

Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice

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Lawyers and law students suffer significant rates of depression and substance abuse. This paper suggests that Law Schools have an obligation to assist students to develop the emotional intelligence necessary in order to cope with the stressful nature of legal practice. We draw on Schön's discussion of the indeterminate zone of professional practice to suggest that reflective practice is the means by which students can become sufficiently emotionally intelligent to become balanced and happy lawyers. We suggest that incorporating reflective practice in intentional curriculum design in the first year of law is an effective first step in assisting students to develop the emotional intelligence necessary to survive the study and practice of law.

Introduction

A 2008 study found that there is a high incidence of depression and alcohol and drug use amongst members of the Australian legal profession, and alarmingly, that 40% of law students reported psychological distress severe enough to warrant medical assessment (Berkovic, 2008). The findings echo similar studies in the United States over the last 20 years which have found that lawyers suffer significant rates of divorce, depression, anxiety, mental illness, suicide, alcoholism, drug abuse and poor physical health (Schiltz, 1999; James, 2005; American Bar Association, 2008). Schiltz (1999, p. 874) suggests that “lawyers seem to be among the most depressed people in America.” A 1991 study found that lawyers suffered major depressive disorders at a rate 3.6 times higher than non-lawyers who shared key socio-demographic traits (Eaton, Anthony, Mandel & Garrison, 1990). Several commentators have suggested that law schools should respond to this crisis in the legal profession by assisting students to develop their emotional intelligence and moving away from the traditional emphasis on intellect above other human qualities (Silver, 1999; James, 2005). We propose that the development of emotional intelligence should begin in the first year of law school, to lay the foundation for professional success and also to help students to cope with the uncertain and anxious learning environment of legal education (particularly in the first year) which we equate to what Schön has called the indeterminate zone (1987, p. 12) of professional work.

This paper will examine how law schools can better prepare students for the stresses and rigours of both legal education and legal practice. We believe this can be done by developing students' emotional intelligence levels, and self-reliance, by encouraging them to engage in reflective practice. First, we consider how reflective practice can assist law students to develop their emotional intelligence. Second, we explore how reflective practice can be

introduced to first year law students in a manner that is in keeping with two key curriculum design principles of Kift's Transition Pedagogy (Kift, 2009) – transition and engagement. We then outline a proposed framework and model to embed reflective practice in teaching and assessment practice in the first year law program. We conclude that incorporating reflective practice in curriculum design in the first year of law is an effective first step in assisting students to develop the emotional intelligence necessary to survive the study and practice of law.

The importance of developing emotional intelligence in lawyers and a role for reflective practice

The high rate of depression and general unhappiness amongst lawyers can be attributed to several factors (Murphy, 2008). Legal practice is stressful. It is not the glamorous profession portrayed in popular culture; rather, it is generally mundane, repetitive and hard work (Schiltz, 1999). Many lawyers work long hours and have little time for personal and family life. In 2004 the average weekly hours worked by solicitors in New South Wales was 49.8 hours (Thampapillai, 2004). The constant pressure to meet tight deadlines and billing targets can create enormous stress and can even lead to unethical practices such as bill padding. When mistakes occur or deadlines are missed (often for reasons beyond the lawyer's control) there is temptation to be dishonest or otherwise act unethically. It has also been suggested that the very culture of large law firms promotes an environment in which maintaining high ethical standards and staying true to one's own values is virtually impossible (Schiltz, 1999, p. 912). Indeed the conflict driven nature of the profession has been said to condition lawyers to be aggressive, analytical and emotionally withdrawn (Murphy, 2008).

Law schools expect students to be rigorously analytical and they reward intellectual excellence at the expense of other qualities such as values and character (Krieger, 1998-1999, p. 24). Successful law school graduates have highly developed skills in reasoning, analysis, distinguishing, analogising and speaking and writing. Even where law courses incorporate legal skills training, such training rarely addresses the emotional dimension of legal practice (Silver, 1999). Law students and lawyers are taught to put aside their own conscience in favour of impartial advocacy. To achieve this impartiality many lawyers compartmentalise values and feelings with the result that they can become disconnected from their sense of self with obvious detriment to their own well-being (Krieger, 1998-1999, p. 25). It has been suggested that common traits of lawyers, such as anxiety, excessive competitiveness and personal dissatisfaction are the result of an immature level of human development (Krieger, 1998-1999, p. 5) and that a lack of emotional intelligence contributes to the disproportionately high levels of stress, substance abuse, and depression among lawyers (Silver, 1999). Lawyers need to have the emotional intelligence to know that academic achievement alone does not guarantee a happy life, and that lawyers can only live happy lives as lawyers if they act according to their conscience, personal values and beliefs (Krieger, 1998-1999). By emotional intelligence we mean the existence of qualities such as self-knowledge, self control, motivation, and the ability to deal with a range of people including clients, other lawyers, judges and staff (Cain, 2003-2004, pp. 2-3).

We have established then that legal professional practice is extremely stressful (like many other professions) – for the most part because of the daily encounters lawyers have with what Schön has called the “indeterminate zones” of professional work (1987, p. 12). Lawyers' values are frequently in conflict with their actions either as a result of advocating a position with which they do not agree or in response to the pressures of legal practice. Schön suggests

that reflective practice can assist professionals to deal with these indeterminate zones. An ability to engage in reflective practice is an important skill for lawyers, therefore, because it can provide the means for lawyers to cope with the day-to-day moral, ethical and personal dilemmas that arise in the practice of law. In our view, for lawyers to have the necessary skills to cope with the indeterminate zones of the profession, they must be introduced to those skills at law school. This requires law schools to assist students to develop their emotional intelligence through reflective practice.

Engagement in reflective practice has been identified as a means of developing emotional intelligence and preparing students for the stresses of professional practice (Schön, 1987, p. 35). As James (2005, p. 138) notes: “Reflection leads to self-awareness which is fundamental in all models of emotional intelligence.” A full review of the vast literature in the area of reflective practice is beyond the scope of this paper. For the purpose of our discussion we are working with definition of reflective practice proposed by Moon (1999, p. 99):

Reflection is a form of mental processing – like a form of thinking – that we use to fulfil a purpose or to achieve some anticipated outcome. It is applied to relatively complicated or unstructured ideas for which there is not an obvious solution and is largely based on the further processing of knowledge and understanding and possibly emotions that we already possess.

In the context of legal education, in our view, the aim of reflective practice should be to encourage students to engage in autonomous learning with a view to developing understanding and critical thinking skills in the context of their own experiences, values and beliefs. Reflective practice for the purposes of legal education has been explored by Hinett (2002) who articulates four stages of reflective practice: students thinking about what they already know, contextualizing what they need to know in order to advance understanding of the subject, relating learning to existing knowledge and experience, and planning for future learning. Reflective practice is a formal process that provides evidence of reflection, for example in a journal or portfolio. A student who is able to engage in reflective practice is more likely to be able to accept and make sense of critical feedback received from their tutors, mentors and supervisors. He or she is also more likely to become a reflective practitioner who is not merely skilful and knowledgeable, but is also “thoughtful, wise and contemplative” and uses “intuition, insight and artistry” in his or her practice (Schön, 1983). A reflective practitioner is also more able to learn from experience, cope with uncertainty and anxiety, exercise sound judgment, assess his or her own skills and abilities, develop career goals and plans and implement strategies to achieve those goals, accept critical feedback and continue to improve skills and aptitudes.

Emotional intelligence, reflective practice and the first year of law

As legal education is the place where students are prepared for legal practice, there is a clear need for the skill of reflective practice to be better integrated into the law curriculum to assist with the development of students’ emotional intelligence. Mack, Mullins, Sidford and Bamford (2002) note, however, that there is surprisingly little in the literature “dealing specifically with (reflective practice) in legal training” (Mack et al., 2002, p. 223); and Kift has commented that the literature generally has little regard “to the mechanics of such a process” (Kift, 1997, p. 71).

Most of the literature to date that has considered the need for law students to engage in reflective practice has focussed on the use of reflection in legal clinics or other practice oriented subjects. James (2005) suggests that clinical legal education programs provide ideal opportunities for developing students’ emotional intelligence, and there are several examples

of clinical programs that are designed to introduce emotional intelligence into the law school curriculum (Cain, 2003). We agree that clinical legal education and other forms of work integrated learning are vital in developing law students' emotional competencies. Such programs are generally available to students in the final year of their law degree providing a capstone experience (Gardner et al., 1998; Kift, Field & Wells, 2008). There is certainly long-standing evidence suggesting that reflective practice is a positive factor in supporting students in their transition out from the university environment to professional life (Cuseo, 1993).

Reflective practice also has a definite fit in the first year law curriculum. This is the case despite the fact that first year law is a place where students are predominantly tasked with understanding a range of different and complex legal threshold concepts (Meyer & Land, 2006) such as the rule of law, statutory interpretation, and legal writing and reasoning. We have previously argued (McNamara & Brown, 2008; McNamara, Field & Cuffe, 2008;) and continue to believe that the "technical rational" aspect of much of the first year curriculum of legal education must not be used to dismiss it as an inappropriate place to inculcate reflective practice skills. Our current position in fact goes further to assert that the first year of legal education is a critical time for law students to be introduced to the skill of reflective practice. We believe that reflective practice should be taught in the first year of legal education, not just with the long term view of preparing students for legal practice, but also with the more immediate goal of preparing students for their legal education.

A key reason for our persistent emphasis on the importance of teaching first year law students how to reflect is our recognition of the strong resonance between the stressors first year law students face at law school, and the stressors they *will* face as practitioners of law. Like legal practice, the first year of law school has long been acknowledged as a stressful place (Taylor, 1975; Glesner, 1991; Kift, 1997). Segerstrom (1996, p. 594) summarises some of the US empirical research of the first year experience in law:

Within a few months of entering law school, students begin to display significant symptoms indicating that the demands of school are taxing their adaptive capacity. Students report being pressed for time and getting insufficient sleep, and symptoms of psychological distress such as depression and anxiety are also quite common. Students also report extreme self-punishing attitudes, obsessive self-doubt, apathy, withdrawal from normal activities, fear, apprehension, a sense of impending doom and panic attacks.

From our own experience as past students of three different Australian law schools we confirm that this description resonates with the experience of many Australian law students.

A useful lens for looking at the stressful nature of the first year of law has been offered by Segerstrom (1996). That lens focuses on how an actual or perceived loss of control can lead to feelings of helplessness, resulting in a state of stress. Segerstrom's study, although based on only a small sample (52 first year students in one US law school), provides an instructive index of 6 stressors that law students experience in their first year that result in them experiencing a sense of a lack of control, and therefore helplessness and anxiety. The highest scoring stressor on the index was feedback. That is, a lack of feedback, and particularly a lack of positive feedback, was seen by first year students as creating in them a sense of helplessness. Following feedback on the index (in descending order) were: pressure associated with law studies; the amount of time required to study law and the impact this had on time for family and friends; the difficulty of the material being learned; the competitive, demanding nature of the academic environment; and the lack of recreation time (p. 602).

For us, the sense of helplessness that first year students experience is comparable to the feelings of uncertainty and confusion that make up Schön's "indeterminate zones" of

professional work. The first year of law school is an “indeterminate zone” for students. Indeed, it can be said that the nature of the first year indeterminate zone is such that it may make it difficult for students to take advantage of the curriculum and institutional efforts being made to support their transition to first year higher education. This is because students may lack the necessary emotional intelligence to engage with, and act on, that support. First year students need assistance, therefore, with the development of their emotional intelligence in order to be able to unravel the uncertainty and anxiety of the first year (such as not knowing whether they are achieving the required academic level due to an absence of feedback), as well as to be able to make the most of the first year experience assistance and support that is made available to them. The development of students’ emotional intelligence in the first year is a key to their survival – both at law school, and beyond in legal practice.

One of the best ways to introduce students to emotional intelligence is through teaching them reflective practice, particularly where it is treated as “an art” in itself (Neumann, 1999-2000, p. 407) and “rigorous in its own terms” (Schön, 1987, p. 13). As Kift comments, “reflection is a metacognitive skill in which greater awareness of, and control over, the student’s learning process is generated” (1997, p. 68). For first year law students, who report in class that they often feel “out of control” and exasperated, reflective practice can be used to enhance their emotional intelligence levels thereby helping them to make sense of that experience, and to cope with the helplessness of the indeterminate zone.

The indeterminate zone of the first year of law can also be conceptualised from a curriculum perspective. In particular, two of Kift’s principles of curriculum design - transition and engagement - that make up the “transition pedagogy” (Kift, 2009; Queensland University of Technology [QUT], 2009) - are indicators of the indeterminate zone of the first year experience. In our view using reflective practice to enhance students’ emotional intelligence through intentional curriculum design can contribute to the achievement of better support for students’ transition and engagement. This can be expressed alternatively in this way: teaching first year law students how to reflect is critical because enhanced emotional intelligence skills will better support their *transition* to university, and also their *engagement* with academic learning at the tertiary level.

The transition principle essentially requires curriculum to be designed to assist students to “transition from their previous education experience to the nature of learning in higher education, learning in their discipline and to life-long learning” (QUT, 2009, p. 3). Kift identifies “independent learning and academic agency”, “self-belief and academic confidence”, “guided reflection on the way in which they learn” and “understanding the cognitive and affective hierarchy” as important areas in which students need transition assistance (QUT, 2009, p. 3). Reflective practice can assist in all these areas by developing students’ emotional intelligence.

Reflective practice can be demonstrated as supporting student transition in the first year of law through the application to the transition context of five arguments we have previously made at this conference about the need for reflective practice in the first year of law (McNamara et al., 2008). First, reflective practice skills can support first year students in transition because such skills can assist students to become life-long learners, and to take academic agency (responsibility for their own learning) more quickly. Students who are emotionally intelligent, and who can take responsibility for their own learning, will experience a greater sense of control and confidence and therefore be able to better manage their transition to higher (legal) education. Second, emotionally intelligent students will

transition better if their reflective practice skills enable them to engage more deeply with the early development of some of the key academic performance skills, such as organisational (Rees, Shephard & Chamberlain al., 2005, 8), and critical analysis skills. The sooner students are across such fundamental skills, the sooner they will have a sense of fit and place in the tertiary learning environment (and will not feel helpless); and the sooner they will manage their learning and assessment tasks effectively. Inevitably, students' self-belief and academic confidence will be bolstered by these developments, further supporting their transition.

Third, students will better transition to tertiary level study if their reflective practice skills help them to take an holistic view of their academic progress. An ability to understand the "why" behind what is being learned, and to make connections between subjects both vertically and horizontally across their degree, will provide students with the necessary understanding of the cognitive and affective hierarchy of tertiary study. An emotionally intelligent grasp of the "big picture" will address much of the uncertainty and stress of the indeterminate zone. Fourth, reflective practice skills will assist student transition by helping first year students start to construct their nascent legal professional identity in an emotionally intelligent way. For young lawyers such an identity is, we think, critical to coping effectively with the indeterminate zone of law school because it provides students with a sense of meaning and purpose to their studies. Finally, where the curriculum uses the teaching of reflective practice skills to create a community of learning practice, student transition will receive greater peer and faculty support that will assist in coping with the stressors and rigours of the law degree. Reflective practice, and its capacity to build the emotional intelligence levels of students, can therefore be seen as an important element of promoting the curriculum design principle of transition.

Turning now to the engagement principle of the transition pedagogy; namely that "learning, teaching and assessment approaches in the first year curriculum should enact an engaging and involving curriculum pedagogy and enable active and collaborative learning" (QUT, 2009). Engagement through curriculum requires an intentional embedding of "active and interactive learning opportunities, and other opportunities for peer-to-peer collaboration and teacher-student interaction" (QUT, 2009, p. 7). It also requires, in keeping with the Segerstrom study above, the provision of timely and positive feedback (Ramsden, 2003, p. 96). Krause has said: "The well-adjusted and engaged student is one who assesses and reassesses their thinking as transitions and opportunities to engage in different ways continue through and beyond the first year of university" (2006, p. 5). For this reason she supports the use of self-reflection as a tool for achieving first year engagement (2006, p. 5).

The five arguments articulated above in relation to the efficacy of reflective practice in supporting transition by teaching students to be emotionally intelligent, also have application to arguing for reflective practice as a tool for achieving engagement. First, reflective practice can support student engagement by teaching students to be emotionally intelligent because students will then be in a better position to become self-directed, independent and life-long learners. Such students will have enhanced confidence and capacity to engage with their learning, and their overall experience, of the first year. Second, emotionally intelligent students will be supported in their engagement when their reflective practice skills help them with the early development of some of the key academic performance skills, such as organisational skills, and higher order critical analysis skills. Students who have such skills will feel less helpless about what to do and what is expected of them, and therefore more able to engage. Third, reflective practice can support student engagement by giving students the emotional intelligence to take an holistic view of their academic progress. Such a view

ensures a sense of structure and certainty that can assist students to overcome the confusion of the indeterminate zone. Fourth, reflective practice that teaches students to be emotionally intelligent can support student engagement by giving them a greater sense of purpose and mission to their studies. Finally, reflective practice in the first year of legal education can support student engagement where it is used to create a community of learning practice, and thereby addresses some of the stressors of the law degree through collective and collaborative learning, and through the avenue of peer support. We now turn to sketching out a pedagogical framework for the teaching of reflective practice to first year law students, articulating some principles of practice that have been drawn from the literature as well as from our own teaching and learning experiences.

A framework for teaching reflective practice in the first year

From the discussion above it can be said that for law students the first year experience is an indeterminate zone characterized by confusion, self-doubt and uncertainty. Students should be supported in developing emotional intelligence to assist them in coping with this indeterminate zone. For student success, and to enable effective learning, this needs to be recognised and addressed. The aim of this framework is to address and ameliorate the indeterminate zone of the first year experience by teaching emotional intelligence through *reflective practice* to support students' *transition* to tertiary study and to support their *engagement* with the university environment and academic learning. There are a number of teaching activities to assist students to develop reflective skills including self and peer assessment, problem-based learning, reflective essays and journals and personal development portfolios. However, to enable students to become reflective practitioners, it is not enough to use reflective activities in an ad hoc way. There must be a rigorous framework underpinning the activities or there is a danger that they will be no more than disconnected exercises, contributing to the indeterminate zone for first year students. Our proposed model adopts a whole of first year approach to teaching reflective practice which is consistent with the transition and engagement principles discussed above and which also addresses the mechanics of the reflective process (Kift, 1997). In order to promote engagement with students, the model incorporates a formalised assessment regime.

We have previously written about an emergent framework for designing reflective assessment (McNamara et al., 2008). The framework involves four steps: first, providing students with instruction on reflection; second, intervening in the student's reflective practice by creating structures and protocols to help students to reflect; third, using criterion referenced assessment to enhance the design of reflective assessment, and fourth, providing feedback on the students' reflection. Our proposed model is in keeping with this framework and advances it by taking a holistic approach to developing students' reflective capabilities. It uses QUT's student ePortfolio as a tool for students to organise their reflection and to ensure that their journal entries are available for future reference and reflection (McAllister, Hallam & Harpur, 2008).

The model that we describe below is proposed to be introduced in the QUT Bachelor of Laws foundation units, LWB145 and LWB146, progressively from 2009. LWB145 Foundations A is a core first year, first semester unit which commences with a two week intensive orientation to law and legal studies. One of the objectives of the unit is to: "work independently, manage time effectively and reflect upon your own understanding and performance to develop strategies for improvement to assist your future studies in law." LWB146 Foundations B is a core first year, second semester unit which builds on the knowledge and skills students have

developed in Foundations A and which focuses on legal research and writing. As identified in our earlier research, a legal research skills unit is an appropriate context for the introduction to reflective practice. First year learners of legal research skills often experience the indeterminate zone quite acutely when grappling with this content, particularly as the legal research process is inherently one in which solutions are not always obvious, or found quickly or simply. The subject area, therefore, provides a strong hook on which to hang the introduction of reflective practice processes (McNamara et al., 2008).

We suggest that in the first week of university, law students should engage in an initial reflective activity that involves them thinking about what they already know about the law and legal studies. As part of an introductory lecture on studying law and what it means to be a lawyer, students should reflect on their own understanding of the law, the legal system and justice and on why they are studying law. This first reflective exercise acknowledges and places importance on students' own values, conscience and personal beliefs, which is not often done in the "technical rational" approach to the law school curriculum. Further, it involves students thinking about what they already know, thus reducing the indeterminate zone. It should be noted that students should not be restricted to reflective writing; alternative forms of reflection such as drawings, poetry, cartoons and mind maps should be encouraged (a radical proposal in legal education!)

The second reflective task (completed early in the semester) is a self audit of skills which are mapped to the Law Graduate Capabilities. At this stage students are given instruction on the use of ePortfolio before completing a simple reflection on their self-audit, which is uploaded to the ePortfolio. A refined version of the first reflective activity should also be uploaded to the ePortfolio. The use of ePortfolio will enable students to capture the knowledge and beliefs they hold in the very early stages of their study, which they can refer to later for critical self reflection. In order to address the sense of helplessness that students experience in the first year, students should receive feedback on the task to provide positive reinforcement and to develop a community of learning. We suggest that summative assessment would not be appropriate for these two initial reflective activities as students should have a safe space to think deeply about their own values without concern for how that is perceived by others. We suggest therefore that feedback should be given by generic means acknowledging the different values and experiences which students have identified and by informal discussion with a "safe" person such as a peer mentor or tutor. The feedback should also encourage students to begin the second stage of reflection, contextualising what they need to know in order to advance their understanding of law.

The third reflective task (completed in the second semester unit Foundations B) is a repeat of the initial self audit of skills. Students complete the skills audit and reflect on the development of their skills during semester one and set goals for their learning in semester two. This reflection should also be uploaded to ePortfolio. The fourth task (completed after return of the student's first piece of formal assessment in the unit) is a reflection on the feedback that they received on their summative assessment and on how they can use that feedback to improve their next piece of summative assessment. Again, this reflection should be uploaded to ePortfolio. Before completing this task students will be given detailed formal instruction on reflection and provided with examples of reflective writing. The reason the formal instruction occurs at this stage is that this piece of reflection will be included with the summative assessment. By assessing the reflection and providing instruction on reflective practice we are moving beyond students merely reflecting and teaching them to be reflective practitioners who take ownership of their own learning.

Conclusion

Our position is that reflective practice holds a critical key to effective student learning at law school and it should be taught in the first year of legal education to ensure, not only that students have the tools to cope with the indeterminate zone that is their legal education, but also as a means of teaching emotional intelligence so that law school graduates are able to cope with the “indeterminate zones” of legal practice. This paper represents the first step in an ongoing process that will eventually test the framework and report on its effectiveness.

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