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Valuing diverse students: an ethical response to building success in first-year law students and broadening the legal profession

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ABSTRACT

Currently, most legal professions are not representative of the communities which they serve. They do not proportionally include diverse members of the community, nor ensure there are diverse practitioners represented in all areas of practice and at senior levels. This impacts on access to justice, a key premise of the law and legal system. One step to make the legal profession more diverse is for law schools to ensure that diverse law students are both admitted and enabled to succeed in their law degrees. While transition to university by diverse students has been analysed over the last 20 years, there remains a disjunct, with students' cultural capital not being recognised, and students being expected to assimilate into the university, rather than their law studies moulding around them. Using a theoretical model of 'transition as becoming', this article analyses first-year law students at Western Sydney University Australia and their responses to a reflection survey. The study identified three key factors which enhance diverse law students' success: recognising the family, work and caring responsibilities of students; enhancing peer support; and making study expectations explicit. In this way, the curriculum can become a vehicle for ensuring successful transition to law study by diverse students.

Introduction

Universities globally have pursued a widening participation agenda for at least 20 years in an attempt to ensure that more diverse students are able to successfully complete tertiary studies.[1] They have focussed on students gaining access to university and the importance of transition pedagogies to ensure students' successful integration into university. These approaches however, do not always take into account the increasingly diverse nature of

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[1]Suanne Gibson and others, '"Diversity" "Widening Participation" and "Inclusion" in Higher Education: An International Study' (2016) 18 *Widening Participation & Lifelong Learning* 7 <http://ezproxy.uws.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=ehh&AN=119836416&site=ehost-live&scope=site> accessed 13 January 2022, 8.

the student cohort, and research indicates that the 'massification' of higher education has led to students feeling lost and isolated.[2] The literature is replete with accounts of the often-alienating experience of diverse first-year students, and calls for universities to do more to make sure that diverse students are better enabled to succeed. Common experiences of diverse students include a disjunct between their expectations of university and the realities of university, the hidden curriculum, the lack of recognition of students' existing cultural capital, and the underlying premise of many transition programmes that it is the *students* who should assimilate to university culture.

These concerns are particularly relevant to law schools, because diversity at law school should contribute to greater diversity in the legal profession,[3] and in Australia and elsewhere, there have been links made between the education of law students from diverse backgrounds, diversity in the legal profession and access to justice.[4] It is important to note however, that in many jurisdictions where diverse students are succeeding at law school, diverse lawyers can end up working in particular areas of legal practice such as crime and family law, as is the case in England and Wales, or in areas that do not provide a clear pathway to the judiciary.[5] In the Netherlands, many diverse graduates work in small firms which are lower status than commercial practice.[6] It is also clear that law schools themselves are stratified, with the higher status law schools providing most of the law graduates to work in corporate law firms, or to support a global legal profession.[7]

For a legal profession which struggles with increasing diversity, supporting the success of diverse law students is an ethical issue. This is because of lawyers' overarching duty to work towards improving access to justice. Law schools have an ethical responsibility to support and encourage the success of diverse students, and their responsibility to do so does not end with *admission* of diverse students to law school, but begins at this point. As the world has faced the cultural movements of the 'MeToo' movement, alongside the 'Black Lives Matter' movement, the significance of having a diverse and inclusive

[2]Chi Baik and others, 'Enhancing Student Mental Well-Being: A Handbook for Academic Educators' (University of Melbourne 2017) Report, 6, citing Chi Baik, Ryan Naylor and Sophie Arkoudis, 'The First Year Experience in Australian Universities: Findings from Two Decades 1994-2014' (Melbourne Centre for the Study of Higher Education The University of Melbourne 2015) Report.

[3]Maxine Evers, Bronwyn Olliffe and Angela Dwyer, 'Law's Not Hard; It's Just Hard to Get into: A Study of Alternative Entry Students to Law School' (2017) 51 *The Law Teacher* 151 <https://www.tandfonline.com/doi/full/10.1080/03069400.2015.1126445> accessed 20 August 2021, 168.

[4]See, generally Russell G Pearce and Sinna Nasseri, 'The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values' (2012) 19 *International Journal of the Legal Profession* 357; Avner Levin and Asher Alkoby, 'Is Access to the Profession Access to Justice? Lessons from Canada' (2012) 19 *International Journal of the Legal Profession* 283; Michael Kirby, 'Leo Cussen Justice Speech: Unmet Legal Needs in Australia: Ten Commandments for Australian Law Schools' Australian Law Teachers' Association Conference, La Trobe University, Melbourne Campus (2015), 10–14; Tina McKee and others, 'The Fairness Project: The Role of Legal Educators as Catalysts for Change. Engaging in Difficult Dialogues on the Impact of Diversity Barriers to Entry and Progression in the Legal Profession' (2021) 55 *The Law Teacher* 283, 1–2; Lady Hale, 'Lord Upjohn Lecture 2021-"When There are 12": Legal Education and a Diverse Judiciary' (2021) *The Law Teacher* 1, 5–6; Dennis Foley, 'Quadrivum: So You Want to Be a Lawyer?' (2014) 8 *Indigenous Law Bulletin* 19; Naveed Khan, 'An Evolution, Not a Revolution' (2017) 91 Law Institute Journal 65; Asian Australian Lawyers Association, 'The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015' (2015) Report.

[5]Lizzie Barmes and Kate Malleson, 'The Legal Profession as Gatekeeper to the Judiciary: Design Faults in Measures to Enhance Diversity' (2011) 74 *The Modern Law Review* 245; Hilary Sommerlad and others, 'Race, Ethnicity, and the Legal Profession' in Richard L Abel and others (eds), *Lawyers in 21st Century Societies: Vol 2: Comparisons and Theories* (Hart Publishers 2022); Hilary Sommerlad and others, 'Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices' (Legal Services Board 2013).

[6]Sommerlad and others, 'Race, Ethnicity, and the Legal Profession' (n 5).

[7]Hilary Sommerlad and Ole Hammerslev, 'Lawyers in a New Geopolitical Conjunction, Continuity and Change' in Richard L Abel and others (eds), *Lawyers in 21st Century Societies Vol 1: National Reports* (Hart Publishers 2020), 32.

legal profession has been highlighted. The beginning step to achieve this is through admitting, supporting and ensuring the success of diverse law students at university. While a diverse legal profession cannot ensure different ways of practising and making law, it increases the range of experience which will be brought to bear in making legal decisions, and in the daily practice of law.[8] The success of diverse law students is just one, beginning step to diversifying the legal profession with many others which will need to be adopted in order to ensure a more inclusive legal profession.

How does a more diverse legal profession contribute to access to justice?

In thinking about the ways in which law is made, it is made through the daily decisions which laywers make, as well as more formal judgments.[9] These daily decisions are impacted by the identity, experience and values of those who make them. A decision to interview a client outside in the sunshine, or with a support person present, will all impact on the process and outcome of the statement or affidavit which will be produced at the end of that interview. Those daily decisions are influenced by the identity of the lawyer, not always the same or predictable, but influenced by that lawyer.[10] This small example demonstrates how diversity of the legal profession matters, and improves access to justice. There has been well-documented discussion of the ways in which law has not included women's experience over the centuries, with examples such as rape in marriage being legal, and women being the property of men.[11] There is also analysis of the ways in which Indigenous people's experience has not been included in the law to the extent of creating a legal fiction that Australia was not occupied by people when it was colonised.[12]

Law has been shaped by a narrow part of the society which has influenced what it says and how it operates. This process occurs on a larger scale in the process of judging, as a judge uses their legal knowledge, but also their perceptions, their thoughts, their experience to come to judgment. Thus, not only is it an equity argument that the legal profession should be more diverse to reflect its surrounding community, but that having a more diverse legal profession will also improve access to justice by including diverse life experience, views and attitudes.

Outline of this article

This article discusses some particular findings from a broader study by the authors on the impact of a scaffolded self-reflection exercise embedded in the first-year law curriculum at Western Sydney University.[13] Our broader study examined the impact of a 'self-reflection

[8] Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998); Susan S Silbey, 'After Legal Consciousness' (2005) 1 *Annual Review of Law and Social Science* 323.

[9] Ewick and Silbey (n 8).

[10] For a discussion about how disability/ability might impact on the way a client's narrative is shaped by a law student, see Anna Cody, 'Changing Law Students' Ideas about Dis/Ability: Can We? Should We? How Would We?' (2018) 25 *Journal of Law and Medicine* 1056.

[11] Michelle Anderson, 'Marital Rape Laws Globally' in Kersti Yllö and MG Torres (eds), *Marital Rape: Consent, Marriage, and Social Change in Global Context.* (Oxford University Press 2016); Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987).

[12] *Mabo v Queensland (No 2)* (1992) 175 CLR 1. In this decision, the legal fiction of 'terra nullius' was overturned.

[13] Sandra Noakes and Anna Cody, 'Building a (Self) Reflective Muscle in Diverse First Year Law Students' (2022) *Legal Education Review* 69.

survey' ('the SR Survey') on a diverse first-year student cohort, with a focus on student engagement and performance. However, in analysing the qualitative data collected from the SR Survey responses as part of this broader study, the authors noticed some dominant themes which were not directly prompted by the questions in the SR Survey. These themes related to external factors impacting on students' studies, adjustment to expectations and reliance on peers.

This article uses the framework of Gale and Parker of 'transition as becoming',[14] to critically anlayse these three themes. As will be explained in detail in this article, the 'transition as becoming' model conceives of transition to university as a process which involves not only the student adapting to change, but the university adapting to and recognising the strengths that students bring to their studies. We suggest that the adoption of a 'transition as becoming' approach, centring diverse students' strengths, may provide a new way of thinking about transition programmes for law students, and will improve the chances of success of diverse law students in their studies. Our article does not use the term 'becoming' in the sense of 'having to learn adjustments and learn the language of "passing"',[15] but rather that the unexpressed assumptions become express to enable their success. We discuss some ways in which our law school has responded to the needs of its very diverse student cohort, and suggest ways in which the law curriculum can adapt in order to enable diverse students to succeed. Enabling the success of diverse students will contribute to a more diverse legal profession which in turn may increase access to justice within the legal system.

This article first discusses some important themes from the literature; in particular how to define 'diverse' students and why supporting these students is an ethical issue for law schools. We relate these themes to our study cohort of students at Western Sydney University. We discuss the theoretical models of transition pedagogy that focus on centring the student experience, and in particular Gale and Parker's 'transition as becoming' model. We then explain our methodology for collecting and analysing the qualitative data from the SR Surveys, and discuss our findings and their implications for our law school curriculum.

Background

Defining the 'non-traditional' or 'diverse' student

This article deliberately uses the term 'diverse students' as the term for students who are usually described in the academic literature as 'non-traditional' or 'non-standard' university students.[16] These terms 'attempt to capture an eclectic range of individual attributes that are used to distinguish these students from "traditional" students … but there is no

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[14]Trevor Gale and Stephen Parker, 'Navigating Change: A Typology of Student Transition in Higher Education' (2014) 39 *Studies in Higher Education* 734 <http://www.tandfonline.com/doi/abs/10.1080/03075079.2012.721351> accessed 22 August 2021.

[15]Hilary Sommerlad, 'Becoming'a Lawyer: Gender and the Processes of Professional Identity Formation' in Elizabeth A Sheehy and Sheila McIntyre (eds), *Calling for Change: Women, Law, and the Legal Profession* (University of Ottawa Press 2006), 166.

[16]Michelle Morgan, 'Student Diversity in Higher Education' in Michelle Morgan (ed), *Supporting Student Diversity in Higher Education : A Practical Guide* (Taylor & Francis Group 2013), 11.

authoritative definition' of the 'non-traditional' student.[17] Many of these students possess more than one 'non-traditional' characteristic.[18] These students are usually conceptualised in contrast to the 'traditional' student. One definition of 'traditional' university students is those who 'enter university shortly after completing their secondary education, and who, owing to their prior socialization, schooling and attainment, are relatively well prepared for academic study'.[19] Students who are 'non-traditional' are 'far more mixed in terms of age and educational, class, cultural and linguistic background'.[20] The term 'non-traditional student' is itself exclusionary, and adopts a deficit conception of these students; it defines them from a frame of reference about what they are *not*, rather than what they *are*. The term 'non-traditional' student 'others' these students, reinforcing constructions of exclusion.[21] Other research relating to the social incongruity between universities and low-socio economic status ('low-SES') students challenges the 'deficit' framing of 'non-traditional' students, arguing instead for a conceptualisation that recognises these students' resilience and their strengths.[22]

Other more appropriate terms for 'non-traditional' students are 'diverse' or 'new' students, to signal that these students have not necessarily had a direct linear path to university,[23] 'and/or that their socio-cultural backgrounds may not have acquainted them with the implicit norms of university culture'.[24] Indeed a reframing of diverse students from a deficit to a strengths perspective recognises and celebrates characteristics and personal experiences which may in fact assist these students to thrive at university.[25]

There is also a body of scholarship which frames Indigenous students at the centre and recognises the significance of their cultural identity and pride which can motivate students academically and build their chances of success. This approach debunks the deficit model which has traditionally been applied to Indigenous students.[26]

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[17]Morgan (n 16), 11; Ethel Chung, Deborah Turnbull and Anna Chur-Hansen, 'Differences in Resilience Between "Traditional" and "Non-Traditional" University Students' (2017) 18 *Active Learning in Higher Education* 77 <http://journals.sagepub.com/doi/10.1177/1469787417693493> accessed 29 August 2021, 79.

[18]Lisa Thomas and Jennifer Heath, 'Institutional Wide Implementation of Key Advice for Socially Inclusive Teaching in Higher Education. A Practice Report' (2014) 5 *The International Journal of the First Year in Higher Education* 125 <https://fyhejournal.com/article/view/206> accessed 29 August 2021, 126; Chung, Turnbull and Chur-Hansen (n 17), 79, citing Karen A Kim and others, 'Redefining Nontraditional Students: Exploring the Self-Perceptions of Community College Students' (2010) 34 *Community College Journal of Research and Practice* 402.

[19]Digby Warren, 'Curriculum Design in a Context of Widening Participation in Higher Education' (2002) 1 *Arts & Humanities in Higher Education* 85, 86–87.

[20]ibid, 86–87.

[21]Angela Daddow, 'Curricula and Pedagogic Potentials When Educating Diverse Students in Higher Education: Students' Funds of Knowledge' as a Bridge to Disciplinary Learning' (2016) 21 *Teaching in Higher Education* 741 <https://www.tandfonline.com/doi/full/10.1080/13562517.2016.1183619> accessed 4 August 2021, 742.

[22]Marcia Devlin and Jade McKay, 'Reframing "The Problem": Students from Low Socio-Economic Status Backgrounds Transitioning to University' in Heather Brook and others (eds), *Universities in Transition: Foregrounding Social Contexts of Knowledge in the First Year Experience* (University of Adelaide Press 2014), 112.

[23]Daddow (n 21), 742.

[24]Noakes and Cody (n 13), 74.

[25]Daddow (n 21), 742; Bonnie Pang and others, 'Forging Strengths-Based Education with Non-Traditional Students in Higher Education' (2018) 9 *Curriculum Studies in Health and Physical Education* 174 <https://www.tandfonline.com/doi/full/10.1080/25742981.2018.1444930> accessed 18 August 2021; Chung, Turnbull and Chur-Hansen (n 17).

[26]Gawaian Bodkin-Andrews and others, 'Exposing the Patterns of Statistical Blindness: Centring Indigenous Standpoints on Student Identity, Motivation, and Future Aspirations' (2017) 61 *Australian Journal of Education* 225.

Supporting diverse law students as an ethical duty and 'what is access to justice'

From an ethical point of view, the legal profession which makes, applies and interprets law, should be representative of the broader community in order to improve the chances of ensuring access to justice with its connotations of equality before the law. Access to justice is a concept which has been examined in many spheres. It includes ensuring that those who cannot afford to pay for lawyers or face other barriers are still able to receive legal advice and representation.[27] It also means the removal of 'structural inequalities within the justice system and the provision of informal justice and alternative dispute resolution options'.[28] Access to justice has also come to mean that the diversity of the community should be represented within the legal profession, with the expectation that the practice of law will contain a range of experiences, ensuring not only that all groups are treated equally within the law, but that a range of experiences are reflected in the law. While no group can be essentialised into a 'woman's' perspective,[29] or 'culturally diverse' perspective, by including the range of lawyers within the practice of law, it increases the range of life experience and perspective which will be included within law making and practising.[30] This builds on the concept that 'law' is the daily practice of law, not just the statute passed by parliament, or a judge making a decision.[31]

For those seeking legal services, being able to seek legal services in culturally or gender appropriate ways, makes those services more accessible. This concept of the influence of diversity within access to justice also draws on theory on how identity is created. Ethnic identity as a category is the product of ascriptive boundaries, creating categories that 'provide an organisational vessel that may be given varying amounts of content in different socio-cultural systems'.[32] Gender is also seen as acted out and 'performed' within society.[33] Thus while race and gender may be changing categories, they influence social relationships and the ways law is made. Including diverse lawyers will impact on the ways law is made, and how law is seen, and the accessibility of legal services to the community.

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[27]'Pathways To Justice–Inquiry into The Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (Australian Law Reform Commission 2018) 133 <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/10-access-to-justice/> accessed 17 September 2022, Ch 10.

[28]'Connection to Country: Review of the Native Title Act 1993 (Cth)' (Australian Law Reform Commission 2015) 126 <https://www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/> accessed 17 September 2022, 293.

[29]Carrie J Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 1 *Berkeley Journal of Gender, Law and Justice* 39.

[30]'Without Fear or Favour: Judicial Impartiality and the Law on Bias' (Australian Law Reform Commission 2021) 138 <https://www.alrc.gov.au/publication/ji-report-138/> accessed 18 September 2022. Recommendation 7 of this Report recommends that the Commonwealth government of Australian include a 'commitment to diversity' in its judicial appointments. See ibid, 14.

[31]Silbey (n 8).

[32]F Barth, 'Introduction' in F Barth (ed), *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (Universitetsforlaget 1969), 14–15, quoted in Sommerlad and others, 'Race, Ethnicity, and the Legal Profession' (n 5).

[33]See generally Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990).

In different jurisdictions the lawyer and legal profession is seen as having a 'special responsibility for the quality of justice'.[34] Access to justice 'must be ensured and upheld by lawyers'.[35]

Across each of the jurisdictions of United States of America, Canada, the United Kingdom and Australia, there is some equivalent rule in the lawyer professional rules which refers to the role of the lawyer, and legal profession to ensure the administration of justice and/or the equal justice for all within that system. The United Kingdom has the most explicit rule which refers to a lawyer having to 'uphold the administration of justice in a way that encourages equality, diversity and inclusion'.[36] Ensuring diversity in the legal profession is one aspect which will encourage diversity, inclusion and equality leading to a better chance of ensuring access to justice. Supporting and enabling diverse students to succeed at law school is one means of building diversity in the legal profession.

Diversity at law school should lead to greater diversity in the legal profession.[37] However as discussed in detail, the ways in which this diversity is expressed are complex. In England and Wales, high status commercial lawyer positions are frequently less diverse than some of the high street and legal aid legal practices.[38] While there are diverse lawyers, the legal profession itself is stratified and the most lucrative and powerful positions continue to be dominated by white men, rather than the more diverse cohort which is graduating. In Australia and elsewhere, there have been links made between the education of law students from diverse backgrounds, diversity in the legal profession and access to justice.[39]

Others have observed that restricting access to legal education 'excludes disadvantaged groups from the profession'.[40] For example, in the United States, the considerable costs associated with legal education limit the types of people who become lawyers and create barriers to entering the legal profession.[41] In Canada the barriers to legal education and access to 'articles' limit the numbers of law students who then are able to qualify as lawyers and practise in areas of law needed by people from low SES backgrounds.[42] Some suggest that diverse lawyers are more likely to practise in small-mid-size firms which are needed by diverse communities.[43] In the United Kingdom, recent reforms to the regulation of entry to practice as a solicitor via the common Solicitors Qualifying Exam (SQE) have been promoted as a means

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[34]Karen H Rothenberg, 'Recalibration the Moral Compass: Expanding Thinking like a Lawyer into Thinking like a Leader' (2009) 40 *University of Toledo Law Review* 411, 413, referring to American Bar Association, 'Model Rules of Professional Conduct: Preamble & Scope' <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/> accessed 25 March 2022.

[35]Lisa Webley, 'Legal Professional De (Re) Regulation, Equality, and Inclusion, and the Contested Space of Professionalism Within the Legal Market in England and Wales' (2014) 83 *Fordam Law Review* 2349.

[36]Solicitors Regulation Authority, 'SRA Principles' (25 November 2019) <https://www.sra.org.uk/solicitors/standards-regulations/principles/> accessed 25 March 2022. See Principle 6.

[37]Evers, Olliffe and Dwyer (n 3), 168.

[38]Sommerlad and others, 'Diversity in the Legal Profession in England and Wales' (n 5).

[39]See, generally, Pearce and Nasseri (n 4); Levin and Alkoby (n 4); Kirby (n 4), 10–14; McKee and others (n 4), 1–2; Hale (n 4), 5–6; Foley (n 4); Khan (n 4); Asian Australian Lawyers Association (n 4).

[40]Angela Melville, 'It Is the Worst Time in Living History to Be a Law Graduate: Or is It? Does Australia Have Too Many Law Graduates?' (2017) 51 *The Law Teacher* 203, 206.

[41]Pearce and Nasseri (n 4).

[42]See generally Levin and Alkoby (n 4).

[43]ibid, 293.

of increasing access to the profession for people from diverse backgrounds,[44] where a lack of diversity in the legal profession has been identified as an ongoing problem.[45] In the Australian context, the need for a more diverse legal profession has been connected to the legal needs of Indigenous communities[46] and people from culturally and linguistically diverse backgrounds.[47]

Despite past criticisms of Australian law schools for their lack of diversity,[48] Australian law schools are becoming increasingly diverse places.[49] However, 'there is very little quantitative or qualitative data on diversity in Australian law schools and even less research examining how students' diverse backgrounds and social identities … .affect their student experience'.[50] In addition, whilst law schools in Australia have been leaders and innovators in transition pedagogy,[51] this work has not tended to focus on the particular position and experiences of diverse students as they transition to law school. Where research does focus on these students, they appear to represent the *minority* of the student cohort.[52] This is not the case with the first-year students in this study; the cohorts in this study epitomise diversity. This provides rich ground for analysing and understanding the experience of diverse students entering law school and ultimately better enabling their success.

The diversity of Western Sydney and its university

Western Sydney University ('WSU') is a multi-campus University situated in the fastest growing region of greater metropolitan Sydney.[53] It is the third largest economy in Australia, after the Sydney CBD and Melbourne.[54] The restrictive Covid lockdowns of mid-2021 demonstrated that the Greater Western Sydney ('GWS') region is central to the economic success of the country.[55] The GWS region is also extremely culturally

[44]Solicitors Regulation Authority (UK), 'The Business Case for Diversity' (2018) Report, 20. However, see Jessica Guth and Kathryn Dutton, 'SQE-Ezed out: SRA, Status and Stasis' (2018) 52 *The Law Teacher* 425, who express doubts about whether the SQE will in fact result in a more diverse legal profession in the UK.

[45]Sommerlad and others, 'Diversity in the Legal Profession in England and Wales' (n 5); Sommerlad and others, 'Race, Ethnicity, and the Legal Profession' (n 5); McKee and others (n 4), 1–2.

[46]Foley (n 4).

[47]Khan (n 4); Asian Australian Lawyers Association (n 4).

[48]David Weisbrot, 'Recent Statistical Trends in Australian Legal Education' (1990) 2 *Legal Education Review* 219; Mark Israel and others, 'Fostering "Quiet Inclusion": Interaction and Diversity in the Australian Law Classroom' (2017) 66 *Journal of Legal Education* 332, 335–36; Kirby (n 4), 10–14.

[49]Aidan Ricciardo and others, 'Understanding, Promoting and Supporting LGBTQI+ Diversity in Legal Education' (2021) (online) *The Law Teacher* 1 <https://www.tandfonline.com/doi/full/10.1080/03069400.2021.1949183>, 1–2; Israel and others (n 53), 335–38.

[50]Ricciardo and others (n 49), 2.

[51]Sally Kift, Karen Nelson and John Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE – A Case Study of Policy and Practice for the Higher Education Sector' (2010) 1 *International Journal of the First Year in Higher Education* 1; Susan Armstrong and Michelle Sanson, 'From Confusion to Confidence: Transitioning to Law School' (2012) 12 *QUT Law & Justice Journal* 21. Leon Wolff and Maria Nicolae (eds), *The First Year Law Experience* (Halstead Press 2014); Cassandra Sharp and others, 'Taking Hints from Hogwarts: UOW's First Year Law Immersion Program' (2013) 6 *Journal of the Australasian Law Teachers Association* 127.

[52]See, e.g., Evers, Olliffe and Dwyer (n 3).

[53]The Centre for Western Sydney, 'Where are the Jobs? Part 1: Western Sydney's Short-Lived Jobs Boom' (2020) Report, 7.

[54]Regional Centre of Expertise on Education for Sustainable Development, 'About Greater Western Sydney' (Western Sydney University, 20 November 2020) <https://www.westernsydney.edu.au/rcegws/rcegws/About/about_greater_western_sydney> accessed 17 January 2022.

[55]Stephanie Chalmers, 'Workers in South-West, Western Sydney Exempt from Toughest COVID-19 Restrictions Part of "Critical" National Infrastructure' *ABC News*(26 July 2021) <https://www.abc.net.au/news/2021-07-27/south-west-sydney-covid-shutdown-would-impact-australia/100322652> accessed 25 March 2022.

diverse with people from 170 nationalities and forty-two percent of whom speak a language other than English at home.[56] It is also home to one of the largest Indigenous populations in Australia.[57]

GWS is also the locus of considerable socio-economic disadvantage. A study drawn from the 2016 Australian Bureau of Statistics data relating to the Socio-Economic Index for Areas found that '[local government areas] in GWS generally have a higher proportion of disadvantage and a lower proportion of advantage' compared to the rest of the Sydney region.[58]

WSU promotes a widening participation agenda, 'to champion higher education and make it accessible for all who want to pursue it',[59] including 'low-SES and Aboriginal and Torres Strait Islander students'.[60] The cohort of WSU Law School is 'more diverse and socio-economically disadvantaged than … in traditional law schools, with a high incidence of students from low socio-economic status backgrounds, who are first in family to attend university and who speak a language other than English at home'.[61] There is also a significant proportion of students who enter a law degree at WSU via a pathway from prior vocational education and training.[62]

The four first-year cohorts in this study are representative of the diversity of WSU's broader cohort. Aggregated data for these four cohorts shows that 45% are from low-SES backgrounds,[63] 35% are from culturally and linguistically diverse backgrounds, 39% are first in family to attend University, 53% are students who have not entered their law course directly from school.

WSU Law School embraces the diversity of its student cohort. This raises questions of how to position diverse students at the 'centre' of the first-year law curriculum. To build their success, the Law School has a responsibility to ensure that 'the implicit or tacit needs to be made more explicit for students whose background does not readily acquaint them with these implicit features of the law school curriculum'.[64] The next section examines how the curriculum can be a means to do this.

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[56]Western Sydney University, 'Securing Success 2018-2020 Strategic Plan' (2018) Report, 2. See also Regional Centre of Expertise on Education for Sustainable Development (n 54).

[57]Matt Wade and Nigel Gladstone, 'Rapid Growth for Indigenous Population of Sydney' *Sydney Morning Herald (online)* (1 June 2019) <https://www.smh.com.au/politics/nsw/rapid-growth-for-indigenous-population-of-sydney-20190531-p51t7i.html> accessed 17 January 2022.

[58]Jawed Gebrael, 'Socio-Economic Index for Areas In Greater Western Sydney' (Westir Limited 2018) Topic Paper, 5.

[59]'School Programs' (Western Sydney University, 19 November 2021) <https://www.westernsydney.edu.au/schools-engagement/connecting-with-western/school-programs> accessed 25 March 2022.

[60]Western Sydney University, 'Securing Success 2018-2020 Strategic Plan' (n 61), 6; Western Sydney University, 'Sustaining Success 2021-2026 Strategic Plan' (2020) Report, 5, 15.

[61]Michelle Sanson, 'WSU Law First Year Review' (2016) Consultation Paper, 43.

[62]See ibid, 43, which reported that, in 2016, 12% of students in the Law School's first year cohort entered the law course from a Vocational Education Training (VET) background.

[63]The University bases low SES status on the students' postcode of permanent home residence within the SSEs value derived from the ABS 2016 Census SEIFA Index for Education and Occupation for postcodes. See Western Sydney University, 'Annual Report: The Year in Review, Volume 1' (2020) Report, 55, Table 7; Australian Bureau of Statistics, 'Details – Socio-Economic Indexes for Areas (SEIFA) 2016' (27 March 2018) <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2033.0.55.0012016?OpenDocument> accessed 17 January 2022.

[64]Peter Moraitis and Helen Murphy, 'Language, Law and Identity: A Language and Learning Response to the Challenges of Widening Participation of Students In Law Subjects' (2013) 47 *The Law Teacher* 159 <http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.791093> accessed 20 August 2021, 161.

Harnessing the curriculum to support students

Transition pedagogy and diverse student cohorts

'Transition pedagogy' as it relates to university can be broadly defined as 'targeted programming reflecting the special significance of the (in particular) first year … transitions to … university in the context of students' whole university experience'.[65] Transition pedagogy does not include programmes that enable students to *enter* university, but rather focuses on the experience of students once *at* university.[66]

Transition to university and the first-year experience has been the focus of considerable research globally for at least 20 years.[67] In Australia and elsewhere, this focus on 'transition pedagogy' has been strongly influenced by the work of Kift and others,[68] who recognise the importance of curriculum as the uniting framework for transition as well as co-curricular activities.

This concept can be a basis for further planning to ensure that the strengths and capabilities which diverse students bring with them are fully recognised and centred. As universities in Australia and elsewhere have moved from an elite to mass model of education, the challenges faced by diverse students transitioning to university have been well documented,[69] as have exhortations for universities to do more to support diverse students in their transition to university.[70] Furthermore, as the

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[65]Susan Armstrong and Judith McNamara, 'Transition Pedagogy in First and Final Year Law Programs' in Sally Kift and others (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis 2011), 209.

[66]Morgan refers to this as the 'induction to study' phase. See Michelle Morgan, 'The Student Experience Practitioner Model' in Michelle Morgan (ed), *Supporting Student Diversity in High Education: A Practical Guide* (Taylor & Francis Group 2013), 49.

[67]Chi Baik and others, 'Examining the Experiences of First-Year Students with Low Tertiary Admission Scores in Australian Universities' (2019) 44 *Studies in Higher Education* 526, 527.

[68]Sally Kift, 'A Decade of Transition Pedagogy: A Quantum Leap in Conceptualising the First Year Experience' (2015) 2 *HERDSA Review of Higher Education* 51.

[69]Liz Thomas, 'Student Engagement to Improve Belonging, Retention and Success' in Neil Murray and Christopher M Klinger (eds), *Aspirations, Access and Attainment: International Perspectives on Widening Participation and an Agenda for Change* (Routledge 2013), 109–12; António Fragoso and others, 'The Transition of Mature Students to Higher Education: Challenging Traditional Concepts?' (2013) 45 *Studies in the Education of Adults* 67 <http://www.tandfonline.com/doi/full/10.1080/02660830.2013.11661642> accessed 4 August 2021; Eugena K Griffin, 'Psychosocial Techniques Used in the Classroom to Captivate Non-Traditional Community College Students' (2020) 44 *Community College Journal of Research and Practice* 329 <https://www.tandfonline.com/doi/full/10.1080/10668926.2019.1590252> accessed 5 August 2021, 330–31; Anna-Maria Meuleman and others, 'Some People Might Say I'm Thriving But . . . ': Non-Traditional Students' Experiences of University' (2015) 19 *International Journal of Inclusive Education* 503 <http://www.tandfonline.com/doi/abs/10.1080/13603116.2014.945973> accessed 5 August 2021; Ian Scott, 'Inequality as the Key Obstacle to Widening Successful Participation in South Africa' in Neil Murray and Christopher M Klinger (eds), *Aspirations, Access and Attainment: International Perspectives on Widening Participation and an Agenda for Change* (Routledge 2013), 60–65; Wolfgang Lehmann, '"I Just Didn't Feel like I Fit in": The Role of Habitus in University Drop-Out Decisions' (2007) 37 *The Canadian Journal of Higher Education* 89, 96–100.

[70]See, e.g., John Bamber and Lyn Tett, 'Transforming the Learning Experiences of Non-Traditional Students: A Perspective from Higher Education' (2000) 22 *Studies in Continuing Education* 57 <http://www.tandfonline.com/doi/abs/10.1080/713695715> accessed 3 August 2021; Meuleman and others (n 74), 515; Steven Roberts, 'Traditional Practice for Non-Traditional Students? Examining the Role of Pedagogy in Higher Education Retention' (2011) 35 *Journal of Further and Higher Education* 183 <http://www.tandfonline.com/doi/abs/10.1080/0309877X.2010.540320> accessed 5 August 2021, 195–96; Marcia Devlin, 'Effective University Leadership and Management of Learning and Teaching in a Widening Participation Context: Findings from Two National Australian Studies' (2013) 19 *Tertiary Education and Management* 233 <http://www.tandfonline.com/doi/abs/10.1080/13583883.2013.793380> accessed 20 August 2021; Debby RE Cotton, Tricia Nash and Pauline Kneale, 'Supporting the Retention of Non-Traditional Students in Higher Education Using a Resilience Framework' (2017) 16 *European Educational Research Journal* 62 <http://journals.sagepub.com/doi/10.1177/1474904116652629> accessed 4 August 2021, 75–77; Margaret Scanlon and others, '"My Biggest Fear Was Whether or Not I Would Make Friends": Working-Class Students' Reflections on Their Transition to University in Ireland' (2020) 44 *Journal of Further and Higher Education* 753, 762.

student body diversifies, universities will need to 'monitor routinely the experience of distinctive student subgroups'.[71] Indeed a 'more fine-grained understanding of the early transition needs of a diverse range of commencing students' is needed.[72] Part of the challenge has been that many studies of the first-year transition experience 'have been young, full-time, campus-based, mainly middle-class school leavers'[73] and the 'experience of students from diverse backgrounds may be distinctly different'.[74] When examining the transition experience at a UK university with a high proportion of diverse students, others have cautioned that there needs to be a more nuanced understanding of the transition experience, observing 'transition' does not have an essence; it is not a neat, 'unifying package containing skills or competencies'.[75] In relation to the transition programmes for diverse cohorts, some have advocated for 'strategies that acknowledge students' lives, including education, linguistic and social-cultural backgrounds, income generation, family commitments and perception about alignment of their university learning to future career success',[76] noting that '"[a] one-size-fits-all" approach is not sufficient'.[77] This accords with the experience of the students in our study. To ensure that diverse students transition successfully to university, scholars need to centre the experience of diverse students, rather than assuming that their trajectories will be the same as each other, or, as traditional students.

This does not necessarily mean that transition pedagogy should single out specific diverse groups of students. A study of a transition programme aimed at Direct Entrant ('DE') students at a Scottish university, who are considered a diverse group in UK higher education,[78] observes that 'targeted support for DE students may unnecessarily single these students out from peers they are already positioned as somewhat other to' and in deficit.[79] The literature relating to the transition experience, particularly that of diverse students, tends to problematise this experience, revealing a 'discourse that reinforces students' vulnerabilities and weaknesses'.[80]

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[71]Baik, Naylor and Arkoudis (n 2), 93.
[72]Keithia L Wilson and others, 'Understanding the Early Transition Needs to Diverse Commencing University Students in A Health Faculty: Informing Effective Intervention Practices' (2016) 41 *Studies in Higher Education* 1023 <http://www.tandfonline.com/doi/full/10.1080/03075079.2014.966070> accessed 6 August 2021, 1024.
[73]Lynda Measor, Paula Wilcox and Philip Frame, 'Transformation or Trauma: The Transition to Higher Education of Non-Traditional Students' in Tamsin Hinton-Smith (ed), *Widening Participation in Higher Education* (Palgrave Macmillan UK 2012), 151.
[74]ibid, 151.
[75]CA Taylor and J Harris-Evans, 'Reconceptualising Transition to Higher Education with Deleuze and Guattari' (2018) 43 *Studies in Higher Education* 1254 <https://www.tandfonline.com/doi/full/10.1080/03075079.2016.1242567> accessed 21 August 2021, 1265.
[76]Greg Rickard and others, 'Exploring the First-Year Experience in a Diverse Population: Using Participatory Action Research to Explore Strategies to Support Student Transition into Fast Track Undergraduate Degree Programs' (2018) 9 *Student Success* 41, 43.
[77]ibid, 43.
[78]This is because this group of students 'incorporate various widening participation (WP) groups that are the focus of institutional and Governmental HE policies'. See Maddie Breeze, Karl Johnson and Claire Uytman, 'What (and Who) Works in Widening Participation? Supporting Direct Entrant Student Transitions to Higher Education' (2020) 25 *Teaching in Higher Education* 18, 19.
[79]ibid, 29.
[80]Naomi E Winstone and Julie A Hulme, '"Duck to Water" or "Fish Out of Water"? Diversity in the Experience of Negotiating the Transition to University' in Simon Lygo-Baker (ed), *Engaging Student Voices in Higher Education* (Palgrave Macmillan UK 2019), 160.

Valuing different 'cultural capitals'

Research highlights the hidden curriculum that favours 'traditional students' at university. This work often harnesses the Bordieusian concept of cultural capital as 'proficiency in and familiarity with dominant cultural codes and practices'.[81] The central argument of this research is that ways of learning at university are dominated by implicit cultural assumptions and expectations that are already familiar to 'traditional' students, and so are not interrogated or even explained to diverse students.[82] Traditional students already have 'proficiency in and familiarity with dominant cultural codes and practices',[83] or a 'feel for the game',[84] and are therefore at an advantage. The literature advocates for making these tacit codes or assumptions explicit,[85] so that diverse students gain access to the 'hidden curriculum', that is, knowledge that is assumed, but left unstated about educational policies and processes concerning educational outcomes.[86] It also seeks to challenge the view that making the tacit explicit is 'spoon feeding' students or 'dumbing down' the curriculum.[87] It identifies that the hidden curriculum must be taught to diverse students explicitly and that curriculum measures need to centrethe experience of tertiary education of diverse students rather than seeing it as the exception or 'other'.

The literature also recognises the importance of seeing and valuing the 'non-traditional' cultural capital(s) that diverse students bring to tertiary education.[88] Adopting a strength-based approach to diverse students' capabilities[89]recognises the skills and strengths that diverse students bring to their university studies.[90] For example, studies of diverse student cohorts indicate that diverse students can use their 'outsider' knowledge that university culture is just one culture; it is not necessarily a superior or better way of being or doing.[91] This is pertinent to Indigenous students and valuing their ways of knowing.[92] Otherwise the academy is a body which has 'historically excluded, misrepresented and de-valued Indigenous knowledge and perspectives'.[93] The Academic Literacies (AcLits) movement has also explored the ways in which diverse students'

[81]Daddow (n 21), 742.

[82]Stephane A Farenga, 'Early Struggles, Peer Groups and Eventual Success: An Artful Inquiry into Unpacking Transitions into University of Widening Participation Students' (2018) 20 *Widening Participation and Lifelong Learning* 60, 62.

[83]Daddow (n 21), 742, citing Marcia Devlin, 'Bridging Socio-Cultural Incongruity: Conceptualising the Success of Students from Low Socio-Economic Status Backgrounds in Australian Higher Education' (2013) 38 *Studies in Higher Education* 939 ('Bridging Socio-Cultural Incongruity').

[84]Farenga (n 82), 61.

[85]See Tamsin Haggis, 'Pedagogies for Diversity: Retaining Critical Challenge Amidst Fears of "Dumbing Down"' (2006) 31 *Studies in Higher Education* 521 <https://doi.org/10.1080/03075070600922709> accessed 11 January 2022; Cassandra Star and Jacquelin McDonald, 'Embedding Successful Pedagogical Practices: Assessment Strategies for a Large, Diverse, First Year Student Cohort' (2007) 3 *International Journal of Pedagogies & Learning* 18; Kathy Tangalakis and others, 'The Use of Explicit Teaching Strategies for Academic Staff and Students in Bioscience Foundation Subjects' (2014) 22 *International Journal of Innovation in Science and Mathematics Education* 42.

[86]Terri Seddon, 'The Hidden Curriculum: An Overview' (1983) 3 *Curriculum Perspectives* 1, 1–2.

[87]Haggis (n 85), 523; Keithia Wilson, 'Practical Leadership for Developing and Sustaining First-Year Learning Environments That Facilitate the Success of a Diverse Student Population' (Australian Government, Office for Learning and Teaching 2014) Report, 19.

[88]See for example Pang and others (n 25), 177, citing Tara J Yosso, 'Whose Culture Has Capital? A Critical Race Theory Discussion of Community Cultural Wealth' (2005) 8 *Race, Ethnicity and Education* 69, 77.

[89]Pang and others (n 25), 177, citing Yosso (n 88), 77.

[90]Pang and others (n 25), 184; Measor, Wilcox and Frame (n 73), 153–54.

[91]Diane Reay, Gill Crozier and John Clayton, '"Strangers in Paradise"? Working-Class Students in Elite Universities' (2009) 43 *Sociology* 1103, 1111–12.

[92]Martin Nakata, Vicky Nakata and Michael Chin, 'Approaches to the Academic Preparation and Support of Australian Indigenous Students for Tertiary Studies' (2007) 37 *The Australian Journal of Indigenous Education* 137.

[93]ibid,138.

experience of language can be recognised as a strength. The AcLits model suggests that students who are able to conceive of academic discourse as just one of many discourses, and who can switch between various 'codes' of discourse, are best able to critique the dominant discourses of University and utilise their critical 'meta-awareness' to their advantage.[94]

Gale and Parker: transition as becoming

Gale and Parker's 'transition as becoming' (T3) model values the non-traditional cultural capital of diverse students. In their comprehensive review of the academic literature relating to student transition to higher education, they propose a typology of understandings of 'transition as induction' (T1), transition as development (T2) and 'transition as becoming' (T3).[95] Under the 'transition as induction' model, the concept of transition is underpinned by the premise that it is the institution's responsibility to assist students to adjust and cope with the changes required of them to succeed at university.[96] The 'transition as development' model also conceives of transition as a process of adjustment for the student, but emphasises the personal characteristics of the student as an essential aspect of the transition process.[97]

Both the T1 and T2 models assume that the transition is a one-way process; that it is the *student* who adjusts to the new requirements of the university, rather than the institution adapting. 'Successful' transition involves the *student* integrating or assimilating into existing university culture.[98] Gale and Parker propose a third paradigm of transition, which is 'transition as becoming'. This understanding of transition sees it as an 'everyday feature' of life rather than an uncommon event. [99] This model challenges the linear way in which study, and life, can be understood. Rather than life occurring in a linear way, it recognises the movements backwards and forwards which people experience and challenges the 'normativity of life stages implicit in much student transition research'.[100] Significantly, this understanding of transition advocates for universities to recognise students' existing cultural capital, and 'embedding diverse identities, ways of doing and being into higher education curriculum and pedagogy'.[101] In other words, 'transition as becoming' involves not only the student 'adapting', but the university 'adapting'. Students integrate study into their lives, rather than pass through a stage of study.

For diverse students, this understanding of transition is helpful. The student's experience is not subjugated to the university, rather the curriculum itself includes the ways of knowing of diverse students. This then informs an approach which centres the diverse student, rather than seeing them as exceptional, or having to 'fit in' to an existing norm.

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[94]See Siân Preece, 'Multilingual Identities in Higher Education: Negotiating the "Mother Tongue",'Posh'and "Slang"' (2009) 24 *Language and Education* 21; Devlin (n 89), 945; Ann-Marie Priest, '"I Have Understanding as Well as You": Supporting the Language and Learning Needs of Students from Low Socio-Economic Status Backgrounds' (2009) 3 *Journal of Academic Language and Learning* A70, A76; Daddow (n 21).
[95]Gale and Parker (n 14).
[96]ibid, 743.
[97]ibid, 743.
[98]ibid, 746.
[99]ibid, 744.
[100]ibid, 745.
[101]ibid, 746.

Avoiding a deficit framework

Researchers caution however, against a 'two-way approach' that frames both the student as in deficit and also the university as in deficit.[102] In their work concerning students from low-SES backgrounds, Devlin and McKay argue that a deficit framework should be avoided. They also resist framing the university as 'the problem'. Requiring the university to 'change' or adapt' can, in some instances, deny agency to students from diverse backgrounds, because it can further marginalise students, and also assumes (incorrectly) that diverse students are 'passive recipients of the middle and upper class culture and discourse of university'.[103] Further, it can result in these students being denied access to the relevant power frameworks that will facilitate their success at university.[104] This has been referred to as the 'access paradox':

> The 'access paradox' refers to the process by which a student is taught to use a dominant form of expression that grants access to the disciplinary register, but may involve her losing her own individual voice. The aim of empowering education is to promote both access and diversity learning, so as to avoid the pitfalls associated with the access paradox.[105]

An example of a study involving diverse law students that demonstrates this 'access paradox' is a study of teaching diverse (and in particular mature aged) law students at a UK law school.[106] This study advocates for using critical pedagogy to teach criminal law. Its use is justified on the basis of allowing students to bring their own perspectives and experiences to their studies,[107] and the ways in which critical pedagogies can enhance students' skills of self-reflection and self-awareness.[108] However, in this context, it is based on the assumption that many of the students in the law course will not go on to *practise* law.[109] This approach may not provide students with access to the discourses of mainstream knowledge and power that they may require to practise law.

Rather than framing either party in deficit, a better way to conceptualise the issue is via 'socio-cultural incongruity',[110] and to find ways to bridge that socio-cultural incongruity. This requires a 'joint venture' between diverse students and universities.[111] Projects based on this framework for bridging social incongruity[112] have been successful, particularly where they support academic staff to be part of the 'joint venture'.[113]

This analysis helps law schools when considering ways to use the 'transition as becoming' model in their first-year curriculum. It encourages law schools to recognise the

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[102]Devlin and McKay (n 22).
[103]Devlin and McKay (n 22), 105; Cotton, Nash and Kneale (n 70), 64.
[104]Devlin and McKay (n 22),115.
[105]A Janse van Rensburg, R Bird and K Manià, 'Writing into Design: An Embedded Writing Course for Architectural Studies' (2017) 31 *South African Journal of Higher Education* 172, 175–76.
[106]Susanna Menis, 'Non-Traditional Students and Critical Pedagogy: Transformative Practice and the Teaching of Criminal Law' (2017) 22 *Teaching in Higher Education* 193 <https://www.tandfonline.com/doi/full/10.1080/13562517.2016.1237492> accessed 5 August 2021.
[107]ibid, 195–96, 201–2.
[108]ibid, 199.
[109]ibid, 196.
[110]Devlin and McKay (n 22), 113.
[111]See, generally, Devlin, 'Bridging Socio-Cultural Inconguity' (n 83).
[112]Marcia Devlin and others, 'Effective Teaching and Support of Students from Low Socioeconomic Status Backgrounds: Resources for Australian Higher Education' (Office for Learning and Teaching Department of Industry, Innovation, Science, Research and Tertiary Education 2012) Report.
[113]See, e.g., Thomas and Heath (n 18).

constant and fluid process of studying at university, and integrating this into the lives of diverse students.

These considerations have all strongly influenced the development and implementation of the first-year programme, including the SR Survey at WSU Law School. The SR Survey is a tool to manage student expectations, and to make the School's expectations clear to first-year students. It helps to reveal the hidden curriculum. However, as discussed in this article, one of the outcomes of the SR Survey responses is that they have provided us with insights into the student experience that have caused our law school to draw on students' existing cultural capital in its design of the curriculum.

Methodology

First-year study at WSU

First-year law students at WSU study two foundations-level subjects, Fundamentals of Australian Law (FAL) and Legal Analysis and Critique (LAC). They undertake FAL in their first semester of law school, and LAC in their second semester. At the end of semester, if students are not satisfied with their overall grade/mark in a subject, students can seek a review of grade. As part of that review of the grade process, students are encouraged to review their exam paper with the Subject Coordinator prior to seeking a formal review of grade. However, it is not mandatory that they do so. One of the authors of this paper became the Coordinator of LAC in 2017, and initially introduced the SR Survey as part of the review of the grade process.

The self-reflection survey

The original purpose of the SR Survey was to encourage students who had reached the end of their first year of law studies to reflect not only on their performance overall in the subject, but also how their engagement with the subject may have contributed to their result. Students brought the completed SR survey with them to discuss their exam paper with the Subject coordinator before making a formal application for a review of grade. In 2017 when it was first introduced, the SR Survey was made available to students in paper form only. Since 2018, it has been made available to students online, via the university's learning management system, vUWS, and has become part of the work that students are encouraged to complete as part of their studies in the relevant subject. In 2019, it was made available to students at the start of the semester, and since 2020, it has been fully embedded into the first-year law curriculum, supported by in-class exercises on self-management and reflective practice Students are also encouraged to complete the SR Survey at various crucial points during their first semester, for example after their first assessment and as part of their revision for their final assessments. This ensures that all students can complete the SR Survey, and are thus exposed to the hidden curriculum, and the expectations of them. This approach also draws from Kift's model of the curriculum being the uniting framework for transition programmes, because the SR Survey is now part of the formal curriculum, rather than an optional extra.

The SR Survey consists of a set of TRUE/FALSE answer questions, which direct students to whether they have participated in certain activities in the subject, and then three or four open-ended questions, which ask them to reflect on their engagement.[114] The open-ended questions ask students to consider:

- What they did well to prepare for the relevant assessment.
- How they could have improved their preparation for the relevant assessment.
- Whether they think their result in the assessment reflects the answers they have provided in the survey result in the assessment.
- In the case of a student's overall result in the subject, whether that overall result reflects the answers they have provided in the SR Survey.

Unlike other reflective self-assessment exercises documented in the literature,[115] the open-ended questions in the SR Survey do not invite students to nominate the mark or result they consider they should have achieved. Instead, the questions sought to direct students' attention to what they did well, where they thought they could improve, and to encourage them to seek feedback or help if they could not see a correlation between their engagement with the subject and their overall result.

Data collection and analysis

Students' survey responses were collated from the University's online learning management system, vUWS from 2018 to 2021.[116] This dataset consisted of 177 responses to the SR Survey that included responses to the open-ended questions. These responses were coded using Nvivo software. As discussed above, our broader research examined the impact of the SR Survey, and in particular whether embedding SR Survey in the first-year curriculum scaffolds students' reflection skills. However, for us, one of the unexpected functions of the SR Survey has been to provide valuable insights into the needs and perspectives of our diverse cohort. This has enabled the School to adjust our practices and curriculum so that we centre the needs and perspectives of this diverse student cohort. Three salient themes which emerged from the qualitative data were: external responsibilities impacting study, which was referenced 27 times in the qualitative data; adjusting to expectations, which was referenced 21 times in the qualitative data; and reliance on peers which was referenced 13 times in the qualitative data. The next section of this paper discusses these themes, and how WSU law school has responded to them.

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[114]See Appendix 1 for an example of the SR Survey.

[115]Graham Thompson, Alan Pilgrim and Kristy Oliver, 'Self-Assessment and Reflective Learning for First-Year University Geography Students: A Simple Guide or Simply Misguided?' (2005) 29 *Journal of Geography in Higher Education* 403, 414–15.

[116]Ethics approval was obtained for all aspects of this study. See H14491, Western Sydney University Human Research Ethics Committee. This research is a sub-project of the University's START program of research. See: 'Research into Student Retention | Western Sydney University' <https://www.westernsydney.edu.au/learning_futures/home/curriculum_renewal/academic_transition/stars/research_and_publications> accessed 18 September 2022. Under the Umbrella Ethics approval that governs the START project, subproject teams can use student data collected routinely by the University, except where students have opted out of this collection process. All new students are contacted to explain the opt out process shortly after they enrol. A register of these students is kept by the University and those who opt out are identified and removed from any study conducted as part of the START project. All students who had opted out were excluded from this study. In addition, all student data was de-identified prior to analysis.

Results: providing insights into our diverse cohort

External responsibilities impacting study

One of the themes to emerge from the students' reflections in the survey is the way in which factors external to their lives at university impacted on their studies. In some cases, these related to carer or family responsibilities. For example, one student responded to the open-ended question about what they did well to prepare for the exam:

> I was present at the seminars, except maybe 2–3 classes I missed, for supporting reasons (court attendance, regarding my ex-husband, and other day had to take my 1 year old son to doctors) … . I did go to the university library few times before the exam week, to focus and prepare better, as I am a single mother looking after my little one, and took the chance and went to the library for 3 times a week, when my little one was at childcare.

They further noted that they were disappointed in their result, given 'the preparation and the time and effort I put to take notes and studying at the library, even in the situation of COVID-19 and the fear of getting out of the home'.

Other challenges were also noted by students:

> If i wasn't sick throughout most of the semester i would have attended more classes and understood the content better.

> I believe that considering my circumstances (going oversees for a month due to ill family members) I performed to the best of my ability. I have always completed all my work and made sure I reflected upon all unit material to ensure I have an understanding of the expectations and core topics implemented within the unit.

> I also suffer from extreme hormonal imbalances and iron deficiency anaemia- meaning I am almost always fatigued and struggle to carry out even the most basic of tasks. It was always an effort to even wake up and attend class as due to my medical issues.

For others, paid work commitments meant that their study was impacted.

> I believe that I have made a respectable effort to my studies so far in balancing and starting a new fulltime job at the same time.

> I wish I could have attending drop-in sessions, PASS and the exam Q&A but unfortunately most clashed with other commitments such as other units and work.

> I'm a mature age student, single parent, business owner, I am here because law is my future, I am not here to waste anyone's time. I take my studies very seriously and I cannot afford to fail, I don't have years and years to play with, I'm 40 years old. I have even recently began to shut down my business as this law degree takes priority.

> I am also the sole provider for my household and work night shift which makes the time I have very limited. I have taken steps reduce the hours I work next semester as well as transitioning into day shift.

The pressures experienced by the students appear, unsurprisingly, to have been exacerbated by COVID-19 in 2020 and 2021:

> I did all my homework by myself and I had no one to help me and guide me, online classes are very difficult to understand most of the times.

> I had lost my focus and track of time during the covid-19 restriction lockdown.

I have worked really hard especially with the circumstances of COVID and having three children at home trying to home school.

Adjustment to new expectations

Another theme that emerged was students' adjustments to the new expectations of study. Some responses indicated that this related to an adjustment to university study generally:

As this was my first semester of uni, I was not prepared for the intensity. In the upcoming semesters I will be a lot more prepared.

I think I need to assess myself and study in a more careful way, like giving myself the enough amount of time for completing the seminar questions being asked ahead before the class starts and ask more questions when I'm stuck.

In other responses, the adjustment related to the adjustment in expectations relating to the study of law, and in particular the need for detailed and thoughtful study:

My study for this unit was unlike any other type of study I have done for any other subject in my academic history, I had not done proper study like I had for this unit prior to enrolling into the school of Law this semester.

As far as i know i have done everything that i could, i have been at uni for three years, and when ever final exams come i do the same preparation had no problem in my previous degree.

Even where students achieved to quite a high standard, there was a gap between their expectations and the realities of law school. The following responses to the SR Survey were from students who achieved high grades in their assessments, but nevertheless indicate that they were disappointed in their results:

I believe my answers to [the SR Survey] … questions would represent a distinction grade, which I came only 2 marks short of. The GPA system looks at only gradings and not percentages, I am not entitled to a distinction and respect whichever decision is made about my request of a review, but I believe achieving a distinction which is only 2 marks away from the 73 I achieved, would better represent the answers I have provided in this questionnaire.

… .My final result of 79/100 indicates my exam mark was 40/55. After reflecting on the answers above I don't see the 27% gap in my preparation and participation. It is important for me to understand so I can quickly correct.

Support from peers

While reference to reliance on peers was not as common as the other two themes, it is notable that it was recognised as an area of strength by the students. This is not one of the behaviours prompted by the T/F questions in the SR Survey. That is, the SR Survey does *not* prompt students to consider whether they relied on peers as part of their engagement with the subject. Instead, the SR Survey asks students whether they engaged with the University's formal peer-mentoring support, PASS. However, the students' responses to the open-ended questions indicate one way they thought they had done well to prepare for their assessments was to rely on peers. This appeared to occur *outside* of PASS:

> I went over the LAC practice paper with friends …

> … .i have done group study with the other class mates, to discuss any concerns.

> … studied with my group of friends to gather further details I may have missed.

> I discussed with fellow peers how they were preparing for there [*sic*] exams and employed some of their techniques to ensure I could be prepared to mymaximum potential. I asked peers for help when I needed it especially when oversees.

> I collaborated with a group of students to make a good set of notes and we used our collective efforts to make sure we all went through and knew our work …

Discussion: ways to address the experience of diverse students

The three themes which emerge from these responses are the impact of work, caring and family responsibilities on studies, the unrealistic expectations that students have of studying law, and the significant and positive influence of seeking support from peers. These three themes fit within the Gale and Parker 'transition as becoming' model.

In relation to the first theme, it underscores the fact that, for many of our students, there is no 'leeway' in their lives outside of law school, and reflects similar experiences of the diverse students in Bamber and Tett's study.[117] Some face serious challenges, have disability, and have commitments to work, to their families and in their communities, and law school has to fit *around* these. These commitments are immutable; law school is and should be malleable. Research relating to law student commitments outside of university has suggested that more attention needs to be paid to how these factors negatively impact student well-being.[118]

The 'traditional' model of study at University is that of the 'full time' student or the 'part time' student. 'The expectation still remains that students will "fit" around academic institutions, but this is complicated by students' responsibilities outside this environment'.[119] This model of studying needs to shift to the concept of a student integrating the various parts of their lives together. Using the model of 'transition as becoming', study is a part of life, rather than a stage of life. There may be some impact of the concept of a full-time worker, the 'breadwinner worker' or full-time student, which bases itself on a male model of working. It may be useful to picture the female student at the centre when re-imagining the ways in which higher education can be structured. This female student is likely to have some caring responsibilities, either for children or family members, is likely to have to work and study. The question then becomes how study can be structured in a way to enable and ensure the success of these students. This integrative model also fits with the recognition of life-long learning as the workforce changes and adapts to technological change.

However, recognising that students have a range of caring, family, work, responsibilities does not mean that law schools should expect less than a professional and committed

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[117]Bamber and Tett (n 70), 65.

[118]Alex Steel and Anna Huggins, 'Law Student Lifestyle Pressures' in Rachel Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Taylor & Francis Group 2016) <http://ebookcentral.proquest.com/lib/uwsau/detail.action?docID=4505723> accessed 29 March 2022.

[119]Sarah O'Shea, 'Transitions and Turning Points: Exploring How First-in-Family Female Students Story Their Transition to University and Student Identity Formation' (2014) 27 *International Journal of Qualitative Studies in Education* 135 <http://www.tandfonline.com/doi/abs/10.1080/09518398.2013.771226> accessed 5 August 2021, 153.

approach from students. What it should influence, however, is how law schools connect students to the supports available within the university and the law school. WSU Law School clearly communicates to students that it expects them to adopt a range of study sequences, and that they should do as much law study which fits into their lives. This is clearly a different approach to the one in which transition information recommends the maximum number of hours of work outside of university if students are studying full time.[120] The WSU approach centres the diverse student. They are the 'typical' student rather than being seen as 'other'.

Another of the themes to emerge was that students did not expect the level and intensity of work required for law studies. This emphasises how important it is to expose the 'hidden curriculum' to diverse students. WSU Law School is explicit about the approximate number of hours study per week that students should be devoting to each law subject.[121] In addition, the T/F questions in the SR Survey make explicit to first-year students what they are expected to do in those study hours. The tutors then encourage students to structure their study patterns- especially in relation to the number of subjects they attempt each semester- around their existing commitments, rather than expecting them to adjust those other commitments. By being explicit about their expectations, they show what the hidden curriculum contains and how to achieve academically. Students are welcome to study only one subject per semester or other combinations of part time sequences.

This is consistent with the 'transition as becoming' paradigm.[122] Further, the Law School's Academic Program Advisor works closely with individual students to map and plan their pattern of study. Students may have commenced university doing a full-time study load and wish to vary this pattern. In addition, the 'non-traditional' pathway through a law degree is framed as one of the *strengths* of the students. The message is framed that having commitments outside of law school will ultimately make students more well-rounded and empathetic lawyers and professionals. If it takes them slightly longer to obtain their law degree, then that is to be commended, because the experiences they are having outside of law school will shape the type of lawyers they become.

It is also clear from the qualitative comments in this study that, even where students are high-achieving, there is an 'expectations gap' that exists between the marks students expect to achieve in their first year of University, and the realities of what constitutes a 'good' mark at University.[123] In relation to law students, studies have documented the negative impact of unrealistic expectations in relation to academic performance on student mental health and well-being.[124] First-year students need support to recalibrate their expectations about what constitutes achievement to a high standard at University.[125] WSU Law School has

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[120]Wilson (n 87), 30.
[121]At WSU Law School, we indicate to students that this is 10 hours per week, including time in class.
[122]Gale and Parker (n 14), 743–46.
[123]Naomi Winstone and Hannah Bretton, 'Strengthening the Transition to University by Confronting the Expectation-Reality Gap in Psychology Undergraduates' (2013) 19 *Psychology Teaching Review* 2, 10.
[124]Wendy Larcombe, Ian Malkin and Pip Nicholson, 'Law Students' Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections' (2012) 22 *Legal Education Review* 71 <https://ler.scholasticahq.com/article/6256-law-students-motivations-expectations-and-levels-of-psychological-distress-evidence-of-connections> accessed 17 January 2022, 87–90.?
[125]Winstone and Bretton (n 123), 11–12.

attempted to support this recalibration through communicating in a First Year Handbook that a mark of 70 is considered to be an excellent mark in law studies. This message is reinforced via communications to first-year students before their results in assessments are released. We also publish the average mark that was achieved for the relevant assessment task prior to the release of marks. These measures help students bridge that expectations gap.

As shown by the students, peers are a key support mechanism for diverse students. This is supported in the research which links peer mentoring to student success.[126] Peer support can assist non-traditional students to overcome the obstacle of traditional cultural capital more quickly.[127] However, diverse students may not be able to access formal peer mentoring structures established by the university. For example, at WSU, there are Peer Assistance Study Sessions ('PASS') available as an extracurricular activity. However participating in these takes more time from students and therefore may not be available to students. These sessions, while effective for those who participate, may not help a student who is already in paid work and has caring responsibilities.

This suggests the importance of integrating supportive mechanisms within the curriculum, rather than making them external and additional to the curriculum, so that all students can access them. At WSU Law School, this means making time in formal scheduled classes for students to work with their peers, so that, consistent with Kift's approach to transition pedagogy, curriculum is the central organising device for the transition experience. We are also trialling an 'asynchronous' version of PASS, so that our students can access PASS support at a time that best suits them. We further suggest that students' reliance on each other for informal academic support be embraced as a strength, as a means of creating 'non-traditional' social networks and social capital.[128] One way to do this would be to provide support for these informal peer networks by ensuring that students have accurate and reliable information about how to ensure academic integrity and avoid issues of collusion on course work that is meant to be individual work.

Limitations of the study

The authors acknowledge the limitations of this study. First, our original reason for analysing the student responses to the SR Survey was to examine its impact on the development of students' self-reflection skills. The SR Survey instrument did not directly ask students questions about how they experienced their first year of law studies. However, the authors argue that this is one of the main reasons that it is important to pay attention to the three themes which emerged. We did not ask students this, but this is what they clearly told us. Secondly, in some circumstances, students may have been responding to the SR Survey as part of the review of the grade process, which means their responses may be affected by a perception that they needed to defend their approaches to their studies and/or their engagement with the course. However, this possible effect is reduced by the fact that the SR Survey has now been embedded as part of the work in the relevant subject. We also do not have fine-grained data on

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126Robyn Benson and others, *Managing and Supporting Student Diversity in Higher Education : A Casebook* (Chandos Publishing 2013), 215; Farenga (n 82), 72.
127Farenga (n 82), 72.
128Pang and others (n 25), 182.

the individual characteristics of the students who responded to the SR Survey, in order to determine whether those particular students possess one or more 'diverse' characteristic. However, as the aggregated demographic data demonstrates, this is a diverse cohort of students attending a law school in one of the most diverse and socially disadvantaged areas of Australia, so it is reasonable to conclude that these responses reflect the experiences of our diverse cohort. Finally, the SR Survey responses do not provide us with insights as to why students had these experiences. This may be a fruitful area of future research.

Conclusion

Law schools should be part of the movement towards the success of diverse students. Rather than assuming that students can fit into traditional ways of studying and curriculum structures, it is vital to centre the experience of diverse students to ensure their success. Law schools need to embrace the ways in which diverse students study law, and design curriculum around them, to enable their success. The narrative needs to change to one which recognises the cultural capital of diverse students, and adopts an understanding of 'transition as becoming'. This includes recognising the myriad responsibilities which students balance, such as family and caring responsibilities and paid work. Law schools can incorporate adaptive models to study[129] rather than expecting that study is the only activity that a student has occurring in their lives. It is clear from some of the students' reflections in the SR Survey that they perceive their ability to balance their lives outside of law school with their studies as a strength. For example, one student reflected that,

> Like the majority of others I am a full time student who also works and has family commitments and even with all that responsibility I still managed to do the majority of the work required and prepare for the final exam to the best of my ability through my strength of understanding and proficient organising skills.

A first-year programme can also build on students' existing social capital[130] as it is likely that students' life experiences will in fact make them better lawyers. Law schools should shift from a deficit framework, 'with more recognition being given to students' strengths, skills and valuable prior experiences'.[131] This 'strength mindset' and aspirational capital is palpably reflected by another student in this study, who noted that

> I really got interested in law after what I have experienced in my life, and want to succeed for the … . future

Another finding from this research is the need to ensure that students' expectations of law study are realistic by making the hidden curriculum explicit. This can be done through an instrument like the SR Survey. Finally the support of peers is another essential aspect of supporting the success of diverse students as they form study groups, discuss difficult issues together and collaborate.

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[129]Meuleman and others (n 70), 515.
[130]Pang and others (n 25).
[131]Chung, Turnbull, and Chur-Hansen (n 17), 85.

Through these mechanisms, law schools can contribute to the potential for the legal profession being more diverse. While legal education is just one step along the way, with a range of other measures, the legal profession can become more representative of the society in which it operates. This will make access to justice more achievable, with the diversity of the community truly represented within the profession. Access to justice continues to be a significant goal for the legal profession and law schools.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Appendix 1. Example of Sr Survey

Sr Survey questions for end of semester – Fundamentals of Australian Law 2021

True/False response questions

(1) Prior to each seminar for this Unit, I completed all of the pre-seminar work, including all viewing, listening, reading, made my own notes and answered pre-seminar questions.
(2) I missed fewer than 2 seminars over the semester.
(3) When I missed a seminar, I contacted the Unit Coordinator to discuss the work I had missed.
(4) In seminars, I took notes of what was being said by the tutor and/or my classmates, and revised those notes once class had finished.
(5) I actively participated in all in class activities, answering questions raised by the tutor, participating in class discussion and group work, preparing written answers to the activities and (where appropriate) discussing them with my classmates.
(6) I completed all of the Academic Integrity Modules and quizzes.
(7) I regularly attended PASS for this Unit.
(8) I completed all of the recommended activities to prepare for the Case Summary assessment. (If you are unsure what these activities were, please complete the Case Summary Self-Reflection Survey, which can be found at the Case Summary Assessment tab).
(9) I submitted a genuine attempt at the Week 12 practice statutory interpretation problem question, and received an answer guide.
(10) I prepared for the Final Exam by following the suggestions in the Exam Revision Screencast.
(11) I prepared and submitted a satisfactory response to the Practice Exam, and received an answer guide.
(12) I used the answer guide for the Practice Exam to make changes to my notes for the final exam.
(13) I attended the Unit Coordinator's exam revision Q&A session prior to the final exam.
(14) In the Final Exam, I employed good exam technique by reading the questions carefully, and allocating my time for each question based on the weighting of the question.

Open-ended response questions

(1) Given your answers to the above questions, please reflect on what you did well to prepare for the exam in this Unit.
(2) Given your answers to the above questions, please reflect on what ways could you improve your exam preparation.
(3) Do you think your result in the Final Exam reflects the answers you have provided in this questionnaire? Why/Why not?