

# STUDENTS DESIGNING ROLE-PLAYS: BUILDING EMPATHY IN LAW STUDENTS?

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## ABSTRACT

This paper explores the potential pedagogical benefits for law students associated with students' design of, and participation in, role-play as a means of developing empathy in students studying legal negotiation. Based on reflections from two teachers regarding the experience of students designing role-plays that were 'acted out' by peer groups of students, the authors speculate upon the potential of this learning and teaching strategy to build empathy in law students. The authors' speculations are based upon the experimental work of Daniel Druckman and Noam Ebner. This research found that, in some circumstances, students who had designed role-plays learned more than students who had acted out the role-plays. In addition, Druckman and Ebner found that student motivation and interest was increased and their negotiation skills were developed. The enhancement to student learning included improved student understanding of the concepts (both in the short term and in the longer term), as well as increased student motivation and interest in design activities. In this paper, the authors canvass the development of non-adversarial orientations to legal practice. They argue that empathy and emotion are important components of skills in legal negotiation and that student participation in the design and playing out of role-plays may contribute to improved empathy for future clients. The paper also explores the importance of derole-ing and debriefing negotiation role-plays and connecting students' learning from role-play activity, including design activities, to their development of empathy in negotiation. In order to test the possible benefits of students designing and playing out role-plays the authors suggest a research methodology for testing improved empathy in law students.

## I. INTRODUCTION

The teaching of negotiation is an important area of study in a variety of disciplines. Negotiation is particularly of interest in the education of lawyers because much of the practice of modern-day lawyers includes engagement with negotiation.<sup>1</sup> Lawyers have always been involved in negotiating their clients' best interests as part of their role as a legal representative. However, in recent times, due to the rise of alternative or appropriate dispute resolution (ADR) in our civil system, lawyers are now often engaged in a variety of processes prior to litigation that include the need to negotiate on their client's behalf, such as in mediation or settlement conferences. This privileging of negotiated settlements in our justice system has been incremental but this approach has gained significant momentum in the last decade. An increase in compulsory pre-

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1 Melissa Conley-Tyler and Naomi Cukier, 'Nine Lessons for Teaching Negotiation Skills' (2005) 15 *Legal Education Review* 61.

litigation schemes in legislation, a focus upon case management in courts<sup>2</sup> whereby lawyers are generally required to engage in mediation and settlement conferences prior to the hearing of a matter, and policy initiatives that fund the expansion of ADR programs<sup>3</sup> contribute to the importance of teaching prospective lawyers negotiation skills.

Recent research by Melissa Conley-Tyler and Naomi Cukier<sup>4</sup> identified the range of ways that negotiation can be taught to legal students. The work of Tom Fisher et al establishes that the teaching of negotiation, and ADR more generally, can shift the attitudes of law students to the use of ADR in legal practice.<sup>5</sup> It would appear that role-plays are one of the major strategies utilised to teach negotiation skills not only in law subjects but also in teaching negotiation to students in a range of disciplines<sup>6</sup> including management, social science and international studies students. In this paper, the authors explore the learning and teaching strategy of not only playing out role-plays in order to gain better negotiation skills, but also the design of the role-play scenarios by students. The authors draw upon the recent research of Daniel Druckman and Noam Ebner<sup>7</sup> that established the pedagogical advantages of this approach to learning about negotiation. This paper is based upon teaching reflections<sup>8</sup> arising from the use of the Druckman and Ebner approach. Recently, the authors have trialed the Druckman and Ebner approach in their law classes and reflections on these trials have led to a number of research agendas being identified.<sup>9</sup> In this, we discuss the potential of the use of students designing role-plays to build a law student's empathy with future clients. The authors acknowledge that reflection regarding the possible improvements to students' empathy with clients is speculative in nature and requires research. The authors therefore outline research methodologies that may provide evidence of an

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- 2 See, for an example of pre-litigation legislation: *Owners Corporation Act 2006* (Vic) s 153(3); *Family Law Act 1975* (Cth) s 60I. For a discussion of the use of ADR in Victorian courts as a case management option, see Victorian Law Reform Commission (VLRC), *Civil Justice Review*, Report 14 (2008) ch 4.
  - 3 The most recent policy initiative is a review of the federal system to incorporate the greater use of ADR: see National Alternative Dispute Resolution Advisory Council (NADRAC), *Alternative Dispute Resolution in the Civil Justice System: Issues Paper* (2009). Recently in Victoria, ADR increases in programs were announced: Department of Justice, Victoria, Attorney-General's Justice Statement 2 (2008) 9.
  - 4 Conley-Tyler and Cukier, above n 1.
  - 5 Tom Fisher, Judy Gutman and Erika Martens, 'Why Teach ADR to Law Students Part 2: An Empirical Survey' (2007) 17 *Legal Education Review* 97. For a literature review of the teaching of ADR in law schools, see Judy Gutman, Tom Fisher and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students Part 1: Past and Current Practices and Some Unanswered Questions' (2006) 16 *Legal Education Review* 125.
  - 6 Role-plays are the signature pedagogy in this area: see Conley-Tyler and Cukier, above n 1. Carrie Menkel-Meadow advocates for lawyers to recognise the value of interdisciplinary approaches to negotiation: Carrie Menkel-Meadow, 'Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education' (2001) 6 *Harvard Negotiation Law Review* 97, 106.
  - 7 Daniel Druckman and Noam Ebner, 'Onstage or Behind the Scenes? Relative Learning Benefits of Simulation Role-play or Design' (2008) 39 *Simulation and Gaming* 465.
  - 8 The authors used the approach of students designing role-plays in their law classes. They differed in their approach from Druckman and Ebner by adapting the task of designing the role-plays to meet their specific teaching contexts. For example, the first-named author altered the learning task to an approach where the class collectively designed the role-play, with students later breaking into groups to role-play the collectively generated design. The second-named author provided students with newspaper articles and asked the students to design the role-play based on the articles, thus providing a specific context for the design. These classroom adaptations, together with reflection and discussion, led the authors to speculate regarding the potential value of designing role-plays to build law students' empathy with clients.
  - 9 One of these research agendas, not discussed in detail in this paper, is the use of the Druckman and Ebner approach in the online environment. Ethics clearance was sought and granted from RMIT for this research project.

improvement in law students' empathy for clients through participation in designing role-plays and through debriefing the experience afterwards.

In the following section of this paper, the authors will canvass the value of law students understanding negotiation and the kinds of practices that might promote a non-adversarial orientation in negotiation and ADR options more generally. The next section of the paper will discuss in detail the recent work of Druckman and Ebner in researching the pedagogical advantages of students designing role-plays to learn about negotiation. The authors then speculate regarding the value of designing role-plays in developing empathy in students. The authors then discuss the importance of derole-ing and debriefing in role-plays and the potential for this strategy to be used in conjunction with the designing role-play approach to build empathy for clients in law students. The final section of the paper discusses research methodologies to test the effectiveness of designing role-plays in building empathy in law students for future clients and also canvasses an approach to test whether derole-ing and debriefing role-plays adds to student learning in this context.

## II. LAW STUDENTS AND THE STUDY OF NEGOTIATION

Knowledge and understanding of negotiation theory and practice is an essential tool for lawyers, and not only because disputes are most commonly settled by negotiation prior to entering the courtroom.<sup>10</sup> A range of non-adversarial options to litigation are also now available and often promoted through government legislation as ways to improve decision-making and access to justice, as well as to provide quicker and more cost-effective solutions for parties in dispute.<sup>11</sup> In addition, and in response to the development of these non-adversarial options, a cultural change in legal practice is being increasingly called for and changes are suggested for legal education.<sup>12</sup> Julie Macfarlane identifies this as a shift in the priorities for lawyers' practice. This shift 'catapults the self-conscious development of negotiation skills, which are evaluated by their effectiveness rather than justified by their habitual character, up the hierarchy of lawyerly skills and capacities.'<sup>13</sup> Despite the external requirements for lawyers with a wider array of skills, the legal culture has arguably been relatively slow in changing.<sup>14</sup>

The need to move lawyers away from zealous advocacy and toward the settlement focus that Macfarlane describes as characteristic of the 'new lawyer' is recognised in some Australian law schools where teaching of negotiation and other dispute resolution skills is becoming more widespread, especially due to State and federal government focus on dispute resolution

10 For example, Maxwell Fulton cites literature on litigation as regularly suggesting that 90 to 95 per cent of disputes where court proceedings are commenced are 'abandoned, withdrawn or settled before adjudication by a court is necessary': Maxwell Fulton, *Commercial Alternative Dispute Resolution* (1989) 14. In the Victorian jurisdiction, the VLRC has recently suggested that there is a need to research whether there has been a reduction of trials due to ADR or other factors in Victoria: VLRC, above n 2, 66-7. A reduction in trials has been speculated upon by some commentators in Australia: see, eg, Geoffrey Davies, 'Civil Justice Reform: Some Common Problems, Some Possible Solutions' (2006) 16 *Journal of Judicial Administration* 5. Negotiation has been identified in the competency standards for entry level lawyers: Australasian Professional Legal Education Council, *Competency Standards for Entry Level Lawyers* (2000) 20.

11 See generally, regarding developments in dispute resolution options: Tania Sourdin, *Alternative Dispute Resolution* (3<sup>rd</sup> ed, 2008). For a discussion of developments in therapeutic jurisprudence, problem solving courts, restorative justice, preventative law and legal education in Australia, see Michael King, Arie Frieberg, Becky Batagol and Ross Hyams, *Non-Adversarial Justice* (2009).

12 Michael King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' (2008) 32 *Melbourne University Law Review* 1096.

13 Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (2008) 111. Notably, Macfarlane argues that a change to lawyers' culture does not require a paradigm change but is rather an evolution of practice: at 96.

14 *Ibid* 75.

options.<sup>15</sup> This may be effecting a change in the student culture. The research of Tom Fisher et al describes the assessment of attitudes of law students before and after undertaking a compulsory dispute resolution unit in the first year of their law studies. Through survey data, it was shown that students experienced significant changes in moving from more adversarial to more collaborative attitudes. The authors suggest that a compulsory unit in dispute resolution (which includes study of negotiation) is an important first step to assist changes in attitude.<sup>16</sup> Such changes in attitude, as well as understanding of theory and skills conveyed through students' education in negotiation and dispute resolution skills, may consequently influence the dominant legal culture. This research demonstrates that students who learn the theory and practice of negotiation and dispute resolution are influenced to shift their attitudes, at least immediately after their studies.<sup>17</sup>

If law schools propose to teach negotiation, and aligned processes such as mediation, in a more comprehensive way to inform the next generation of lawyers, they will need to make that learning effective.<sup>18</sup> Students will need to gain both a theoretical and a practical understanding of negotiation. In their review of the recent literature in negotiation training, and in recognition of the upsurge of training available over the last decades, Conley-Tyler and Cukier<sup>19</sup> make nine recommendations. Specific recommendations that apply to the topic of this article include that students require learning from theory as well as experience, the significance of a rich review of negotiation experience, and the need for role-plays to be credible, relevant and contextual.<sup>20</sup> In essence, the authors suggest that a broad array of teaching techniques will assist students to maximise learning, rather than a focus on theory at the expense of practice, or the reverse. They further emphasise the significance of review and debriefing, an area that will be explored later in this article.

In exploring ways to ensure successful teaching of negotiation, Melissa Nelken reflects that effective teaching may usefully follow the tenets of the negotiation process. The negotiation class can be compared to a multi-party negotiation and she suggests 'the more the way in which one teaches models what one teaches, the more deeply the lessons will be learned.'<sup>21</sup> Essentially, she suggests that such teaching may lead to learning characterised by deeper listening, understanding of each other's perspectives and the desire to collaborate and move flexibly according to the needs of the parties. Nelken encourages both teachers and learners to take risks in the learning process and engage in a process that is non-linear, chaotic and uncertain—the same characteristics which often feature in negotiation.

### III. STUDENTS DESIGNING ROLE-PLAYS

One area which may contribute to more effective learning in negotiation is the student design of role-plays. Conley-Tyler and Cukier suggest that role-plays need to contain sufficient detail, context and credibility to engage students and enable them to perform in roles that truly simulate real-life situations. They propose that one way to achieve this is to encourage students to design their own role-plays.<sup>22</sup> This approach to learning has been extensively explored by Druckman and Ebner in their recent research.

15 Kathy Douglas, 'Shaping the Future: The Discourses of ADR and Legal Education' (2008) 8(1) *QUT Law and Justice Journal* 138. Macfarlane argues that legal education is an important site for change to lawyers' traditional 'adversarial' practices: *ibid* 223-4.

16 Fisher et al, above n 5.

17 *Ibid*.

18 The meaning of effective negotiation training is debatable according to the literature: Hal Movius, 'The Effectiveness of Negotiation Training' (2008) 24 *Negotiation Journal* 509.

19 Conley-Tyler and Cukier, above n 1.

20 *Ibid* 67.

21 Melissa Nelken, 'Negotiating Classroom Process: Lessons from Adult Learning' (2009) 25 *Negotiation Journal* 190.

22 Conley-Tyler and Cukier, above n 1, 67.

Their experiment in comparing learning for designers and role-players suggests that involvement in simulation design enhances learning and that designers learn more about the concepts involved in their simulation or role-play than those who participate in it. As the designers develop the role-play, the process ‘encourages designers to first, view the system from above, and second, to work out the details (including role definitions and assignments) for play—thereby capturing Crookall’s features of creativity, involvement, and concreteness’.<sup>23</sup> It seems that familiarity with the ‘conceptual map’ that is required for role-play design may require greater understanding of the theoretical aspects which contribute to this map. Further, when students develop practical ways to induce concepts in a role-play setting, this may also require greater understanding and implementation than participation in a role-play simulation where the design work has been completed by teaching staff or through the use of role-plays available from other sources.

In order to explore the influence of role-play design on the learning of negotiation concepts, Druckman and Ebner developed a comparative study in two different locations, Australia and Israel. They developed four hypotheses which the study was designed to test:

1. The design process increases short-term concept learning more than role-playing.
2. The design process increases understanding of the way the concepts relate to each other more than role-playing.
3. Role-players retain the same amount of learning over time as do game designers.
4. Role-playing produces greater motivation and interest than game designing.<sup>24</sup>

Students were randomly allocated to two conditions, designer or role-player, after attending a lecture on three negotiating concepts—alternatives, time pressure and power. In the Australian study, there was also a lecture-only control condition.<sup>25</sup>

The designers were given the task of deciding on the issue, role, history and current situation as well as outlining procedures and agenda. They also provided confidential fact sheets for each party. It was emphasised that the main purpose of the role-play design was to facilitate learning about the three concepts in the lecture. The scenarios developed by the designers were varied and creative and used a wide range of initiatives to emphasise learning of the three concepts. The role-players were assigned roles based on the scenarios developed by the designers. They were given 25 minutes to familiarise themselves with the information, prepare and develop strategy, and then 35 minutes to perform the roles. Although the aim was to negotiate to agreement on some or all of the issues or to reach deadlock, students were advised that the aim was not to assess their negotiation skills but to learn the three concepts.

Role-players and designers were then assessed on their learning through a combination of multiple-choice and open-ended questions. The questions were designed to address the hypotheses by assessing students’ evaluation of their own learning through a Likert scale of forced choice questions, as well as open-ended questions. The assessment was also performed a week later in order to assess longer-term learning. This retention assessment was followed by a debriefing session.<sup>26</sup>

The results supported the hypotheses.

1. The design process increases short-term concept learning more than role-playing. Fifteen of the 16 forced-choice questions favour designers in terms of direction and nine of the 16 questions are statistically significant (56%). The support is not so clear in the open-ended questions.<sup>27</sup>

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23 Druckman and Ebner, above n 7, 469.

24 Ibid 471.

25 Ibid 472.

26 Ibid 475-6.

27 Ibid 487.

2. The design process increases understanding of the way the concepts relate to each other more than role-playing. Significant differences were demonstrated in both forced-choice and open-ended questions.<sup>28</sup>
3. Role-players retain the same amount of learning over time as do game designers. Answers to all of the retention questions favoured designers. Eleven of the questions were statistically significant (70%).<sup>29</sup> Druckman and Ebner go on to discuss retention effects and validity and the reason for choosing the relatively short retention period of one week.
4. Role-playing produces greater motivation and interest than game designing. Again, all of the questions addressing motivation favoured designers and nine of the 16 were statistically significant. Designers thus seem to learn more and to be more motivated than role-players.<sup>30</sup>

Druckman and Ebner suggest that their research supports the inclusion of role-play design in teaching negotiation to enhance understanding of negotiation. Their results also challenge the belief that role-playing is the most effective learning task in negotiation training. Their research demonstrates that role-players show less understanding of the concepts, less creativity in their responses to relations among the concepts and less motivation than role-play designers. They recommend that a combination of role-playing and design may be used in tandem, either sequentially or for different purposes, such as using design tasks to enhance conceptual learning and role-play to develop implementation of concepts. They further recommend that more research is required to establish the most effective ways to combine tasks and to investigate the effect of debriefing.<sup>31</sup> In the discussion in this paper, the authors focus upon the building of law students' empathy with clients and the potential for designing role-plays to improve student empathy.

#### IV. EMPATHY

One area that Druckman and Ebner do not explicitly address in their study is the empathy that students may experience by developing their own roles. Just as designing role-plays offers the potential for deeper conceptual understanding, it may also enable students to experience greater empathy<sup>32</sup> for the characters in their role-plays through a more thorough consideration of the situation, context, motivations and experiences of the characters whose roles they design.

The notion of empathy and emotional expression is a challenging one in legal practice. Michael King has recently highlighted the need for Australian lawyers to engage with the issue of emotion in their practice.<sup>33</sup> Traditionally, emotion and reason have been seen as largely incompatible in the legal culture.<sup>34</sup> Lynne Henderson suggests that 'the values of legality make it especially difficult for lawyers and legal thinkers to accept that emotion and reason are interconnected rather than separated'.<sup>35</sup> In contrast, postmodernist<sup>36</sup> and therapeutic

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid 488.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid 491.

<sup>32</sup> The discussion of empathy in this article is focused upon cognitive empathy that is 'intellectually taking the perspective of another, also known as perspective taking': Dorothy Della Noce, 'Seeing Theory in Practice: An Analysis of Empathy in Mediation' (1999) 15 *Negotiation Journal* 271, 280.

<sup>33</sup> King, above n 12, 1122.

<sup>34</sup> Erin Ryan, 'The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation' (2005) 10 *Harvard Negotiation Law Review* 231.

<sup>35</sup> Lynne Henderson, 'The Dialogue of Heart and Head' (1988) 10 *Cardozo Law Review* 124.

<sup>36</sup> Susan Daicoff, 'Law as a Healing Profession: The "Comprehensive Law Movement"' (2006) 6 *Pepperdine Dispute Resolution Law Journal* 1; Carrie Menkel-Meadow, 'The Trouble with the Adversarial System in a Postmodern, Multicultural World' (1996) 38 *William and Mary Law Review* 5.

jurisprudence<sup>37</sup> encourage lawyers to move beyond the legal problem presented by a particular case or disputant and consider the interests, needs, emotions and specific context of their client or the other disputant to provide an individualised understanding and a particularised response. Arie Freiberg describes a shift in emphasis in legal curriculum so that law students ‘understand that cases involve real people with psychological and emotional needs in addition to their legal needs’.<sup>38</sup>

Greater emphasis on teaching collaborative and non-adversarial practices, such as negotiation and a range of other dispute resolution skills, may enable a fuller understanding of the interaction of the substance or content of a dispute with the ideals, values and emotions of those who are involved. Consideration of the perspective of the other party is a significant aspect of preparation in negotiation.<sup>39</sup> In order to address these broader aspects of a dispute, lawyers require training at conceptual and experiential levels. The development of empathy relies on the capacity to imagine the situation of another person. The authors argue that the imaginative tasks of designing and performing role-plays offer the opportunity for students to develop empathy towards clients and parties in simulated scenarios as well as an understanding of the possible deeper dimensions of disputants’ experiences.<sup>40</sup>

## V. DEBRIEFING

In Druckman and Ebner’s research project, they acknowledge the absence of a debriefing task during the learning process and suggest that research into the contribution of debriefing to learning in negotiation is required.<sup>41</sup> Their decision to postpone the debriefing was a methodological strategy to eliminate its potential influence on their results rather than a pedagogical choice. In the context of this paper’s discussion regarding learning and teaching strategies that may build empathy in law students, it would be useful to explore whether debriefing contributes to an improved awareness on the part of students regarding this issue.

Debriefing appears to be a fundamental strategy in experiential learning and an essential element of role-playing. Although David Crookall identified a neglect in the literature and research of this crucial element of simulation in 1992, the literature is still sparse in this area.<sup>42</sup> Linda Lederman provides a simple definition:

‘debriefing is a process in which people who have had an experience are led through a purposive discussion of that experience. The debriefing process is based on two assumptions. Firstly, that

37 The philosophy of therapeutic jurisprudence is to focus upon the impact of the law on the emotional life and psychological wellbeing of those affected by decisions of our justice system: Bruce Winick and David Wexler (eds), *Judging in a Therapeutic Key* (2003) 7. This movement also advocates for changes in legal education to value the emotional dimensions of practice: Bruce Winick, ‘Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards’ (2005) 17 *St Thomas Law Review* 429.

38 Arie Freiberg, ‘Non-adversarial Approaches to Criminal Justice’ (2007) 16 *Journal of Judicial Administration* 221. See also King et al, above n 11, ch 7.

39 Bruce Patton, ‘Negotiation’ in Michael L Moffitt and Robert C Bordone (eds), *The Handbook of Dispute Resolution* (2005) 279.

40 The creative task of developing the scenario has resonance with the development of empathy through legal storytelling and law and literature, a theoretical area well established in law and legal education: Richard Delgado, ‘Storytelling for Oppositionists and Others: A Plea for Narrative’ (1989) 87 *Michigan Law Review* 2411. This approach can be used in teaching law to help students to develop empathy for the stories of clients: Amnon Reichman, ‘Law, Literature, and Empathy: Between Withholding and Reserving Judgment’ (2006) 56 *Journal of Legal Education* 296. This approach has been used in a variety of jurisdictions and in diverse ways in the classroom: eg, Lisa Sarmas, ‘Storytelling and the Law: A Case Study of *Louth v Diprose*’ (1994) 19 *Melbourne University Law Review* 701.

41 Ibid 490-1.

42 David Crookall, ‘Editorial: Debriefing’ (1992) 23 *Simulation and Gaming* 141.

the experience of participation has affected the participants in some meaningful way. Secondly, that a processing (usually in the form of a discussion) of that experience is necessary to provide insight into that experience and its impact.<sup>43</sup>

The literature in the area derives from three streams: military operations and traumatic incidents, psychological studies involving subject deception, and experiential learning.<sup>44</sup> Vincent Peters and Geert Vissers see that there are two elements that are required in debriefing for experiential learning, the stream which applies in teaching negotiation. The participants need to ‘cool down’ to be able to leave their roles.<sup>45</sup> Debriefing also provides an opportunity for enhancing learning.<sup>46</sup> This learning may include a number of aspects:

- Identification of the different perceptions and attitudes that have occurred.
- Linking the exercise to specific theory or content and skill-building techniques.
- Development of a common set of experiences for further thought.
- Opportunity to receive feedback on the nature of one’s involvement, behaviour and decision-making.
- Re-establishment of the desired classroom climate, such as regaining trust, comfort and purposefulness.<sup>47</sup>

These aspects may be explored in a number of ways in a debriefing session—through class discussion, in small groups or individually, through written exercises and journals. Kristina Dreifuferst emphasises five attributes of debriefing which are useful to consider for inclusion in a session: reflection, emotion, reception (openness to feedback), integration into a conceptual framework and assimilation or transfer to professional situations.<sup>48</sup> She also emphasises the necessity to set an atmosphere in which students feel comfortable to participate in this activity.<sup>49</sup> Arguably, debriefing role-plays would be an important aspect of engendering specific learning outcomes in law students, such as developing a less adversarial approach to legal disputes and, particularly, developing empathy for clients in law students. In the next section of the paper, the authors discuss ways to research the development of empathy in law students through the learning and teaching strategy of designing and debriefing role-plays.

## VI. RESEARCH OPTIONS

In this paper, the authors have raised the potential of law students designing role-plays as a learning and teaching strategy leading to the development of an increased empathy for clients. The experience of designing and playing out role-plays may lead to a better understanding of the emotional dimensions of legal disputes and assist in building empathy with clients. However, we acknowledge that these identified opportunities are speculative in nature. Therefore, the authors suggest a research methodology that may shed light on the benefits of this learning

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43 Linda Lederman, ‘Debriefing: Towards a Systematic Assessment of Theory and Practice’ (1992) 23 *Simulation and Gaming* 146.

44 Vincent Peters and Geert Vissers, ‘A Simple Classification Model for Debriefing Simulation Games’ (2004) 35(1) *Simulation and Gaming* 71.

45 Stephen Weiss sees that ‘deroling addresses the affective dimension of the experience’. He suggests that explicit discussion of their role reminds students of the impact of their behaviour in negotiation, and addresses any negative emotion that may obstruct learning about other aspects of the experience: Stephen Weiss, ‘Teaching the Cultural Aspects of Negotiation: A Range of Experiential Techniques’ (2003) 27 *Journal of Management Education* 117.

46 Nelken, above n 21, 74.

47 Don Warrick, Phillip Hunsaker, Curtis Cook and Steve Altman, ‘Debriefing Experiential Learning Exercises’ (1979) 1 *Journal of Experiential Learning and Simulation* 95.

48 Kristina Dreifuferst, ‘The Essentials of Debriefing in Simulation Learning: A Concept Analysis’ (2009) 30 *Nursing Education Perspectives* 111.

49 *Ibid* 112.



and teaching strategy.<sup>50</sup> One possible methodology, similar to the approach used in the work of Fisher et al, would be to test the students prior to taking part in the design of role-plays and, then, to re-test later. As indicated previously in this paper, in the work of Fisher et al, a survey was used to identify whether the experience of a dispute resolution course brought about attitudinal change in law students. The survey was divided into five main areas: (i) importance of ADR; (ii) lawyer client interaction; (iii) focus of approach; (iv) negotiating behaviour; and (v) lawyer's responsibility.<sup>51</sup> In this research, a series of statements were given to students and the students responded using a Likert scale. Students were later re-tested to see if there were changes in students' attitudes in the nominated five areas. One shortcoming of the Fisher et al research is that the research did not specifically test which learning and teaching strategies generated the identified attitudinal changes. It is not clear if the experience of lectures, role-playing, debriefing or other learning and teaching strategies brought about the changes in attitudes in the students or whether the changes were the result of the experience of a collection of learning and teaching strategies. The value of the Druckman and Ebner research is that the study compares various learning and teaching strategies.

The authors propose that in future research relating to students designing role-plays and the building of empathy in law students a similar survey could be used to test changes in the development of empathy with clients. This research could present a series of statements dealing with the issue of empathy and test attitudes using a Likert scale. After the design of the role-plays students could again be tested for the degree to which they empathise with a client. Thus it could be demonstrated whether the design of role-plays had an impact upon student empathy for a client. The authors acknowledge that different students would have differing degrees of empathy for future clients. However, notably, this methodology is directed at testing for a change in empathy that flows from the experience of designing role-plays rather than for testing the degree of empathy alone.

Additionally, specific learning and teaching strategies can also be tracked for their impact. For example, in order to check whether designing or playing out of the role-plays has the intended effect of building empathy with clients, the research approach of Druckman and Ebner could be adopted. Students could be divided into designers and role-players and separately tested regarding empathy both prior to and post engagement with the learning task. To test regarding the impact of derole-ing and debriefing on the building of empathy in students for clients, the research described in this paper could include a group that was tested after designing the role-plays or playing out the role-plays and tested again after derole-ing and debriefing. Thus it would be possible to test whether derole-ing and debriefing further added to the building of empathy with clients.

## VII. CONCLUSION

The work of Druckman and Ebner provides important data about the benefits of students designing role-plays. In this paper the authors have canvassed the rise of non-adversarial practice in law and explored the potential benefit of law students engaging in designing role-plays to increase law students' empathy with clients. The authors have also speculated regarding the importance of derole-ing and debriefing in building empathy. In order to test these speculations, the authors have suggested a research methodology that would study the impact of designing role-plays on the building of empathy in law students. In future, the authors plan to undertake this research. This discussion is provided to engender debate about the wider possibilities of the Druckman and Ebner research in legal negotiation teaching.

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50 Fisher et al, above n 5.

51 Ibid.