

Learning to reflect in the first year of legal education: The key to surviving legal education and legal practice

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In this paper we ...

- Consider how law school can better prepare students for the stressors of legal education and legal practice.
- We also consider how reflective practice can be incorporated in the curriculum design of the first year of law and how it can be an effective first step in assisting students to develop the emotional intelligence necessary to survive the study and practice of law.

Paper outline

- First, we draw a stark picture of the reality of legal practice and legal education.
- Secondly, we argue that reflective practice can assist law students to develop their emotional intelligence and coping strategies.
- Thirdly, we consider how the introduction of reflective practice to first year law students is consistent with Kift's transition and engagement first year curriculum design principles.
- Finally, we establish a framework for embedding reflective practice in teaching and assessment practice in the first year of legal education.

The reality of legal practice and of law school

- The Brain and Mind Institute published research this year that found 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).
- The findings echo similar studies in the United States over the last 20 years (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.”
- Several commentators have suggested that law schools should respond to this crisis 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).

Legal 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 = 49.8 (Thampapillai, 2004)).
 - When mistakes occur or deadlines are missed there is temptation to be dishonest or otherwise act unethically.
 - The conflict driven nature of the legal profession has been said to condition lawyers to be aggressive, analytical and emotionally withdrawn (Murphy, 2008).

Legal education

- Intellectual excellence is rewarded at Law School 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.
- Law students are taught to put aside their own conscience in favour of impartial advocacy.
- To achieve this they have to 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).
- Legal education therefore does not currently foster emotional intelligence.

The 'indeterminate zone' of first year law

- Within a few months of entering law school, students begin to display significant symptoms of psychological distress:
 - students report being pressed for time and getting insufficient sleep,
 - depression and anxiety are also quite common,
 - students report extreme self-punishing attitudes, obsessive self-doubt, apathy, withdrawal from normal activities, fear, apprehension, a sense of impending doom and panic attacks (Segerstrom, 1996).

The 'indeterminate zone' of first year law

- The actual or perceived loss of control in the first year of law can lead to feelings of helplessness.
- Segerstrom's (US) study (1996) indicates that the highest scoring stressor for students is a lack of feedback.
- Other stressors leading to a state of helplessness include:
 - 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).

Emotional intelligence and reflective practice

- 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).
- 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.”
- For the purpose of this discussion we are working with the 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.

Reflective practice and emotional intelligence

- We propose that the development of law students'/ lawyers' emotional intelligence should begin in the first year of law school through teaching reflective practice.
- We see reflective practice as a key to providing the foundation for professional success and also to helping students cope with the uncertain and anxious learning environment of legal education (particularly in the first year).

Reflective practice and legal education

- Mack, Mullins, Sidford and Bamford (2002) note that there is surprisingly little in the literature “dealing specifically with (reflective practice) in legal training” (Mack et al., 2002, p. 223).
- Kift also notes that the literature generally has little regard “to the mechanics of such a process” (Kift, 1997, p. 71).
- Most of the literature to date focusses on the use of reflection in legal clinics or other practice oriented subjects.

Reflective practice and the first year of legal education

- We argue that reflective practice 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.
- 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.
- We believe that the first year of legal education is a critical time for law students to be introduced to the skill of reflective practice.



Law school - legal practice

- A key reason for our 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.



Supporting the first year design principle of *transition* by teaching reflective practice

- The transition principle 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).

Supporting the first year design principle of transition by teaching reflective practice

- 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.
- 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.
- Students will better transition to tertiary level study if their reflective practice skills help them to take an holistic view of their academic progress.
- 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.
- 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.



Supporting the first year design principle of *engagement* by teaching reflective practice

- The engagement principle = “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 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 Krause supports the use of self-reflection as a tool for achieving first year engagement (2006, p. 5).

Supporting the first year design principle of engagement by teaching reflective practice

- Reflective practice can support student engagement by teaching students to become self-directed, independent and life-long learners. Such students will have enhanced confidence and therefore a greater capacity to engage with their learning, and their overall experience, of the first year.
- Second, emotionally intelligent students who have organisational and higher order critical analysis skills will feel less helpless about what to do and about 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 which can help 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 which addresses some of the stressors of the law degree through collective and collaborative learning, and through the avenue of peer support.

A framework for teaching reflective practice in first year law

- The aim of our 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.

The aspects of the framework

- The framework involves four aspects:
 - 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.

ePortfolio

- The framework also 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 use of ePortfolio enables 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.

A possible approach in the first year program

- The model described here 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.
- 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.

Initial reflective activity

- 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.
- This first reflective exercise acknowledges and places importance on students' own values, conscience and personal beliefs.
- 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!)

Second reflective task

- 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.
- 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.

Third reflective task

- 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.

Fourth reflective task

- 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

- Reflective practice should be taught in the first year of legal education.
- Students need the tools to cope with the indeterminate zone that is their legal education.
- Students also need to develop their emotional intelligence so that they are able to cope with the 'indeterminate zone' of legal practice.

