

life for practising lawyers. It is often seen as playing a more central and strategic role in the life of the profession than tertiary studies or practical legal training. More is expected of CPD but we have an underdeveloped theoretical base to enable us to deepen our understanding of it and develop our strategy for it in a logical and reliable way. We have high and stringent expectations of pre-CPD education. With CPD, we are more likely to expect and accept well-intentioned, intelligent amateurism.

We should not assume that non-formal CPD should simply mirror the education which precedes it. Any theoretical base for CPD must take into account a number of differences. Unlike students in primary, secondary and tertiary education, lawyers are engaged generally in full-time work. They are adult learners and there is considerable adult learning theory which suggests that adults learn to meet particular needs, rather than to store up a body of knowledge and skills. Most structured CPD is about the law and the practice of the law but there is considerable evidence that there are at least equal and probably greater needs for education in areas such as communications, client management, practice management and personal management. The areas of work for many lawyers are contracting and, as markets are lost, lawyers are generally not being trained either to retain them or to refresh themselves in order to cope with the change and to open up to new opportunities.

A literature review, to begin the construction of a conceptual framework for CPD, will need an organising principle. The review will lead into a number of areas and there needs to be a way to limit the literature review and organise the material. The suggested way is to put practi-

tioners and their work contexts at the centre of the review. Thus, the first step would be to examine what the literature says about lawyers' understandings of their work contexts, their learning needs and how these are currently met, or not. If the literature says little about these matters, some tentative extrapolations would be made from work on other professional fields and then tested. This approach is based on solid adult and professional educational theory and on a broad notion of adult education and learning.

The review would then move on to related areas which might well have relevant concepts, theories or approaches which could be incorporated into the framework. The range is wide and might include learning theory, the professions and professionalism, approaches to providing education, skills in legal practice, and management and equality.

When lawyers engage in CPD, all that they are doing can be 'explained' in theory—or at least we hope. We can draw from the literature those theories which seem most apposite and then construct them into a framework which best suits—just as another framework would best suit the CPD of chemists or of agronomists. Such a framework, even the beginnings of one, should assist better practice in CPD by making it more theory-based and thus more professional and less intuitive.

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GENDER AND RACE ISSUES

What difference does difference make? The challenge for legal education

E Mertz with W Njogu & S Gooding
48 *J Legal Educ* 1, 1998, pp 1–87

In recent years there has been a great deal of debate about law school education, with serious questions raised about whether the law school classroom affords an equal-opportunity learning experience for all students. This article presents the first quantitative results from a study of law school teaching conducted since 1990 which involved observational research in eight law schools across the country.

The results reveal a complex patterning in which many aspects of classroom context must be considered, including race and gender composition of the classes, class sizes, teacher profiles, predominant discourse styles in the classrooms, and characteristics of the law schools. The model for understanding law school teaching that emerges from this work can be characterised as one that stresses the importance of local cultures in law schools and classrooms in creating inclusive learning environments. When those local cultures are analysed closely, it is possible to discern patterns of empowerment and disempowerment that have wider social and structural dimensions. The resulting model of classroom interactions is one in which patterned features of social and institutional context combine with discourse structures to create more and less inclusive—and hence democratic—environments for learning.

Overall, the findings argue for heightened attention to the effects of complicated contextual factors, in-

cluding variations among law schools according to status, region, and law school culture and to the intertwined effects of school, classroom, discourse, class content, teacher, and student profiles on the interactions in law school classes. This is the first observational research to examine quantitatively the effects of race in law school training. It is also the first to move beyond counting numbers of student turns in class to look at classroom discourse in terms of time, type of dialogue, and other variables. Furthermore, this is the first observational study comparing classrooms across a diverse range of law schools and including such diversity among teachers.

While the relationship between classroom participation and students' overall school experience is largely undocumented to date, there are indications that events in the classroom can affect students' self-esteem, performance and sense of inclusion in the wider communities and the profession into which they are purportedly being socialised.

Although earlier generations of women students in law school appear to have performed as well as or better than their male counterparts, several recent studies report a changing pattern in which women in some schools no longer fare as well as men who enter those law schools with similar credentials.

There is much scarcer evidence on the effects of race and class on inclusion, but the accounts that exist indicate still less success in integrating minority and working-class people into the legal profession and there is reason for concern that their law school experience might be contributing to this problem.

The eight different schools in which data were collected in this study ranged across the status hierarchy of law schools, with two in the 'elite' category, one in the 'prestige' category, two 'regional', two 'local' and one night-school class. Five of the teachers were men, and three were women, two were teachers of colour, and six were white. Data collection involved taping and ethnographically coding the interactions during the entire first semester of the Contracts classes. The tapes were subsequently transcribed, coded and analysed both quantitatively and qualitatively.

In addition to the issues raised in studies of other kinds of schooling, studies of law school education have grappled with the distinctive characteristics of law teaching. Perhaps the most prominent debate focuses on the 'Socratic method', which in recent years has been criticised as differentially affecting and excluding students of colour and white women. There has been some speculation about the differential use and utility of traditional teaching methods according to social class. There is also a growing literature examining the content of traditional law courses for gender or racial bias, as well as numerous anecdotal reports of the differential difficulties faced by women and by people of colour in the law school classroom. When we combine the law school results with those from studies in other educational settings, we can also begin to see a clustering of variables affecting classroom discourse through which we can examine these cross-currents empirically: numbers of turns in class taken by different students; time spent in speaking by different students and teachers; and the persistent issue of students' volunteering.

In this study class participation profiles are presented both in terms of numbers of turns and of how much time speakers had to talk. The data tend to confirm the findings of previous studies that male law students generally participate at greater rates than females. Adding mean times and turns to this picture of classroom participation even further complicates the overall view of gender aspects of classroom dynamics.

There have been indications from previous work that use of Socratic dialogue might have a differential impact on women students. Where school status and teaching style combine to create the most elite and heavily stylised Socratic classroom, women participate more in extended dialogue than shorter dialogue and dramatically less in volunteered dialogue than in called-on turns. If a class is going to use a Socratic style, a higher percentage of extended, structured exchanges might produce more egalitarian results than frequent interruptions of those exchanges for shorter interjection, perhaps volunteered.

There is a somewhat different participation profile by race from that of gender. It is clear that inclusiveness is not a uniform characteristic across different dimensions: a classroom can be quite inclusive along lines of gender but not race and vice-versa. Somewhat different issues emerge when race is examined. Students of colour participate relatively well in classes with teachers of colour in both large and small classrooms in elite schools. The elite setting does not seem to interfere with that positive effect.

In this study race, gender and school status all matter, but they have their effect in complex interactions

that require careful contextual analysis. The social differences among students and classrooms affect the interactions and learning that occur in law school classes in ways that can be characterised as 'underdeterminate': that is, gender and race are important, in some ways formative, but not completely determining aspects of classroom exchanges.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

The curriculum and teaching of property law in Australian law schools

L Griggs & R Snell

5 *Aust Property Law J* 1997, pp 213–226

In a rapidly changing university environment, how do Property Law teachers deliver a complex and important subject in a way that is interesting, cost effective and of practical relevance to both students and the community?

During first semester 1997 a total of 16 Australian law schools were approached to provide a course outline or a synopsis of their current Property Law course. Upon inspection, problems became apparent: in pursuit of coverage, there was a failure to adequately introduce students to the paradigm legal problem — the application of a relatively tightly organised set of facts to the infinitely varied circumstances of social and commercial life; a general coverage which leads to a superficial overview of the entire area; a failure to inculcate various practical skills such as client interviewing, the use of land title office documents, drafting, use of plain English, negotiating and mediation skills; a failure to develop research skills that will assist the students re-

solve any problem; an increasing volume of legislative and case-law material which renders it near impossible to obtain any satisfactory overview of the area; and the difficulties that students have in identifying with the subject matter.

In the pursuit of coverage, lecturers are forced to err on the side of providing an overview, a generalisation of the many varied topics that exist within the standard Property Law text. A generalist approach often leads to a superficial coverage of the whole spectrum of Property Law, leaving the students without a feel for any particular issue.

For those who may contemplate changing the Property Law curriculum, sources of advice or inspiration are rare. While texts on teaching and learning are replete with articles and ideas about techniques and conceptual approaches, the literature offers little insight. A different tack is to leave the content and structures of the curriculum relatively unchanged and seek change in the way students can tackle the subject. An example could be an approach which combines mastery learning with principles of reinforcement learning theory and computer based learning.

Approaches should fall clearly within the 'making learning possible' model of teaching, as opposed to the 'disseminating knowledge' model typified by current Property Law courses. The aim is to focus more on developing lifelong learning competence, including generic employment-related skills, rather than preparing a research elite.

One approach is to present the students with a complicated scenario which continues to unfold as they progress in the course. This approach is designed to acknowledge the mys-

tery and confusion of the subject, while encouraging students to investigate and discover Property Law. The mission of our intrepid investigators is to unwrap, explore and analyse the various threads from week to week. As the students' investigation continues they build up an assessable workbook or case file. In essence this would be adopting a problem-based learning methodology where a didactic lecturing approach would be replaced with students engaging in the dynamic solving of a series of problems. The problem-based learning method being contemplated would be more in line with its wider university meaning than an expansion upon the traditional law seminar problem.

The second approach, probably far more radical, is to dispense with the tyranny of a never-ending case list. Students would learn about Property Law via the mastery of a small number of key cases associated with learning modules designed to equip them with understanding of certain concepts and foundation skills for a property lawyer in the twenty-first century. Many of the issues raised in Property Law can be considered within the context of six cases. Importantly, this teaching method will allow for a fuller discussion of why the parties got to that dispute, the role of law in society in resolving disputes and the human cost involved in litigation. Furthermore, this could be done with a number of professional skills emphasised and would combine not only intellectual rigour but practical application.

As Property Law academics, we face difficult challenges. The subject generally falls part way through the degree, too far from the start to be something new and interesting, too far from the finish to be motivated by completion. Similarly students