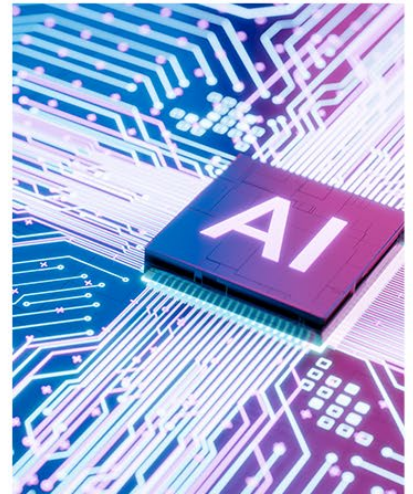UNSW Law & Justice

Legal Education Research Conference

20 – 21 November 2023

Register: unsw.to/leconf

Situated Learning:
Climate Change,
First Nations Recognition,
Generative AI

2023 Conference Abstracts

Situated Learning:
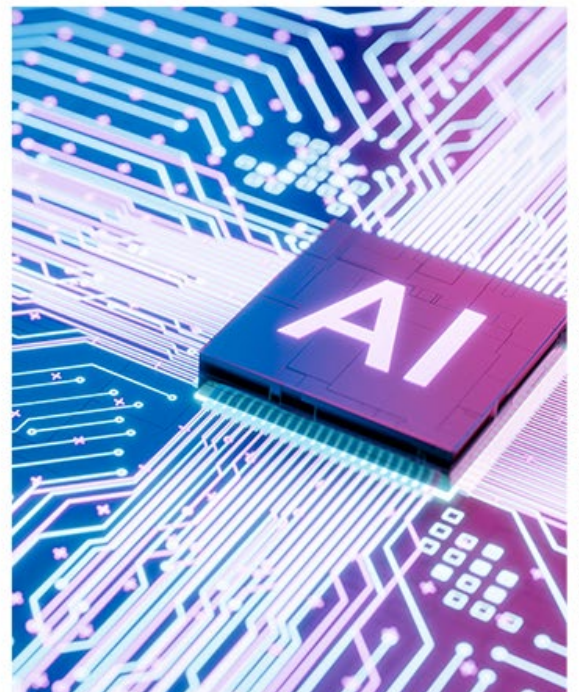Climate Change,
First Nations Recognition,
Generative AI

GenAI

Law G23

DIGITAL SAVIOUR OR JUST ANOTHER PROBLEM TO DEAL WITH: A DISCOURSE ANALYSIS OF THE CONFLICTING NARRATIVES REGARDING THE IMPLICATIONS OF GENERATIVE AI FOR THE TEACHING OF LAW

Nick James, Bond University

In recent months, much has been written and spoken about the current and potential influence of generative artificial intelligence (Gen AI) on legal practice, on higher education, and on legal education. The sentiments expressed in these narratives have varied from pessimistic and alarmist to ambivalent and nonchalant, to excessively optimistic and even utopian. Some claim that Gen AI's capabilities are woefully exaggerated, others claim it is 'becoming like a God'. Some claim it will accelerate human development, others claim that it is so tainted by privacy, IP, human rights and sustainability problems it should be slowed down if not derailed entirely. Some claim it is creating insurmountable challenges relating to academic integrity, others claim it is providing ways to radically enhance student learning. Some portray it as a long-awaited saviour and a solution to all our workload problems, others say it is making our lives as law teachers miserable. This diversity of sentiments has made it challenging for legal educators to develop their own opinion on the probable impact of Gen AI, and formulate their own strategic response. This article aims to make sense of these contrasting narratives not by striving to settle on a single truth about Gen AI and legal education but by analysing them within the framework of discourse analysis. This framework identifies the emerging dominant discourses, and tentatively predicts how these discourses might evolve in the coming months.

Professor Nick James is the Executive Dean of the Faculty of Law at Bond University. He is a former commercial lawyer and has been practising as an academic since 1996. He is passionate about legal education and the role of law schools in modern society. His areas of teaching expertise include law in context, legal theory, animal law, business law, and company law. He has won numerous awards for his teaching including a National Citation for Outstanding Contribution to Student Learning, and he is the author of several leading textbooks. He has written numerous journal articles, book chapters and conference papers in the areas of legal education, critical legal theory, disruption of the legal services sector and the impacts of climate change. Professor James is Co-Director of the Bond University Centre for Professional Legal Education (CPLE), Co-Chair of the Council of Australian Law Deans (CALD), President of the Australasian Animal Law Teachers Association (AALTRA), Immediate Past Chair of the Australasian Law Academics Association (ALAA), and a Fellow of the Australian Academy of Law.

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LEGITIMATE PERIPHERAL PARTICIPANTS: A MODEL FOR SITUATED LEARNING THAT EMBRACES GENERATIVE AI

Georgia Cam, Macquarie University

The traps of classic constructivist pedagogy are pervasive in higher legal education. The restraints of the archetypal classroom confine students' learnings to one-dimensional underpinnings, typically informed only by the individual contexts of the students within the classroom. In the age of the climate crisis, it is not the law students in Australian higher

education settings that will bear the brunt of extreme weather events, food insecurity, and ecosystem collapse. Statistically, these students are likely not the most affected by the frequent futile attempts for reconciliation with First Nations peoples in this country. This paper explores the emergence of generative AI and considers its implications for legal education to offer a modern model for situated learning within the classroom.

Traditional constructivists and behaviourists view learning as the individual acquisition of knowledge or skills that are 'owned' by the individual and then applied to different contexts. Departing from this epistemological notion of how learning occurs, this paper espouses the social construction of 'learning as participation'. Consequently, if students learn by participating within different contexts, legal educators are left with the abiding conundrum of how to transform a classroom into an expanse of dynamic contexts in which students can participate.

Recent pedagogical innovation has focussed on developing clinical legal education as a remedy for the confines of the classic classroom setting. However, this traditional setting remains an inherent function for the delivery of the curriculum. To effectively encourage students to 'think like lawyers' within the classroom, close attention must be paid to the individual thought processes of those students. Drawing on Vygotsky's emphasis on the use of interaction to develop the internal understandings of students, it is argued that students would benefit from personalised learning experiences that are beyond the capacity of tutors in typical classrooms settings.

Research consistently shows that student performance improves by two standard deviation points when they have access to a personal tutor. However, the cost associated with private tutoring has left a legacy of untapped learning potential for students. This paper argues that generative AI can be used within the classroom as a personal tutor for every student to facilitate interactions within diverse contexts. By prompting students to adopt their learnings in different contexts, a form of experiential learning takes place, where students reflect on the suggested context in order to conceptualise the issues, and then critique the application of their new understanding to make sense of the experience in a personalised and interactive manner.

This forthright adoption of generative AI is met with the duality of enforcement issues regarding plagiarism. However, it has been shown that generative AI can be programmed to engage in Socratic teaching methods. This paper concludes that generative AI can be coded to mitigate the concerns within higher legal education. Whilst students are still peripheral learners in the early stages of their career, they can become legitimate peripheral participants more efficiently by interacting with generative AI, in order to effectively navigate the tumultuous issues of modern times.

IS THERE ANYTHING PRIESTLEY ABOUT GENERATIVE ARTIFICIAL INTELLIGENCE TECHNOLOGY? ENSURING THAT LAW GRADUATES UNDERSTAND CORE LAW CONCEPTS IN A POST-AI ASSESSMENT ENVIRONMENT

Dr Sonya Willis and Dr Amanda Head, Macquarie University

Assessing Australian law students in core law subjects, particularly the Priestley 11 subjects, has always been challenging. These challenges have grown in the 21st Century due to increased cohort sizes, the rise of contract cheating, note-selling websites, the tightening of university teaching budgets and the increasing desire of universities to meet the demands of employers to deliver job-ready graduates. However, perhaps the greatest challenge yet for legal academics teaching core law subjects may be the sudden capability leap of Generative Artificial Intelligence Technology (GAIT), such as ChatGPT and the often-misguided perception that they can answer any question a law teacher might ask a law student.

This paper will attempt to resolve the inherent conflict created by GAIT for those teaching core law units. On the one hand, law schools will need to grapple with GAIT and include its use in the curriculum so that our law graduates understand the capabilities and limitations of the technology as it applies to legal practice. On the other, Australian law schools are required to produce students who meet the 'eligibility' requirements for admission into practice. This requires the higher education body to certify that the student has attained the requisite academic qualifications in which a student has 'acquire[d] and demonstrate[d] appropriate understanding and competence in each element of the academic areas of knowledge' (*Legal Profession Uniform Admission Rules 2015* (NSW) r 5). To what extent should students be able to rely on GAIT in creating work for the assessment of their legal abilities?

This paper will proceed from the premise that GAIT will not entirely replace lawyers. This seems to be the case, given GAIT's current tendency towards inaccuracy and unreliability in the legal space. It will, however, change the way lawyers practice law. The problem facing those teaching law to students then becomes: how do we ensure that future lawyers understand the core concepts required by the Law Admissions Consultative Committee to practice law while also graduating with the skills to become productive employees? At its heart, this is a problem of student assessment. This paper will consider how we efficiently assess the core knowledge and skill set that is the Priestley 11 in the current large University cohort context, given GAIT can now mimic so much of what used to be the sole purview of humans. What are our parameters? Students must understand the key areas of law at a critical level where they can apply it to real-world problems they may encounter in practice (for those who end up there).

This article will evaluate whether it is possible for legal educators to simultaneously (or, at least, very efficiently) assess the everchanging requirements of legal technological competence with the essential requirement that law graduates truly comprehend the meaning of the law.

Climate Change
Law G02

ECO-JUSTICE, EXPERTS AND EMERGENCY: EXPLORING VOICE IN EVIDENCE LAW

Dr Rachel Killean, University of Sydney Law School

This paper is a response to two prompts. The first is – of course - this conference's invitation to engage with the theme of situated learning. The second is Nicole Graham's (and others') call for all legal education to be, in some way, climate law education (Graham et al., 2023).

To respond to these prompts, I reflect on my experience of teaching Evidence Law in New South Wales. As a newly arrived settler here, I provide an 'outsider' perspective on some of the restrictions and challenges that come to bear on such an activity. I then consider what possibilities a re-imagined Evidence Law curriculum might offer as a means to engage in situated learning in the context of climate crisis and environmental catastrophe.

In some respects (and I am sure in some of my students' eyes), Evidence Law is as procedural and doctrinal as law comes. Yet underneath seemingly technical choices lie fundamental ideas about who and what we trust, whose voice is privileged in the courtroom, and what situational contexts are permitted to shape legal decision making.

This paper explores these ideas by looking at approaches to opinion evidence, in particular expert evidence and evidence on Aboriginal Torres Strait Islander traditional laws and customs. Drawing from green criminology literature on eco-justice, defined as the 'valuing of and respect for humans, ecosystems, non-human animals, and plants' (White, 2020), as well as climate litigation and the work of the NSW Land and Environment Court, the paper interrogates who is given authority to speak to the crises of our times, and how their voice is received by courts. It concludes with some thoughts as to how centring these issues might shape the experience of learning Evidence Law.

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THE THREE AUSTRALIAN MODELS FOR CLIMATE LAW CLINICS

Kate Fischer Doherty and Dr Brad Jessup, University of Melbourne

This paper reflects on the past decade of Australian climate law teaching that has used clinical legal education, and it foreshadows the opportunities to use clinical approaches to teach climate law while simultaneously developing competencies and confidence in law students to tackle environmental dilemmas throughout their careers. The explains that three Australian law schools have developed different climate law clinical subjects using three longstanding clinical legal models: the policy clinic, the litigation clinic, and the community enterprise clinic. The paper presents these three clinics as models for other law schools who are considering an expansion of their law degree curriculum into climate clinical legal education.

CLIMATE CHANGE, EQUITY AND TRUSTS

Dr Allison Silink, UNSW Law & Justice

"Equity and Trusts" is not a subject that is traditionally oriented to be particularly future-focused, nor does it seem to have an immediately obvious connection to climate change law or litigation. It is deeply rooted in English legal history. The curriculum is dense and it is a perennial challenge to wrestle centuries of doctrinal development and conceptual underpinning of its doctrines and remedies into too few weeks. The temptation is to say that introducing climate change into the legal curriculum is worthy work that needs to be done by someone, but not by us. However, with each year, students become more engaged with the need for a bold rethink about the role that the law plays in managing this global challenge. This paper argues that there is a role for Equity & Trusts to play in a future-focused curriculum that at least signposts ways in which equitable doctrines and the institution of the trust can be applied to respond to issues raised by climate change. To that end, this paper offers a discussion about some of the critical choices we can make in curriculum design to contextualise our teaching of equitable doctrines for an age of climate-conscious necessity and reform.

Curriculum Development

Law 203

EMPOWERING THE LLB GRADUATE PROJECT: SCHOOL OF LAW, UNIVERSITY OF WOLLONGONG

Dr Sarah Ailwood, Associate Professor Niamh Kinchin, Dr Dora Anthony, Dr Kate Tubridy & Ms Kaitlyn Poole, University of Wollongong

In 2023 UOW School of Law has embarked on a curriculum development project, 'Empowering the LLB Graduate'. It is a multi-faceted project, incorporating curriculum mapping of vertical themes, integrating work-integrated learning within and beyond the course structure, and an overarching Students-as-Partners approach to curriculum design. Supported by a UOW Learning and Teaching Innovation Grant, the project aims to empower students both as partners within curriculum design, and in terms of their preparation for an agile professional future. The proposed session will outline the project, the opportunities and challenges presented by the Students-as-Partners approach, data collection and results analysis in terms of the student experience, and reflection and future directions. We hope to share our experience of designing and implementing a Students-as-Partners project at the course level.

Associate Professor Niamh Kinchin (Acting Dean) will outline the vertical themes and curriculum mapping aspects of the project. The catalyst for this project was an internal LLB review, which prioritised curriculum innovation through the integration of four vertical themes: social justice, innovation, global perspectives and professional skills. These themes were audited and mapped across the curriculum, revealing strengths in social justice and professional skills and opportunities to develop the curriculum to empower student choice, experience and genuine collaboration.

Dr Sarah Ailwood (Discipline Leader Teaching & Learning and MCR) will explain and reflect on the trajectory of the project, including the development of the Students-as-Partners approach, securing ethics approval, collaboration with Student Partners and future directions for partnership.

Ms Kaitlyn Poole (HDR candidate, sessional academic and research assistant) will reflect on a student perspective on the project design, development, and implementation. Something that emerged from the process of the project approval was the underlying framing of students as the subject. It raised the question as to how we conduct research that is designed to empower students, when the processes in place position students as the passive 'subject' over whom the research is conducted rather than an active participant in its formulation. How then can we empower students at every point of project design, development and implementation whilst still acknowledging the power differentials?

Dr Dora Anthony (Head of Students and ECR) will explain and analyse results from the student survey. She will look at whether UOW students see that subjects and assessments in their law degree are and should be helping to develop 1. awareness of social justice and global issues and the context of law, and 2. skills to practise law in diverse and innovative ways.

Dr Kate Tubridy (Discipline Leader Clinical Legal Education and Professional Engagement and ECR) will outline the WIL aspects of the project by examining the results from the student survey on WIL and explaining the development of a roadmap for building a holistic WIL Strategy across the core LLB subjects.
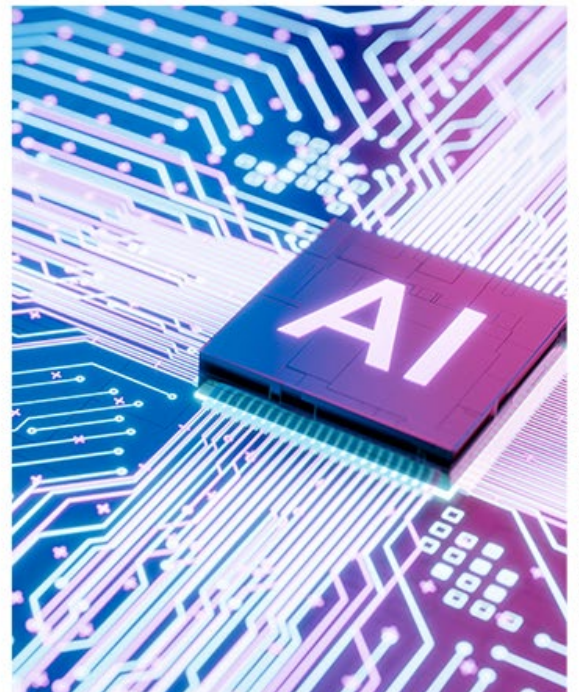
Situated Learning:
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First Nations Recognition,
Generative AI

CRICOS Provider Code 00098G

First Nations Recognition
Law G02

COUNCIL OF AUSTRALIAN LAW DEANS FIRST PEOPLES PARTNERSHIPS WORKING PARTY

Mark Nolan (CSU), Natalie Skead (UWA) & Karinda Burns (UWA)

The Council of Australian Law Deans First Peoples Partnerships Working Party was established in 2020 to bring about deep structural change to address the ongoing exclusion of and continuing injustices to First Peoples knowledges, laws, sovereignties occasioned by colonization. The CALD-FPPWP recognizes the complicity of legal education in contributing to this injustice and is committed to transforming law curricula and creating culturally safe law schools to support First Nations staff, students and communities. This panel will reflect upon the opportunities and challenges confronting laws schools to bring about this transformation and initiatives from the CALD-FPPWP to support this critical work.

REFERENDUM 2023: ENGAGING STUDENTS IN CONSTITUTIONAL CHANGE THROUGH AUTHENTIC ASSESSMENT

Dr Sandra Noakes & Dr Catherine Renshaw, Western Sydney University

The Australian government has committed to holding a referendum to introduce a First Nations Voice to Parliament and Government ('the Voice Referendum') before the end of 2023. The legal profession and law schools in Australia have a key educative role in relation to the Voice Referendum and the function of the Voice to Parliament. However, there are currently no studies that evaluate Australian law school curricula that focuses on the Voice Referendum.

In Autumn Semester 2023, Western Sydney University ('WSU') Law School conducted a subject called Law and Public Policy (Referendum 2023: engaging in constitutional change). The 2023 Referendum subject examined the link between law, public policy and social reform and adopted a range of social, political, and legal perspectives to examine the policy process and its interaction with law. It invited students to engage, study and reflect on discourse and activism around the Voice Referendum proposal. The major assessment was a presentation/artefact of the student's choice, presented to an audience selected by the student, about civic engagement around the process of constitutional change.

WSU Law School has been uniquely positioned to conduct this subject. The Greater Western Sydney region is home to one of the most diverse populations in Australia, and the student cohort at WSU reflects this diversity. The content and assessment in the 2023 Referendum subject encouraged our law students to recognise and harness their 'non-traditional' cultural capital by connecting with their communities in relation to the Voice Referendum.

Our presentation will focus on the way in which the 2023 Referendum subject harnessed authentic assessment and a strengths-based approach to 'non-traditional' students to foster student engagement. It will reflect on some of the practical challenges encountered in conducting this subject. Finally, it will report on our study of student work in the subject, in particular their presentations/artefacts and their written reflections on their learning journey and the impact of their major projects. This study has Ethics approval under WSU's STaRT (Student Transition, Retention and Progression) umbrella.[1]

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[1] Ethics Approval number: H15391 Subproject Title: [Subproject H13567] Evaluation of student experience in relation to Law School curriculum concerning the 2023 referendum proposal to change the Australian constitution to include a First Nations Voice to Parliament.

SITUATIONAL TEACHING AND DEAKIN LAW CLINIC POLICY ADVOCACY SECTION: ACTION RESEARCH FOR FIRST NATIONS RECOGNITION IN 2022/2023

Karen E. Powell, Deakin University

Australian law students study at a time of technological and social change. At Deakin University, law students can take their entire law degree online from anywhere (including the beach, if one believes the marketing campaigns). With this 'freedom', students have become less situationally located within their educational and legal communities, as they can avoid interpersonal interaction with both educators and fellow students.

Despite a shifting focus to online education, Australian law schools have also invested in clinical legal education as an elective for students. Australian clinical education is based on, or at least developed from the US law clinic experience, which uses not only a specific legal pedagogical approach, but also functions under specific legal accreditation requirements which severely limits online education. US law students study their entire first year in class, together, and have attendance requirements throughout their degrees. Additionally, they are required to participate in a full year of experiential education before graduation. This allows for US law students to be situationally located (and arguably subversively educated) in place, with the opportunity for guided consideration of their responsibilities towards low income and marginalised communities. Yet, Australia accreditation requires something entirely different, perhaps to the students' benefit and detriment. Unlike US legal accreditation of law schools, there are no requirements for legal education to provide exposure to low income and marginalized communities, and no requirements for students to place themselves within their communities of study or profession. These accreditation differences make clinical experiences optional for Australian law students.

This paper begins with an overview of clinical legal pedagogy (incorporating experiential education) as a framework for supporting and encouraging Australian students' situated and situational learning. The paper will also discuss how the pedagogies have can be used in the Australian context for online students to bolster situational learning. To do so, this paper presents a case study on the Deakin Law Clinic Policy Advocacy section's student work in 2022-2023 engaging with the Voice to Parliament. In the policy advocacy section, students study fully remotely and online, but have compulsory attendance requirements, are taught via the legal pedagogical approach, and engage in student-led research on a current legal policy challenge. The online section of DLC was designed specifically to support students who study law in regional and remote locations and/or with low SES and has been taught since 2021. For 2022 and 2023, students engaged with the Voice to Parliament, studying through the announcement of the referendum, to the debate on Voice language, through the vote to bring the Referendum to the Australian electorate. Assessments are designed to develop materials that are used to influence current public policy questions, including the Voice to Parliament. The case study will discuss teaching and learning pedagogy used for design of both learning and assessment formats, considering how legal pedagogy informs experiential education.

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Legal Design and the Profession

Law G23

DEVELOPING LEARNER ENGAGEMENT THROUGH DESIGN THINKING

Judith McNamara, University of Adelaide

Dr Rachel Hews & Dr Gnanaharsha Beligatamulla, Queensland University of Technology

This paper seeks to explore the potential of legal design pedagogy as a method to address the challenges faced by law schools in the wake of disruptions caused by the shift to online learning during the COVID-19 pandemic. Legal design pedagogy is a form of situated learning, a pedagogical framework emphasizing contextualized and authentic experiences. Many legal educations have reported a decline in student engagement in recent years. Approaches to learning have been disrupted by the switch to online learning during the COVID19 pandemic, exacerbating an already existing trend for students to prioritise life load over learning. We argue that design thinking, which is known for enhancing creativity, endurance, engagement, and innovation can assist law schools in meeting this challenge.

We will present the results of a research project investigating how educators experience design thinking pedagogy in law and higher education. We conducted interviews with design thinking educators from an Australian law school to investigate their experience and sense-making of design thinking pedagogy. Our participants sensed design thinking pedagogy as developing empathic, creative, and innovative thinking skills as an alternative to the traditional institutionalised way of producing lawyers. They also sensed it as enabling human centred problem solving, developing creative confidence, enabling alternative mindsets, developing learner engagement, and providing an innovative and entrepreneurial approach. In this presentation we will focus on design thinking pedagogy (DTP) in the context of law education as developing learner engagement.

Legal design educators perceived design thinking pedagogy as supporting students to use empathy-based skills to understand complex problems more deeply. One significant outcome of our investigation is the observation that design thinking pedagogy encourages students to use empathy-based skills to gain profound insights into complex legal problems. This approach empowers students to understand the intricacies of legal issues from a more holistic perspective, leading to a deeper appreciation of the human aspects involved. Through empathetic problem-solving, students develop creative confidence, alternative mindsets, and enhanced engagement with their learning. By emphasizing the development of empathetic problem-solving skills, design thinking pedagogy serves as a catalyst for meaningful student engagement and skill acquisition. This research highlights the potential benefits of incorporating legal design pedagogy within law school curricula.

GENERATING RESPONSIBLE PROFESSIONALS: BUILDING STUDENT CAPABILITY IN THE CRITICAL USE OF GENERATIVE AI

Dr Evana Wright, Faculty of Law, University of Technology Sydney

Dr Rachel Thompson, Institute of Interaction Media and Learning, University of Technology Sydney

Generative artificial intelligence (AI), such as ChatGPT, poses serious challenges for educators and legal practitioners. Students may be tempted to use generative AI to prepare and respond to assessment tasks, limiting the learning opportunities that arise out of research and writing. Legal practitioners are using this new technology in a wide range of tasks, however not all practitioners may be aware of the limitations of such tools and as such their use may be inconsistent with professional duties. Further concerns relating to generative AI include data collection practices, confidentiality, bias and discrimination, and intellectual property rights in training data sets and the resulting outputs. Broader questions are being raised about the impact of generative AI on the legal profession and higher education generally.

Much of the discussion on generative AI has focused on how to prevent students from using the technology to cheat or otherwise gain an unfair advantage including the kinds of tools that can be used to detect AI-generated text. There is little formal literature on how to support students to use generative AI responsibly in both their academic and professional careers. Readman et al argue in support of effective ethical engagement with generative AI[1] and we argue that academics have an important role to play in modelling and supporting students to develop these skills. Higher education must prepare legal professionals for this brave new world where they will no doubt be engaging with generative AI and other legal technology in both practice and their personal lives. Consistent with Frank Pasquale's New Laws of Robotics,[2] generative AI and other similar tools should be used to complement professional practice rather than replace professionals.

This paper will report on a pilot project conducted by the authors to explore students' understanding of the role of generative AI in professional practice and the extent to which students' perceptions of the value and use of generative AI may change over the course of the session. The project evaluated student experience and responses to a new assessment task that asks students to engage in critical analysis of a generative AI response to a legal question and reflect on the role of generative AI in practice. Students were surveyed on their experience of the new assessment task, their perceptions of the use of generative AI in personal, academic and professional contexts, their use of generative AI and other tools in the preparation of their response to the assessment task and, given their experience, the likelihood of using generative AI in the future. The paper makes an important contribution to the legal education discourse by outlining new approaches to assessment and will provide important guidance to legal educators seeking to respond to the risks and opportunities of generative AI in the classroom.

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[1] Kylie Readman, Simon Buckingham Shum, Jan McLean and Chris Girdler, *Generative AI@UTS: effective, ethical* engagement (Blog Post, 7 February 2022) https://lx.uts.edu.au/blog/2023/02/07/generative-ai-uts-engagement/.

[2] Frank Pasquale, *New Laws of Robotics: Defending Human Expertise in the Age of AI* (Harvard University Press, 2020) See, generally, Chapter 1.

LEGAL EDUCATION RESEARCH, AN EDUCATIONAL DESIGNER'S PERSPECTIVE

Dr Stafford Lumsden, University of Sydney Law School

In this paper, I explore the Scholarship of Legal Education (SoLE) from the unique perspective of an educational designer and underscore the value of incorporating educational designers' interdisciplinary and methodological knowledge into legal education research.

Educational designers bring practical, pedagogical, and methodological experience to legal education but often have a limited understanding of the law. Conversely, law educators are subject matter experts who have limited experience with pedagogical and methodological discussions outside of the law school context. As Roux notes "[legal education] research is research conducted by legal insiders for other legal insiders"[1]. However, educational designers, in addition to acting as a conduit between academics and competing constituencies such as institutions, educational managers, and students, supporting academics in navigating institutional and pedagogical imperatives, and setting up the occasional site in an LMS, could also bring new perspectives to legal education research.

It is in this light that I identify and describe three emergent challenges in legal education: embedding practice competencies into the curriculum, the deployment of artificial intelligence, and the implementation of work-integrated learning (WILL) policies. To address these challenges, I propose a consistent research approach that unifies legal educators and educational designers and also combines the evolving methodological diversity of SoLE[2] with traditional educational research practices[3].

For instance, a qualitative approach using a phenomenological method could be adopted to examine the effectiveness of embedding statutory interpretation skills across different subjects. Such a study would collect qualitative evidence through interviews with students and educators and analyse syllabi through thematic coding, exploring the integration and effectiveness of interpretation skills in the curriculum.

The use of Generative AI in legal education lends itself to a case study methodology, conducted through a constructivist lens, to examine how the technology is used. Observation and semi-structured interviews with educators and students on their use of AI in assessments, for example, and subsequent thematic analysis of their responses would potentially shed light on the positive and negative implications of AI while supporting legal educators in the implicit teaching of AI-specific ethical considerations[4] for when students graduate and enter practice.

Finally, the analysis of WIL could draw on quantitative data to measure the effectiveness of clinical placements and internships by surveying both students and placement partners. Qualitative data could be gathered to examine the design and delivery of WIL pilot programs,

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[1] T Roux 'Judging the Quality of Legal Research: A Qualified Response to the Demand for Greater Methodological Rigour' (2014) 24(1) Legal Education Review 177-178.
[2] K Galloway, M Castan and A Steel, 'Towards a Taxonomy of Legal Education Research' in B Golder, M Nehme, A Steel and P Vines (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019) 120-140.
[3] See eg, Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (Routledge, 2018).
[4] P Allo, M Taddeo, S Wachter & L Floridi, The ethics of algorithms: Mapping the debate' (2016), 3(2) *Big Data & Society*.

while thematic and content analyses of documents, teaching materials, and student-produced artefacts could be leveraged to uncover shifts in policy and approaches to WIL in legal education over time.

Galloway et al[5]. suggest that legal education research is instrumental in shaping the law by moulding the future practitioners who will construct it but traditional, doctrinal scholars may struggle to articulate their research methodology in a manner accepted by other disciplines[6]. It is with this in mind that I suggest that the explicit inclusion of educational designers in legal education research is essential. This is especially the case when we consider the evolving nature of legal research, how legal [education] research straddles humanities and the social sciences, its growing interdisciplinary nature, and its relevance in academic and professional contexts[7].

In summary, this paper explores the potential benefits of incorporating the interdisciplinary pedagogy and research expertise of educational designers into the scholarship of legal education. To illustrate this unique approach I have suggested three legal education challenges that could be addressed by utilising methodologies and traditional research practices from humanities and the social sciences, such as qualitative analysis, case studies, and quantitative surveys.

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WHY LAWYERS NEED TO KNOW A BIT ABOUT THE FUTURE OF EVERYTHING

Paul Ippolito, College of Law, Sydney

Legal education stands at a pivotal juncture in the wake of the pandemic, where society is transitioning between old and new, tradition and innovation, and push and pull. This paper proposes a forward-thinking perspective that underscores the intricate connection between the future of the legal profession and the development of the post-pandemic world, encompassing pressing issues such as climate change, recognition of first nations' rights, and the rise of generative AI.

The paper emphasises the need for legal education to be immersive, agile, and adaptive, both anticipating and responding to complex multi-faceted challenges. To this end, legal educators, law students, and lawyers are called upon to embrace futures thinking with a proactive and reactive stance, enabling them to comprehend and influence upstream developments and downstream societal outcomes.

The integration of futures thinking, incorporating foresight, strategy, scenario planning, and futurism, is proposed as an integral component of evolved legal education. Situated learning, which emphasises immersive experiences in real-world contexts, aligns well with futures thinking, empowering future lawyers to comprehend not only the law but also the broader societal influences shaping it.

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[5] Galloway et al. *Towards a taxonomy of legal education research* above, n .1
[6] Ibid.
[7] Council of Australian Law Deans, *Statement on the Nature of Legal Research* (October 2005).

Addressing complex issues necessitates an understanding extending beyond traditional legal boundaries, encompassing scientific, political, economic, ethical, and cultural contexts. This multi-faceted approach equips future lawyers with the wisdom to navigate an increasingly complex and uncertain world, where human and machine, local and global, and theory and practice intersect.

By adopting this approach, modern lawyers assume roles as guardians of justice, ethical influencers, visionaries, and empathetic human beings. They gain a deep understanding and versatility to anticipate and adapt to societal expectations and global challenges.

In conclusion, legal education must transcend merely preparing lawyers for the future; it must strive to shape the future through their actions. Through a blend of futures thinking and situated learning, we can cultivate agile lawyers proficient not only in the law but also in the broader interconnected issues influencing it. This proactive and reactive capacity positions future lawyers to play a crucial role in shaping our collective future.

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Situating Learning

Law 203

SITUATING SOCIAL JUSTICE: THE INTERPLAY OF SITUATED LEARNING AND CRITICAL PEDAGOGY IN FINDING ONE'S PLACE IN LEGAL EDUCATION

Dominic Fitzsimmons & Simon Kozlina, UNSW Law & Justice

Situated learning shares much with the values and aspirations of critical pedagogy, such as a focus on the lived experience of each individual student, an understanding of the transformative power of education and the rejection of a banking model to learning. However, critical pedagogy also provides a framework and rationale for the incorporation of social justice into education through the writings of Freire and hooks.

This paper examines the interplay between critical pedagogy, social justice and situated learning in the context of legal education. The paper distinguishes between three 'levels' or 'situations' in higher education – the student, the course, the institution - to examine the tensions that arise at each level to challenge and limit the scope for a model of legal education that focuses on social justice. The paper also considers the work of James on the socialisation of students into a professional legal identity to evaluate the role of situated learning for legal education. The paper concludes with a renewed understanding of the opportunities and challenges of teaching for social justice in the current educational environment based on the work of hooks and Freire.

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RESILIENCE, AUTHENTICITY AND SITUATED LEARNING: ADAPTING A LAW TECH CHALLENGE TO THE PANDEMIC AND BEYOND

Dr Genevieve Wilkinson & Associate Professor Maxine Evers, Faculty of Law, University of Technology Sydney

The Allens Neota UTS Law Tech Challenge began in 2016 as a co-curricular program where students are supported with skill development in legal tech and mentoring from tech and legal professionals with the aim of mimicking a legal tech start up working with a not-for-profit client. Student teams build and deliver a legal app for their assigned clients over a nine month period, receiving mentoring from a legal technology organisation, the legal industry and UTS academics. The situated learning experience provides students with invaluable skills in groupwork, project management, legal technology design and client liaison.

This paper explores how a co-curricular program that blends technology and social justice thrived during the pandemic, enabling students to continue to engage in situated learning that facilitates students advancing the social justice objectives of not-for-profit organisations through the development of practical legal skills, including legal technology skills. Changes to the program to adjust to the pandemic mimicked changes to legal practice, enhanced the authentic nature of the challenge and permitted students to develop resilience as law students and future legal professionals.

 Considering the experience of students, academics and external partners involved in the program, the paper analyses the way that differences between face-to-face and online

engagement and collaboration contributed positively to students' experience of situated learning and assesses the continuing value of this co-curricular program beyond the pandemic. These finding are important to our understanding of student engagement and the purpose of legal education beyond the classroom. We conclude that our response to the challenges of the pandemic has taught us valuable and sustainable lessons in student wellbeing and professional growth.

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TEACHING CIVIL ARGUMENT IN THE LIGHT OF HISTORICAL WRONGS

Prue Vines, UNSW Law & Justice

We live in times of vicious argument and where discussing historical wrongs often pushes people to opposing sides from which they shout slogans at each other. This reduces the level of nuance in argument, which also reduces the ability of people to understand more deeply.How is legal education to teach counter argument (which it must) without destroying relationships and ending discourse? How can we make these arguments more like exploratory conversation and less like battle? The history of adversarial/barristerial courtesy may offer some help in developing civil disagreement as accepted social discourse. In this paper I offer some psychological insights into why humans find civil discourse so difficult, and then suggest three ways to teach more complex transactions in order to build tolerance for disagreement, and a desire to know more of another's viewpoint. One of my protocols draws on medieval justification methodology as used by St Thomas Aquinas and others.
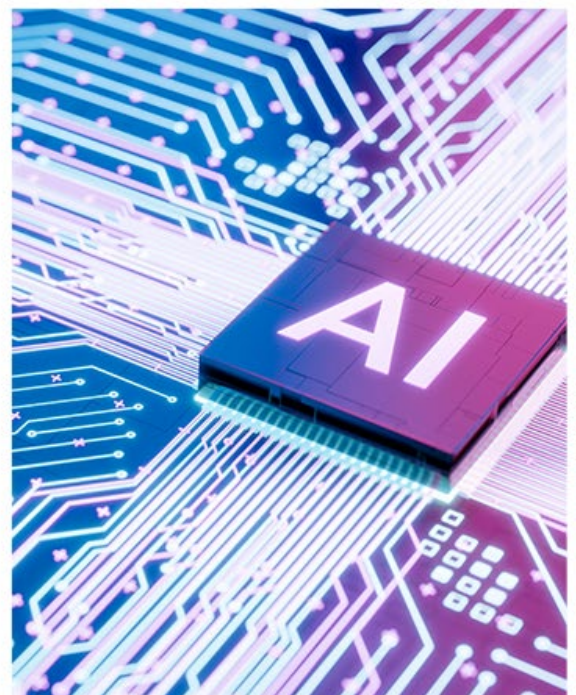
Situated Learning:
Climate Change,
First Nations Recognition,
Generative AI

First Nations Recognition

Law 203

EMBRACING VULNERABILITY IN INDIGENISING THE LAW CURRICULUM: A PEDAGOGICAL APPROACH

Svetlana Tyulkina, UNSW Law & Justice

Law teachers in Australia actively debate on how to situate Australian public law in the context of its relationship with First Nations peoples, and more importantly, how to teach this complex matter to our students. We understand that it is important to engage and ensure that law students have a solid knowledge and understanding of these matters. This requires educators to be equipped with knowledge of the subject matter and be emotionally prepared to discuss the uncertain and unknowable. I argue that law educators can navigate this challenge by employing the "pedagogy of vulnerability" (Bullough, 2005 and Brantmeier, 2013) as one of the characteristics of their pedagogical strategy (Mangione & Norton, 2020).

The concept of pedagogic vulnerability is simple – open yourself, contextualise that self in societal constructs and systems, co-learn, admit you do not know, and be human (Brantmeier, 2013). It is a teaching practice of 'taking risks such as risk of self-disclosure, risk of change, risk of not knowing, and the risk of failing' (Brantmeier, 2013). This paper advocates for the adoption of the pedagogy of vulnerability to enable educators to work with complex and emotionally challenging content in the context of indigenising the law curriculum.

Contrary to misconception pedagogic vulnerability does not make a teacher look weak or incompetent. Rather it should be considered as a positive and proactive response to the reality of being surrounded by uncertainties. Engaging critically with vulnerability gives educators an opportunity to grow and stretch while discussing discomforting and challenging themes. Educators who choose to be vulnerable tend to be more authentic as persons and teachers. They replace the desire to appear as the ultimate source of knowledge and invite students to take part in learning about the subject matter. Pedagogic vulnerability emphasises creating a supportive and inclusive learning environment where vulnerability is acknowledged, validated, and addressed constructively. This approach has a potential of nurturing conscious, empathetic, and ethically responsible legal professionals.

To conclude, by addressing pedagogic vulnerability, educators can create a nurturing learning environment where students feel safe to take intellectual risks, express themselves authentically, and embrace the challenges and growth opportunities that arise in the learning process. This pedagogical approach is particularly relevant and effective when tailored to current needs of indigenising the law curriculum and teaching indigenous content to our law students.

TRUTH-TELLING IN CURRICULUM: REPORTS, REFLECTIONS, NEXT STEPS

Ingrid Matthews, UNSW Law & Justice

In this paper I report on the development of protocol for written submissions in law and criminology courses; and present next steps towards truth-telling in curriculum (Matthews and Holden, forthcoming) based on individual and collegiate reflective practice.

Since starting work on anti-racist and truth-telling curriculum at UNSW Law and Justice two years ago, three key outputs are: 1/ protocol and respectful naming practices; 2/ revised and 'Indigenised' reading lists; and 3/ story and music featuring Aboriginal artists.

The protocol opens by directing students to cite First Nations scholarship if they are discussing First Nations peoples. It includes links to respectful naming practices (Finlay 2016; Pearson 2021); citation (O'Sullivan 2020, Mudyi Sentence 2020); and Aboriginal usage (such as Blak and mob, see Latimore 2021). Principles of place-based learning are part of the introduction to each course.

A primary purpose of revising reading lists is to cite First Nations authors throughout the course, instead of 'siloing' their expertise into a single 'Indigenous' week (such as native title). This approach is based on first principles – we are on Aboriginal lands – and because it is limiting and typecasting to confine First Nations scholars and their expertise within colonially-defined disciplinary bounds. In addition, Aboriginal and Torres Strait Islander scholars are bolded in the reference list at the end of lectures; and their countrypeople named in the slides eg Darumbal and South Sea Islander journalist and scholar Amy McQuire; Wiradyuri Professor Sandy O'Sullivan.

Story and music are included in some course materials.[1] While marking written submissions, it has become apparent that posting the protocol to course pages – and reminding students to read it – is not sufficient. Based on aggregated feedback from teaching teams, we have started work on designing tutorial exercises to better teach students why we have the protocol and how to follow it.

Colleagues are warmly invited to share experiences or thoughts on broader application of respectful naming practices, citation protocol, and truth-telling in curriculum.

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[1] The philosophical framework for using artistic materials is not included in this paper. This approach draws on a two-ways pedagogy that recognises story and song as law and learning here (see Irene Watson 2014; Martuwarra et al 2021; Bodekin Andrews 2022) and that allegory and story-telling has long been integral to [northern] law and legal education, from the Bible and ancient Greek allegory to Lon Fuller's Spelunkeans (1948) and King Rex (1969).

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Martuwarra RiverOfLife, Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell and John Page, 'Yoongoorrookoo' (2021) 30(3) *Griffith Law Review* 505

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STARTING AT THE BEGINNING – WHO ARE WE, WHERE ARE WE?

Associate Professor Elisa Arcioni, University of Sydney Law School

Teaching public and constitutional law in Australian law schools necessarily includes questions of history, authority, imposition of power. Who are we, non-Indigenous teachers such as myself, to teach these things on Aboriginal and Torres Strait Islander lands and waters?

The challenge I have set myself is to consider what initial steps may be made to assist teaching colleagues to engage with this question. I start with a focus on the calls to incorporate cultural competence and Indigenous perspectives into the curriculum, and ask how to do these things from the beginning – by which I mean in a context where there have been few initial steps in a particular subject towards incorporation of either.

Rather than jump forwards to an ambitious end point, which has been achieved in other places or other subjects, I focus on how to start small, with modesty. This begins with identifying

barriers perceived by teachers. Namely, lack of knowledge, lack of resources, lack of authority. Then, designing a response to these challenges in order to trial activities and teaching resources, to respond to these barriers with a clear pedagogical approach from within teaching scholarship – modelling and praxis (combining theory and practice).

In this paper/presentation I outline my own learning journey – an autoethnographical account – of my process of consultation and discussion in designing my approach, the activities themselves and the review and feedback regarding that process – ending with next steps: how to up-scale the activities, what teacher training is required and where these first steps may lead – ultimately to incorporation in one or more units of study, going beyond class activities to include assessment.

Th activities chosen are as follows:

In the first class of the subject Public Law – an activity around Acknowledging Country in Language. This activity is aimed to introduce students to cultural competence as a process of self-reflection, where they observe my interaction with the practice and explicit explanation of how I come to that practice from my particular cultural perspective and then reflect on how I go about engaging in the practice.

In a subsequent class – an activity around the Voice proposal. This activity is aimed to introduce students to receiving and thinking about First Nations perspectives on a topic in relation to which they also have non-Indigenous perspectives. Students are led through a process of identifying the similarities, differences, intersections between the perspectives.

Both activities present students with authoritative expert perspectives from Indigenous and non-Indigenous scholars/practitioners, with the teacher guiding them through an exploration of how each perspective interacts with the subject they are studying. This opens up a space for students to understand the impact of incorporating cultural competence and Indigenous perspectives in a subject traditionally closed from both – with the aim of assisting students to consider their own positionality as well as the impact on their understanding of an area of law when diverse perspectives are brought to the fore.

Assessment

Law G23

PROGRAMMATIC ASSESSMENT IN THE TEACHING OF CRIMINAL LAW AT UNSW

Felipe Balotin Pinto, Dr Emma Buxton-Namisnyk, Helen Gibbon, Matthew Nelson & Dr Leah Williams, UNSW Law & Justice

The nature of teaching and learning law, as well as of legal practice, is changing rapidly. Law Schools have been summoned to reconsider the intersection between program and assessment.[1]

Programmatic assessment's (PA) 10 principles warrant a move from a teacher-centred curriculum to a learner-centred one, where 'assessment of learning' becomes 'assessment for learning'.[2] At UNSW Law & Justice, a project is being conducted to explore the feasibility of redesigning the assessment in its core criminal law courses in professional law programs (LAWS1021/JURD7121 Crime and the Criminal Process and LAWS1022/JURD7122 Criminal Laws) and in the Bachelor of Criminology and Criminal Justice (CRIM2020 Criminal Law & Justice 1 and CRIM2021 Criminal Law & Justice 2) to introduce a more programmatic approach to assessment.

The literature review stage has indicated that while much change has occurred across the globe at universities' Medicine and Health departments,[3] the potential benefits of PA within Law Schools remain underexplored.[4]

To implement an arrangement of different assessment methods to support student learning,[5] the research group will apply PA's principles to identify the competency-based requirements of the course curricula, creating comprehensive practice guidelines,[6] to move assessment theory into the practice of the core criminal law courses.

The project aims at taking a holistic approach to the assessment in the criminal law courses, potentially involving other courses/competencies such as the foundational research and writing skills introduced in earlier courses (i.e., Introducing Law and Justice, Legal Research & Writing). The research team will then organise and conduct a planning day to workshop with

[1] Roberts, H. & Henderson, A. (2021). Designing Law School Assessment to Meet New Forms of Legal Practice: A Model from Australia. In Clinical Law Review (Forthcoming), ANU College of Law Research Paper No. 21.38; Steel, A. (2022). Re-Thinking Assessment in Law. Critical Legal Education as a Subversive Activity. Routledge. [Forthcoming chapter].

[2] Heeneman, S., de Jong, L., Dawson, L., Wilkinson, T., Ryan, A., Tait, G., Rice, N., Torre, D., Freeman, A., & van der Vleuten, C. (2021). Ottawa 2020 consensus statement for programmatic assessment – 1. Agreement on the principles. In Medical Teacher, 43(10), 1139-1148, DOI: 10.1080/0142159X.2021.1957088.

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[4] van der Vleuten, C. P. M. (2016). Assessment in the legal and medical domain: two sides of a coin. In International Journal of Clinical Legal Education, 23(1), 156-167.

[5] Baartman, L.; van Schilt-Mol, T. & van der Vleuten, C. (2022). Programmatic assessment design choices in nine programs in higher education. In Frontiers in Education, Asil, M. (ed.), Vol 7, p. 931-980. DOI: 10.3389/feduc.2022.931980.

[6] Bok, H. G. J., Teunissen, P. W., Favier, R. P., Rietbroek, N. J., Theyse, L. F. H., Brommer, H., et al. (2013). Programmatic assessment of competency-based workplace learning: When theory meets practice. In *BMC Med. Educ.*, *13*(123). doi: 10.1186/1472-6920-13-123.

course convenors and other relevant stakeholders the ideas, innovations, obstacles, and concerns that emerge from the issues paper and discussions at the planning day.

Finally, the team will collate the results from the literature review, issues paper, and the planning day to develop a series of recommendations to present to the Faculty with the aim of introducing a pilot programmatic assessment regime across the criminal law courses in 2024 and 2025.

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DOES GENERATIVE AI HAVE A PLACE IN LAW ASSESSMENT?: A DISCUSSION PAPER

Marc De Leeuw, Nicola Kozlina & James Metzger, UNSW Law & Justice

This Discussion Paper aims to evaluate the current state of Generative AI as it relates to assessment in law subjects, to take account of the purpose and design of those assessments and to make suggestions for whether and how Generative AI should be used in either or both formative and summative assessment in a law program. The Paper is not meant to be prescriptive or to predict exactly where AI may go in the future. Rather, it is intended to be the start of an ongoing discussion about what kinds of assessment are most meaningful for law students and whether AI is likely to contribute or detract from the goals of assessment. To do so, this Paper first summarises the challenges and opportunities presented by Generative AI, describing the technological landscape into which Generative AI platforms like ChatGPT entered and looking at whether this new technology is truly revolutionary or is more the latest iteration in a series of disruptive technologies that have already been incorporated into tertiary education.

The paper then collects the initial and still emerging responses to Generative AI by UNSW and other colleges and universities to see whether a consensus seems to be forming about (perceived) proper and improper uses of the technology by students. This section will also describe the various assessment types used at UNSW Law & Justice and describe how the advent of Generative AI might require a change in approach to how these assessments have traditionally been designed and administered. The next section of the Paper focuses on a particular aspect of assessment quality and evaluation that Generative AI has made more tricky than previously experienced – that of being able to trust that the work that is being submitted is authentic student work. This section will necessarily require consideration of contract cheating and other obstacles to this kind of trust that already existed, but which have likely been made more readily and easily available due to the existence of Generative AI.

The Paper then moves to an assessment of the current state of thinking about best practices in the design of assessment in legal education and looks ahead to how Generative AI might require a re-evaluation of these practices as assessment design needs to take account of the use of Generative AI by students. This section will also look to standards such as Program Learning Outcomes and Course Learning Outcomes as benchmarks against which any best practices can be assessed. The final section looks at the practical realties of assessment in a world of Generative AI, including how AI might be used in teaching and the possible need to

familiarise students with AI technology before they are expected to use it in professional practice.

The paper concludes with suggestions about ways to think about Generative AI in both course and assessment design and how what we know about Generative AI at the present time might influence both assessment and program design going forward.

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Student Learning & Wellbeing

Law 276

THE IMPACT OF EMOTIONS ON STUDENT LEARNING IN LAW

Dr Anna Rowe, Dr Chantal Bostock & Dr Chien Gooi, UNSW

It is well-established that emotions felt by students can profoundly impact not only their learning but also their wellbeing and mental health. While positive emotions generally have a positive impact on learning, some negative emotions may have a deleterious impact on learning and the overall student experience. Fear, for example, which encompasses anxiety, may adversely impact on student engagement, because it promotes avoidance behaviours. The study of emotions in learning can be complicated when students from the same cohort have very different personal and sociocultural backgrounds. This can influence the types of emotions experienced, and thus the impact that they have on learning, engagement and achievement.

This research investigates the emotions reported by students in relation to studying Administrative Law, exploring some within-cohort differences in the emotional experiences of students from different backgrounds. A total of 166 students completed a quantitative and qualitative survey exploring the range of emotions they felt towards the area of Administrative Law, before entering the classroom. Results indicated that students reported a mix of positive emotions (e.g., interest and excitement) and negative emotions (e.g., fear and boredom) associated with the area of study. While generally students valued administrative law and believed they would be successful in the course, they also noted concerns relating to its workload. Results also showed differences in the experience of emotions between students who did and did not endorse English as their primary language. Those who did not have English as their primary language were more likely to report feelings of embarrassment, shame, anxiety and uneasiness around the course of study. Similarly, international students were more likely to report feelings of anxiety and uneasiness compared to local students. Further analysis also showed that international students and students who did not have English as their primary language tend to report less emotions generally and were more likely to have responses to open-ended questions, which did not contain emotion words.

The findings of the study will be discussed in light of the broader literature on emotions in learning in higher education, specifically their role in learning, engagement and the overall student experience. A range of recommendations will also be proposed, including in terms of the design of course content, with the hope of improving student learning outcomes.

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WHEN EMOTION CAME TO CONTRACT LAW CLASS

Dr Renata Grossi, University of Technology Sydney

The view that dominates in law is that emotions destroy objectivity and neutrality, are the enemy of truth and a threat to the rule of law.

While law and emotion scholars, and the critical movement more generally, have now been battering against this view for some time, the persistence of the positivist viewpoint that

strives to see law as a science, means that students are regularly met at the door of their law degrees with a clear message that 'emotion is antithetical to learning about law'.

It is a brave law teacher who contradicts the doctrinal, black letter and objectivist approach to teaching law. But it was exactly this that I did when I invited my contract law students to consider a legal problem according to how the outcome made the parties and themselves feel.

What happened was that by thinking about feelings, students were able to reflect on bigger questions on the role of contract law in society and the relationship it has with justice and not just the economy. In this case it enabled students to think about inequality in society and the law's response to it.

Simply asking students how parties feel about an outcome elicits responses that go to the big questions on the role and function of law in society. Such a question will not lead to the abandonment of doctrinal teaching, it will not lead to the abandonment of reason, it will not stop our students from thinking 'like a lawyer', but it may well lead to a better understanding of the law, its function, and its relationship with political economic questions in which it functions.

A law and emotion agenda in legal education does not require a complete re-write of our courses, a simple question about feelings can and does lead to important critical questions which can have real and significant impact on our students and our future lawyers.

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THE EXPERIENCE OF MUSLIM LAW STUDENTS: A CASE STUDY

Dr Maria Bhatti, Western Sydney University School of Law

Dr Sandra Noakes, Director of Academic Programs, Western Sydney University School of Law

Diversity at law school should lead to greater diversity in the legal profession, and in Australia and elsewhere, connections have been made between the education of law students from diverse backgrounds, diversity in the legal profession and access to justice. However, despite the increasing diversity of student cohorts in Australian law schools, there is very little research that focuses on the experience of law students from diverse backgrounds, and none that focuses on the experience of Muslim law students.

In a national study of Muslim students studying at Australian universities administered prior to 11 September 2001, Muslim students reported to have a strong sense of academic satisfaction and commitment, yet this was at odds with their feelings of belonging, which were impacted at both the institutional and interpersonal level.[1] Another survey conducted in 2013 in New South Wales found that a majority of Muslim university students experienced some form of religious discrimination while in an educational setting, with female students reporting

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[1] C Asmar, 'A Community on Campus: Muslim Students in Australian Universities' in A Saeed and S Akbarzadeh (eds), *Muslim Communities in Australia* (: University of NSW Press, 2001) 139.

a higher level of discrimination.[2] However, the research regarding the experiences of Muslim students at Australian universities is outdated. A more recent study is required, given the socio-political landscape post 9/11 and also the impact of COVID-19 and the shift towards online/hybrid teaching models. In addition, although there has been research into the health and psychological well-being of international students post COVID-19, there has been no research investigating the impact on Muslim students.

Our presentation will discuss the findings of a project conducted at Western Sydney University ('WSU') during 2022 concerning the experience of Muslim law students. Using focus group methodology, it explored the experience of Muslim law students in relation to:

- Formal and informal support and networks, both at law school and within the legal profession.
- Representation at law school and in the legal profession.
- The students' sense of belonging and identity at law school.[3]

This project was informed by an ethical separation of teaching practice from teaching research, by engaging members of the Muslim Legal Network to conduct the focus groups.

Our preliminary findings are that, while students have a strong sense of belonging and identity at law school, they also have reservations about their transition to legal practice, expressing concerns about tokenism, and the way in which accepted methods of networking in the profession may exclude Muslim lawyers. These findings reinforce the recent findings of the Asian Australian Lawyers Association in relation to cultural diversity in the legal profession.[4] Another theme that emerged from the focus groups was the student experience in relation to how Islam is discussed in Australian law school classrooms.

Our presentation will discuss these findings and their implications for legal education and the profession. It will make recommendations in relation to how law school curricula could be made more inclusive for Muslim law students, and how law schools might work with the legal profession to encourage the engagement and professional development of Muslim lawyers.

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[2] Possamai et al, 'Muslim Students' Religious and Cultural Experiences in the Micro-publics of University Campuses in Australia' (2016) 47(3) *Australian Geographer* 311; Possamai et al, 'Muslim students' cultural and religious experiences in city, suburban and regional university campuses in NSW, Australia' (2016) 38(6) *Journal of Higher Education Policy and Management* 637.

[3] This study has Ethics approval under WSU's STaRT (Student Transition, Retention and Progression) umbrella. Ethics Approval number: H15117 Subproject Title: [H13567 Subproject] The Experience of Muslim Law students.

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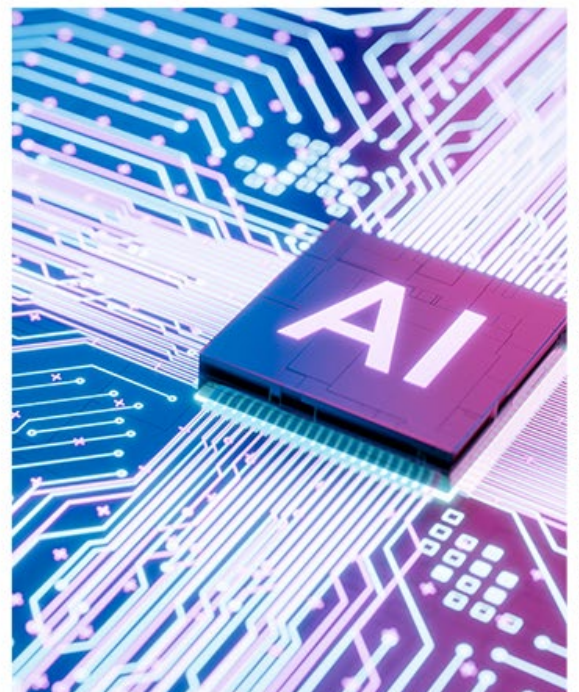
Situated Learning:
Climate Change,
First Nations Recognition,
Generative AI

First Nations Recognition

Law G23

INVOLVING STUDENTS IN PUBLIC ADVOCACY ON CONTEMPORARY ISSUES: INFORMATION CAMPAIGN ON THE 2023 REFERENDUM ON A FIRST NATIONS VOICE

Professor Gabrielle Appleby, UNSW Law & Justice

Associate Professor Kate Galloway, Griffith Law School

Cornelia Koch, Adelaide Law School

UNSW Law & Justice Uluru Education Project Social Justice Interns

Each panel member will introduce the program they designed and ran, its aims and the triumphs and challenges that emerged. The panel will then reflect in more informal discussion with each other and the audience on involving students in public education and advocacy initiatives on contemporary issues.

The 2023 referendum on an Aboriginal and Torres Strait Islander Voice is a milestone in public law and Australian politics. It may be the only federal referendum held in a generation. Few voters have experience with referendums (with the last referendum held in 1999 and the last successful one in 1977). Amidst much uncertainty, members of the public seek reliable information.

Our projects show that law students can play a role in educating the public about important public issues like the 2023 referendum. Two benefits seem apparent: the student engages deeply with a legal issue that they are passionate about and information is disseminated to the public, enabling them to make an informed decision when they vote.

By engaging in collaborative advocacy on a contemporary issue, students become part of a community of practice that educates itself, develops strategies to disseminate information to the public and puts these strategies into practice. Working together on a joint goal allows different student collaborators to draw on their individual strengths and contribute meaningfully somewhere in the process from generation of the information to the information reaching the public.

In 2022 the Indigenous Law Centre, UNSW, brought together legal academics from across Australia to brainstorm what role Law Schools could play in informing the public about the referendum. Some educators developed projects involving students in public advocacy activities.

Three of these projects are presented at this session.

The first is in a boutique internship setting at UNSW. Community education preparation was done by a small group of committed students recruited into the existing social justice internship program, offering them 1:1 supervision and mentoring in a structured internship program.

The second is in a medium sized elective course in law at Adelaide Law School, where students studied and trained together, picked outreach activities that drew on their strengths, and carried these out in groups or individually (e.g. information stalls at public events, presentations to community groups, resources for high school teachers, a podcast series, social media outreach, all supported by a bespoke website).

The third is a university-wide elective course open to all undergraduate students at Griffith. Students learned the history of the law's engagement with Aboriginal and Torres Strait Islander people and the background to the Voice proposal, as well as strategies for effective community engagement. Aboriginal colleagues provided students with an introduction to cultural capability and, given the context of the public discourse on the referendum, the course directly dealt with the question of racism. In small groups supported by two lecturers and one clinic supervisor, students developed and executed a strategy for community engagement about the referendum.

These projects will be compared and their differences for teachers and students highlighted. Presentations will reflect on whether situated learning in the context of referendum education campaigns has led to deeper student engagement, what the challenges for educators and students were and how they were addressed. Insights gained could be used for future projects in clinical/legal education which involve students in public advocacy on contemporary issues.

In an era where civil society's ability to advocate is under threat, universities have a role to play in public advocacy. Our session will provide insights into the benefits and challenges of involving students in this endeavour.

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Climate Change

Law 203

CLIMATE CHANGE IN LEGAL EDUCATION: POSSIBILITIES FOR TORTS AND INTERNATIONAL CRIMINAL LAW

Joanna Kyriakakis, Monash University

Climate change, and the ways in which it threatens life now and in the near future, is the most pressing existential challenge of our time. Our law students (as all of us) are already seeing some of its negative effects unfold. Moreover, in Australia, as in other parts of the world, the strategic use, or defiance, of law in order to achieve meaningful action on climate change is becoming ever more apparent. This is the reality, the setting, in which we teach law today. And as educators, we are beginning to think about what it means for legal education.

In the last year, I have had the privilege of working on two distinct forward-thinking projects that explore the need for, and means of, integrating climate change into legal education. In this presentation, I would reflect upon how my ongoing work on those projects has influenced and informed my teaching in two subjects: tort law and international criminal law. In tort law, the phenomena of climate litigation and of climate protest can readily be a part of teaching. Both have potential to, among other things, invite critical reflection on the outer boundaries of torts as a field that is principally concerned with interpersonal responsibilities between individuals in the context of one-to-one social encounters, rather than as a means of redressing public wrongs.[1] In international criminal law, the historical marginalisation of environmental harms and a current debate over the wisdom of recognising a fifth international crime of ecocide are subjects that enable an exploration of the ways in which international law is complicit in the structural environmental violence of modern industrial societies,[2] as well as the appropriate role that international criminal law should play in our quest for solutions.

The magnitude of the threat climate change poses can be crippling, a phenomenon sometimes referred to as 'eco-anxiety'. Mainstreaming climate change into legal education in a mindful way may enable us, as educators, to help students navigate this reality in an empowering way. Among other things, providing students with awareness of, and engagement with, collective efforts to combat climate change through law may help sustain positive mental health (eco-resilience) in the face of a frightening future.[3]

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[1] K Barker et al, *The Law of Torts in Australia* (5th edn, OUP, 2012) 583.

[2] T Lindgren, 'Ecocide, Genocide and the Disregard of Alternative Life-systems' (2018) 22(4) *The International Journal of Human Rights* 525, 536-539.

[3] See, eg, Panu Pihkala, 'Eco-Anxiety and Environmental Education' (2020) 12 *Sustainability* 1, 15.

WE'RE IN A TRIPLE PLANETARY CRISIS, BUT WOULD LAW STUDENTS KNOW? (RE)CONSIDERING THE ROLE OF LAW SCHOOLS IN SUSTAINABILITY AND CLIMATE CHANGE EDUCATION

Dr Sarah Wright, University of Wollongong

The world is considered to be in the midst of a 'triple planetary crisis' as a result of climate change, biodiversity loss and pollution. Effectively tackling these issues requires a multi-disciplinary response and collective action by governments, businesses and individuals. Many law schools have dedicated environmental, climate change and other sustainability-related electives which provide students with the basic knowledge needed to practice in environmental law and a general grounding in sustainability issues that can be applied in other areas of law. However, only some students undertake these subjects. A number of core law subjects and texts also examine cases which have an environmental context, such as the special interest test for standing in Administrative Law and the external affairs power in Constitutional Law. However, it is often by chance, rather than by design, that core law subjects raise environmental issues. A case is included because the key principles to be studied arose in a matter that happens to have an environmental factual matrix, rather than to ensure law students are apprised of environmental issues and critically examine how the law does and should respond. Accordingly, critical engagement with environmental issues may become relegated to electives, with law students potentially giving little thought to the environmental crisis in which we are situated and the role of law in assisting to solve it.

While dedicated environmental law electives are necessary, and only some core law teachers are environmental lawyers, we need to rethink the role law schools can play in sustainability and climate change education across the curriculum to encourage the behavioural change needed by individuals, businesses and governments. Accordingly, we firstly need to (re)consider the role of law schools in equipping students as 'individuals' to think about the environmental crisis in which they situated and what they can do in response. Furthermore, as law students will become legal advisers as well as employees and leaders within businesses and governments, they need to be apprised of the ways climate change and sustainability issues now cut across many traditional legal areas given the increasing pervasiveness of these threats.

In order to (re)consider the role law schools can play in sustainability and climate change issues, this paper firstly considers the ways environmental issues can be incorporated by design into the core curriculum, including by non-environmental lawyers. This can range from the 'light touch' approach of integrating environmental issues into teaching materials and activities so that law students are at least aware of current environmental issues, to tackling the current and emerging law relating to environmental and climate changes issues as they relate to core subjects. Practical examples from Property Law and Administrative Law are given. The paper then examines how climate change is situated within law electives. It argues for the need for climate change law electives to focus on linked sustainability issues, such as the circular economy and waste management, in order to force the broader behavioural change needed for a sustainable future and to solve the triple planetary crisis.

CORPORATE LAW AND CLIMATE CHANGE: TEACHING PRIVATE LAW THROUGH THE LENS OF SUSTAINABLE DEVELOPMENT

Dr Anne Matthew, Queensland University of Technology

In 2024 sustainability perspectives will be embedded into the teaching of law at the Queensland University of Technology ('QUT'). This paper is devoted to explaining the teaching and learning approaches that will be adopted to this end in corporate law, and the pedagogy behind their selection. The driving pedagogical choices include blended, problem-based, authentic learning with a view to fostering engagement while being acutely sensitive to the affective state of learners.[1]

Corporate law lends itself to realistic contexts, where tasks are relevant, complex, engaging and immersive.[2] The authenticity of the connection between corporate law and sustainability is unquestionable.[3] Unit design can seize upon this.

The United Nations' Sustainable Development Goals ('SDGs') most closely related to corporate law include those related to climate change.[4] While only one SDG specifically targets climate, sustainability measures targeting innovation, industry, life below water and life on land are all closely connected to climate.[5] One of the joys of teaching corporate law is to rise above the challenge of student expectations that the content will be dry and boring, by revealing corporate law as fascinating and of critical importance to the world in which we live. In other words, engagement can often follow from allowing students to discover the social-legal, or contextual, dimensions of the law.[6] For example, students learn that companies permeate most societies and are often the commercial vehicles responsible for distributing the

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[1] See: Emma Jones, *Emotions in the Law School: Transforming Legal Education Through the Passions* (Taylor & Francis, 2019) 113, 169; Minjuan Wang and Myunghee Kang, 'Cybergogy for Engaged Learning: A framework for creating learner engagement through information and communication technology' in D Hung and MS Khine (eds), *Engaged Learning with Emerging Technologies* (Springer, 2006) 225; Barry Kort, Rob, Reilly, Rosalind Picard, 'An Affective Model of Interplay between Emotions and Learning: Reengineering Educational Pedagogy' in *Proceedings of the IEEE International Conference on Advanced Learning Technologies* (IEEE, 2001) 43; Barry Kort, Rob Reilly and Rosalind Picard, 'External Representation of Learning Process and Domain Knowledge' in *Proceedings of Artificial Intelligence in Education* (AI-ED, 2001) 64.

[2] Yiasemina Karagiorgi and Loizos Symeou, 'Translating Constructivism into Instructional Design: Potential and Limitations' (2005) 8(1) *Educational Technology and Society* 17; Diana Laurillard, *Teaching as a Design Science: Building Pedagogical Patterns for Learning and Technology* (2012, Routledge); Jan Herrington, Thomas Reeves and Ron Oliver, 'Immersive learning technologies: realism and online authentic learning' (2007) 19(1) *Journal of Computing in Higher Education* 80; Jan Herrington, Jenni Parker, Daniel Boase-Jenlinek, Woei Hung, Chwee Beng Lee, 'Connected Authentic Learning: Reflection and Intentional Learning' (2014) 58(1) *The Australian Journal of Education* 23; Andrew Bland, Annie Topping and Jane Tobbell 'Time to unravel the conceptual confusion of authenticity and fidelity and their contribution to learning' (2014) 34(7) *Nurse Education Today* 1112.

[3] Beyond SDG 13 *Climate Action*, other close connections to corporate law relate to SDG8 *Decent Work and Economic Growth*, Goals 8.1-8.3 and 8.5-8.6, SDG 9 *Industry, Innovation and Infrastructure*, Goals 9.1-9.3, and SDG 12 *Responsible Consumption and Production*, Goal 12.6.

[4] United Nations General Assembly, 'Transforming Our World: The 2030 Agenda for Sustainable Development', United Nations General Assembly (UNGA) Resolution 70/1, 25 September 2015 <http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf>.

[5] See United Nations Sustainable Development Goals ('SDGs') 9, 13-15.

[6] Jones (n2) 169.

fundamentals of life and livelihoods: income, water, power, food, housing, and education. The core features of companies are limited liability and separate legal personality; these features position the corporate form to foster opportunities for entrepreneurship, innovation, economic growth and sustainability.[7] In most nations, even the smallest companies, when considered collectively, make a contribution to GDP and employment that belies their size.[8] It is arguable that without an effective corporate legal system, achieving most of the SDGs will be difficult. Success will depend in part on the initiative and cooperation of private enterprise.[9]

Effective teaching here aims to cut through complexity while taking advantage of opportunities to make the study of corporate law engaging and relevant for students. Presently, this is achieved through cooperation with multiple ASX listed companies. However, the SDGs can also be harnessed to this end via authentic learning pedagogies, beginning with framing an authentic connection between SDG 13 *Climate Change* and the particular topic.[10] The paper will explore what could be possible with these connections, driven home via authentic assessment.

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[7] United Nations Commission on International Trade Law ('UNCITRAL'), *UNCITRAL Legislative Guide on Limited Liability Enterprises*, 9-13 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2201230_ebook_english.pdf>.

[8] Organisation for Economic Co-operation and Development ('OECD'), *SMEs, Entrepreneurship and Innovation*, OECD Studies on SMEs and Entrepreneurship (OECD, 2010), 5.

[9] United Nations, Secretary-General, 'Secretary-General's Remarks at the United Nations Private Sector Forum' (26 September 2015, New York) https://www.un.org/sg/en/content/sg/statement/2015-09-26/secretary-generals-remarks-united-nations-private-sector-forum.

[10] This approach is influenced and informed by Amr ElAlfy, Nicholas Palaschuk, Dina El-Bassiouny, Jeffrey Wilson and Olaf Weber 'Scoping the evolution of corporate social responsibility (CSR) research in the sustainable development goals (SDGs) era' (2020) 12 (14) *Sustainability* 5544, 5544-6; Janice Denoncourt, 'Companies and UN 2030 Sustainable Development Goal 9 Industry, Innovation and Infrastructure' (2020) 20(1) *Journal of Corporate Law Studies* 199, 200; Jan Herrington and Ron Oliver, 'An Instructional Design Framework for Authentic Learning Environments' (2000) 48(3) *Educational Technology Research and Development* 23.

Student Learning

Law 276

SITUATING LAW AND HISTORY TEACHING IN THE MODERN LAW SCHOOL: SITUATED LEARNING EXPLORED THROUGH REFERENCE TO THE SIGNIFICANCE ATTACHED TO 'LIVES LIVED' IN THE 21ST CENTURY

Dr Sarah Wilson, York Law School, University of York

This paper is grounded in the 'Law and History' module offered to undergraduate finalist Law students at the University of York, UK. This module looks to combine wisdom from conventional Legal History's interest in the value of understanding law's own history for the present (e.g. Ibbetson, 1999) with Modern History's ideas of a 'trajectory … still unfolding' where past, present, and future lie on the same continuum of societal evolution and development (Tosh, 2010). The paper explains how the module scrutinises the emergence of modern Britain for examining relationships between law and society across time. It encourages students to use insights from this to reflect on law as a living phenomenon within society, and embodying societal 'choices', and to ask whether laws today are fit for purpose for a complex and diverse society.

The paper identifies the module's aim of encouraging students to explore how they might become better lawyers through looking at law not only in its social context, but doing so beyond 'the present' and across a longer timeframe, as one example of its situational learning ambitions. Here, the module looks to make connections between its emphasis of the past and (contrasting, and highly present-focused) approaches taken elsewhere in their undergraduate studies. Beyond this, the paper explains how the module's situational learning dimensions also arise from asking students to consider what makes a strong and cohesive society, and how individual and collective behaviours might be framed around this, as well as sound laws flow from this.

The paper explains that central for setting the scene (or situating, perhaps) both the module's narrower (directly law-focused) and wider ('law and societal cohesion'-focused) aspirations is the idea of configuring 'lives lived' in the early twenty-first century. The paper suggests that whilst the module is grounded in 21st century Britain, the core idea could be applied more widely than this. From here, a sense of a society which is likely to experience the present and near future as times of challenge, unease, and upheaval is constructed through discussions of students' life experiences (e.g. many will have grown up in 'Austerity Britain' following the GFC in 2007-2008) and those of their families and communities, and wider observations on 'Britain today'. Whilst reference to 'lives lived' helps to create the situational emphasis of the module, the paper explains that asking students to situate themselves in such a context raises ethical considerations, especially ones concerning triggering and safeguarding. And from this the paper explains how these issues are raised directly with the students, through discussion of how the module looks to convey messages of hope and societal resilience in uncertain times.

The paper foregrounds the module's key message that even the very worst of times can be times when positive societal choices are made. In even the worst of times we can choose to continue to strive for social justice, equality, and human rights. We can choose politics which aspires to be progressive and inclusive and long-termist rather than divisive and populist. And perhaps most profoundly we can choose to respond to the climate emergency by taking responsibility to halt environmental destruction rather than passing the burden of doing so to future generations.

The paper closes by commenting generally on the apparent benefits of learning which is situational by virtue of being grounded in context, and built on experiences and relationships, rather than abstract approaches more typically found in formal learning. And through this, the paper- like the module- encourages reflection on the place of universities in wider society.

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ASSESSING THE TRANSFORMATIVE POTENTIAL OF INTERNATIONAL STUDY TOURS IN ENVIRONMENTAL LAW EDUCATION

Dr Alexandra McEwan (Corresponding Author) & Dr Luke Price, Central Queensland University

International Study Tours (IST) situate students' learning within authentic and unfamiliar contexts. In doing so, IST present students with disorienting dilemmas, diverse professional and personal roles and relationships, and opportunities for critical reflection on both prior assumptions and future plans. These learning processes align closely with Mezirow's model of transformative learning.[1]

The transformative potential of IST may make a significant contribution to tertiary legal education, which has traditionally situated disorientating authentic learning within university law clinics with social justice objectives. However, the last two decades have seen an ongoing redirection of clinical legal education (CLE) in Australia and worldwide towards (less disorienting) entrepreneurial experiences, which risks reducing the availability of important professional development opportunities. IST may provide a transformative surrogate that better meets student preferences and institutional expectations, while remaining consistent with CLE's pedagogical underpinnings.

In environmental law education, the recognition and development of responses to professional responsibilities is particularly complex. New lawyers' professional development must be cognisant not only of their familiar responsibilities to clients and the justice system, but also their evolving responsibilities to the natural environment: integrating climate change mitigation and adaptation, and nature conservation into their professional practice.[2] Transformative learning experiences in IST may cultivate awareness and understanding of environmental responsibilities in legal practitioners.

This paper explores the transformative potential of IST in environmental law education by analysing student outcomes from a recent wildlife law and protection IST to Vietnam, conducted by the authors in 2022. It will present preliminary findings from an ongoing longitudinal study, analysing qualitative data collected from students on their experiences and perspectives before, during, and after attending this IST.

The paper will address four matters:

1. The study's design and implementation;

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[1] Jack Mezirow, *Transformative Dimensions of Adult Learning* (Jossey-Bass, 1991).
[2] Steven Vaughan, 'Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harms' (2023) *Current Legal Problems* (advance).

2. The themes arising from student experiences and outcomes, and the extent to which this data aligns with Mezirow's model of transformative learning;
3. The alignment of student experiences, learnings, and professional and personal development with student outcomes in domestic university law clinics; and
4. The potential of environmental law IST to support the development of lawyers cognisant of and capable of meeting their evolving responsibilities to the environment.
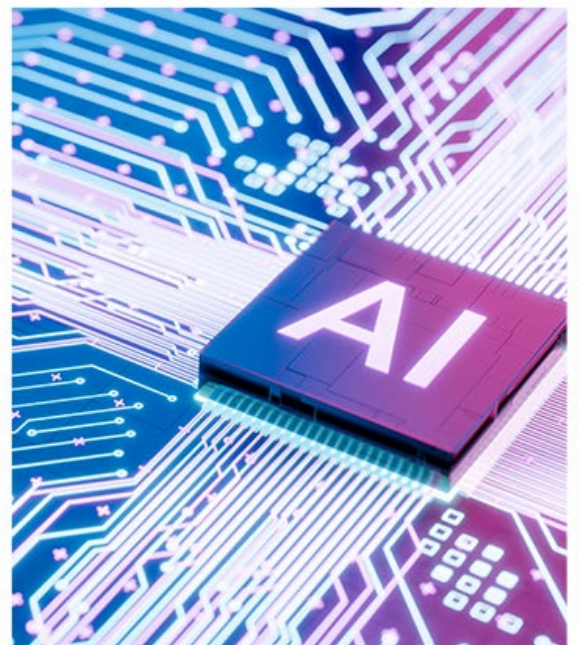
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Situated Learning:
Climate Change,
First Nations Recognition,
Generative AI

First Nations Students and Perspectives

Law G23

EMBEDDING INDIGENOUS CONTENT AND PERSPECTIVES INTO LAW COURSES

Sharleigh Crittenden, Nicola Kozlina, Prue Vines & Dr Leah Williams

Building on the discussion of experiences of Indigenous students studying law, this panel highlights projects and approaches undertaken at UNSW Law and Justice to embed Indigenous content and perspectives in a range of core courses, including criminal law and procedure, and torts. Panellists will discuss the background against which these projects and approaches were initiated, the variety of content that has been embedded to make Indigenous perspectives more visible, and their experiences of the successes and challenges in effectively integrating Indigenous content to develop non-Indigenous students' understanding of the enduring legacy of colonialism in the operation of law today.

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Climate Change
Law 203

ROUNDTABLE TITLE: BECOMING A CLIMATE CONSCIOUS LAWYER: THE TEXTBOOK PROJECT TO TRANSFORM LEGAL PEDAGOGY

Julia Dehm, La Trobe University School of Law

Professor Nicole Graham, Sydney Law School

Associate Professor Kate Galloway, Griffith Law School

Professor Nicole Rogers, Faculty of Law, Bond University

Professor Vivian Holmes, ANU College of Law

Associate Professor Cristy Clark, University of Canberra Law School

There is a growing need to transform legal education to ensure the next generation of lawyers is provided training to be 'climate conscious' legal practitioners and have the skills to deliver legal services and promote justice in a climate transformed world. However, there is a relative absence of educational resources to support the mainstreaming of climate change considerations in Australian legal education.

The forthcoming open access textbook, *Becoming a Climate Conscious Lawyer: Climate Change and the Australian Legal System,* seeks to respond to these challenges and provide tools to transform legal teaching and pedagogy in Australia. It will address how climate change impacts and the transition to a low-carbon society will (or already has begun to) transform areas of law relevant to compulsory and elective law subjects.

The textbook will also discuss how legal doctrine and practice is implicated, directly or indirectly, in facilitating greenhouse gas emissions leading to climate change. This panel will feature the editors of this textbook, as well as the authors of chapters on property law, criminal law, ethics and professional responsibility and human rights law, who will discuss the challenges of developing innovative and adaptive pedagogical materials to prepare students for their professional lives in light of the global challenge of climate change.

Skills Development

Law 276

SITUATED LEARNING FOR LEGAL EDUCATION: FUTURE-PROOFING LAW GRADUATES WITHIN AND BEYOND THE CLASSROOM

Professor Queenie Ying Lai, Associate Dean of Teaching and Learning, Faculty of Law, Chinese University of Hong Kong

How does situated learning take place within the law curriculum and outside it? What support can law schools provide to law students to ensure their technical abilities and professional skills are relevant to employers and make them attractive hires?

The constant changes in legal practice mean educators must ensure students develop new skills and competences that are relevant to meet society's ever-increasing demands. Employers can now cherry pick from a large number of graduates pouring into the job market each year. Law graduates will need to demonstrate beyond technical and academic ability, their resilience, critical thinking skills, team work, interpersonal skills and the ability to build professional connections.

How does situated learning assist students professionally, technically, ethically and socially? This paper aims to explore 1) instruction design for situated learning within the law curriculum and 2) opportunities beyond the classroom. Theory and practice of situated learning will be discussed, with illustrations from a variety of examples from Chinese University of Hong Kong Faculty of Law undergraduate and postgraduate programs.

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A CLOSER LOOK AT CASE LAW READING: AN EMPIRICAL STUDY OF STUDENTS' READING HABITS AND PREFERENCES

Julie Falck, Aidan Ricciardo, Professor Ian Murray & Dr Sarah Murray, University of Western Australia

At some point, every university tutor has looked out across a classroom in hope, desperately searching amongst the averted eyes and raised laptop screens for someone, *anyone*, who has 'done the reading'. We've all felt the creeping dread upon realising that we'll have to struggle through a tutorial focused on a case that nobody seems to have read. We've been there. But where are our students in all this? Where are they – to adopt the theme of the conference – situated? And rather than lamenting (hypocritically, for some of us) the fact that 'nobody reads cases anymore', how might we meet them where they are?

Being able to read, understand, analyse, and use written legal materials is crucial to success in legal practice. Law students might often be tempted to put reading cases in the 'too hard basket', relying instead on textbooks and summaries. We think avoiding case reading means students miss an opportunity to practice this vital lawyering skill, so we're working to help students read cases more confidently and more often. To make sure we're addressing a real problem and not just faculty common room gripes, we started by surveying current JD students about their case law reading habits, preferences, and experiences. We were especially interested in what motivated them to read cases (or not). They told us that our

suspicions were correct – they often didn't read cases, and very few of them ever did all the assigned case reading. Primarily, they don't read cases because they're busy. They'll always be busy, but they also gave us valuable insight into how we can make it easier to make reading cases a priority.

In this paper we discuss the results of our preliminary survey. We learned where and when and how our students prefer to read cases. They told us that they appreciated opportunities to discuss cases, but were frustrated by 'unrealistic' reading lists, and mentioned the many minor annoyances that deplete their motivation to read. We found that there were both cognitive and situational barriers to students completing assigned case reading. There is a lot (according to our students) that instructors can do to get students to read cases without requiring much change from the students. The next stage of our project will involve dismantling the instructor-side situational barriers (where possible) and designing interventions to start to break down the cognitive barriers. Hopefully, this will also have the side-benefit of fewer awkward silences in tutorials.

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SITUATED SKILLS: SOME REFLECTIONS ON THE HISTORY AND PEDAGOGY OF ADR

Professor Amy J. Cohen, UNSW

Chat GPT tells us that situated learning means attention to "context and authentic experiences in fostering deep understanding and skill development." So let me begin this abstract with context and experience. In 2002, when I was in Nepal studying dispute resolution in a post-revolutionary society, I discovered a local civil society organization, CVICT, that formed to provide counseling and other services to victims of state torture. The organizers discovered that they often ended up with clients after police intervention in local community disputes, and so they decided to teach community mediation techniques to Nepali villagers to preempt the involvement of the police and the state violence that often followed. This was a kind of home-grown form of ADR. And yet it was not easily recognizable as mediation to a US audience where I was hoping to obtain employment as an ADR teacher (and, to that end, to describe my research in the form of a "job talk"). This was because CVICT mediation was public and coercive and organized around a normative critique of the state, and it disrespected principles of mediator neutrality and liberal understandings of party self-determination that had come to define mediation as a formal institutional practice within the Western field of ADR.

And yet CVICT is not the only grassroots organization to conclude that reshaping practices of dispute resolution plays an important role in projects of social and political transformation. Today, organizers in the Movement for Black Lives in the United States—alongside organizers fighting to end the incarceration of Indigenous people in Australia—are asking how they can resolve local disputes without turning to the police because turning to the police risks introducing outsized responses of state violence. These organizers have developed a set of tools to respond to interpersonal conflict, harm, and violence, alongside a political vision for police and prison abolition, that they often call community accountability and/or transformative justice.

In my talk, I will argue that by defining ADR in narrow institutional terms, ADR scholars have contributed to what many now feel is a disciplinary crisis where law schools often view ADR courses as "merely" skills courses. But the fact that movements for prison abolition in the US, Australia, and elsewhere are turning to ADR-like skills and practices as a mechanism of social change suggests that the field need not be thought of as a politics-free, neutral collection of techniques for resolving interpersonal disputes, but rather a field with an important set of questions linked to macro political, economic and social change.

I will argue that by recognizing the situated and political nature of ADR—indeed by recognizing transformative justice as a kind of ADR—ADR scholars can open up the field to critical sociolegal questions and perhaps can change some of how we teach and practice ADR as well. Our real conference organizers remind us that "we are situated, all of us, as legal educators in a world structured by history and riven by constant change." Hence let me conclude by suggesting that in a moment when people are asking how to make communities safer without relying on police, courts, and prisons, I would suggest that ADR courses explicate for students how different practices of conflict intervention presuppose very different relationships to the state and capitalism. From this perspective, one aim of ADR could be to help students develop relational skills and capacities as part of broader deliberations about how and why to use these skills to resist or transform externally imposed state power in their own relationships and communities.

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Thank you for attending the
2023 Legal Education Research Conference