

REFLECTION IN LEGAL EDUCATION — SO WHAT, NOW
WHAT?: AN ACADEMIC’S REFLECTION ON THE BENEFITS
AND CHALLENGES OF IMPLEMENTING REFLECTIVE
PRACTICE IN AN ONLINE LAW DEGREE

*Haley McEwen**

ABSTRACT

Reflection in legal education has grown in prominence and is recognised as a core competency within the Threshold Learning Outcomes (‘TLOs’) for law. Yet there are challenges in implementing reflection in a way that is truly authentic and enables students to develop self-awareness and self-management as the TLOs require. This paper proposes multiple benefits for incorporating reflective practice early in the law degree and illustrates how it can be assessed in both a first-year subject and final-year capstone subject. Finally, the author offers a personal reflection as an illustration of how the practice of professional praxis can contribute to improvements in cultural understanding, curriculum design and teaching.

* Senior Lecturer and Discipline Lead for Law, Charles Sturt University.

I INTRODUCTION

Reflective practice offers diverse benefits to students studying law, and to graduates entering the legal profession. Learning to reflect on one’s skills, values and beliefs early on in a law degree will better equip students to positively manage the uncertainty that comes with change and to cope more effectively with a rapidly changing profession. Indeed, the importance of demonstrating reflective skill is acknowledged in three of the six Threshold Learning Outcomes (‘TLOs’) for the Bachelor of Laws in Australia.

This paper outlines some of the practical challenges of incorporating reflection in the curriculum, and potential avenues for assessment at both a first-year and final-year level of study. As institutional priorities shift our focus from effectiveness to efficiency, we must not lose sight of the bigger picture. Although capturing the opportunities for deep reflection in legal education takes time, planning and careful implementation, the transformative effects that self-, critical and collective reflection can offer are worth the investment. As a legal educator, my personal reflection on assessment design demonstrates the transformative effect that deep reflection can have on student self-management, self-awareness and cultural competency.

II WHAT IS REFLECTIVE PRACTICE?

Definitions of reflective practice are varied but, in very simple terms, it is a strategy designed to promote learning via experience. Reflection as an activity involves a cycle of observation, experience and action that requires planning and active participation.¹

As a process, reflection involves identifying an experience, then evaluating how theory, thoughts, feelings, attitudes and beliefs align with that experience, which can lead to a change in future action.² As a practice, it is about self-discovery and self-management, and engaging in continuous learning.³

Boud, Keogh and Walker describe reflection as ‘an important human activity in which people recapture their experience, think about it, mull it over and evaluate it. It is this working with experience that is important in learning.’⁴ More recently, Race described the act of reflecting as:

one which causes us to make sense of what we’ve learned, why we learned it, and how that particular increment of learning took place. Moreover, reflection is

¹ Neil Thompson and Jan Pascal, ‘Developing Critically Reflective Practice’ (2012) 13(2) *Reflective Practice* 311, 314–16.

² Russell Rogers, ‘Reflection in Higher Education: A Concept Analysis’ (2001) 26(1) *Innovative Higher Education* 37, 41.

³ Leering suggests that reflective practice supports a practitioner’s learning journey towards professional competence, continuous learning, professional growth and commitment to action: Michele Leering, ‘Conceptualizing Reflective Practice for Legal Professionals’ (2014) 23 *Journal of Law and Social Policy* 83, 100.

⁴ David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Routledge Falmer, 1985) 19.

about linking one increment of learning to the wide perspective of learning — heading towards seeing the bigger picture.⁵

It is the linking of one increment to the next and preparing for future action that is common to models such as Kolb’s Learning Cycle (1984), Boud, Keogh and Walker’s reflection model (1985) and Gibbs’ reflective learning stages (1998).⁶ As a process, reflection need not be difficult or complex, but it must be purposeful and strategic.⁷

Donald Schön documented two types of reflection: reflection-in-action (‘thinking on your feet’), which is the application of existing knowledge to new situations; and reflection-on-action (‘thinking back and forward’), which involves an intentional analysis of experience that has taken place to prepare for future learning.⁸ More recent proponents have added reflection-for-action (also referred to as ‘reflection-on-practice’ and ‘reflection-on-knowledge’⁹), which often includes critical reflection on the social and political dimensions of one’s experience.¹⁰

Legal academic and modern ‘guru’ of reflective practice in legal education Michele Leering posits five reflective domains that support professional praxis: self-reflection, reflection-on-practice, critical reflection, collective reflection and integrative reflection, which are each suited to different purposes and educational outcomes. She has outlined a range of opportunities, methods and techniques that can be utilised to address these domains in legal education.¹¹ Each one can contribute to the acquisition of the level of reflective skill required by the TLOs for law and can support the cultivation of professional praxis.

III BENEFITS OF INCORPORATING REFLECTIVE PRACTICE IN EDUCATION

Reflective practice in its various forms can benefit students, practitioners and legal academics alike. Adopting Leering’s taxonomy as it pertains specifically to legal education, reflection-on-practice promotes deeper learning and develops metacognition and the ability to self-assess and integrate theory and practice.¹² It can also promote greater personal and professional awareness, resilience, creativity and innovative thinking.¹³ Self-reflection on one’s values can lead to a better alignment of a person’s occupational values and goals, and ultimately greater career satisfaction, performance and ethical and moral development.¹⁴ Collective reflection,

⁵ Phil Race, *Evidencing Reflection: Putting the ‘W’ into Reflection* (ESCALATE Learning Exchange, 2002), cited in Georgina Ledvinka, ‘Reflection and Assessment in Clinical Legal Education: Do You See What I See?’ (2006) 9 *Journal of Clinical Legal Education* 29, 31.

⁶ Ozlem Susler and Alperhan Babacan, ‘Embedding Critical Reflection in Legal Education’ (2021) 37(3) *Law in Context* 1.

⁷ J Eyler, DE Giles and A Schmiede, *A Practitioner’s Guide to Reflection in Service-Learning* (Vanderbilt University, 1996), cited in Sarah Ash and Patti Clayton, ‘The Articulated Learning: An Approach to Guided Reflection and Assessment’ (2004) 29(2) *Innovative Higher Education* 137, 151.

⁸ Thompson and Pascal (n 1) 316–17.

⁹ Leering (n 3) 96.

¹⁰ Thompson and Pascal (n 1) 317.

¹¹ Michele Leering, ‘Perils, Pitfalls and Possibilities: Introducing Reflective Practice Effectively in Legal Education’ (2019) 53(4) *The Law Teacher* 431.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Leering, ‘Conceptualizing Reflective Practice’ (n 3).

which involves an examination of one's attitudes, values and beliefs in company with others, can promote innovation and extend a person's journey towards cultural competency.¹⁵ Critical reflection offers the potential for participants to reflect on law as a system, imbalances of power, class, gender, race and sexuality, and how the legal system creates and responds to disadvantage and marginalisation.¹⁶ Critical reflection therefore presents opportunities for students, academics and practitioners to identify steps to bring about a more accessible legal system. Integrative reflection can foster professional growth, lifelong learning and professional praxis, ensuring that as professionals our theory of practice measures up with what we do, and what we say we do. This poses a particular challenge for academics to model reflection in their teaching and in their personal reflection on pedagogical practice.

IV LEGAL EDUCATION IN AUSTRALIA

The value of reflective learning has been recognised since the 1980s in the fields of nursing, social work and teacher education.¹⁷ Yet, the role of reflective practice in legal education has been slower to emerge.¹⁸ Reasons for this include that, from a pedagogical perspective, legal education is teacher-centric and Socratic in nature.¹⁹ The Priestley 11 subjects have an emphasis on technical rationality and instrumental problem-solving based on logical reasoning and the application of rules to set facts, which leaves little room for creative and critical thinking — questioning whether they are all the facts, why they are the facts and whether they are in fact, *fact*.

Current literature on legal education in Australia suggests that the extent to which universities incorporate reflective practice in legal education is varied in depth, scope, and where and when it is taught and assessed — being most often utilised in formal Clinical Legal Education subjects that naturally lend themselves to a focus on communication skills, self-awareness and professional development.²⁰

Contemporary critics of the traditional approach to legal education have suggested that maintaining our focus on doctrinal knowledge and technical legal skills does not adequately prepare law students for practice.²¹ In a time when the legal profession, global economies and industries are rapidly changing, graduates need, more than ever, to think flexibly and be

¹⁵ Collective reflection involves reflecting with others to generate dialogue, share perspectives and problem-solve through methods such as peer review and communities of practice. Leering, 'Perils, Pitfalls and Possibilities' (n 11) 439.

¹⁶ Ibid; Susler and Babacan (n 6).

¹⁷ Thompson and Pascal (n 1) 312–13.

¹⁸ Nathalie Martin, *Lawyering from the Inside Out: Learning Professional Development through Mindfulness and Emotional Intelligence* (Cambridge University Press, 2018) 58.

¹⁹ Susler and Babacan (n 6).

²⁰ Ibid; Victoria Roper, 'Reflecting on Reflective Practices in Clinical Legal Education' (2019) 26(1) *International Journal of Clinical Legal Education* 216; Omar Madhloom, 'A Normative Approach to Developing Reflective Legal Practitioners: Kant and Clinical Legal Education' (2019) *The Law Teacher* 53(4) 416.

²¹ Susler and Babacan (n 6); Madhloom (n 20); Marjorie Silver, 'Emotional Intelligence and Legal Education' (1999) 5(4) *Psychology, Public Policy and Law* 1173.

creative, adaptable, innovative, opportunistic and resilient.²² Technical brilliance alone is no longer a guarantee to securing employment, or to sustaining it.

Whilst analytical skills and a knowledge of the law is, of course, critical, recent studies have revealed that employers, lawyers and clients identify relationship skills — such as listening skills, communication, empathy and compassion and the ability to sustain relationships — as well as virtues such as trustworthiness, integrity and resilience as critical to successful career development.²³ The importance of these skills for graduate lawyers is demonstrated by multiple references to the need ‘to reflect’ in three of the six TLOs agreed upon through extensive national consultation for the Bachelor of Laws in Australia. These outcomes represent what law graduates are expected ‘to know, understand and be able to do as a result of learning’ and are encapsulated in the 2010 *Learning and Teaching Academic Standards Statement* for the Bachelor of Laws in Australia.²⁴ TLOs 2, 3 and 6 explicitly incorporate these skills.

TLO 2: Ethics and Professional Responsibility (‘TLO2’) is about developing the values that underpin ethical conduct, professional responsibility and community service. It requires graduates to demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to *recognise and reflect upon*, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to *recognise and reflect upon* the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise *professional judgement*.²⁵

This statement is consistent with the Council of Australian Law Deans Standards that promote the development and internalisation of ‘the values of ethical legal practice, professional responsibility, and community service’.²⁶ Essentially, it is encouraging students to engage in professional praxis — to combine an understanding of the expected standards of professional conduct with their personal judgement and moral compass, whilst promoting justice and serving the community.

TLO 3: Critical Thinking (‘TLO3’) requires graduates to: ‘... c) engage in critical analysis and make a reasoned choice amongst alternatives, and (d) think creatively in approaching legal issues and generating appropriate responses.’²⁷

²² Martin (n 18) 62–3.

²³ Ibid 64; Leering, ‘Perils, Pitfalls and Possibilities’ (n 11) 437–8; Susler and Babacan (n 6).

²⁴ Sally Kift and Mark Israel, *Learning and Teaching Academic Standards Project: Bachelor of Laws, Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, December 2010) 9 <<https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf>>.

²⁵ Ibid 10 (emphasis added).

²⁶ Ibid 14.

²⁷ Ibid 17.

TLO 6: Self-management ('TLO6') requires graduates to: '... (b) *reflect on and assess their own capabilities and performance*, and make use of feedback as appropriate, to support personal and professional development.'²⁸ This outcome supports a commitment to lifelong learning and continuing education as a key aspect of legal professional competence and performance. It also recognises the need for emotional intelligence in practice, and the role of reflective practice in fostering resilience through personal awareness and coping skills.²⁹

While the *Learning and Teaching Academic Standards Statement* recognises a whole-of-curriculum approach through learning, teaching and assessment to the attainment of the TLOs, the practical application of these skills is often facilitated through final-year Clinical Legal Education subjects.³⁰ While a scaffolded approach is certainly appropriate, there is potential — and great benefit — in designing the curriculum to address deeper reflection from an earlier stage in the degree.

Equipping students with the skills to reflect on their strengths and weaknesses as they begin studying law leads to greater self-awareness and self-management, which can improve performance and prepare students to be future leaders who can operate effectively in a complex society.³¹ The integration of emotional intelligence (which includes knowledge of one's own emotional life and sensitivity towards others³²) and self-awareness (of strengths, weaknesses and values) is closely aligned with self-management and can help students new to the study of law cope with the various impacts of circumstances beyond their control, which require them to be adaptable, ethical and resilient.³³ In the past 12 months across Australia, floods, fires and Covid-19 have presented myriad challenges to students' work, personal and family life, requiring many to change their enrolment pattern or place their studies on hold. This is in addition to the usual challenges of mental health conditions, poor organisation or 'life commitments' outside of study.

Learning to reflect honestly on one's skills, values and circumstances early on in a law degree will better equip students to positively manage the uncertainty that comes with change during study and stand them in better stead as graduates to cope with changing demands in the legal profession due to the impacts of technology and the evolving nature of the profession.³⁴ Many students study law expecting a clear pathway to graduation and employment, and when disruptions occur they struggle with the resulting uncertainty.³⁵ Teaching students the skills of

²⁸ Ibid 22 (emphasis added).

²⁹ Ibid 23.

³⁰ Ibid 9; Susler and Babacan (n 6); Roper (n 20).

³¹ David Boud and Rebeca Soler, 'Sustainable Assessment Revisited' (2016) 41(3) *Assessment & Evaluation in Higher Education* 400; Marcy Levy Shankman, Scott J Allen and Paige Haber-Curran, *Emotionally Intelligent Leadership: A Guide for Students* (Jossey Bass, 2nd ed, 2015).

³² Silver (n 21) 1178.

³³ Susler and Babacan (n 6); Kift and Israel (n 24) 23.

³⁴ The FLIP inquiry documented the rapid technological changes facing the legal profession in 2016 and the role of education in teaching graduates to manage change and be adaptable, flexible and resilient: Law Society of New South Wales, *FLIP: The Future of Law and Innovation in the Profession* (Report, 2017) 77–9.

³⁵ Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 2020) 114.

self-awareness (of their strengths, values, weaknesses and beliefs), self-management (emotional self-control, motivation and organisational skills) and reflection on the many adaptations in the practice of law can better prepare them to face these challenges with optimism and flexibility.³⁶ Having an open mind to different perspectives, asking questions and reflecting on their beliefs can lead to a greater awareness of self, of others and of context,³⁷ and can shape students' understanding of legal professional identity.³⁸

V CHALLENGES

Incorporating reflection in ways that promote creativity (TLO3) and the use of feedback (TLO6) in legal education is not easy. We are faced with a multitude of practical challenges, including a packed curriculum dominated by the Priestley 11 subjects and calls for electives to suit the needs of graduates in technology and areas of specialisation.³⁹ The transformation that comes with effective self-reflection requires trust and an investment of time and resources, which must be weighed against the increasing workloads and demands on academics.⁴⁰

Whilst a reflective practice pedagogy lends itself to a scaffolded approach that imports reflection across the curriculum,⁴¹ a cap on the number of assessments and task length limits places practical constraints on its implementation.⁴² It is easier to adopt in summative assessment than in formative assessment, which limits the powerful transformative benefits that formative feedback can provide.⁴³ However, the tendency for assessment to be tied to discrete tasks in order to demonstrate a mastery of numerous technical skills and learning outcomes suggests that we don't often assess whether students have 'fed forward' the feedback they receive in a way that supports their personal development, as TLO6 requires.

Remote teaching and flexible learning present particular challenges for students developing self-awareness and resilience, as activities designed to develop these 'soft skills' often require participation and role play that is more effectively delivered face-to-face. For example, the ability of a student to first greet a 'client' in a mock interview scenario, to position themselves appropriately, to establish rapport and to respond to body language is hindered by the confines of an online meeting room. Another challenge is that in an online degree there is often a requirement for flexibility, enabling students to attend seminars live or to replay the recording

³⁶ Ibid 116–17; Shankman, Allen and Haber-Curran (n 31).

³⁷ Leering, 'Perils, Pitfalls and Possibilities' (n 11).

³⁸ Jenny Gibbons, 'How Is Reflection "Framed" for Legal Professional Identity? Using Bernstein and Leering to Understand the Potential for Reflection in Our Curriculum as Written, Experienced and Assessed' (2019) 53(4) *The Law Teacher* 401. Professor Vivien Holmes has commented on the importance of cultivating professional judgement and professional identity as essential for law graduates navigating the complexity and uncertainty of practice: Vivien Holmes, Tony Foley, Stephen Tang and Margie Rowe, 'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers' (2012) 15(1) *Legal Ethics* 29, 46.

³⁹ Leering, 'Perils, Pitfalls and Possibilities' (n 11) 442; Law Society of New South Wales (n 34) 77.

⁴⁰ Thompson and Pascal (n 1) 320.

⁴¹ Roper (n 20).

⁴² Leering, 'Perils, Pitfalls and Possibilities' (n 11) 443.

⁴³ Julie MacFarlane, 'Assessing the "Reflective Practitioner": Pedagogic Principles and Certification Needs' (1998) 5(1) *International Journal of the Legal Profession* 63.

at their convenience. Some students report preferring to watch the recording, not just out of convenience but because they do not want the pressure of participating in live discussion and prefer to take the material at their own pace. This presents a particular challenge for engaging students in the steps required to really reflect on their experiences, attitudes and beliefs. Indeed, most transformation results from the sharing of perspectives that challenge preconceived opinions or beliefs.⁴⁴ Furthermore, students often self-sensor what they would otherwise offer as immediate feedback when they are engaged in online meetings, as they are conscious of being recorded for the benefit of other students.

These constraints limit the opportunity to challenge students in the steps required to reflect on their experiences, attitudes and beliefs, and to engage in what Ash and Clayton refer to as the ‘articulated learning’ phase of reflection, which follows description and analysis of an experience, and is the phase that leads to a better understanding for informed future action.⁴⁵

VI HOW WE CAN DO THIS

Despite these challenges, there are numerous ways in which reflective practice can be embedded in the curriculum, even in an online learning environment. The following provides an overview of how reflection-on-practice, self-reflection, critical reflection and collective reflection on Indigenous cultural content is incorporated to varying degrees in a first-year and final-year subject in the Bachelor of Laws at Charles Sturt University.

In ‘Writing & Communication for Legal Professionals’ (a first-year subject that is a prerequisite for students progressing to the Priestley subjects), students study topics that focus on client representation skills, teamwork, cross-cultural communication, ethics and reflective professional practice.

As part of their intensive school program, students take part in an interview assessment, which has three parts: 1) preparation for the interview; 2) the mock interview itself — students are marked on their interview technique and provided with feedback on what they did well and where they could improve; and 3) utilisation of the ‘4Rs model’ of Ryan and Ryan to report, relate, reason and reconstruct their interview experience,⁴⁶ taking into account the marker’s feedback and their own understanding of the task and relevant theories. While an assessment of practical skill is somewhat hindered by the limitations of the online mode, as mentioned above, it offers the opportunity to easily record the interview, which can benefit the student’s reflection for future practice. Summative assessment of reflection is incorporated in other tasks, one requiring students to critically reflect on how their cultural understanding informs their ability to communicate effectively with clients of diverse backgrounds. A further assessment task incorporates a reflective journal, which engages students in self-assessment of their

⁴⁴ Ibid.

⁴⁵ Ash and Clayton (n 7) 142.

⁴⁶ Mary Ryan and Michael Ryan, ‘Theorising a Model for Teaching and Assessing Reflective Learning in Higher Education’ (2012) 32(2) *Higher Education Research and Development* 244, 254.

negotiation skills, cross-cultural understanding, and collaboration skills utilised in a group assessment task.

By contrast, a final-year capstone subject ‘Community Law and Culture’ is a double-weighted unit with a three-day intensive program that includes a whole day cultural immersion with Wiradyuri Elders in Residence. Critical, self- and collective reflection is scaffolded throughout the subject and the assessment regime. Activities are populated across each topic that invite students to keep a reflective learning journal that is non-assessable but will prepare them for assessments. Topics cover issues specific to the rural, regional and remote context, legal need and access to services, the legal assistance sector, Indigenous social justice, legal pluralism, crime and social inequity, professional and interpersonal skills for legal practice, innovation, career planning, professional development and reflective practice.

The first assessment requires students to provide a critical opinion of a journal article, to evaluate what they learned from the text and what challenged their thinking with respect to the urban-centric bias of law, and to reflect on the experiences, attitudes and beliefs they bring to the study of law and culture.

Two further assessment tasks involve students working collaboratively in small groups to identify a law reform opportunity. Students present their proposal in an oral format at the intensive school and receive peer and instructor feedback, and then submit written submissions that formalise their proposal and reflect on the challenges and benefits of collaborative learning in the task.

The final assessment invites reflection on the students’ learning across the subject, and their cultural competency journey across the degree. Part one involves an oral reflection on their cultural immersion experience and how it informed and challenged their knowledge in relation to Indigenous law and culture. Students are prepared for this by an oral debrief in the form of a yarning circle that follows the cultural immersion experience. Despite the online environment, the intensive nature of the immersion, linked to a three-day intensive school, fosters deep rapport between students and staff, which contributes to often emotional, candid and deep reflections. Part two requires students to research, analyse and critically reflect upon their understanding of contemporary debates on Indigenous issues and the relationship between Indigenous people and the legal system, and how their understanding informs their future professional identity and practices.

VII PROFESSIONAL PRAXIS

Teaching students the skills for engaging in reflective practice is one thing, modelling it — by engaging in professional praxis — is quite another. Professional praxis requires us to be ethically informed, committed and guided by critical reflection of practice traditions and our

own practice.⁴⁷ In brief, it is action informed by reflection. To do this, we too must reflect on our capabilities, prejudices and practices and evaluate these in an institutional context. Implementing this skill benefits academics and lawyers in practice, just as it does students.

Action-informed practice takes into account the professional standards we are called to uphold as educators and the critical judgement we display in applying theory to context. As professionals, we have scope to build upon existing practice in our teaching and curriculum design by using our judgement to improve upon theory and standards.⁴⁸ Mahon et al define educational praxis ‘as a kind of educational practice that is informed, reflective, self-consciously moral and political, and oriented towards making positive educational and societal change’.⁴⁹ In this way, it can be used to interrogate everyday practices in education and the conditions impacting on those actions. For example, Mahon et al note that the possibilities for enacting educational praxis have been increasingly eroded by the pressures of neoliberal and managerialist educational reforms, whereby demands for efficiency and competitive gains have shifted the focus from effective positive change to considerations of effectiveness and efficiency.⁵⁰

Kemmis and Smith highlight the importance of educators taking morally responsive action to consider the interests of society and the world as well as their own interests or the interests of a particular group of people.⁵¹ By critically reflecting on the inequities in our legal system and the existing justice gaps, we can use our morals and values to inform advocacy and law reform by involving ourselves in law reform opportunities and equipping students to take action against perceived injustices in the system they come to inhabit. Legal educators, I would argue, have a moral imperative to reflect and act on the purpose and effect of their teaching practices and the ways they contribute to positive social change. Not only does this develop praxis (action informed by reflection) but it models to students the expectations we have of them, helps to develop trust and demonstrates authenticity and a commitment to lifelong learning.

⁴⁷ Joy Higgs, ‘Realising Practical Wisdom from the Pursuit of Wise Practice’ in Elizabeth Kinsella and Allan Pitman (eds), *Phronesis as Professional Knowledge: Practical Wisdom in the Professions* (Sense Publishers, 2012) 73, 75.

⁴⁸ Peter Massingham, ‘An Aristotelian Interpretation of Practical Wisdom: The Case of Retirees’ (2019) 5 *Palgrave Communications* 123:1–13, 3.

⁴⁹ Kathleen Mahon et al, ‘What Is Educational Praxis?’ in Kathleen Mahon et al (eds), *Pedagogy, Education, and Praxis in Critical Times* (Springer, 2020) 15, 15.

⁵⁰ Ibid 34. See also Ian Hardy et al, ‘Critiquing and Cultivating the Conditions for Educational Praxis and Praxis Development’ in Kathleen Mahon et al (eds), *Pedagogy, Education, and Praxis in Critical Times* (Springer, 2020) 65, 65.

⁵¹ Stephen Kemmis and Tracey J Smith (eds), *Enabling Praxis: Challenges for Education* (Sense, 2008), cited in Mahon et al (n 49) 23.

VIII MY PRAXIS — ACTION INFORMED BY REFLECTION

In reflecting on my recent practice, my action (to incorporate more reflective activities and assessment in subjects I teach) was informed by three distinct moments in which I experienced a ‘disorienting dilemma’ in response to a student action or comment:⁵²

1. A student email, addressed to me, abruptly said ‘call me’, with very little additional information, no subject code, no context, not even a phone number to enable an efficient response.
2. A ‘disruptor’ (ie, that one student — often in first year — who requires a disproportionate amount of staff consultation time) repeatedly contacted every teaching staff member affiliated with the subject within the first six weeks of session, and pressed for collaboration outside class that was not welcomed by some students.
3. A First Nations student enrolled in our capstone subject ‘Community Law and Culture’ bravely reflected on the difficulty that studying colonisation, the Stolen Generation and Aboriginal deaths in custody presents for him personally when he said: ‘We all read facts and figures and it can be overwhelming, but for me, I see faces and names’.

Each of these examples of individual actions brought up uncomfortable emotions for me — in an immediate sense, and later, as I found myself reflecting on each one. They made me ask ‘what is it I am missing?’ in the way I educate these students that fails to address their capacity for self-management, self-awareness, resilience or cultural safety.

My response to the first scenario (‘call me’) was informed by a belief that students should employ professional and courteous communication with staff at all times, which must also be modelled by staff to students. It demonstrates the importance of developing self-awareness and self-management in law students from an early stage in their studies. After reflecting on this type of student interaction with colleagues, I now frequently provide specific directions to tutors of first-year subjects of our expectations of professional communication by students, allowing time for skill development (for now is the time to make mistakes) but ultimately instilling a more professional approach to communication from the outset. In addition, I have moved away from assessing professional communication via the form of a legal memorandum, essay or letter of advice and implemented a professional email format for a reflective task in ‘Legal Writing & Professional Communication’, to address the more common mode of communication that is employed in practice but less commonly taught at university.

My response to the second scenario (the ‘disruptor’) was to question my assumptions as to that student’s needs (age, educational background, any undisclosed disabilities that might hamper

⁵² Margaret Wheatley identifies surprising or disturbing moments as ‘gifts’ that present opportunities for self-reflection: Margaret Wheatley, *Turning to One Another: Simple Conversations to Restore Hope to the Future* (Berrett-Koehler Publishers, 2002).

their awareness of self and of others) and my belief in the value of inclusive education, fostering opportunities for first-in-family students to study law, combined with the reality that education is a service that has necessary limits. My response to this individual student was informed by reflection with student support services, conversations with the student and the teaching team. It was obvious to me that the student sought and benefitted from more frequent opportunities for feedback than what was available to them in the ordinary course of classwork, assessment and consultation. While organisations need to strike a balance between supporting the outliers and servicing the norm, this example has motivated my adaptation of assessment tasks in this subject to include more formative assessment and the reflective journal, mentioned above, that encourages students to self-assess and develop greater self-awareness.

The third scenario ('I see faces and names') is a stark recognition of the continuing impact our legal system and legal education has on First Nations students, who have been anonymised and traumatised by our very recent history. It also illustrates the powerful reflection that is possible in a trusting environment where shared perspectives can impact on both students and staff. This student's honest perspective demonstrates the importance of generating cultural safety and trust in reflective activities and that we must move beyond technical rationality when addressing facts and figures to incorporate feelings, values and beliefs and a critical reflection on the legal system and its limitations.⁵³ Reflecting on the continuing impacts of colonisation on First Nations students who are studying law prompted me to critically evaluate how we assess the inclusion of lived experience in assessment tasks — not just in reflective assessments, but in traditional assessment forms — which could be a further step towards decolonising the law curriculum. The incorporation of oral reflections in our 'Community Law and Culture' subject provides flexibility in the mode of assessment and cultural sensitivity in its approach,⁵⁴ but I see greater potential to uphold the value of lived experience in written assessments when evaluating a student's use of academic research and credible sources, which is a larger task for the university as an institution to address.

Whilst these specific examples have motivated my enhancement of reflective activities and assessment in the subjects I teach, they do represent broader student needs that must be addressed on many levels, not just in curriculum design. My attempts to better equip students with the skills of self-awareness and self-management are, admittedly, works in progress. I share them to illustrate that the practice of praxis holds value for us as academics, as it does for practitioners, despite the fact that time constraints, bureaucratic demands and organisational policies can dictate the limits of our actions. We are all on a lifelong journey of learning.

⁵³ In her PhD thesis 'Embedding Indigenous Knowledges in the Design of Higher Education Curriculum', Annette Gainsford, who designed the reflective activities and Indigenous content in this subject, notes that 'the creation of culturally safe learning spaces is heavily reliant on the constant reflection by academics in relation to Indigenous community engagement, curriculum development and teaching practice': Annette Gainsford, 'Embedding Indigenous Knowledges in the Design of Higher Education Curriculum: An International Study in Law Education' (PhD Thesis, Charles Sturt University, 2021) 378.

⁵⁴ For detailed information on how Charles Sturt has scaffolded Indigenous Australian content across the Bachelor of Laws, see Annette Gainsford, Marcus Smith and Alison Gerard, 'Accrediting Indigenous Australian Content and Cultural Competency within the Bachelor of Laws' (2021) 31(1) *Legal Education Review* 59.

Sceptics to the practice of reflection might suggest that we don't have the luxury of time to mull it over. Yet the benefits clearly show that the time is worth the effort.