raised that accidental breaches of confidentiality may occur⁶⁴ as it become apparent that a

⁶¹ Richard Machin, ‘The Professional and Ethical Dilemmas of the Two-child Limit for Child Tax Credit and Universal Credit’ (2017) 11(4) Ethics and Social Welfare, 404.

⁶² Tom Sefton and Tucker, ‘Unhappy Birthday. The Two-Child Limit at One Year Old’ (Child Poverty Action Group 2018) <<https://cpag.org.uk/sites/default/files/policypost/Unhappy-birthday-report-on-two-child-limit-final.pdf>> accessed 15 September 2020.

⁶³ Engender, ‘UK Government Consultation On Exceptions To The Reforms Which Limit The Child Elements In Child Tax Credit And Universal Credit To A Maximum Of Two Children Engender Response’ (Engender 2016) <<https://www.engender.org.uk/content/publications/Engender-two-child-limit-consultation-November-2016.pdf>>.

⁶⁴ Social Security Advisory Committee, ‘The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017’, 2, para 1 (31 January 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590932/ssac-to-damian-hinds-2-child-exceptions.pdf> accessed 15 September 2020.

claimant is subject to the 'rape clause' exception when they apply for housing, seek debt advice or apply for student finance. As we have seen, the two-child limit has a disproportionate impact on larger families, families with disabled children, certain ethnic groups and potentially on bereaved parents. These are amongst the groups that a social worker is most likely to work with. The opening to this article referred to a "tool-box of coping strategies"⁶⁵ which must be fostered in social work education. This is particularly important when working with these marginalised groups.

EQUIPPING FUTURE SOCIAL WORK STUDENTS FOR ETHICAL CHALLENGES

How then can social work legal education prepare students for these challenging ethical situations in a way which also promotes wellbeing and resilience? Ethical role modelling and professional supervision are key; leaders in a social work setting (e.g. service directors, senior practitioners) should set the standards which are expected of staff. Leaders should recognise that the ethical dilemmas described in this article are complex and social workers need carefully planned supervision and support to discuss concerns and promote staff welfare. In a social work legal education context, academic staff must also behave in similar way, role modelling the ethics and values that are embedded in social work practice, avoiding favouritism and promoting the rights of groups who suffer from discrimination.⁶⁶

Legal educators must be mindful of the language used to describe service users experiencing mental health problems or encountering issues with the social security system. In both of these situations, individuals will often have been inappropriately labelled by the media⁶⁷ and can be subject to stereotyping by professionals with whom they work. An appreciation of the language that we use to describe service users, and the way that we communicate with them must be explored with student social workers.⁶⁸ Social work education should acknowledge the causes of structural discrimination and discuss the power of language which can promote, or undermine wellbeing, for both staff and service users.

Social work students should be encouraged to critically analyse the ways in which legal provisions are developed within in a political environment. Alongside the teaching of social work theory, students should be encouraged to consider the impact of political ideology on policy-making. In a UK context, the last decade has been dominated by the politics of austerity and a "shrinking state"⁶⁹ and students need to

⁶⁵ Op cit, n 7, 617.

⁶⁶ Marietta Anne Barretti 'Teachers and Field Instructors as Student Role Models' (2007) 27(3-4), *Journal of Teaching in Social Work* 215.

⁶⁷ Emma Briant, Nick Watson, and Gregory Philo, 'Reporting disability in the age of austerity: The changing face of media representation of disability and disabled people in the United Kingdom and the creation of new 'folk devils' (2013) 28(6) *Disability and Society*, 874; Kayleigh Garthwaite, 'Fear of the Brown Envelope: Exploring Welfare Reform with Long-Term Sickness Benefits Recipients' (2014) 48 *Social Policy & Administration*, 782; Alessandra Maiorano, Antonio Lasalvia, Gaia Sampogna, Benedtaa Poci, Mirella Ruggeri, Claire Henderson, 'Reducing Stigma in Media Professionals: Is there Room for Improvement? Results from a Systematic Review' (2017) 62(10) *The Canadian Journal of Psychiatry* 702.

⁶⁸ Jane Dalrymple and Beverley Burke. *Anti-Oppressive Practice. Social Care and the Law*. (Open University Press, 2006).

⁶⁹ Linda Lobao, Mia Gray, Kevin Cox, and Michael Kitson, 'The shrinking State? Understanding the assault on the public sector' (2018) 11(3) *Cambridge Journal of Regions, Economy and Society*, 389.

reflect on how this has affected the day-to-day lives of service users. The individual role of a social worker will dictate the extent to which they feel able to be an active political campaigner. However, political awareness should not be placed on the margins of social work practice. The British Association of Social Workers has developed an 'Anti-poverty Practice Guide for Social Work' which states: "social workers should adopt a multi-dimensional approach, which emphasises equal rights to participation in society".⁷⁰ Student social workers should be encouraged to consider how they can build resilience and access support when working in this overtly political environment.

Discussions around complex issues of mental health and entitlement to social security inevitably raise issues of client confidentiality and the potential for conflicts of interest. These are key issues which are explored in a classroom setting with social work students, and then applied in practice during professional placements. An emphasis on advocacy is important; advocacy strategies have been identified as a key way in which social workers can promote social justice and assist service users with complex legal processes.⁷¹ Students are encouraged to actively reflect on appropriate ways to support service users where a MHA assessment is undertaken or attendance at a social security appeal tribunal is required. Discussions within sessions are held around appropriate referral and support services to which service users can be signposted. Role-play can be a challenging but valuable way of exploring many of the above issues. This works most effectively in a safe environment with well-defined learning needs, ground rules and effective feedback⁷² and can be an opportunity to "experience practice dilemmas and to be able to reflect on these in a safe environment".⁷³

⁷⁰ British Association of Social Workers, 'The Anti-Poverty Practice Guide for Social Work' (BASW, 2 September 2019) <<https://www.basw.co.uk/what-we-do/policy-and-research/anti-poverty-practice-guide-social-work>> accessed 17 November 2020.

⁷¹ Anne Marie McLaughlin, 'Clinical Social Workers: Advocates for Social Justice' (2009) 10(1) *Advances in Social Work*, 51.

⁷² Rosalind Hargreaves and Jan Hadlow 'Role-play in social work education: Process and framework for a constructive and focused approach' (1997) 16(3) *Social Work Education* 61.

⁷³ Malcolm Kinney and Elaine Aspinwall-Roberts 'The use of self and role-play in social work education. *Journal of Mental Health Training*', (2010) 5(4) *Education & Practice* 27, 32.

BLENDING LEARNING TO SUPPORT STUDENT WELLNESS: EXPERIENCES TEACHING CORPORATIONS LAW

HELENA H STOOP*

ABSTRACT

Blended learning is not a new concept in the context of legal education. Many studies have commented on the use of blended learning strategies, especially to enable law teachers to use 'flipped room' teaching methods optimally. This article offers an overview of the development of blended learning – both in general and in the context of legal education. It then considers the potential for blended learning to support student wellness. The article draws from a project which made use of blended learning to teach an intermediate year corporations law course at the University of Cape Town, in South Africa. In addition to traditional reading, students were given short podcasts and videos to prepare for class. Teaching time was adjusted to include more practical sessions and group work in class. Students were asked to reflect on the impact that the model had on their confidence in class and their willingness to participate. While the size of the study prevents any clear conclusions, student responses and the teacher experience point to the potential of this model of blended learning to support student wellness and potentially to reduce the feelings of anxiety. It may be an especially useful approach for so-called 'killer courses' that students tend to be especially fearful of and could offer additional support to students studying in their second language.

INTRODUCTION

The world will remember 2020 for many things; a whole new vernacular has become mainstream as conversations centre around 'social distancing', 'track-and-trace', and 'social bubbles'. Yet perhaps one of the most astounding realisations was how technology has enabled us to function effectively in ways we could hardly imagine.¹ Educators have long been aware of the possibilities that technological advances presented, as is clear from the wealth of academic studies and research on the impact of technology on teaching.² While many courses and even entire degree programs can be offered online, it has also become possible to integrate technology with

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¹ Richard A Easterlin *Growth Triumphant: The Twenty-first Century in Historical Perspective* (University of Michigan Press 1998), David C Mowery and Nathan Rosenberg *Paths of Innovation: Technological Change in 20th- Century America* (Cambridge University Press 1998); Sanford L Moscovitz, *Advanced Materials Innovation: Managing Global Technology in the 21st Century* (Wiley 2016).

² A literature review is beyond the scope of this paper but see for example: Lawrence Tomei *Exploring the New Era of Technology-Infused Education* (IGI Global 2017); Arthur Tatnall and Anthony Jones (eds), *Education and Technology for a Better World* (Springer 2009).

traditional face-to-face teaching practices.³ Such integrated practices are commonly referred to as 'blended learning' - although the parameters of the term remain contested.⁴ There have been a multitude of studies to assess the efficacy of blended learning practices in teaching and curriculum design, both generally, and specifically in the context of legal education.⁵ Blended learning has proven popular for its perceived ability to improve student outcomes, flexibility, and cost effectiveness to name a few.⁶ In the context of legal education blended learning has proven popular especially because it can effectively support a 'flipped room' teaching strategy.⁷

Much has been said about how blended learning may or may not support academic outcomes and throughput. While these more general studies will be referenced in overview below, this research will turn to the ability of blended learning to support aspects of student wellbeing. Many universities grapple with student wellbeing and how best to support a student body that is increasingly anxious and unwell. The strains and stresses of 2020 will no doubt aggravate this and, if anything, tertiary institutions will be under increased pressure to offer viable solutions to protect the wellbeing of their students. As the discussion below will point out, online materials enable educators to take a more student-centred approach, unencumbered by the usual capacity constraints. It also makes it possible to offer students variation. These characteristics and the inherent flexibility that can be achieved through effective use of blended learning, makes it a valid approach to consider when designing a course with student wellness in mind.

The article will briefly consider the definition of blended learning and will comment on the apparent strengths and shortcomings of the blended learning approach; and more specifically blended learning that facilitates teaching in a 'flipped classroom'. The meaning of student wellness and its importance in curriculum design – especially in the context of legal education – will then be discussed, before considering how informed curriculum design, which incorporates thoughtful blended learning practices, might support student wellbeing. Following the theoretical overview, the article will focus on a case study of blended learning introduced at the University of Cape Town (UCT) to teach a mid-curriculum law course. While the blended learning elements were introduced with various goals in mind, the potential impact of these practices on student wellbeing will be the subject of this discussion. A final section of the article is

³ Harvey Singh, 'Building Effective Blended Learning Programs' (2003) 43 *Educational Technology* 51, 51.

⁴ See for example: Lauren E Margulieux, Michael McCracken and Richard Catrambone, 'A taxonomy to define courses that mix face-to-face and online learning' (2016) 19 *Educational Research Review* 104; Martin Oliver and Keith Trigwell, 'Can 'Blended Learning' be Redeemed?' (2005) 2 *E-Learning* 17.

⁵ For a comprehensive literature review see: Lisa R Halverson et al 'A thematic analysis of the most highly cited scholarship in the first decade of blended learning research' (2014) 20 *Internet and Higher Education* 20. See also for example: Wendy W Porter et al, 'Blended learning in higher education: Institutional adoption and implementation' (2014) 75 *Computers & Education* 185.

⁶ Rasheed Abubakar Rasheed, Amirrudin Kamsin and Nor Aniza Abdullah, 'Challenges in the online component of blended learning: A systematic review' (2020) 144 *Computers and Education* 103701. See also: J Broadbent, 'Comparing online and blended learner's self-regulated learning strategies and academic performance' (2017) 33 *The Internet and Higher Education*, 24; K Jusoff and R Khodabandelou, 'Preliminary study on the role of social presence in blended learning environment in higher education' (2009) *International Education Studies* 83; C Dziuban, P Moskal and J Hartman, 'Higher education, blended learning, and the generations: Knowledge is power: No more' in John Bourne and Janet C Moore (eds) *Elements of quality online education: Engaging communities* (Sloan Center for Online Education 2005); C Dziuban et al, 'Blended learning: The new normal and emerging technologies' (2018) 15 *International Journal of Educational Technology in Higher Education* 3.

⁷ See discussion below under *Technology that 'flips the room'* and sources cited.

dedicated to reflection on the practices introduced to the course that is the subject of the case study, to identify strengths, weaknesses and areas for improvement.

As restrictions are eased and students return to classrooms, most educators look forward to getting 'back to normal'. However, the disruptions we have faced have been an education in themselves, and we have gained insights that may make a 'new normal' possible. This article aims to contribute to the continuing discourse about how best to use technology to dynamically support more traditional teaching practices. The course that is the subject of the case study has tended to undermine students' confidence which may erode student wellness and in turn could undermine performance for some. The suggestions and practices discussed below may be useful to those teaching on any course with an intimidating reputation. It may also benefit those who teach especially diverse student bodies, with varying levels of academic preparedness and abilities in the language of instruction.

BLENDED LEARNING: DEFINITION AND CONTEXT

Defining the Term

Considering the sheer number of academic studies and articles inspired by the term 'blended learning', it is surprisingly difficult to pin down a clear and concise definition for it.⁸ Writing at the turn of the century, when it was emerging as a notable trend, Graham explained blended learning as "part of the ongoing convergence of two archetypal learning environments".⁹ On the one hand, traditional face-to-face teaching, and on the other emerging distributed learning environments. These two archetypes had remained largely separate because they used different media/method combinations and were aimed at different audiences, but technological advances allowed them to merge.¹⁰ Accepting that 'blended learning' in general terms, would refer to educational policies that in some way combined face-to-face and online learning was easy enough.¹¹ It is the second phase of the definition that presented greater challenges, as any combination of the two will technically fit the bill.¹²

⁸ See for example definitions proposed by: M Kerres and C De Witt, 'A Didactical Framework for the Design of Blended Learning Arrangements' (2003) 28 *Journal of Educational Media* 101; D Whitelock and A Jelfs, Editorial: *Journal of Educational Media Special Issue on Blended Learning* (2003) 28 *Journal of Educational Media* 99; M Driscoll 'Blended Learning: let's get beyond the hype', (*E-learning Magazine*, 2002) <https://www.researchgate.net/publication/286029739_Blended_learning_Let's_get_beyond_the_hype> accessed 27 October 2020.

⁹ Charles R Graham, 'Blended Learning Systems: Definition, Current Trends, and Future Directions' in Curtis J Bonk and Charles R Graham (eds) *Handbook of blended learning: Global Perspectives, local designs* (Pfeiffer 2006) 6.

¹⁰ The author notes that traditional face-to-face teaching "typically occurred in a teacher-directed environment with person-to-person interaction in a live synchronous, high fidelity environment. On the other hand, distance learning systems emphasized self-paced learning and learning-materials interactions that typically occurred in an asynchronous, low fidelity (text only) environment": Graham (n9) 6.

¹¹ This definition is generally also supported by Porter et al (n5) 185. It is described along similar lines by Garrison and Kanuka as "a thoughtful integration of classroom face-to-face learning experiences with online experiences". See: DR Garrison and H Kanuka, 'Blended learning: Uncovering its transformative potential in higher education' (2004) 7(2) *The Internet and Higher Education* 95, 96.

¹² Patsy Moskal, Charles Dzubian and Joel Hartman, 'Blended Learning: A Dangerous Idea' (2013) 18 *Internet and Higher Education* 15, 15. The authors mention that the vital role that context played in the

Singh, for example, offered a more nuanced approach, and identified five dimensions with potentially overlapping attributes. First, and perhaps most traditionally associated with the term 'blended learning' is a blend between online and offline learning. Second, a blend between self-paced and live, collaborative learning. Third, blending structured and unstructured learning. Fourth, a blend between custom content and off-the-shelf content. Fifth, blended learning, practice and performance support which is "to supplement learning (organized prior to beginning a new job-task) with practice (using job-task or business process simulation models) and just-in-time performance support tools that facilitate the appropriate execution of job-tasks".¹³

On the other hand, Oliver and Trigwell criticised the term 'blended learning' in its entirety. They point to anomalies in various traditional definitions of blended learning,¹⁴ and especially emphasize the inconsistency of using the word 'learning' in reference to something that is actually an instructional approach.¹⁵ The authors contended, however, that the term could be redeemed by subverting it and by using it to describe an approach that does focus on learning.¹⁶ Recent education theory has made it clear that students will experience instruction uniquely – and not necessarily in the way that the instructor intended. In light of this, they argue that some of the successes being ascribed to blended learning may actually be attributed to an increase in choice.¹⁷ However, it may also be that the blend being used allows some students to experience greater variation, in which case the blended approach would in fact support learning – at least for those students. Variation theory posits that learning depends on the learner experiencing variation.¹⁸ Discernment lies at the heart of the theory. We see and experience the world in juxtaposition to what we have already seen and experienced, discerning differences and similarities.¹⁹ The theory contends that "[l]earning occurs when critical aspects of variation in the object of learning are discerned", and the authors argue that it might be that blended learning is better able to facilitate this. While technology enables us to use new forms of learning, the reason why this is proving effective is not new. Educators can introduce variation in ways they were not able to do before, and according to variation theory the fact that the approach is successful is not surprising. The ability of new media to offer variation in teaching is also emphasised by proponents of student-centred teaching,²⁰ and comments from

construction of the definition, many later accepted that it is more useful as a mental model; in other words, a generalised sense or understanding that is strongly informed by the context within which one operates. The authors refer here to the definition used by P M Senge, *The fifth discipline: The art and practice of the learning organization* (Doubleday 1990).

¹³ Singh (n3) 51 - 54.

¹⁴ Oliver and Trigwell (n4) 18. The authors summarise: "As the above analysis has shown, by any definition there is little merit in keeping the term 'blended learning' as it is currently understood. It is either inconsistent (and so useless as a way of understanding practice) or redundant, because it simply describes practice within higher education more generally, and it attributes to learning something that, in terms of what we know, only applies to teaching or instruction" .

¹⁵ Oliver and Trigwell (n4) 21.

¹⁶ Ibid 22.

¹⁷ As the authors note, there is research to support this. See: NJ Entwistle and P Ramsden *Understanding Student Learning* (Croom Helm 1983); P Ramsden, 'A Performance Indicator of Teaching Quality in Higher Education: the Course Experience Questionnaire' (1991) 16 *Studies in Higher Education* 129.

¹⁸ Oliver and Trigwell (n4) 22. And see: J Bowden and F Marton *The University of Learning: beyond quality and competence in higher education* (Routledge 1998); F Marton and ABM Tsui *Classroom Discourse and the Space of Learning* (2004 Lawrence Erlbaum Associates 2004).

¹⁹ This is not to be confused with choice in the sense that a variety of media is being used.

²⁰ Oliver and Trigwell (n4) 23. And, with regards to student centred methods see: Renate Motschnig-Pitrik and Andreas Holzinger 'Student-Centered Teaching Meets New Media: Concept and Case Study'

students surveyed after some weeks participating in the blended learning course that is the subject of the case study, also support the notion that one of the key strengths of a blended approach is the variation it facilitates.

At the end of the day, “blended learning has become an evolving, responsive and dynamic process that in many respects is organic, defying all attempts at universal definition”.²¹ While the flexibility of this approach has allowed institutions to apply blended learning in creative and context appropriate ways to best suit their needs, the lack of a clear definition does undermine specificity,²² and makes blended learning especially challenging to assess in meaningful ways, as the examples below will illustrate.²³ The approach that best fits the practices described below would appear to align most closely with variation theory and a technology enabled student-centred approach.

Finding what works best

The efficacy of courses that mixed face-to-face and online instruction had been contested in the literature. Although some studies found that blended courses improved learning outcomes, others did not.²⁴ Margulieux et al attributed conflicting literature and ostensibly unreliable results to inconsistent definitions. The authors attempted to make sense of these discrepancies by developing a Mixed Instructional eXperience taxonomy to better define such courses on two dimensions – delivery medium and instruction type. Delivery medium refers to the medium through which the learner receives instructions, while instruction type refers to the role that the learner takes during these instructions.²⁵

In applying the taxonomy, the authors were able to identify three main types of mixed instruction courses: combination courses, hybrid courses or blended courses.²⁶ Of the latter, three common types of blended courses could further be identified. The first is a so-called ‘flipped blend’ – or a course in which students receive content from technology and then apply the content with the help of the instructor. The second, referred to as a supplemental blend, entails a course where students receive content from the instructor and then apply it with the aid of technology. Finally, the authors identify a replacement blend instructional experience which moves significant content

(2002) 5(4) Educational Technology & Society 5; Benjamin R Malczyk ‘Multimodal Instruction, the New Hybrid A Student-Centered Approach to Blended Learning’ (2018) 8 The Journal of Nonprofit Education and Leadership 16.

²¹ Moskal, Dzubian and Hartman (n12) 16.

²² Ibid.

²³ Margulieux, McCracken and Catrambone (n4) 105. The authors note that “[b]etter definitions of terms are needed to advance knowledge in this area because inconsistent definitions of mixed instruction courses makes comparing results, replicating experiments, implementing course design, and finding and understanding information from the literature difficult”. See also: Yuping Wang, Xibin Han and Juan Yang, ‘Revisiting the Blended Learning Literature: Using a Complex Adaptive Systems Framework (2015) 18 Journal of Educational Technology & Society 380 – 393.

²⁴ Margulieux, McCracken and Catrambone (n4) 107.

²⁵ Ibid. In terms of the latter dimension, the question is whether the student is receiving content (lecture, notes etc) or whether the student is applying content (exercise, assignment).

²⁶ Ibid 111. Combination courses refer to “courses that provide instructional support during both receiving content and applying content. How instruction is delivered determines whether it is a face-to-face or online combination course”. Hybrid courses “combine delivery of instruction via an instructor and via technology. What type of instruction is delivered determines whether it is a lecture hybrid or practice hybrid course”. Finally, blended courses are defined as “courses that combine delivery of instruction via an instructor and via technology and provides instructional support during both receiving content and applying content”.

and application online, so that it “replaces part of the instructor-delivered component with a technology-delivered component”.²⁷

The authors used the taxonomy to reorganise and analyse courses and found that those mixed instruction courses that had changed the delivery medium only, tended by an overwhelming majority to report no change in learning outcomes.²⁸ What was clear on the other hand, was that the type of instruction had a consistent impact on learning outcomes. Courses that in some way added instruction during the *application* of content to the original structure of the course reported improved outcomes in 77% of cases.²⁹ Importantly, in nearly all of the courses, students originally also completed application activities. The change brought about by the mixed instruction course was that the *feedback* was received while students were completing application activities. The authors further noted that the majority of the courses that incorporated instruction in this way were so-called ‘flipped courses’.³⁰ Typically, such courses would record video lectures that had to be viewed before class so that application activities could subsequently be completed in small groups, in class with the support and instruction of a tutor, assistant or lecturer.³¹

The literature seems therefore to indicate that blended learning can play the most dynamic role when coupled with a flipped or inverted classroom approach, and then specifically to allow for direct and synchronous feedback to be provided by the instructor – the more so if this is combined with application tasks completed in small groups.

Technology that ‘flips the room’.

Flipping the room is a trend that emerged at the turn of the century, and that has gradually gained traction, especially in the United States;³² to the extent that it has

²⁷ Ibid 110. See also: Jacob Bishop and Matthew A Verleger, ‘The Flipped Classroom: A Survey of the Research’ (ASEE, 2013) <<https://peer.asee.org/the-flipped-classroom-a-survey-of-the-research>> accessed 10 May 2021, Carol A Twigg, ‘Improving learning and reducing costs: New models for online learning’ (2003) 38 EDUCAUSE Review 28.

²⁸ Margulieux, McCracken and Catrambone (n4) 112. The authors point out however, that no improvement is a significant finding in itself – as it might indicate that instruction can be delivered in a mixed mode with equal efficacy which may have implications for the use of technology to supplement instructions.

²⁹ Ibid. The authors provide a table to outline and categorise the various studies and their results.

³⁰ See discussion below under Technology that ‘flips the room’.

³¹ Margulieux, McCracken and Catrambone (n4) 112.

³² See in general: Perry Binder ‘Flipping a Law Class Session: Creating Effective online Content and Real World In-Class Team Modules (2015) 17 Atlantic Law Journal 34, 35. See also: Nancy Lape Yong Rachel Levy, Darryl, ‘Can Flipped Classrooms Help Students Learn? We’re Trying to Find Out.’ (Slate Magazine, 25 April 2014) <<https://slate.com/technology/2014/04/flipped-classrooms-can-they-help-students-learn.html>> accessed 10 May 202; Catherine A Lemmer, ‘A View from the Flip Side: Using the ‘Inverted Classroom’ to Enhance the Legal Information Literacy of the International LLM. Student’ (2013) 105(3) Law Libr J 461; Nicola Sales ‘Flipping the classroom: revolutionising legal research training’ (2013) 13(4) Legal Information Management 231, 232. See also: Katharine T Schaffzin, ‘Learning Outcomes in a Flipped Classroom: A Comparison of Civil Procedure II Test Scores between Students in a Traditional Class and a Flipped Class (2016) 46 University of Memphis Law Review 661 for an overview of the history of flipping, its perceived benefits and concerns and the role of the flipped room in existing law school pedagogy.

been described as the “Socratic Method for the new millennium”.³³ At its most basic level, flipping or inverting the room would require students to engage with content before a class takes place, so that class time can be devoted to practical activities, discussions, writing exercises and other application tasks.³⁴ To flip the classroom in the context of blended learning usually implies that online or technology mediated content is used to facilitate this process and to replace the traditional lecture with an ‘in-class learning lab’.³⁵ It is rooted in the idea that class time should be used to construct meaning, rather than to transmit information, and the aim is to allow the instructor to become the ‘guide on the side’ as opposed to the ‘sage on the stage’.³⁶

Inverted classroom teaching has been popular as a tool to teach law, especially when combined with online components in the form of a ‘flipped blend’ as described above. Inverted rooms in law schools have been used with reported success to teach first year law students effective research skills,³⁷ to successfully teach lawyering skills,³⁸ and to support student learning in a more general sense.³⁹ Law teachers have further implemented inverted rooms to achieve constructivist teaching values,⁴⁰ and as mechanism to assist underprepared law students entering law school.⁴¹ Even in studies where student outcomes remained the same as compared to those achieved using traditional teaching methods, the instructor reported greater depth in classroom discussions and a heightened sense of accomplishment and satisfaction on the part of both instructor and student.⁴² Notable for the purposes of this research, it has been found in at least one study that flipped pedagogies effectively eased student anxieties, where video primers were used to prepare students for class.⁴³ Finally, flipped room pedagogy has been used to align teaching and assessment and to remedy a fundamental disconnect that mars assessment practices at many law schools – the fact that schools tend to teach case reading and analysis, but test problem-solving.⁴⁴

³³ Brad Keywell, ‘Flipping The University: A Young Entrepreneurs Guide’ (*Forbes*, 18 February 2014) <<https://www.forbes.com/sites/groupthink/2014/02/18/flipping-the-university-a-young-entrepreneurs-guide/>> accessed 10 May 2021.

³⁴ Binder (n32) 35.

³⁵ Binder (n32) 35. See also at note 8 where the author offers gives an overview of the studies on the efficacy of inverted rooms and points to long term studies that have shown no difference to academic outcomes in study areas other than law.

³⁶ See: Alison King ‘From Sage on the Stage to Guide on the Side’ (1993) 41(1) *College Teaching* 30; who first focused on the concept, after which it was developed by several academics and researchers. The term ‘flip the classroom’ was first used by JW Baker at a conference some years later; see: J Wesley Baker, ‘The Classroom Flip: Using Web Course Management Tools to Become the Guide by the Side’ (Selected Conference papers, 2000) <http://www.classroomflip.com/files/classroom_flip_baker_2000.pdf> accessed 10 May 2021.

³⁷ Sales (n32) 231.

³⁸ Joseph A Rosenberg ‘Confronting Cliches in Online Instruction: Using a Hybrid model to Teach Lawyering Skills’ (2008) *SMU Science and Technology Law Review* 19.

³⁹ Gerald F Hess ‘Blended Courses in Law School: The Best of Online and Face-to-Face Learning’ (2013) *McGeorge Law Review* 51, 56.

⁴⁰ Amy Huey-Ling Shee, ‘In Search of a Modern Confucius for Effective Teaching in Law: A Trial Project to Promote Interactive Learning in Taiwan’ (2013) 8 *Nat’l Taiwan U L Rev* 299.

⁴¹ Susan D Landrum, ‘Drawing Inspiration from the Flipped Classroom Model: An Integrated Approach to Academic Support for the Academically Underprepared Law Student’ 53 (2015) *Duquesne Law Review* 245.

⁴² Schaffzin (n32) 661.

⁴³ Julie Tausend, ‘Flipping the Law Classroom to Ease Student Anxiety’ (*EdTech magazine*, 6 December 2013) <<https://edtechmagazine.com/higher/article/2013/12/flipping-law-classroom-ease-student-anxiety>> accessed 10 May 2021.

⁴⁴ Debora L Threedy, Aaron Dewald, ‘Re-Conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving’ (2015) 64 *Journal of Legal Education* 605. The authors consider “how

Many studies have reported general student satisfaction with the practice, but at least one study conducted among first year law students at a Canadian law school concluded that while students accepted online learning content, they still “expressed a strong desire to see in person, traditional means of learning strengthened and maintained - lectures, seminars, and tutorials run by live human teachers”.⁴⁵

Concerns

Despite its potential, blended learning presents notable challenges.⁴⁶ For example, an increased use of technology outside the room could lead instructors to underestimate how much time students are actually spending on the course, which may paradoxically translate into a more time-consuming course – or a course and a half.⁴⁷

Rasheed et al focussed specifically on the challenges presented by the online component of blended learning and identified five main challenges that the online environment presents.⁴⁸ First are so-called ‘self-regulation challenges’ which relate to issues such as poor time management, procrastination, and improper utilization of online peer learning strategies. While some students may find managing their own time very useful, the very flexibility and self-paced learning that is touted as one of the strong suits of blended learning may be truly problematic for others. Second are technological literacy and competency challenges, examples of which are resistance to technology, challenges in using various user interfaces, distractions caused by overly complex technology and technology being seen as a barrier to seeking help. Third are so-called ‘isolation challenges’ - students feeling isolated and disinterested, or struggling with synchronous online communication. Fourth and fifth respectively, the authors identified technological sufficiency challenges and technological complexity challenges. The former refers to the fact that there may be inequality of technological accessibility; some students may have outdated technology or limited access to internet outside of the classroom, low bandwidth, or slow processing speeds. The latter highlights again that complex technologies could be a distraction and that longer videos may challenge learning.⁴⁹

The discussion above has highlighted the potential of blended learning to enhance student outcomes, especially when combined with inverted classroom

flipped, or hybrid, or blended learning environments (the terms are often used interchangeably) can contribute to the ultimate goal of having our students learn the analytical skills necessary for solving legal problems” (at 606).

⁴⁵ Richard Jochelsona and David Ireland, ‘Law Students’ Responses to Innovation: A Study of Perspectives in Respect of Digital Knowledge Transmission, Flipped Classrooms, Video Capsules and Other Means of Classroom Dissemination’ (2018) 41 Manitoba Law Journal 131. And see: Peter Sankoffa and Craig Forcese, ‘The Flipped Law Classroom: Retooling the Classroom to Support Active Teaching and Learning’ (2015) Canadian Legal Education Annual Review 119. While generally positive about the approach, the authors do wonder what might happen if the practice became so commonplace that students grew inured to it and it lost efficacy.

⁴⁶ For design challenges in general see: R Boelens, B De Wever and M Voet, ‘Four key challenges to the design of blended learning: A systematic literature review’ (2017) 22 Educational Research Review 1. The authors identified ‘incorporating flexibility’; ‘facilitating interaction’; ‘facilitating students’ learning processes’; and ‘fostering an effective learning climate’ as the four key challenges in question. See also: C R Graham, W Woodfield, and J B A Harrison, ‘A framework for institutional adoption and implementation of blended learning in higher education’ (2013) The Internet and Higher Education 4.

⁴⁷ Margulieux, McCracken and Catrambone (n4) 114.

⁴⁸ Rasheed, Kamsin and Abdullah (n6) 2.

⁴⁹ Ibid 5.

pedagogy and when used as part of a law school curriculum. It also touched upon some of the challenges that the approach may present and noted that not all studies conclude that blended learning will result in improved student outcomes. Some of the criticisms mentioned above present clear challenges, such as unequal access to technology and poor digital literacy (this is especially true in the context of a developing economy). However, it bears mention that many of the concerns do not present insurmountable obstacles. With the use of appropriate technology and meticulous planning of online elements it is possible to address many of the pitfalls commonly associated with a blended approach. For example, allocating time to each activity, using checklists and releasing information strategically will all speak to concerns around course load and time management. As far as determining impact and improved student outcomes, impressions may be skewed by the fact that there is no universally accepted definition for the term. But even if one accepts a lack of evidence to support the fact that blended learning improves throughput and other more concrete student outcomes, there is more than one measure of success.

BLENDED LEARNING AND STUDENT WELLNESS

Student Wellness – Cause for Concern

Evidence from many countries indicate that students are more stressed than they have ever been, and increasingly suffer from mental illness during their studies,⁵⁰ and law students are apparently more stressed than many of their peers. This state of stress has been attributed to the emphasis that law schools place on the adversarial nature of the profession, the costs of education, the competitive requirements for entering the degree stream and subsequently the fierce competition to find employment at what is considered a worthwhile firm.⁵¹

⁵⁰ See for example: Debora R Baldwin, Kerry Towler, and Michael D Oliver 'An examination of college student wellness: A research and liberal arts perspective' (2017) *Health Psychology Open* 1; Geoff Masters, 'Conceptualising and Researching Student Wellbeing', *Supporting Student Wellbeing: what does the research tell us about social and emotional development of young people?* (2004) <https://research.acer.edu.au/research_conference_2004/1> accessed 14 May 2021; Wendy Larcombe, Chi Baik and Abi Brooker, 'Teaching with Student Wellbeing in Mind: A New Initiative to Support the Mental Health of University Students', (*Handbook and Proceedings* 2015) <<http://www.unistars.org/papers/STARS2015/02E.pdf>> accessed 10 May 2021; Jason Bantjes et al, 'Prevalence and sociodemographic correlates of common mental disorders among first-year university students in post-apartheid South Africa: implications for a public mental health approach to student wellness.' (2018) *BMC Public Health* 922.

⁵¹ Many researchers have highlighted the phenomenon. See for example: Judie Allen and Paula Barren 'Buttercup goes to Law School: Student wellbeing in stressed law schools' (2004) 29 *Alternative Law Journal* 285; Anna Huggins, Sally Kift and Rachael Field, "Implementing the Self-Management Threshold Learning Outcome for Law: Some International Design Strategies from the Current Curriculum Toolbox" (2011) 21(2) *Legal Educ Rev* 183; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No time to lose: Negative impact on law student wellbeing may begin in year one' (2011) *The International Journal of the First Year in Higher Education* 49; Natalie Skead and Shane L Rogers, "Stress, Anxiety and Depression in Law Students: How Student Behaviors Affect Student Wellbeing" (2014) 40(2) *Monash U L Rev* 565; C Strevens and C Wilson 'Law student wellbeing in the UK: a call for curriculum intervention', (2016) 11 *Journal of Commonwealth Law and Legal Education* 44.

Much like blended learning, wellbeing is a term that may denote many concepts and one that has been defined in various ways depending on context.⁵² Baik and Larcombe define wellbeing as “a positive state of mental health” and as more than merely the absence of mental health difficulties.⁵³ They note that “[w]ellbeing is associated with experiences of personal growth, intrinsic motivation, positive relationships, autonomy and competence. A person’s state of mental health fluctuates over time, in response to many factors including physical health, life events and environmental conditions that increase protective or risk factors”.⁵⁴

Risk factors are those that exacerbate mental health difficulties, while protective factors in turn promote wellbeing. In the tertiary context the authors identify academic under-preparedness as a specific risk factor, while experiences of competency – being effective and able to meet academic demands – are noted as protective factors.⁵⁵ Research has consistently identified that “student mental wellbeing and academic achievement are both strengthened by learning environments that actively foster 5 wellbeing essentials”. These are autonomous motivation, a sense of belonging, relationships, autonomy, and competence.⁵⁶

As mentioned, academic under-preparedness is considered a specific risk factor to wellbeing in higher education. This is especially noteworthy, as law students increasingly seem to reach law school under prepared, with many students struggling to employ higher level cognitive processes such as problem solving and analysis. The problem that students enter law school without the requisite skills is often compounded by the fact that faculty by overwhelming margin still believe that students have already acquired the skills, and teach accordingly. It is also noteworthy that the problems tend not to be uniform, with some students facing more academic challenges in law school than others.⁵⁷

As Landrum noted:

“Students from privileged backgrounds tend to experience significant improvement in their critical thinking skills during their years as an undergraduate, in contrast to students whose parents are less educated and those who come from more diverse socioeconomic backgrounds. The end result is that ‘[l]aw schools that admit a more diverse population of students, from across the socioeconomic spectrum and from a variety of

⁵² See for example: Michael Barkham et al, ‘Towards an evidence-base for student wellbeing and mental health: Definitions, developmental transitions and data sets’ (2019) 19 *Couns Psychother Res* 351. See also for a discussion of definitions from different contexts: Toni Noble and others, ‘Scoping study into approaches to student wellbeing - Final Report’ (Department of Education Skills and Employment 2008) Text PRN 18219 <<https://www.dese.gov.au/student-resilience-and-wellbeing/resources/scoping-study-approaches-student-wellbeing-final-report>> accessed 24 March 2021; B Hettler, ‘Wellness: Encouraging a lifetime pursuit of excellence’ (1984) 8 *Health Values* 13.

⁵³ Chi Baik, Wendy Larcombe et al, *Enhancing Student Mental Wellbeing: A Handbook for Academic Educators* (University of Melbourne 2017) 3.

⁵⁴ Baik, Larcombe et al (n53) 3. See for example also David S Anderson (ed) *Further Wellness Issues for Higher Education: How to Promote Student Health During and After College* (Routledge 2017) where social, intellectual, physical and occupational wellness is considered. See also: Debora R Baldwin et al, ‘An examination of college student wellness: A research and liberal arts perspective’ (2017) 4 *Health Psychology Open* 1.

⁵⁵ Baik, Larcombe et al (n53) 4.

⁵⁶ *Ibid* 8.

⁵⁷ Landrum (n41) 254.

undergraduate schools, have students with widely differing levels of academic preparation' for law school".⁵⁸

Technology has also affected students' ability to analyse complex concepts and convey information effectively. The fact that students type notes at fast pace in class may result in them not processing fully what is being said, while the abbreviated language that is a mainstay of social media and texts does not readily convert into academic language and appropriate fluency in grammar and other writing skills.⁵⁹ Teachers working with millennials reported that these students tended to be completely concerned with grades as opposed to learning. A focus on good grades cultivated throughout primary and high school leaves students ill prepared for law school where they will undoubtedly be awarded lower marks. This is a concern as research has shown that students who are motivated by extrinsic factors tend to have a lower rate of long-term success, and students focussed primarily on grades will 'hit a road block' if they fail to achieve the grades they hope for.⁶⁰ Another dilemma is that many students

"enter law school without an understanding of what a legal education requires of them academically, in terms of time, amount of reading and other work, and complexity of course content. They approach law school passively rather than engaged in its challenges".⁶¹

Supporting Student Wellbeing through Curriculum Design

Student wellness is often seen as something apart from, or tangential to the academic project. Support on the side is a start, but these strategies may not be dynamic enough to address students' needs adequately. However, it is difficult to understand how academics can play a central role in supporting student wellbeing without overstepping professional boundaries and without undermining their own wellbeing. While universities are invested in student mental health, "solutions can be hindered by concerns about the fit, cost, effectiveness, or sustainability of diverse initiatives".⁶²

In this regard, Baik, Larcombe et al conclude that:

"Academics have a critical role to play in fostering student mental wellbeing. This is because the academic curriculum structures and gives coherence to student life. Increasingly, the curriculum is the one consistent element of the student experience. Academic educators are the ones who design and deliver that curriculum. There is thus great potential for academic teachers to foster student mental wellbeing through teaching innovation and the intentional design of learning environments that are psychologically 'resource-rich' for students. Happily, supporting student wellbeing does not require academics to be or become psychologists, mental health experts or counsellors. It is not the job of university

⁵⁸ Ibid 255.

⁵⁹ Landrum (n41) 257.

⁶⁰ Ibid.

⁶¹ Ibid 258.

⁶² Abi Brooker, Meredith McKague and Lisa Phillips 'Implementing a Whole-of-Curriculum Approach to Student Wellbeing' (2019) 10(3) Student Success Journal 55.

educators to make students happy or to help students resolve their mental health difficulties. However, as educators, it is our job to facilitate student learning”.⁶³

The idea that wellness is best supported through thoughtful curriculum design has been put forward by others. Duncan, Field and Strevens proposed ethical obligations for intentional curriculum design for the promotion of student well-being and the ongoing well-being of practitioners.⁶⁴ Brooker, McKague and Phillips in turn apply dynamic systems theory to illustrate how specific context could be taken into account to develop whole-of-curriculum approaches that support wellbeing.⁶⁵ Huggins, Kift and Field have proposed integrating a self-management threshold (which strongly relates to general wellbeing) as a learning outcome for law into the entire curriculum.⁶⁶ As an approach it is strategic and achievable. It does not require more from academics than to apply their expertise as teachers - one of the core functions of the profession.

PRACTICES ADOPTED TO SUPPORT STUDENT WELLNESS WHILE TEACHING CORPORATIONS LAW

Background and Context

Universities worldwide have been both challenged and enriched by the diversity of their student bodies and globalisation has amplified these challenges and presented new opportunities as universities open their doors to students from a multitude of backgrounds. UCT is no exception. Students enter law school from one of three different streams and can start their law degrees directly after school, a year into a commerce or humanities degree or as postgraduates having qualified in another faculty. The result of the various streams is a student body with different levels of experience and maturity. The student body is diverse in other ways. Students come from many different cultural and socio-economic backgrounds, and while English is spoken as a first language by some students, it is a second or even third language for others.⁶⁷

Students study Corporations Law in the Intermediate year of their LLB degrees. Undergraduate students will be in their third or fourth year of studies, while postgraduate students enter the Intermediate year in their second year of study. The year is challenging, as students navigate complex subjects and must complete various tasks as part of a skills assessment component to the year – namely an essay, a legal opinion and a moot. There are three contact sessions per week, each lasting 45 minutes and the class is made up of just under 200 students.

⁶³ Baik, Larcombe et al (n53) 11.

⁶⁴ Nigel Duncan, Rachael Field and Caroline Strevens, 'Ethical imperatives for legal educators to promote law student wellbeing' (2020) 23(1-2) *Legal Ethics* 65. See also: Caroline Strevens and Clare Wilson 'Law student wellbeing in the UK: a call for curriculum intervention', (2016) 11 *Journal of Commonwealth Law and Legal Education* 44.

⁶⁵ Brooker, McKague and Phillips (n62) 55.

⁶⁶ Huggins, Kift and Field (n51) 183.

⁶⁷ As discussed above, this diversity often results in some students facing greater challenges in law school. See text to note 57 above.

Corporations Law poses difficulties especially to students who have no commercial background and for whom terminology is completely new and foreign. Some students have no idea what even the most basic terms (a share, a director) refers to and become overwhelmed quickly. A further challenge is the fact that students have not yet completed other subjects that would ensure that they understand concepts such as agency or securitisation and this must first be explained before more complex concepts can be introduced. These realities, and the competitive nature of law school in general, result in a student body that tends to be nervous about the course, or even anxious, before they so much as attend the first lecture.⁶⁸

I decided to introduce blended learning to respond to some of the challenges that the students faced. The ultimate goal was to use blended learning to enable the lecturer to 'flip the room' more effectively and use contact sessions for practical exercises and to divide students into groups for collaborative, in-class activities. The success of any such project would depend on active participation and engagement from the students and this is of course unlikely if students are ill prepared or feel too intimidated to take part. Blended learning was a logical solution. The aim was to offer students a variety of materials online to engage with before attending the lecture. The hope was that students would be more inclined to engage with these types of materials and arrive at lectures prepared and feeling more confident. It was hoped that such confidence would allow more targeted and effective contact sessions and increased participation which would in turn support student wellness, alleviate anxiety and ultimately result in better outcomes for students at the end of the course. The course was structured to include three online components: videos, podcasts and materials for self-assessment or to prepare for in class practical exercises.

In particular, the aim was to allow for the type of constructive instructor feedback during application activities that has proven to be very effective.⁶⁹

Videos

I prepared videos of no longer than eight to ten minutes each to discuss key topics, analyse cases or deconstruct complex concepts.⁷⁰ Videos were produced using pictures, graphics and concept mapping to visually illustrate cases and concepts. While it is very useful to discuss the impact and interpretation of key cases in class, having to first give students an overview of the facts is time consuming. Assuming that the case had been read, at least by a simple majority of students, is ideal but often not realistic. Students also grasp complex sets of facts and concepts at different rates. If a case has complex facts (and in the context of Corporations Law, facts with many terms from industry that will be foreign and new) some students may be disproportionately affected and might simply not find the time to properly engage with a written text in preparation for a lecture – if the text is all that they receive. Reading

⁶⁸ Informal notes at the beginning of the year were used to poll students and to gauge their feelings about the course. While many were excited, the overwhelming majority felt nervous, uncertain and/or anxious about their ability to succeed. Subsequent survey results affirmed this: 65% of students agreed and 18.8% somewhat agreed that they 'felt nervous about and/or intimidated by' the subject at the beginning of the year.

⁶⁹ See discussion above at text to note 30.

⁷⁰ Other law lecturers have reported success using short videos, while there is a general understanding that longer videos are less effective. See: William R Slomanson 'Blended Learning: A Flipped Classroom Experiment' (2014) 64 *Journal of Legal Education* 93.

and analysis remains a core skill, and the aim of the materials was not to replace traditional readings in preparation for class, but to support it instead. Videos offered students who struggled to grasp a concept quickly the opportunity to see it explained with visual aids and graphics and allowed them to watch the explanation multiple times. This avoids the stress of being unable to follow quickly enough in class and then being effectively excluded from any discussion that follows – with the additional anxiety caused by the fact that you might not be able to answer a question when asked. It also avoids frustration on the part of peers who happen to understand an explanation immediately but must listen to it being repeated twice more for the sake of their colleagues.

Podcasts

Podcasts of no longer than five to six minutes were recorded and uploaded at the beginning of a new topic. The podcast consisted of an interview between me and one of the students. All students were invited to participate on a voluntary basis and especially students with little or no commercial background or experience in company law were encouraged to do so. The podcasts followed a Socratic method and questions were drafted to elicit specific responses from the students. Given that the students being interviewed did not have any background in company law, the conversation focussed on understanding the regulatory framework and why the legislature may have chosen to regulate a particular issue in the way that it had. The conversations were designed to lead the student to identify the underlying conflicts and policy considerations themselves. The aim was twofold. First, the conversations would hopefully make the content more accessible by showing students that even their peers with little to no experience are able to identify key points and approaches to regulation when guided appropriately. The approach affirmed that although some concepts may be new this remained a law course and they have the generic skillset to navigate it successfully. Second, the podcasts gave an introduction that hopefully illustrated the broader aims of the regulatory response. This context, in turn, would allow students to engage with the material not as a list of requirements or a series of statutory provisions but instead as a comprehensive solution that forms part of a logical regulatory strategy.

Self-Assessment Tools and Preparation for Practical Lectures

The course was designed to allow for every third contact session to be devoted entirely to practical exercises. A diverse range of practical in-class exercises were planned which ranged from role play exercises, to practically registering a company online, to planning and practising essay questions and exam problem questions. Many of these practical sessions relied completely on preparation on the part of the students and for this reason materials were made available online a few days before the practical session to allow students to prepare. Online quizzes were also planned to supplement the material and allow students to gauge their understanding of the material before the practical exercise which would call upon them to apply their knowledge of the concepts in class. Mostly, students were asked to divide themselves into smaller groups. I was then able to walk around the room and listen to the conversation and answer questions as each small group posed them. The solutions were then discussed and I was able

to identify common misconceptions or misunderstandings more effectively from my conversations walking around the room.

ASSESSMENT AND REFLECTION

General

The Corporations Law blended learning experiment was cut short by the COVID-19 epidemic of 2020 that brought the world to a standstill and impacted tertiary education in ways we could scarcely imagine before. Only a few weeks after the start of the academic year in February 2020, South Africa's president Cyril Ramaphosa declared a national state of emergency and announced a strict national lockdown. While regulations were later relaxed, university teaching continued completely online for the rest of the 2020 academic year.

The result of this interruption was that many of the planned exercises and activities could not take place. Students were also given very little time to become used to the process and to assess whether it positively impacted their experience of the course. It was also not possible to consider whether the blended learning approach would translate into concrete positive outcomes for students at the end of the year. However, despite these limitations the experience provided a wealth of insight.

Students were surveyed a month or so after contact teaching had come to an end. The survey took the form of a voluntary anonymous survey conducted online. Of 190 registered students, only 32 completed the survey.⁷¹ Questions were drafted specifically to focus on issues of competency as a key component of student wellbeing. While this is not statistically significant, the data point to some interesting provisional trends and qualitative data provided valuable insights.

Students were asked why they felt intimidated by the course and responses varied. One response reflected a common theme:

“I have no background in commerce (primarily because I have always struggled with maths-related subjects, and considered university commerce subjects to be beyond what I could comprehend as well as enjoy), and that unfamiliarity scared me. Knowing that I would be trying to learn the law whilst simultaneously learning completely foreign, and perhaps tricky, business concepts and terminology was a daunting prospect. I am, admittedly, a classic A-type personality, so knowing that I was starting on the back foot when I really wanted to do well, meant that there was a lot of internal pressure I was putting myself under. Add to the mix that commercial practice is predominantly the path advertised to law students at UCT, I knew that corporation law was something that I had to get right”.

Of the respondents 34% agreed and 50% somewhat agreed that they felt nervous participating in class. Of these students, the majority indicated that they felt nervous to participate as they feared answering incorrectly in front of their peers, while the

⁷¹ The low number is likely because the survey could only be released after the semester and exam due to disruptions caused by the Coronavirus lockdowns which delayed ethical clearance.

second biggest component of students felt nervous as they struggled to formulate their thoughts and convey them coherently. Unsurprisingly, an overwhelming majority of 72% indicated that they felt more confident to participate if they were properly prepared before the lecture.⁷²

Of the participants, 78% preferred a combination of traditional written reading material (such as cases and articles) and online material (such as podcasts, videos and quizzes), to prescribed reading material alone, and 84% felt that the online materials had helped them to prepare for their lectures more effectively. When asked why they felt that this may be, some responses stood out (my italics):

“It gave me an overview of the structure of the lecture beforehand so during the lecture, I could take what I was hearing and slot it into what I had read already.”

“I think it made me learn with all my senses instead of just reading things. It made it interesting and if I did not fully understand a topic then it was clarified in a video or podcast.”

“I find repetition as well as explaining the same concepts differently helps me conceptualise better. I found the podcasts and videos did this.”

“It was so refreshing (*and reassuring!*) to have an abundance of materials in different mediums: it meant that when I was feeling a bit more distracted and didn't feel like I could read a case, I would be able to watch an interesting video and still be studying. Having audio-visual materials in the form of podcasts and videos, as well as written materials, meant that my brain was being stimulated in multiple different ways which I find has helped me retain the information better. Also, having tricky concepts explained to you in plain English, and often in a variety of different ways, means that if you don't fully understand the first time (in the one medium) it's likely you'll get it in the next.”

“Each medium offered *something different about the material* and, together, it helped to solidify my understanding of the concepts.

What is notable about these comments are that they seem to indicate that the multiple materials did achieved three aims. First, the students responded well to a choice between different types of materials. Second, the comments indicate that, at least for some students, the materials did support discernment as propagated by variation theory. Students are able to compare and contrast concepts as explained and engaged with differently in various media which supported learning. What was surprising apparent from other comments that will be highlighted below, was the use of the language that seem to suggest that the mere availability of the media reassured

⁷² Those who answered that adequate preparation did not make them experience less anxiety in participating noted for example that “[e]ven with adequate preparation, you can still say/ask something that is trivial. I know from experience that other students judge and silently criticise those who ask redundant questions”.

the students on some level. Merely introducing the additional resources seemed to have made students feel secure and validated.

Of the students 37% and 34% felt that, or somewhat felt that, the podcasts had made the course feel more accessible, while 53% and 31% felt that, or somewhat felt that, group discussions and tasks in class made them feel more confident to discuss the subject in front of others. In this regard, the following comments were noteworthy (my italics):

“I definitely think working with my peers and discussing the material helped me realise that my understandings and misunderstandings aligned with others; which gave me confidence.”

“I like doing the work online as I can do it at my pace and I can continually refer to it while studying etc.”

“Being given the practical scenarios to complete in class made me feel confident in my work as there are often times when I've prepared but don't feel as if I know the work and therefore hesitate to participate in class so it was nice being able to bounce ideas around in a more comfortable space with a small group of peers. It also *boosts confidence to know a lecturer is going out of there (sic) way in working extra hard to ensure that you understand the material or at least have the resources* to understand the material rather than just providing materials to read and being left to our own devices. *Makes us feel cared for* and that we are not being set up to fail but are being *supported as much as possible.*”

“I didn't feel very nervous about the course starting off with because I come from a commerce background, but I found that making us engage with the concepts by discussing them really assisted in my understanding and learning.”

“A course like corporation law is extremely daunting for someone coming from a humanities background but *during the group sessions I learnt that everyone was in the same boat.* We felt comfortable talking to each other and grappling with the concepts together. Also, when the lecturer walked around to each group, it made it easier to ask questions instead of asking in front of the whole class.”

“I *struggle to concentrate* in lectures and prefer to consolidate content in my own time, so online materials work better for me than going to class.”

“The podcasts and videos make the topics very approachable and they seem far less complex and unmanageable when you can *watch the video multiple times* etc. So online materials would have made everything more easy to understand and engage with. Videos and podcasts also make working more interactive especially considering we have to read so often- it is nice to learn by listening too just to keep interested and engaged.”

Students commented repeatedly that they felt comfortable discussing content in a small group context and that they felt less anxious knowing that their peers were also struggling with certain ideas and concepts. Students also commented that they did in fact watch videos multiple times and that they found this helpful. Comments seem to show that the practical applications in class made the lecturer more accessible. Finally, another comment noted that the structure of the course made students feel acknowledged and supported. Empirical research on a larger scale would be required to determine whether these sentiments translate generally to the broader group. As anecdotal evidence it is at least encouraging and tends to indicate that the approach has merit.

Charting a Course for the Future

Courses at most South African universities are still being offered fully online, and only very limited classroom teaching will take place for the foreseeable future. It is not possible at the moment to implement improvements based on my experiences in 2020. However, the course design shows great promise. The aim was to support feelings of competency and togetherness as two key components of student wellbeing. Initial indicators are that the blended learning mechanisms and the inverted room pedagogy may achieve this.

The implementation of the new course structure was not seamless. Some students indicated that they were not sure how to integrate the materials, while some felt that the group sessions in class could be managed more constructively. This was one of the key lessons that I learnt from embarking on the process. As the approach may be new to students it is vital to communicate expectations, processes and outcomes clearly. Students were notably anxious about whether the teaching approach would adequately prepare them for assessment. They are used to a traditional structure and there was initially a clear sense of distrust and disarray. Many questions at the beginning of the course focussed on whether they will be adequately prepared for assessment, what they were supposed to 'take out' of the session and what they had to 'know'. Although I indicated clear outcomes for each topic, I will use online resources to more effectively communicate exactly what the role of the module is. Checklists work very well in the online space and can be used to communicate exactly what they must do before class, and what we will do in class.

I was reluctant to make use of mandatory groups as I was concerned that this may dampen enthusiasm and could potentially cause stress and anxiety for students who do not enjoy group work. However, if groups can be more clearly organised it would be possible to monitor participation more effectively, give clearer feedback and ensure attendance. Using mandatory groups will give structure and prevent students without social circles from becoming isolated in class.

The project would further benefit from a more mindful approach to digital literacy. While all our students should have their own laptop or at least have access to a university computer, I had presupposed that all students will be equally adept at navigating technology and learning online. This is not the case. The university has measures in place to support digital literacy. In future I will poll students at the start of the year not just to determine their expectations and concerns about the course (a

usual practice) but also to assess digital literacy and perceptions about online materials.

What has emerged as a key lesson is that half-measures tend not to work. The educator must be convinced of the value of the project and must clearly and consistently explain to students how the course will proceed. Material and interactions between online and face-to-face teaching sessions must be predictable and students must understand exactly how various materials and sources are to be integrated. Course outcomes and assessment practices must be communicated clearly to illustrate how blended and flipped room activities support learning and will be assessed. Most importantly, the course must be developed holistically to integrate online materials. If they are added as an afterthought or an 'extra' will create to many of the problems associated with blended learning – such as unrealistic course loads or challenges related to time management.

While the practices implemented in this course seem especially well suited to the South African context, the lessons that were learnt are useful in a wider sense. As mentioned, law schools in most countries must find ways to better support an increasingly stressed and anxious student body. University must offer academic support in ways that take account of student well-being. Arguably, one of the core tenets of this is an approach to curriculum design that best caters to a diverse student body, and that takes a student-centred approach. The practices that made up the case study offer some examples of how this might be achieved.

CONCLUSION

It has been said that “blended learning offers potential for improving the manner in which we deal with content, social interaction, reflection, higher order thinking and problem solving, collaborative learning, and more authentic assessment”.⁷³ The approach certainly offers flexibility and efficiency in curriculum design that was not possible before. Online materials may also help to make learning more accessible and could reduce barriers to entry for students who have difficulty travelling to class, or who are otherwise “disadvantaged in the verbal and visual world of the physical classroom”.⁷⁴

Each student has unique preferences and requirements, and blended learning approaches can potentially “get the right content in the right format to the right people at the right time”.⁷⁵ If students are able to work at their own pace, and revisit information repeatedly without fear of the stigma or ridicule that often follows when raising a hand to ask again and again in class, might this alleviate some of the anxiety that students experience in a traditional face-to-face setting? Might online materials, if properly prepared, support second language speakers or students otherwise marginalised in a face-to-face setting, and in doing so go as far as to support student wellbeing in general, and potentially even support a transformation agenda. When embarking upon the project that was described above, it was hoped that these outcomes might be achieved through blended learning and that curriculum design

⁷³ Patsy Moskal, Charles Dzubian and Joel Hartman, 'Blended Learning: A Dangerous Idea' 18 (2013) 18 *Internet and Higher Education* 15, 16.

⁷⁴ Rosenberg (n38) 26.

⁷⁵ Singh (n3) 51-54.

might successfully support key aspects of student wellness or wellbeing - specifically competency and togetherness.

With one instructor teaching complex concepts to up to 200 students with limited time and the many other constraints discussed in this article, it makes sense to harness the power of technology to maximum effect. While a national lockdown interrupted the course before it was possible to properly reflect on its success or shortcomings, early evidence indicates that the project has potential and could be developed into a blended learning programme that not only ensures academic success but also supports student wellness and potentially promotes equity and transformative practices in the classroom.⁷⁶

⁷⁶ It was not possible to address blended learning as a driver for equity and transformation but see in this regard: Garrison and Kanuka (n11) 95 – 105; Mackenzie O'Connor Kaspar, 'Blended Learning as a Transformative Pedagogy for Equity' (2018) 107(6) *English Journal* 54; Ruth Boelens, Michiel Voet, Bram De Wever, 'The design of blended learning in response to student diversity in higher education: Instructors' views and use of differentiated instruction in blended learning' (2018) 120 *Computers & Education* 197.

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