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Justine Rogers

Faculty of Law and Justice. UNSW Sydney

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TEACHING LEGAL THEORY IN A CROWDED (AND UNCROWDED) CURRICULUM

JUSTINE ROGERS*

I INTRODUCTION

Most Australian law degrees include a course and sometimes courses in legal theory or jurisprudence. These courses occupy a distinct place in the law curriculum. They examine the theories developed by scholars to explain, critique, and guide change in law and legal institutions.¹ They invite students to step back from doctrinal detail and engage with foundational questions about law, justice, and power, and to interrogate the assumptions underlying legal concepts, practices and systems, and indeed the ‘foundational’ questions themselves.

This paper examines what it means to teach a legal theory course within the context of the ‘crowded curriculum’. The theme naturally invites a discussion of crowding or excess, as opposed to a course that is unhurried and spacious or one that offers the freedom to read, debate, deeply learn, and reflect. This paper argues, however, that another opposite condition also warrants attention. An ‘uncrowded’ curriculum may not always be experienced as spacious and generative; ‘uncrowded’ can feel thin, dislocated, or even deserted. In other words, an *uncrowded* curriculum may have negative or ambiguous effects, whereas a *crowded* curriculum can provide students with guidance and meaning, anchor the discipline, and confer a sense that such course is integral to the law degree and broader law school experience. Throughout this paper these different meanings of ‘crowding’ and ‘uncrowding’ are used and shown to operate across multiple levels: the place of legal theory within the law degree, the organisation of legal

* Associate Professor, Faculty of Law & Justice, UNSW Sydney, Australia. The author would like to thank Uma Rogers and Lara Fosbery for their research assistance, the two anonymous reviewers for their constructive comments, and the organisers of the 2025 UNSW Legal Education Conference, where a draft of this paper was presented. A generative AI tool (ChatGPT-5.3) was used to format the table featured in Part III C.

¹ Drawing on Sternlight’s definition of ‘theory’: Jean R Sternlight, ‘Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications’ (1995) 50 *University of Miami Law Review* 707, 717.

theory as a discipline, and the pedagogical experience of the classroom itself. This movement between levels is intentional, since institutional and disciplinary conditions shape how legal theory is taught and experienced.

The idea of a crowded curriculum has particular resonance for legal theory. Within the law degree, theory is often treated or experienced as marginal or peripheral, positioned at the edges of the curriculum rather than at its centre.² It is not a ‘Priestley 11’ mandatory subject in Australia;³ it is often taught at the end of the degree; and there appears to have been, at least overseas, a trend from compulsory to optional offerings.⁴ In this sense, legal theory may be regarded as isolated, or *uncrowded*. At the same time, legal theory courses are also often internally crowded. They are encumbered by an inherited canon as well as increased expectations of inclusivity, resulting in an overall sense of there being ‘too many topics and not enough time’. Traditional assessment practices, centred on the essay, and increasingly diverse student needs intensify pressures on both students and teachers. These pressures are further complicated by generational shifts in learning styles particularly among ‘Gen Z’ students (now comprising the majority of undergraduate and postgraduate cohorts).

Meanwhile, broader institutional pressures continue to reshape Australian legal education. Current debates concerning accreditation reform and the relationship between qualifying law degrees and Practical Legal Training (‘PLT’) increasingly emphasise practice readiness and the embedding of professional skills within the law degree. These developments risk adding further demands to already dense curricula, often without a corresponding consideration of how professional skills training relates to the intellectual and critical aims, content, and methods of legal theory, or how such elements might instead be understood as contributing to forms of professional identity and judgement.

These institutional developments intersect with, and are further complicated by, technological change. The growing presence of Generative Artificial Intelligence (GenAI) further reshapes this landscape, as it can both support and dramatically undermine the slow, effortful practices regarded as central to theoretical inquiry. As this paper demonstrates, these dynamics can and do coexist in a legal theory classroom. Legal theory courses may feel crowded with content, expectations, and technologies, while also feeling emptied of time and incentives for reflection, dialogue, and deep engagement.

² See below Part II for discussion.

³ The ‘Priestley 11’ are the 11 law subjects or ‘academic areas of knowledge’ required as a minimum for admission to the profession (named after Lancelot John Priestley who chaired the 1992 Uniform Admissions Committee that introduced them). The Priestley 11 list is set out in the Legal Profession Uniform Admission Rules 2015, Schedule 1.

⁴ See, for example, Hilaire Barnett and Dianna M Yach, ‘The Teaching of Jurisprudence and Legal Theory in British Universities and Polytechnics’ (1985) 5(2) *Legal Studies* 151, 153–4 (UK); and Friedmann’s observations in the 1950s that the majority of (US) classes were elective: Wolfgang Friedmann, ‘Vitalizing the Teaching of Jurisprudence’ (1952) 4(4) *Journal of Legal Education* 392, 392.

Despite these challenges, there is relatively little scholarship addressing how legal theory is taught, and how it might be taught differently. Crowe's observation, made more than a decade ago, that the literature on legal theory pedagogy remains sparse,⁵ continues to hold true. Building on this relatively small (but insightful) body of work, and drawing on my own experiences designing and teaching a legal theory course,⁶ this paper contributes to the scholarship by offering a framework for understanding 'crowding' in legal theory teaching. It also proposes strategies for creating conceptual and practical spaciousness in legal theory courses, with a particular focus on accommodating the current cohort of students. In doing so, the paper examines crowdedness on two levels - the discipline and the classroom - and through two distinct oppositional dynamics: crowded versus spacious, and crowded versus desolate.

As a brief note before proceeding, this article uses 'jurisprudence' where the writer being referenced has used it and otherwise adopts the term 'legal theory'. While 'jurisprudence' is often used to denote philosophical inquiry into the nature and validity of law, 'legal theory' is employed here to capture the plurality of methods and perspectives through which law is examined as a social, political, and historical practice. As used in this article, 'legal theory' functions as an umbrella term encompassing jurisprudence alongside critical, normative, and interdisciplinary approaches to law, including political, social and socio-legal theory concerned with justice, ethics, and power.⁷

The paper is structured as follows. Part II examines competing accounts of what legal theory is, why it is taught, and where it is positioned within the law degree, with reference to debates about legal theory as peripheral or otherwise central, or in this paper, whether it belongs to the curricular in-'crowd'. Part III identifies the main sources of curricular crowding and uncrowding at the classroom level, including the inherited canon, characteristics of the Gen Z cohort, pressures towards inclusivity, and assessment design. Part IV turns to responses found in the literature, particularly approaches that

⁵ Jonathan Crowe, 'Reasoning from the group up: some strategies for teaching theory to law students' (2011) 21 *Legal Education Review* 49, 49 – noting exceptions including: Charles Sampford, 'Teaching Theory in Substantive Subjects' in John Goldring, Charles Sampford and Ralph Simmonds (eds), *New Foundations in Legal Education* (Cavendish Publishing, 1998) 117; Charles Sampford and David Wood, 'Legal Theory and Legal Education: The Next Step' (1989) 10 *Legal Education Review* 107.

⁶ I convene and teach a legal theory strand at UNSW Law & Justice called *Theories of Law and Justice*. The course builds on the earlier design developed by Robert Shelley and Arthur Glass, with some of my subsequent revisions to the readings informed by the approach of Associate Professor Kevin Walton and colleagues at University of Sydney Law School.

⁷ For the argument that jurisprudence is a distinctly 'juristic' enterprise, with concerned with theorising law in ways that serve legal scholars and practitioners and support the wellbeing of law as a social practice, and not merely a branch of philosophy, see Roger Cotterrell, 'Why Jurisprudence Is Not Legal Philosophy' 5(1) *Jurisprudence* 41, 42. On Cotterrell's account, jurisprudence so understood largely corresponds to what is described in this article as 'legal theory', albeit with a more explicit emphasis on theory's orientation towards practice.

reconceptualise legal theory as a practice of inquiry, critique and worldmaking. Part V reflects on how these ideas inform or are found in the design and delivery of a legal theory course at UNSW, *Theories of Law and Justice*. The article concludes in Part VI by considering areas for further development in my course design and teaching practice, and the ongoing tensions involved in teaching legal theory effectively, within a curriculum that is, at the same time, crowded and uncrowded.

II WHAT IS LEGAL THEORY? WHY DO WE TEACH IT? AND 'WHERE' IS IT?

Before teaching, let alone reforming, a course, it is worth pausing to consider its purpose. Teachers in a particular subject area may assume that their own reasons for valuing a subject are self-evident or widely shared: for example, that legal theory is intrinsically interesting, or that it is uniquely valuable for cultivating such things as critical thinking, reflection, and intellectual independence.

The limited scholarship on legal theory pedagogy suggests that such assumptions cannot be taken for granted. Where legal theory teaching has been discussed, it is often characterised by ambiguity and an enduring tension regarding the discipline's purpose and status within the law degree. In his 1909 publication identifying the 'defects' of English jurisprudence courses, Australian legal theorist, Jethro Brown identified as the first defect 'the absence of any clear conception of the purposes which Jurisprudence should serve'.⁸ Writing also in the UK context, but a century later, Cotterrell observed that jurisprudence occupies a generally stable but ambiguous position in the legal curriculum. Although it is generally valued for its ability to offer 'something that other law school courses cannot or do not offer', what this 'something' is, and 'how important it is', remain far from clear.⁹

In the 1950s, Wolfgang Friedmann had observed that jurisprudence in American law schools was treated by lawyers and legal educators 'with a mixture of bewilderment and contempt',¹⁰ a characterisation that continues to resonate. The bewilderment reflects uncertainty about what legal theory is for, while the contempt seems to capture a perception of theory as being impractical or dispensable, and removed from the curricular 'crowd'. Four decades later, Coleman similarly reported that legal theory's place had come under 'attack' for its perceived lack of relevance to the future careers of law students.¹¹ He described how the growth of legal theory in American law schools had been variously explained by the following factors: elite-school mimicking; the migration of scholars trained in other disciplines into law faculties, where they then returned to their original intellectual

⁸ W Jethro Brown, 'Jurisprudence and Legal Education' (1909) 9 *Columbia Law Review* 238, 238–9.

⁹ Roger Cotterrell, 'Pandora's Box: Jurisprudence in Legal Education' (2000) 7(3) *International Journal of the Legal Profession* 179, 179.

¹⁰ Friedmann (n 4) 392.

¹¹ Jules L Coleman, 'Legal Theory and Practice' (1994) 83 *Georgetown Law Journal* 2579, 2579.

interests; law schools' indulgence of academic curiosity, with tacit professional support; and, 'perhaps the best explanation', the rise of legal realism, which itself necessitates engagement with knowledge drawn from multiple disciplines.¹²

While Coleman noted a view (one he did not share) that there was too much theory in the law degree,¹³ a countervailing view has long been present in debates about legal theory. This view asserts that legal theory is not an indulgence but an essential part of legal education. As indicated in the Introduction, legal theory is said to enable students to situate law within its wider social, moral, and political contexts, to reflect critically on law, legal practices and institutions, and, as explored later in this paper, to interrogate legal theory as a practice itself.

Cotterrell develops this defence further in his framing of the purpose of jurisprudence. He argues that jurisprudence is not concerned with pursuing abstract philosophical truth for its own sake, whether about the nature of law or the identification of its supposed 'essential' characteristics, but with cultivating juristic judgement (*prudencia*): the practical understanding, discretion and foresight required to sustain law as a social practice oriented towards 'justice and security'.¹⁴ Its purpose then is to serve those concerned with the 'well-being' of law, usually professionals, by supporting the wisdom and 'craft-skills' required to practise law in particular contexts.¹⁵

This defence of jurisprudence has deep roots. Writing in the same period as Friedmann, Miriam Rooney warned that the low status accorded to jurisprudence risked reducing law schools to 'technical trade schools' rather than sites of genuine, broad university education.¹⁶ The omission of jurisprudence altogether, she argued, was having 'a crippling effect on the all-around development of first-rate legal minds'.¹⁷ Friedmann similarly resisted this ambivalent and dismissive treatment of the discipline. Without jurisprudence, he said, lawyers risk becoming merely 'highly accomplished craftsmen' who are easily manipulated by corporate interests: 'With all that, the modern lawyer may become as much a highly accomplished craftsman as the modern engineer or soldier. He becomes a specialist and an obedient tool in the hands of the controlling master minds'.¹⁸

On Friedmann's account, jurisprudence fosters critical reflection on law and its ends, guarding against both complacency¹⁹ and compliancy in the face of injustice:

¹² Ibid 2581–5.

¹³ Ibid 2579–81.

¹⁴ Cotterrell, 'Why Jurisprudence' (n7) 42.

¹⁵ Ibid 42, 60.

¹⁶ Miriam T Rooney, 'Jurisprudence — A Teaching Problem' (1958) 4 *Catholic Lawyer* 172, 172.

¹⁷ Ibid.

¹⁸ Friedmann (n 4) 399.

¹⁹ The notion of a 'complacent curriculum' as potentially more threatening than a 'crowded' one was the main theme in Professor Desmond Manderson's remarks as part of the panel, 'Teaching Legal Theory in the Crowded Curriculum' at the UNSW Legal Education Conference, UNSW Law & Justice, 25 November 2025.

What little we can do to avoid this deadly trend, to help in imparting the quality of critical, but not indifferent, appraisal of the law, of its ends, functions, and limits, we must do. If we fail in this task, we will unwittingly contribute to the development of the kind of society which most of us abhor.²⁰

Cotterrell describes jurisprudence as performing what Julius Stone called the lawyer's 'extraversion': a turning outward from legal doctrine to examine law in its broader intellectual and social settings, and then back again to reconsider law from that external vantage point.²¹ Barnett and Yach's 1980s UK survey research of universities and (the then termed) polytechnics, found a degree of convergence around the aims of teaching jurisprudence. These aims included: stimulating students' critical faculties and awareness; providing a grounding in logic; introducing students to the social sciences; equipping students to become better practising lawyers; and facilitating exploration of areas of interest to students while encouraging them to question their own and others' assumptions.²² In the late 1980s Australian context, Sampford and Wood characterised the legal academy as broadly agreed on the central importance of the 'theoretical dimensions of law' within the law degree.²³

Very recently, Nicolson described jurisprudence as allowing for a more sustained, systematic look at the issues of how the law operates, which may otherwise only be picked up in parts, or superficially, or indirectly through other courses.²⁴ Jurisprudence 'can challenge students to step back from the wilderness of single legal instances to gain a more holistic understanding of law as an institution and directly confront the question of whether they want to practise law'; and to develop 'critical thinking and citizenship skills more generally'.²⁵ On this view, legal theory is not an optional embellishment but a core component of the law school's intellectual mission. Sternlight situates debates about legal theory within wider concern over the 'soul of legal education',²⁶ noting though a 'general consensus' that 'the gap between practice and academia has widened in recent years'.²⁷

Despite the longstanding defences of legal theory, those who have written about legal theory teaching frequently describe it as being perceived, if not experienced, as peripheral to the law degree. It is described as 'ornamental or extravagant',²⁸ an 'impractical luxury',²⁹ rather than as integral to legal education and the 'bread and butter'

²⁰ Friedmann (n 4) 400.

²¹ Cotterrell (n 8) 181.

²² Barnett and Yach (n 4) 169.

²³ Sampford and Wood 1998 (n 5) and for further background, see: David Barker, 'The Pearce Report: does it still influence Australian legal education?' (2014) 7 *Journal of the Australasian Law Teachers Association* 77.

²⁴ Donald Nicolson, *Legal Education and Legal Theory: The Determined Province of Jurisprudence Textbooks* (2025) 85.

²⁵ Ibid.

²⁶ Sternlight (n 1) 708.

²⁷ Ibid 726.

²⁸ Friedmann (n 4) 392.

²⁹ Rooney (n 16) 173.

training of the lawyer.³⁰ Friedmann reported widespread scepticism about whether jurisprudence could be taught as a ‘live and vital’ subject.³¹ Sternlight describes a common practitioner view that ‘abstract legal theory is generally useless intellectual self-indulgence’.³² Meanwhile, Sampford and Wood questioned why the ‘general awareness’ among academics of the significance of law’s ‘theoretical dimensions’ had not been translated into legal education.³³

Writing in the UK context, Stanley offered a striking, and perhaps unsettling, depiction of jurisprudence’s marginality:

Jurisprudence does have a reputation in the curriculum. It always exists somewhere, usually pigeonholed in the [final] year. Somehow not quite ‘law’, perhaps a ‘soft option’, almost an ology. The final retreat of the incompetent or exhausted black-letter lawyer: shutting the door on the ‘real’ world of rules to find solace in the murkier depths of theory, apparently irresponsible and with little need for exactness. From the land into the ocean. The preserve of the legal *l’estranger* — deviants, miscreants, oddballs and weirdos.³⁴

Stanley’s metaphor of leaving the firm land of doctrinal law for the open ocean of theory captures a persistent perception: that legal theory requires students to step away from the centre of their legal education (the ‘crowd’) into a space that is unfamiliar, unstable, populated by intellectual outsiders and, says Stanley, maybe even ‘dangerous’ as well.³⁵ From this perspective, theory may be internally crowded, for reasons explored in the next Part, but it is also institutionally isolated, occupying the outskirts of the curriculum rather than its core.

Cotterrell, meanwhile, reflects on a tendency within legal education to conceptualise jurisprudence either as observing law from ‘the outside’, or as offering a moral or social perspective from ‘inside’ the lawyer’s professional world with its internal purposes, values and understandings.³⁶ Cotterrell finds this distinction unhelpful, as it depends entirely on where one is positioned when observing law. Nonetheless, he suggests that the metaphor remains compelling because so much of legal education reinforces the idea of law as a structure or as a structured professional domain.³⁷ Legal education teaches students how to enter and feel at home inside the ‘lawyer’ *professional* house of law’, to internalise its assumptions, and to look out at the world through its windows.³⁸ In this work, Cotterrell positions the task of jurisprudence as preventing students’ existence inside this professionalised house of law from becoming ‘too comfortable’, in prompting them to step outside, look beyond dominant professional

³⁰ Friedmann (n 4) 392.

³¹ Ibid.

³² Sternlight (n 1) 712.

³³ Sampford and Wood (n 5) 100.

³⁴ Christopher Stanley, ‘Legal Fictions: Discourse and Archaeology Notes on the Construction of a Jurisprudence Course’ (1991) 25(3) *The Law Teacher* 241, 241.

³⁵ Ibid 242–3.

³⁶ Cotterrell, ‘Pandora’s Box’ (n 9) 182.

³⁷ Ibid.

³⁸ Ibid.

images of law, and seek alternative perspectives.³⁹ Cotterrell suggests that ‘taught jurisprudence’ derives some of its ‘strangeness (particularly for students)’ from the way it runs in and out of law’s domain ‘with bewildering indecision’. As he puts it, ‘jurisprudence seems ... like a restless individual who cannot decide whether to stay inside the house and clean the rooms or go outside and repair the pointing’.⁴⁰

This ‘restlessness’, this movement in and out of law’s conceptual house, helps to explain both legal theory’s pedagogical power and its vulnerability within the curriculum. Legal theory unsettles habits of thought that students acquire through doctrinal study by exposing law’s contingency, indeterminacy, and embeddedness in social power.⁴¹ Moreover, it is precisely this unsettling quality that can render theory ‘bewildering’ or suspect within a curriculum centred on black-letter reasoning, and persistent pressures towards technical competence, skills-based training, and managerial standardisation.⁴² As Cotterrell observes, legal thought tends to seek closure, involving rational consistency and authoritative solutions to legal and social problems, while jurisprudence resists such closure.⁴³

Seen through the lens of the crowded curriculum, legal theory therefore occupies an ambiguous position. It is often marginalised or treated as peripheral, even as it is asked to achieve so much: cultivating critical thinking, a civic sensibility, excellence in reading and writing, and habits of ethical and contextual judgement, within a tightly constrained curricular space. It might be argued that the uncrowded margins are not necessarily an absence but a space for cultivating such critical and reflective capacities (the very ‘spaciousness’ this paper explores). However, legal theory teachers should be aware of how, when positioned against doctrinal subjects that would seem promise students, for example, a more consistent perspective (less ‘restlessness’) as well as professional utility, legal theory can appear anomalous or out on its own.

III SOURCES OF CROWDING AND UNCROWDING

This Part identifies four interrelated sources of curricular crowding in legal theory teaching: the inherited canon, student cohort characteristics, pressures towards inclusivity, and assessment design. Together, these factors help explain why legal theory courses are often experienced as overcrowded in content and expectations, while

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ For a critical look at the privileging of the ‘black letter’, doctrinal approach to teaching law in Australia, see Nickolas John James, ‘Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine’ (2004) 8 *UW Sydney Law Review* 1.

⁴² For further context and discussion: Stuart Toddington, ‘Skills, ‘Quality’ and the Ideologies of Managerialism’ (1994) 28(3) *The Law Teacher* 243; Darryl SL Jarvis, ‘Regulating Higher Education: Quality Assurance and Neo-Liberal Managerialism in Higher Education—A Critical Introduction’ (2014) 33(3) *Policy and Society* 155.

⁴³ Cotterrell (n 9) 181–2.

simultaneously allowing limited time or space for sustained engagement.

A *The Crowded Canon*

Concerns about the scope and content of legal theory teaching are not new. Writing in the late 1950s, Rooney reflected on the challenges of teaching jurisprudence as a subject that appeared to demand expertise in philosophy, history, and law, skills she considered scarce among legal educators.⁴⁴ She also observed the absence of a standardised curriculum, agreed method, and available teaching tools, resulting in textbooks and materials that were out of date.⁴⁵ For Rooney, the problem was one of excessive eclecticism: teachers drew on a wide and undisciplined range of materials, from philosophical treatises to biographical accounts of jurists, creating confusion rather than intellectual stimulation for students.⁴⁶ Similarly, Barnett and Yach's mid-1980s, UK survey reported that designing a jurisprudence course was difficult because its scope felt delimited yet arbitrary; subject matter selection involved choosing between disparate perspectives and sources.⁴⁷

Contemporary critiques seem to invert this concern. Rather than excessive diversity, many commentators now identify uniformity as the dominant and more significant problem in legal theory curricula. More specifically, the subject is experienced as crowded not only by the volume of material students are asked to cover, but also by its implicit rules about what counts as legitimate theory and its inherited narratives for the course.

In his (2022) critique of legal theory teaching, Kirkby describes the 'usual story' presented by most jurisprudence courses.⁴⁸ On this account, students encounter a canon of foundational Western texts organised as a conversation among 'great' philosophers of the past, addressing a set of perennial questions about the nature of law. These questions (usually what law is, how it relates to morality, what grounds legal authority and obligation, and how judging operates⁴⁹) are presented as timeless and universal, and their answers, as progressively refined over time.⁵⁰ Kirkby highlights that this 'usual story' of jurisprudence is 'not ancient', but rather a product of the mid-twentieth-century professionalisation of UK and Commonwealth law schools, in which it was constituted as a 'distinct discipline'.⁵¹

⁴⁴ Rooney (n 16) 172.

⁴⁵ Rooney also identified one textbook that represented a subtle form of indoctrination: Ibid 176.

⁴⁶ Ibid 173.

⁴⁷ Barnett and Yach (n 4) 168.

⁴⁸ Coel Kirkby, 'How to Do Things with Legal Theory' (2022) 18(4) *International Journal of Law in Context* 373, 374.

⁴⁹ Adapted from Kirkby, *ibid* 374. See Nicolson (n 24) 85 for a longer list of possible questions.

⁵⁰ Kirkby (n 48) 374-5.

⁵¹ Ibid 374.

Nicolson's recent (2025) analysis of UK jurisprudence textbooks reinforces this critique. His in-depth study revealed conformity in both content and structure: where the same theorists, debates, depth of coverage, and sequencing appear with striking consistency. Although he found 'considerable variations between textbooks, most textbooks serve a "standard, liberal humanist jurisprudence course with a few alternative, more critical, approaches bolted on"'.⁵² Cotterrell similarly observed that even with 'much diversity in what is covered in teaching', there is 'generally strong continuity with the perceived classics'.⁵³

Defenders of the 'usual story' approach might emphasise the pedagogical value of presenting legal theory as a structured debate among rival thinkers: it inducts students into an ongoing intellectual conversation, models reasoned disagreement, and would ideally cultivate habits of civil discourse.⁵⁴ These are significant educational benefits. The difficulty, however, lies not in the existence of a canon as such, but in the way it is typically framed: as a settled conversation to be entered, rather than as a constructed inheritance to be interrogated. Also, its presentation has certain effects.

As Kirkby and Nicolson both observe, the dominance of the classical canon often marginalises alternative perspectives. Nicolson found that jurisprudence teaching implicitly privileges an apolitical and liberal conception of law. More specifically, there are 'big three' themes in 'mainstream jurisprudence': legal positivism, natural law, and Dworkin's interpretivism.⁵⁵ 'Jurisprudence's second division' includes, Nicolson found, American realism, Marxism, critical legal studies, feminism, and some sociological theorists;⁵⁶ its 'third division' includes early Enlightenment theories, social contract and liberal political theory, economic analysis of law, and (briefly) communitarian critique.⁵⁷ At the 'bottom textbook division' are common law theory, queer legal theory, the free law movement, and legal process.⁵⁸ This hierarchical organisation narrows the students' opportunities to engage with broader theoretical and critical debates on law, justice, and power.

Nicolson also noted that mainstream topics are typically set out extensively and 'allowed to speak for themselves',⁵⁹ whereas many books give little detail on critical theories before moving straight to criticism of them.⁶⁰ He observed that major textbooks use similar strategies that serve to undermine the challenge of critical approaches. They include 'damning with faint praise' (for example, one textbook

⁵² Nicolson (n 24) 108, citing one reviewer's description of a popular jurisprudence textbook.

⁵³ Cotterrell (n 9) 180.

⁵⁴ Such benefits were highlighted among the panel, 'Teaching Legal Theory in the Crowded Curriculum' at the UNSW Legal Education Conference, UNSW Law & Justice, 25 November 2025.

⁵⁵ Nicolson (n 24) 91.

⁵⁶ Ibid 93.

⁵⁷ Ibid 94.

⁵⁸ Ibid.

⁵⁹ Ibid 103.

⁶⁰ Ibid.

referring to feminist criticisms as ‘interesting’⁶¹); dismissing or downplaying critiques; appealing to unsupported assumptions; giving disproportionate focus on less challenging aspects of a theory; trivialisation through storytelling; and pre-emptive warnings about a theory’s lack of persuasiveness.⁶² Nicolson also highlighted a lack of socio-legal (empirical) research studying law’s actual operation and function in society.⁶³

As Nicolson argues, structural choices such as these matter. To be clear, there are legitimate pedagogical reasons for introducing students first to traditions such as natural law, positivism, and liberalism, since critical theories are often intelligible as critiques *of* these established approaches. Sequencing foundational theories before their critics does not wholly imply that critical perspectives are less important. Nevertheless, curriculum organisation is not neutral in its effects. Where critical perspectives are positioned as brief or concluding additions to an otherwise settled canon or ‘core’, particularly when covered rapidly at the end of a course or combined with undermining strategies, such as those Nicolson found, they can appear supplementary rather than constitutive of ‘true’ legal theoretical inquiry. This conveys implicit messages about who gets to theorise, what forms of reasoning count as legitimate, and whose experiences are taken seriously.⁶⁴ As discussed in Part IV, alternative approaches might instead place critical and canonical perspectives into closer dialogue throughout the course, emphasising, then, the contingency and contestability of all theoretical perspectives. Meanwhile, Nicolson ventures that the legal theory courses supported by the textbooks he examined ‘only partly fulfil jurisprudence’s potential to help students gain a critical understanding of the nature of law’.⁶⁵

In this way, the legal theory curriculum can be experienced as crowded and also exclusionary. It can be dense with established debates and authoritative voices, while offering limited scope for new questions, perspectives, or approaches. The questions deemed worth asking are largely predetermined, leaving little space for alternative starting points or lines of inquiry.

B The Gen Z Cohort and Learner Characteristics

Effective teaching must be grounded in a clear understanding of who students are and how they arrive in the classroom. Student cohort characteristics constitute a second, increasingly salient source of curricular crowding for legal theory teachers.

Concerns about student disengagement from legal theory are longstanding. Mid-twentieth-century studies reported low motivation among students. Friedmann, for example, felt that the abstract and technical aspects of jurisprudence were difficult for students: ‘Much of

⁶¹ Ibid 104.

⁶² Ibid 104–8.

⁶³ Ibid 94–5.

⁶⁴ Ibid 102.

⁶⁵ Ibid 109.

what is put forward as jurisprudence is incomprehensible, confusing, or remote to the intelligent student who is anxious to think of legal principles or the things that stand behind the law'.⁶⁶

Friedmann's (1952) observations should be understood in the context of the heavy metaphysical writing then prevalent in jurisprudence, which was often difficult to connect with specific legal problems. That said, more recent commentators have noted that students often 'do not want to radically question their beliefs; they just want to learn the law'.⁶⁷ Participants in Barnett and Yach's survey reported widespread student resistance to jurisprudence, which they attributed, in part, to the 'de-intellectualising effects of two years of black letter law', traditionally devoid of theoretical considerations and lacking grounding in fields such as political science, philosophy, or sociology.⁶⁸ These historical, ongoing challenges are amplified with contemporary Gen Z cohorts, whose learning dispositions and expectations differ in important respects from those of earlier generations.

Research on Gen Z learners suggests several relevant patterns. Gen Z students typically exhibit shorter attention spans,⁶⁹ routinely engage with multiple digital devices,⁷⁰ and display lower tolerance for sustained, long-form reading.⁷¹ They prefer short, visual, and technologically integrated forms of 'content',⁷² including slides to accompany lectures,⁷³ and use digital tools for both independent and collaborative work.⁷⁴ When reading complex materials, they are likely to be task-switching, and may engage in 'power-browsing'; approaching texts in the same way they would approach social media feeds, such as 'Facebook or Twitter'.⁷⁵ GenAI tools are also increasingly used to support class participation and assessment

⁶⁶ Friedmann (n 4) 393–4.

⁶⁷ Crowe (n 5) 50–1.

⁶⁸ Barnett and Yach (n 4) 165.

⁶⁹ Arlene J Nicholas, 'Preferred Learning Methods of Generation Z' (2020) Faculty and Staff – Articles & Papers 2. This would seem to mean that Gen Z tends to disengage from unchanging stimuli, not that these students can only concentrate for short amounts of time.

⁷⁰ The average (American) Gen Z university student brings eight pieces of technology to university: Bobbi Shatto and Kelly Erwin, 'Teaching Millennials and Generation Z: Bridging the Generational Divide' (2017) 23(1) *Creative Nursing* 24, 25.

⁷¹ April Milburn-Knizner and Megan EK Montcalm, *TL;DR: The Truth About Gen Z Law Students & Why They Need More, Not Less* (Unpublished manuscript, Thomas R Kline School of Law of Duquesne University, 1 August 2025) 34.

⁷² Cecilia Ka Yuk Chan and Katherine KW Lee, 'The AI Generation Gap: Are Gen Z Students More Interested in Adopting Generative AI Such as ChatGPT in Teaching and Learning than Their Gen X and Millennial Generation Teachers?' (2023) 20 *International Journal of Educational Technology in Higher Education* 1, 6; Gen Z's favourite way of learning new information is via YouTube, but they do not like recorded lectures (Nicholas (n 69) 4, 9).

⁷³ Nicholas (n 69) 5.

⁷⁴ *Ibid* 4, 5.

⁷⁵ Laura P Graham, 'Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation' (2018) 41(1) *University of Arkansas at Little Rock Law Review* 29, 52.

completion (further detailed shortly).⁷⁶ This cohort expects careful scaffolding and clear instructions.⁷⁷ They also expect coursework to have practical relevance to topics of special interest to them, for instance, climate change,⁷⁸ and to their career goals.⁷⁹ At the same time, Gen Z students value affective engagement from their teachers: enthusiasm,⁸⁰ passionate interest,⁸¹ signs of care,⁸² humour,⁸³ and approachability⁸⁴ (being ‘open and real’)⁸⁵ are very important, alongside technical competence.⁸⁶

These characteristics do not render legal theory incompatible with contemporary learners, but they create certain pedagogical pressures. Legal theory is conceptually demanding and does not easily lend itself easily to bullet points, checklists, or immediately applicable frameworks. The values and affective orientations of Gen Z students can intensify the ‘crowding’ dynamics of the legal theory classroom. For example, many Gen Z students articulate strong commitments to diversity,⁸⁷ tolerance,⁸⁸ social justice and activism,⁸⁹ and public service,⁹⁰ and are likely to be critical of institutions they view as oppressive.⁹¹ As one writer put it, they ‘want to change the world, and they want their education to help them do so’.⁹² Yet research indicates they also experience heightened anxiety around disagreement and critique,⁹³ and may use repressive techniques available to silence

⁷⁶ They are more likely to embrace technological advancements like GenAI and they are able to use AI to cater to their educational preferences (e.g. fast, individualised feedback, visual learning, rapid information access): Chan and Lee (n 72) 17, 20.

⁷⁷ Nicholas (n 69) 4.

⁷⁸ Climate anxiety may be a defining characteristic of Gen Z: Bardales Salguero, Diana Bogueva and Dora Marinova, ‘Australia’s University Generation Z and Its Concerns About Climate Change’ (2024) 7(8) *Sustainable Earth Reviews* Article 8, 13.

⁷⁹ Amy Chasteen Miller and Brooklyn Mills, “‘If They Don’t Care, I Don’t Care’”: Millennial and Generation Z Students and the Impact of Faculty Caring’ (2019) 19(4) *Journal of the Scholarship of Teaching and Learning* 78, 80; Kathleen A J Mohr and Eric S Mohr, ‘Understanding Generation Z Students to Promote a Contemporary Learning Environment’ (2017) 1(1) *Journal on Empowering Teaching Excellence* Article 9, 91; Milburn-Knizner and Montcalm, (n 71) 50.

⁸⁰ Miller and Mills (n 79) 84.

⁸¹ Kimberlee R Mendoza, *Engaging Generation Z: A Case Study on Motivating the Post-Millennial Traditional College Student in the Classroom* (PhD Dissertation, Johnson University, February 2018), 95–7.

⁸² Miller and Mills (n 79) 84–6.

⁸³ Ibid 84.

⁸⁴ Ibid.

⁸⁵ Mendoza (n 81) 97.

⁸⁶ Nicholas (n 69) 5.

⁸⁷ Tiffany D Atkins, ‘#ForTheCulture: Generation Z and the Future of Legal Education’ (2021) 26 *Michigan Journal of Race and Law* 115, 130.

⁸⁸ Olivia R Smith Schlinck, ‘OK, Zoomer: Teaching Legal Research to Gen Z’ (2023) *Library Staff Articles* Article 3, 284; Mark K McBeth, ‘Coddled or Engaged? Teaching Political Tolerance to Generation Z Students’ (2022) 18(4) *Journal of Political Science Education* 438, 445.

⁸⁹ Chan and Lee (n 72) 6.

⁹⁰ Atkins (n 83) 134.

⁹¹ Ibid 140.

⁹² Schlinck (n 88) 283.

⁹³ Call-out culture exists among progressive and conservative students, but arguably, more so the former. Both sides use social media to call out/ “cancel” teachers who they feel don’t align with them: Mark Carl Rom and Kristina Mitchell, ‘Teaching

speech or individuals they find objectionable.⁹⁴ This anxiety around disagreement, combined with unfamiliarity with theoretical reasoning, and worry about being called out to participate,⁹⁵ receiving feedback,⁹⁶ and about failure generally,⁹⁷ may inhibit participation, resulting in silence or withdrawal in discussion-based classes.

Research has also suggested certain skill gaps for Gen Z learners, including critical thinking and problem solving, particularly in relation to evaluating information acquired online.⁹⁸ This cohort of learners is good at finding large amounts of information in legal research, but worse than previous generations at making sense of it,⁹⁹ evaluating it for its quality,¹⁰⁰ and deciding what should be written down while note-taking.¹⁰¹

This is not the full picture of any cohort — many students remain deeply engaged and produce excellent work — but it highlights the need for theory teachers to attend to the sensibilities, strengths, and deficits of today's learners. When combined, these factors suggest that legal theory classrooms may feel simultaneously crowded and under-inhabited: crowded with stimuli, competing demands, and urgent normative questions, yet under-inhabited in the sense that attention, reflection, and dialogue are increasingly shortened, superficial, or avoided as too risky or uncomfortable.

C The Inclusive Curriculum

A third source of crowding arises from growing expectations, often institutionally articulated,¹⁰² that curricula be more inclusive. In course reading materials, inclusivity can be understood broadly as a commitment to diversity of voices, perspectives, and experiences, including so they reflect the diversity of student groups and to help make learning 'meaningful, relevant, and accessible to all'.¹⁰³ This

Politics in a Call-Out and Cancel Culture' (2021) 54(3) PS: Political Science & Politics 610, 610.

⁹⁴ Andrew J Perrin, Emily J Calderone and Jessica Caterson, 'Open Minds, Closed Discourse: Dynamics of Openmindedness and Speech Suppression on Campus' (2025) 50 *Innovative Higher Education* 2145, 2158, noting that the group of students most likely to use repressive techniques were those strongest opposed to a conservative position or progressive students.

⁹⁵ Graham (n 75) (Gen Z students do not like to be called out by teachers without advance warning).

⁹⁶ Schlinck (n 88) 287.

⁹⁷ Graham (n 75) 60.

⁹⁸ Ibid 60.

⁹⁹ Ibid 64.

¹⁰⁰ Schlink (n 88) 278.

¹⁰¹ Graham (n 75) 65.

¹⁰² Gwen Lawrie et al, 'Moving Towards Inclusive Learning and Teaching: A Synthesis of Recent Literature' (2017) 5(1) *Teaching and Learning Inquiry* 9, 13, citing C Hockings *Inclusive Learning and Teaching in Higher Education: A Synthesis of Research* (Higher Education Academy, 2010) 1.

¹⁰³ For a discussion of inclusivity in university education more broadly, see Ted Nunan, George Rigmor, and Holly McCausland, 'Inclusive Education in Universities: Why It Is Important and How It Might Be Achieved' (2000) 4(1) *International Journal of Inclusive Education* 63.

means that students can see aspects of their own backgrounds, circumstances, and concerns in the readings, and that the materials do not create ‘barriers for particular students or student groups’.¹⁰⁴

Debates about inclusivity in legal theory have been particularly visible and influential. When Harvard Law Professor Stephen Sachs published his jurisprudence syllabus online, it attracted criticism for its overwhelming reliance on male authors.¹⁰⁵ Green responded by articulating reasons for widening the theory canon, including those related to: student engagement, social justice, pedagogical effectiveness, and epistemic richness.¹⁰⁶ On this view, legal theory courses are strengthened, not diluted, by incorporating diverse scholarship and ideas.

Most legal theory teachers would likely endorse these aims and seek to reflect them in their courses. Yet this impulse recalls Rooney’s earlier concern, expressed nearly seventy years ago, about the sheer volume of material available to theory teachers. In practice, inclusiveness can become an additive pressure: the expectation to include more material within an already dense syllabus, often in the context of a student body keenly evaluating whether this inclusivity has been achieved.¹⁰⁷ As Nicolson observed in relation to legal theory textbooks, the temptation is, then, to simply bolt on ‘new’ materials, for instance, Indigenous, feminist, critical race, and postcolonial perspectives, without rethinking the course’s overall structure. The resulting curriculum can become densely layered. To illustrate the breadth of material that might plausibly be included in a legal theory course, the table below sets out a non-exhaustive range of theoretical strands that contemporary teachers may feel pressure to accommodate in some significant way. Noting the earlier discussion of legal theory’s ‘usual story’, the ordering of the table reflects the inherited structure and is not intended to represent any inevitable priority:

¹⁰⁴ Lawrie et al (n 102) 13.

¹⁰⁵ For a short description and response: Alex Green, ‘Lines to a Don: Why It Isn’t Mindless to “Reimagine” Jurisprudence’ (2023) 57(4) *The Law Teacher* 548.

¹⁰⁶ Ibid.

¹⁰⁷ They expect more diversity in their environment than previous generations: Atkins (n 87) 130.

1. Traditional / 'Canonical'	2. Critical & Transformative	3. Post-Structural / Continental	4. Decolonial & Indigenous	5. Empirical & Sociological	6. Economic, Governance & Future
Ancients & Natural Law Revivals	Marxist & post-Marxist theory	Post-structuralism	Indigenous jurisprudence	Law & society	Law & economics
Legal positivism	Critical Legal Studies	Postmodern jurisprudence	Decolonial theory	Legal realism	Regulatory & governance theory
Interpretivism	Feminist theory	Biopolitics/Italian theory	Postcolonial theory	Sociology of law	Digital jurisprudence & AI ethics
Social contract and liberal political theory	Critical Race Theory	Hermeneutics	Legal pluralism & hybridity	Legal consciousness studies	Global justice
Libertarianism	Queer theory	Phenomenology	Global South approaches	Anthropology of law	Environmental / earth jurisprudence
Virtue ethics	Intersectional & disability theory	Critical Theory/Frankfurt School/ Recognition	Plurinationalism	Empirical legal studies	Posthuman theory / animal law

In the course I teach, efforts to expand the range of perspectives have resulted in a tightly packed syllabus, covering approximately thirty theorists. One student described (an earlier version of) the course as ‘biting off more than it can chew’, a blunt but telling metaphor for a crowded curriculum that leaves insufficient time for ‘digestion’.

D *Assessment Crunch*

A final source of crowding and uncrowding considered in this paper lies in assessment design. Legal theory courses commonly rely on dense readings and one or two substantial essays as primary demonstrations of learning, supplemented by class participation and/or reflective tasks. High-stakes assessment can contribute to crowding, by displacing curiosity, dialogue, and enjoyment as students focus primarily on performance. In conceptually and practically intensive tasks such as essays, performing well requires research, critical analysis, structured argumentation, creative application, and multiple rounds of revision. The burden is not borne by students alone: large cohorts can require teachers to mark hundreds of essays, contributing to significant workload pressure and burnout. The rise of GenAI adds further complexity to both dynamics. On one view, AI tools offer several potential benefits, including personalised assistance, timely feedback, and extended access to knowledge resources.¹⁰⁸ At the same time, they risk displacing the mostly slow-paced, deliberate practices of theoretical reading, thinking, and writing in favour of superficial AI-generated summaries and responses. Hargreaves’s study of ChatGPT’s performance across a range of law assessments (varying in subject area and type) demonstrated that traditional essays are especially susceptible to AI-assisted production, in the sense that ChatGPT can perform them competently, and in some cases excellently,¹⁰⁹ and does particularly well in jurisprudence essays.¹¹⁰ The study showed that it performs the best when essays are to address ‘relatively broad topics’ and are not tied to any ‘hyper-local intricacies’ of law, ‘real’ topics, or to ‘some technique or concept that could only be known if a student had attended a particular class.’¹¹¹ ChatGPT performs less reliably on long research essays, and tasks requiring in-depth research, or nuanced argumentation.¹¹²

¹⁰⁸ Schlinck (n 88) 20.

¹⁰⁹ Hargreaves, Stuart, “‘Words Are Flowing out Like Endless Rain into a Paper Cup’: ChatGPT & Law School Assessments” (2023) 33 *Legal Education Review* 69, 81: ‘This [a broad, essay-based assessment] then is the kind of assessment ChatGPT has the most success with, insofar as it can mimic a relatively well-written summation of ideas and concepts contained within its training data. It can offer critiques and contrasts as well, so long as those critiques can also be found within its training data’.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid* 89.

This demonstrates that AI performance varies with assessment design, including the way essay questions are framed. Such findings raise questions about what it means to teach legal theory in an age of AI assistance, and about how to design assessments that encourage deep and genuine engagement, and, for Hargraves, those that still allow students to indulge their intellectual curiosity through the written essay¹¹³ or that aligns with the idea of spaciousness as structured opportunity for inquiry rather than passive or outsourced completion of tasks. Legal theory teachers must, then, design assessments carefully, but also, usually, provide detailed guidance on permissible use, and manage academic integrity processes. These dynamics underscore that assessment itself can be a source and site of curricular crowding.

These factors point to important pedagogical questions for legal theory teachers:

1. How might inherited curricular structures be de-crowded but also anchored to reduce uncrowding?
2. How can conceptual and practical spaciousness be created without sacrificing rigour?
3. How can curricula better accommodate contemporary students?

The next Parts examine how these questions might be addressed through insights from the literature and then from my own teaching practice.

IV SOLUTIONS FROM THE LITERATURE

A *Teachers, Students, and Worldmaking*

The literature offers a number of responses to curricular crowding and uncrowding in legal theory, particularly by rethinking the nature of theory, the practice of theorising, and the teacher's role in mediating that practice. Rather than presenting legal theory as a settled body of knowledge, scholars emphasise it as an active practice in which both teachers and students participate: a mode of inquiry into law, justice and power that resists both overcrowding (through over-accumulation of content) and uncrowding (through thinness or disconnection).

Kirkby supports this reorientation by proposing 'critical genealogy' as a pedagogical approach.¹¹⁴ Genealogy traces the historical emergence of concepts, practices, and forms of knowledge in order to denaturalise them, showing what appears inevitable, neutral, or universal is in fact contingent, power-laden, and 'always guided by our concerns in the present'.¹¹⁵ Drawing on Srinivasan,¹¹⁶ Kirkby argues that canonical theorists should not be treated as articulating timeless truths, but as successful 'worldmakers'.¹¹⁷ Worldmakers' theories do

¹¹³ Ibid.

¹¹⁴ Kirkby (n 48).

¹¹⁵ Kirkby (n 48) 376, referencing Friedrich Nietzsche and Michel Foucault.

¹¹⁶ Amia Srinivasan, 'VII—Genealogy, Epistemology and Worldmaking' (2019) 119(2) *Proceedings of the Aristotelian Society* 127.

¹¹⁷ Kirkby (n 48) 381.

not merely describe the world (or the law), they actively produce enduring representations of it.¹¹⁸ In the legal theory context, they secured and continue to secure authority by shaping how legal problems can be named and addressed. Theories are shown, then, for what they *do* ‘in response to particular crises’.¹¹⁹

From this perspective, genealogical analysis does not ask whether a theory is *true*, but how and under what conditions it came to be accepted and stabilised; what problems a theory responded to; what kind of world it sought to bring into being; whose interests it served; who or what was excluded; and what alternative conceptualisations might have been possible.¹²⁰ Unlike traditional philosophy or doctrinal history, genealogy resists narratives of rational progress. It foregrounds ruptures, contingencies, silences, accidents and errors,¹²¹ while insisting on the intimate relationship between knowledge and power.¹²² Applied pedagogically, this approach positions students as critical participants in theorising, encouraging them to understand law as a historically situated, contested and creative practice. ‘The critical genealogist is...concerned to understand how legal theories transform representations of legal concepts (and thus the world itself).’¹²³ Kirkby’s ultimate hope is that students will ‘come to see both how legal thought has shaped the world we find ourselves in and how we might remake that world by doing things differently with legal theory’.¹²⁴

Stanley’s earlier account of jurisprudence as an ‘archaeological practice’ anticipates many of these themes.¹²⁵ Jurisprudence, Stanley argued, should equip students with the tools to investigate the past, tracing the development of concepts such as ‘ideology, power, [and] legitimation’,¹²⁶ and attending to ‘the unsaid or unwritten (the hidden silences)’ as much as ‘what is expressed’.¹²⁷ On this view, jurisprudence leads students to the centre of unresolved puzzles in social and political life. The ‘archaeologist of knowledge’, Stanley explains, asks what has made different forms of knowledge possible, working ‘to dismantle the universal and evident themes of what passes for the history of ideas’.¹²⁸ Law, as a discourse, is therefore understood not as exceptional or self-contained, but ‘an expression/reflection of social consciousness’ in much the same way as ‘art, literature, [or] film’.¹²⁹

Stanley rejected the idea that jurisprudence should provide a fixed body of answers or a coherent disciplinary worldview, suggesting that

¹¹⁸ Ibid 378.

¹¹⁹ Ibid 379.

¹²⁰ Ibid 377, citing Srinivasan (n 116) 140.

¹²¹ Ibid 376.

¹²² Ibid 376.

¹²³ Ibid 381.

¹²⁴ Ibid.

¹²⁵ Stanley (n 34).

¹²⁶ Ibid 245.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid 246.

broad coverage was a trap, offering a 'mere glimpse'.¹³⁰ Instead, its pedagogical value lies in what he described as an 'enabling methodology': an approach that teaches students how to interrogate concepts, assumptions, and institutions, formulate their own questions, construct critique, draw on multiple analytical tools and disciplines, and navigate uncertainty.¹³¹ On this account, the emphasis shifts away from comprehensive coverage of canonical theories towards sustained work with a smaller range of examples, through which students can practise jurisprudence as an orientation and method (broadly construed) rather than attempt to master it as content.

Meanwhile, Kirkby's emphasis on worldmaking extends this pedagogical stance to the curriculum itself. From a genealogical perspective, the continued inclusion of a theory in the legal theory syllabus cannot be treated as neutral or self-justifying. Inclusion is itself an exercise of power and judgment. Teachers must make their curricular choices visible and justify them in light of their own standpoint or 'what matters to us now'.¹³² Students, in turn, are invited not only to engage with the theories presented, but to ask why these theories have been selected; which whose perspectives remain marginal or absent; and what alternative starting points or frameworks might have been possible.¹³³ In this way, decisions about content, sequencing, and emphasis are rendered both objects and instrument of the classroom inquiry.¹³⁴

Cotterrell's work complements this orientation through his account of jurisprudence's value as 'constructive subversion', which challenges the assumptions underpinning 'legal professional accepted wisdom' about law without simply declaring those assumptions wrong.¹³⁵ The aim of 'constructive challenge' is to show that dominant professional understandings are partial rather than authoritative, and that multiple perspectives on law can and do coexist.¹³⁶ Classical legal theorists such as Austin or Hart,¹³⁷ for example, can be taught contextually: as responses to particular political, institutional, and professional problems, rather than as neutral or inevitable foundations.¹³⁸ Similarly, 'non-jurist' theorists can be treated as jurists 'and thereby shine a different light on legal knowledge'.¹³⁹ On Cotterrell's account, the success of a jurisprudence course depends on whether it conveys 'powerfully' 'something different' about law, a new way of seeing assumptions that are otherwise taken for granted across the law curriculum.¹⁴⁰ This perspective underpins Cotterrell's insistence that

¹³⁰ Ibid 244.

¹³¹ Ibid 244–5 (emphasis omitted).

¹³² Kirkby (n 48) 378, 381.

¹³³ Ibid 381.

¹³⁴ Ibid 375.

¹³⁵ Cotterrell, 'Pandora's Box' (n 9) 183, 184.

¹³⁶ Ibid 184.

¹³⁷ Ibid 183.

¹³⁸ Ibid 183.

¹³⁹ Ibid (Cotterrell gives the examples of Durkheim, Habermas and Freud).

¹⁴⁰ Ibid.

there is no privileged 'inside' or 'outside' view of law.¹⁴¹ There are only different experiences of law, each generating distinct perspectives.¹⁴²

Cotterrell's metaphor of 'the box' further illustrates this stance.¹⁴³ Legal theory is imagined as a box filled with a diverse and disordered collection of intellectual materials; a 'complex intellectual patchwork' drawn from philosophy, social theory, history, linguistics, and the human sciences.¹⁴⁴ The teacher's task as curator is to rummage through this box, select a cluster of 'the shiniest' objects, usually reflective of their own experiences and concerns,¹⁴⁵ and to arrange them into a story that holds students' attention.¹⁴⁶ The metaphor captures several features of legal theory teaching: its lack of a settled disciplinary core; the autonomy and responsibility of the teacher; and the contingency of any particular curricular arrangement.

At the same time, Cotterrell acknowledges that the contents of the box are themselves historically limited and skewed, shaped by what earlier 'wandering jurists' happened to find interesting.¹⁴⁷ This insight aligns closely with Kirkby's genealogical critique. Yet the strength of the box metaphor lies in its refusal of reverence. It invites playful, experimental engagement with the discipline, affirming that legal theory can be arranged in 'an infinity of ways',¹⁴⁸ and that teachers are entitled to add new objects to the box just as others have done before them. The message conveyed to students is one of 'contingency and incompleteness, uncertainty rather than certainty, questions rather than answers, and the importance of personal discovery rather than the acceptance of authority'.¹⁴⁹

B *Meeting Students Where They Are*

A further strategy for creating conceptual spaciousness in legal theory teaching lies in taking seriously who students are and how they experience the discipline. Building on images and insights from the literature, this paper presents three categories to guide pedagogical thinking: the student as explorer, the student as future practitioner, and the student as novice. These categories are neither exhaustive nor mutually exclusive; rather, they serve as shorthand to synthesise and apply the diverse perspectives offered by scholars on how legal theory can be made meaningful without either overcrowding or leaving the classroom deserted.

The first is the student as explorer. Drawing on Balkin,¹⁵⁰ Forrest argues that legal theory inquiry should begin with the individual who

¹⁴¹ Ibid 184.

¹⁴² Ibid.

¹⁴³ Ibid 181.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Jack M Balkin, 'Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence' (1993) 103 *Yale Law Journal* 105.

seeks to understand law, and their ‘purpose for doing so’,¹⁵¹ rather than with abstract questions of coherence or definition.¹⁵² Balkin explicitly rejects a model in which students are treated as ‘empty vessels’,¹⁵³ with the teacher cast as ‘water carrier’.¹⁵⁴ Instead, learning is active, dynamic, and reciprocal,¹⁵⁵ with understanding (produced through interrogation and application) distinguished from memorisation or recitation.¹⁵⁶ On this view, the individual actively participates in the construction of legal meaning. Law becomes coherent through the interaction of people (including law students), doctrines,¹⁵⁷ and institutions, shaped by dialogue in the law school classroom, throughout law school, and then in professional practice itself.¹⁵⁸

Pedagogically, this approach invites theory teachers to begin from students’ existing ‘maps’: their prior beliefs about law, justice, and authority; their institutional experiences; and the questions that already animate their engagement with legal and political life; from ‘their particular place[s] in the world’.¹⁵⁹ The teacher’s role is to guide students in interrogating, revising, and expanding these maps through exposure to different theoretical frameworks. Conceptual spaciousness is created, then, not by reducing content, but by allowing students room to locate themselves within it.

Kirkby’s use of critical genealogy (outlined above) reinforces this approach by insisting that courses must start in the present,¹⁶⁰ not in abstract or timeless questions about law (or, to add, justice or power). As indicated, the critical genealogist teacher first identifies, and explicitly welcomes critique of, the contemporary, open-ended concerns informing the course and then works backwards to examine how particular theories have contributed to the making of the present. This approach anchors theory in students’ current contexts and helps them to see theory as something that ‘does things’ in the world, rather than as a detached body of ideas.¹⁶¹ To that end, Kirkby asks students to suspend their disbelief, ‘namely of our contemporary condescension to the past’ and to ‘come prepared for a lecture that is not concerned with the logical refutation of classic answers to persistent questions, but seeks to rebuild a past world to understand each text as an act of worldmaking that marked a moment in the birth of our present’.¹⁶²

This orientation also invites reflexivity on the part of the teacher as well. Rigney’s work on engaging with Indigenous epistemologies, for

¹⁵¹ Heather Ann Forrest, ‘Jurisprudence Meets Epistemology: Facilitating Legal Understanding and Meaningful Learning in Legal Education with Concept Maps’ (2008) 18 *Legal Education Review* 73, 76.

¹⁵² *Ibid* 73.

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid* 74.

¹⁵⁵ *Ibid*.

¹⁵⁶ *Ibid* 77.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Ibid* 88–9.

¹⁵⁹ Kirkby (n 48) 376.

¹⁶⁰ *Ibid* 378.

¹⁶¹ *Ibid* 381.

¹⁶² *Ibid* 379.

example, emphasises the importance of acknowledging the limits of one's knowledge and embracing the discomfort of not knowing as a pedagogical stance.¹⁶³ This might also help to reduce any student fears that teachers are indoctrinating them into their own preferred worldview.¹⁶⁴ In this way, the explorer identity situates students as active participants, developing their own critical understanding and narratives of law¹⁶⁵ while being guided by the teacher's framework. As one articulation of this approach puts it: 'Our pedagogical philosophy is not to teach the students fact but rather to help them see themselves as participants in a democracy and in solving future challenges facing the world'.¹⁶⁶

A second identity is that of the student as future practitioner. As suggested in Part II, scepticism about legal theory is closely tied to questions about professional relevance.¹⁶⁷ Several scholars argue, then, that theory teachers should be explicit to students about both the instrumental and intrinsic value of legal theory. Coleman contends that legal theory produces better lawyers: legislators and policy-makers require defensible conceptions of justice; judges rely on interpretive and moral reasoning in hard cases; and practising lawyers must understand these frameworks to advise clients and construct persuasive arguments.¹⁶⁸ As legal work increasingly involves strategic, reform-oriented, and transnational dimensions, theoretical reasoning becomes not less but more essential.¹⁶⁹ Legislative drafting, policy/regulatory design, strategic litigation, and constitutional adjudication can be improved through engagement with legal theory.¹⁷⁰ Vilaça argues that we could do more to examine and then share, the potential connections between different 'styles' of legal theory and different aspects of legal practice.¹⁷¹

At the same time, theory has intrinsic value. Law, Coleman argues, is not merely a set of rules, but an expression of the state's coercive authority and justified by principles and claims to moral authority.¹⁷² A

¹⁶³ Sophie Rigney, 'Creating the Law School as a Meeting Place for Epistemologies: Decolonising the Teaching of Jurisprudence and Human Rights' (2020) 54(4) *The Law Teacher* 503, 509.

¹⁶⁴ Identified by Crowe as part of the challenges in teaching legal theory, the students' unfamiliarity with theoretical inquiry and related resistance: Crowe (n 5) 56.

¹⁶⁵ Kirkby (n 48) 376.

¹⁶⁶ Mark K McBeth et al, Teaching Generation Z Students About Politics: Optimism or Pessimism? (Unpublished manuscript, Idaho State University, January 2023) 3.

¹⁶⁷ See footnotes 27–32 and accompanying text.

¹⁶⁸ Coleman (n 11) 2586.

¹⁶⁹ Guilherme Vasconcelos Vilaça, 'Why Teach Legal Theory Today?' (2015) 16(4) *German Law Journal* 781, 785.

¹⁷⁰ Sternlight's specific examples include: critical legal studies can assist practitioners in conceptualising arguments and framing briefs; law and economics provides tools relevant to litigation, transactions, and policy design; and feminist theory can generate new ways of formulating arguments and identifying solutions: Sternlight (n 1) 741–2.

¹⁷¹ For Vilaça, 'legal theory should be a window into critical legal studies, law and economics and policy, theories of regulation and law-making, anthropological studies of legal practice, law and gender, cause lawyering, law and literature, and other theoretical approaches to law': Vilaça (n 169) 816.

¹⁷² Coleman (n 11) 2587.

lawyer who never reflects on these foundations risks ‘dishonoring [sic]’ the practice or, worse, misunderstands the nature of the role in which they are engaged.¹⁷³ Reflective engagement cultivates what Coleman describes as the ‘examined life of a lawyer’, fostering moral and political consciousness on what it means to be a lawyer that cannot be cultivated through skills training alone.¹⁷⁴ Tan similarly emphasises that jurisprudence contributes to moral and professional identity formation and to reflective capacities required for ethical legal practice.¹⁷⁵ These ideas complement Cotterrell’s argument detailed above, that jurisprudence serves to cultivate the judgement and reflection that underpin the craft of law.¹⁷⁶

Read together, these accounts also suggest and invite a broader understanding of what it means to be a ‘practitioner’. Rather than referring only to traditional legal roles, practice can be understood to encompass a wider range of forms of engagement with law and legal institutions, including policy advising, advocacy, activism, and democratic participation.¹⁷⁷ This perspective resonates with Friedmann’s earlier defence of jurisprudence as a ‘vital and indispensable part of the mental equipment’ of the modern lawyer:¹⁷⁸ jurisprudence may not resolve conflicts of values, but it can render them explicit, relate concrete legal problems to their underlying assumptions, and foster the intellectual maturity and civic awareness that democratic education demands.¹⁷⁹ From this vantage point, a plural and conceptually spacious curriculum is not a luxury but a necessity, equipping students to navigate ethical and political challenges across diverse legal and civic contexts.

The third identity is that of the student as novice. Many students enter legal theory classrooms with limited experience of philosophical reasoning, sustained engagement with disagreement, or disciplines in which tentative thinking, uncertainty, and revision are ordinary features of the learning process. This means they require explicit guidance, careful scaffolding, and a gradual increase in conceptual complexity. For Kirkby, this can involve assigning shorter extracts of primary sources and prioritising careful reading over broad coverage.¹⁸⁰ Crowe offers four complementary strategies for addressing students’ unfamiliarity with legal theory. First, he emphasises supplying basic methodological tools, particularly logical reasoning and argument structure, so students have the skills needed to engage with theoretical claims rather than feeling alienated by them. Second, he stresses the importance of carefully structuring theoretical material, situating each theory within its broader philosophical context and clarifying the kinds

¹⁷³ Ibid 2602.

¹⁷⁴ Ibid 2587–8.

¹⁷⁵ Seow Hon Tan, ‘Teaching Legal Ideals Through Jurisprudence’ (2009) 41(1) *The Law Teacher* 14, 22.

¹⁷⁶ Cotterrell, ‘Why Jurisprudence’ (n 7).

¹⁷⁷ McBeth et al (n 166) 3; Tan (n 175) 26.

¹⁷⁸ Friedmann (n 4) 394.

¹⁷⁹ Ibid.

¹⁸⁰ Kirkby (n 48) 379.

of questions it seeks to answer, thereby enabling students to build understanding cumulatively. Third, Crowe advocates the use of analogies and concrete examples drawn from students' everyday experience (further detailed in the next section). Finally, he cautions against allowing theoretical pluralism to slide into relativism or nihilism, arguing that students should be encouraged to treat sceptical positions as themselves open to critique, and to understand disagreement as part of reasoned inquiry rather than evidence that evaluation is impossible.¹⁸¹

C Classroom Strategies

Supporting these broader orientations, the literature also identifies classroom strategies that reduce cognitive, psychological and practical crowding without diminishing theoretical rigour, allowing students to engage with legal theory more meaningfully and effectively.

Green, for example, argues that legal theory courses should 'flip the script' by introducing theories emphasising contingency, context, and critique before engaging with universalist claims.¹⁸² Presented in this way, analytical and critical theories appear not as orthodoxy and after-the-fact critique, but as genuine philosophical rivals. Nicolson similarly suggests disrupting the sequencing of traditional jurisprudence by presenting theories thematically or in parallel, encouraging students to move backwards and forwards between frameworks rather than progressing through a linear historical narrative.¹⁸³ These strategies allow students to encounter theories as equally legitimate and relationally connected, rather than in a predetermined sequence of authority.

Another technique, which has received wide attention in the literature, is 'concept mapping', developed by American scientist, Joseph D. Novak, and later adapted for legal education. Concept maps require students to identify key concepts and visually represent the relationships between them, producing a 'visual, pictorial representation'¹⁸⁴ of how ideas such as law, justice, authority, and power interrelate. Rather than memorisation, concept mapping is explicitly aimed at fostering understanding. Forrest describes how concept maps allow students to articulate what they consider relevant and to reflect on how their conceptual frameworks evolve over time.¹⁸⁵ This technique aligns with a facilitative model of teaching, in which students' prior knowledge is acknowledged and used as a platform for new understanding.¹⁸⁶ Drawing on American psychologist, David Ausubel's theory of meaningful learning, Forrest emphasises that new information is more likely to be integrated into long-term memory when

¹⁸¹ Crowe (n 5) 57–62.

¹⁸² Green (n 105) 557.

¹⁸³ Nicolson (n 24) 102.

¹⁸⁴ Forrest (n 151) 75.

¹⁸⁵ *Ibid* 89, 91.

¹⁸⁶ *Ibid* 92.

it connects with existing cognitive structures.¹⁸⁷ Used at multiple points across a course, concept maps can scaffold increasing complexity and show students how their thinking has evolved.

A related strategy is the adoption of a thematic or problem-based approach to jurisprudence. Tan, for example, advocates organising theory around themes, concrete examples and real cases, rather than individual theorists or schools of thought.¹⁸⁸ This approach foregrounds values, ideals, and context, and can counteract the doctrinal habits students acquire elsewhere in the curriculum.¹⁸⁹ Sternlight's account of 'common sense jurisprudence' offers a further variation, emphasising theory grounded in real-world problems, oriented towards feasible solutions with some chance of success within existing political and economic conditions, and articulated in ways accessible to practitioners.¹⁹⁰ Against the widespread perception that abstract theory is of little practical use and linking to the earlier discussion of student as practitioner, Sternlight argues that theoretical frameworks often dismissed as impractical in fact supply important analytic resources for legal work.¹⁹¹ The teacher's role, then, is not merely to introduce students to competing frameworks, but to demonstrate how those frameworks can be translated into legal reasoning and deployed by judges, litigators, legislators, policy-makers and others in addressing concrete legal problems.

Framing legal theory around shared problems, such as inequality, climate change, or emerging technologies, helps students to see theory as a living resource rather than an abstract body of knowledge detached from practice. As Friedmann had observed, jurisprudence can be taught through concrete legal topics and political conflicts, linking theory and practice while exposing students to underlying value disputes (such as, he said, liberalism versus welfarism) so they can understand and discuss them.¹⁹² In line with Kirkby, a theory course can deliberately pair canonical 'usual suspects' with anti-canonical thinkers, disrupting linear, Eurocentric, and male-dominated narratives while highlighting the contingent, creative, and contested nature of legal thought.¹⁹³

These approaches show that curricular crowding can be addressed not by cutting content, or not simply by cutting content, but by reframing how it is encountered. Theory can be presented as an active practice of worldmaking, students can be engaged on terms that reflect their starting points and aspirations, and classroom strategies can organise complexity without sacrificing depth.

¹⁸⁷ Ibid 79–80.

¹⁸⁸ Tan (n 175) 24–5.

¹⁸⁹ Ibid 25.

¹⁹⁰ Sternlight (n 1) 713.

¹⁹¹ Ibid 741–2 for specific examples.

¹⁹² Friedmann (n 4) 396.

¹⁹³ Kirkby (n 48) 379.

V SOLUTIONS FROM THE AUTHOR'S PRACTICE

Drawing on the literature discussed in Part IV, my approach to teaching legal theory seeks to respond to curricular crowding by reconfiguring how theory is framed, sequenced, and inhabited by students. To use the language of the thematic and this paper, the course is designed to support three interrelated aims: to de-crowd inherited curricular structures, to create conceptual spaciousness for sustained engagement, and to prevent student desertion in a subject that is both demanding and unsettling.

A *De-crowding: Making the Course Story Explicit*

The first strategy addresses crowding at the level of structure and narrative. Rather than presenting legal theory as a neutral survey of established thinkers, the course makes its organising 'story' explicit showing how choices about starting points, sequencing, inclusion, and exclusion reflect particular conceptual and normative priorities. These choices and their connections are revisited it throughout the term using visual diagrams and conceptual maps. Students are introduced early to the idea that any theory course is constructed, and they are encouraged to question those choices.

The course begins with a shared framing around what 'justice' might mean, mapping the kinds of questions legal and political theory ask about it, the different answers they offer, and the worldviews those answers presuppose. Canonical and critical perspectives are presented on the same conceptual plane, rather than arranged hierarchically, with attention drawn to gaps in representation and to whose voices are marginalised or absent. In this way, students are invited to examine not only the theories themselves but also the conditions under which these theories came to occupy space in the legal curriculum.

This approach aligns directly on genealogical and 'worldmaking' accounts of jurisprudence discussed in Part IV. By foregrounding the contingency and constructed nature of the syllabus, de-crowding is achieved not by removing material, but by loosening its claim to inevitability, while empowering students to see themselves as legitimate participants within the conversation.

B *Creating Spaciousness: Teaching Theory in Contexts and Conversations*

A second strategy focuses on creating conceptual and pedagogical spaciousness within the classroom. Rather than teaching theorists in isolation, each is situated socio-historically and introduced through the problems they were addressing in their own time and the problems they can and do help diagnose and/or solve today (or not). Theories are taught in conversation with one another, emphasising disagreement, overlap, and tension rather than discrete mastery. This approach aligns

with thematic and problem-based methods, and with the idea of theory as an enabling methodology¹⁹⁴ rather than a fixed body of knowledge.

Class time is deliberately cleared for sustained discussion, debate, and role-play, with preparation time built into the course design. Students are regularly asked to apply theoretical frameworks to real-world problems, historical cases, and scenarios they create themselves, drawn from their own experiences. These exercises are treated as sites where theory is tested, contested, and made meaningful.

Assessment design plays a central role in creating this spaciousness. Across all major assessment tasks, students are given a high degree of autonomy: they choose the theorists they wish to work with, the contemporary legal, social, political, and/or economic problems they wish to analyse, and, in some cases, the pop cultural materials through which the theories can be explored. In early assessments, students experiment with applying theories of law and justice to familiar cultural texts. Some of the examples they have chosen and designed include: interpreting Aristotelian justice through *The Green Mile*, Rawls's 'veil of ignorance' through *The Hunger Games*, and Nozick's theory of voluntary exchange through *Breaking Bad*. The second, longer assessments moves to explicitly real-world problems, asking students to place two or more theorists (of their choosing) in dialogue when diagnosing and responding to issues, creating unexpected conversations and comparisons, and new ideas.¹⁹⁵ Again, students have examined a range of issues, of their choosing, such as mass deportation, incarceration, online sex work, and even aviation regulation. These tasks invite students to imagine theorists responding to one another, to critique theoretical limits, and, to use Kirkby, engage in their own modest acts of 'worldmaking', within a curriculum that can feel overcrowded.

Finally, by asking students to apply theories to concrete contemporary controversies in both their class activity and assessment, the course emphasises legal theory as a relevant and practical interpretive tool rather than an abstract body of knowledge. The specificity of these tasks, and the requirement for sustained engagement with competing theoretical perspectives, also makes them less amenable to full GenAI substitution.

C *Avoiding Desertion: Structure, Presence, and Scaffolding*

Finally, the course explicitly addresses the risk of student desertion in the face of dense, demanding material by combining structured support with opportunities for engagement and reflection. Engagement is supported through a deliberate blend of lectures, interactive activities, collaborative work, and experiential learning, designed to

¹⁹⁴ Stanley (n 34) 244–5.

¹⁹⁵ Students are discouraged from (solely) selecting theorists who are already paired as rivals in the course, to encourage more independent and creative combinations in their analysis, e.g. Rawls v Bentham, Rawls v Nozick, Honneth v Fraser, Gilligan v MacKinnon, MacKinnon v Crenshaw.

accommodate diverse learning preferences and needs. Classroom practices, such as circular or horseshoe seating, open-ended questions, and ‘think-pair-share’ and jigsaw methods,¹⁹⁶ are used to foster dialogue and lower the perceived risks of participation.

Assessment guidance is very detailed. Students are provided with rubrics for each assessment task, covering each relevant descriptive indicator at each performance level, and also with ‘shadow rubrics’ that illustrate what poor or underdeveloped performance ‘actually’ looks like. Students are also provided with exemplars, templates, and annotated examples of effective introductions, theoretical positioning, use of theoretical support and empirical evidence, and conclusions. These scaffolds are particularly important for novices to philosophical reasoning and academic writing, where they clarify expectations and help students navigate the intellectual density of the subject with less overwhelm.

Meta-cognitive learning is built into the course through short reflections tasks (written or in video form) posted to the student forum. This invites students to articulate how their thinking on a topic has shifted through engagement with the readings, to be explicit about what they do not yet fully understand, and to explain what aspects of theorists’ accounts they find unconvincing or unappealing, and why. These tasks encourage thoughtful reading, prioritise the student as an individual learner, and are also more difficult to outsource (entirely) to GenAI.

‘Teacher presence’¹⁹⁷ is maintained through essay-writing workshops, individual and cohort-level feedback, and explicit modelling of intellectual uncertainty. By balancing challenge and care, the course acknowledges the demands of legal theory while attending to the qualities and inclinations of the cohort.

VI CONCLUDING REFLECTION

Teaching legal theory occurs within a distinctive, changing mix of curricular crowding and un-crowding: an inherited canon, expanding expectations of inclusivity, assessment challenges intensified by GenAI, and student tendencies that complicate engagement with abstract readings and ideas, disagreement, and uncertainty. The marginal position of legal theory within the wider curriculum shapes how students enter the classroom, probably with some bewilderment

¹⁹⁶ ‘Think-pair-share’ is a teaching tool where students are given time to respond to a prompt/topic/task, then to team up with a classmate to discuss and refine their thoughts, and then share insights with the wider class. Jigsaw learning is a teaching tool in which students become ‘experts’ on one part of a topic and then teach that part to their peers, so that each student’s contribution is necessary for the group or class to understand the whole.

¹⁹⁷ Taken from Randy D Garrison, Terry Anderson and Walter Archer’s community of inquiry framework, and meaning the teacher’s role in learning design, facilitation and ongoing guidance. See for a history: Randy D Garrison, Terry Anderson and Walter Archer, ‘The first decade of the community of inquiry framework: A retrospective’ (2010) 13 *The Internet and Higher Education* 5.

and/or contempt as Friedmann put it.¹⁹⁸ It also leaves teachers with significant autonomy, a state that can foster creativity but that requires intentional decisions about how the course is structured, ‘pitched’, and delivered.

The approaches shared in this paper suggest that responding to these conditions does not require either abandoning the canon or defending it uncritically. Rather, they point to a shift in emphasis from theory as content to be covered to theory as a shared, participatory practice. Legal theory emerges not as a fixed set of authoritative answers, but as a range of orientations and methods through which law can be interpreted, contested, and re-imagined. Once understood in this way, the sequencing of material becomes a substantive pedagogical choice rather than a neutral inheritance. Approaches such as critical genealogy, ‘archaeology’, and constructive subversion reframe canonical theories as historically situated responses to particular historical problems, ‘crises’ and contexts. This framing creates space to disrupt the traditional order of presentation, perhaps beginning from contemporary problems or student concerns and working backwards to the theories that have helped shape them, and/or organising the curriculum thematically rather than chronologically. Either way, curricular selection itself becomes part of the pedagogical work, inviting reflexivity about what is taught, why it is taught, and what alternative starting points might have been possible.

Equally important is what this literature suggests about student identity and the teacher’s role in mediating it. Treating students simultaneously as, I suggested, explorers, future practitioners, and novices, anticipates and supports the diversity of perspectives, anxieties, and capacities they bring to the legal theory classroom. It also guides them into spaces where familiar assumptions are challenging and the grounds of their thinking can be unsettled, what Stanley described as entering potentially dangerous waters.¹⁹⁹ This approach enables legal theory to be both intellectually demanding and professionally formative, in the broader sense of cultivating civic sensibilities, moral consciousness, and reflective judgement. In this context, emerging challenges, including the use of GenAI, sharpen these questions about legal theory. If legal theory is understood as a practice of inquiry, critical reflection, and worldmaking, then the pedagogical task is less about excluding new technologies and more about designing learning environments that reward careful thinking, intellectual and creative risk-taking, and genuine engagement.

My own strategies, to both de-crowd and bring together, represent some of my current, provisional responses to these pressures. Persistent tensions remain. One such tension concerns what it means, in practice, to ‘start with the student’. While the course increasingly foregrounds students’ questions and concerns, canonical theorists continue to act as primary anchors. This reflects a persistent worry about short-changing students: that letting go of familiar theorists, or working with fewer of

¹⁹⁸ Friedmann (n 4) 392.

¹⁹⁹ Stanley (n 34) 241.

them in depth, risks depriving students of a shared disciplinary language in a field where the canon continues to carry academic weight. As a result, the course still follows much of the ‘usual story’ identified in Part III, combining a broadly chronological structure with critical interventions layered on top. Future iterations may require greater willingness to rethink this structure altogether, moving beyond adaptations at the margins, with the notion of worldmaking a guiding principle.

Time is an ongoing constraint. Despite deliberate efforts to clear space for discussion, debate, and reflective activity, class time remains crowded. Structured debates and role-plays have proven pedagogically rich for many students, yet they also generate ambivalence. Some students report that debates favour confident speakers, while others, particularly those with a philosophy background, experience them as taking time from engaging more deeply with the texts. This raises a persistent pedagogical question: how to balance depth, inclusivity, and participation in a limited classroom space.

Assessment design remains perhaps the most pressing site for future development. The current two-essay model enables rich, independent engagement with theory but is logistically heavy for both students and teacher, and increasingly vulnerable to GenAI. Future iterations may explore shorter, progressive assessments that scaffold theoretical thinking over time, or alternative formats such as group assessments and/or viva-style discussions. Early reports from a colleague experimenting with vivas, in which students discuss their essay plans and later reflect orally on their final work,²⁰⁰ suggest promising ways of preserving intellectual integrity, supporting reflective learning, and reducing the need for policing and discipline.

Ultimately, the goal is not to resolve crowding and un-crowding once and for all, but to remain attentive to how their blend shifts, and to respond in ways that preserve, and make pedagogically available, theory’s distinctive capacity to unsettle, reframe, and deepen students’ understandings of law and justice. By foregrounding legal theory as a practice of inquiry, critical reflection and worldmaking, students and teachers can approach it as a space to experiment, engage critically, and apply ideas creatively, recognising law as a living social practice.

²⁰⁰ Associate Professor Kevin Walton’s presentation focused on his experimentation with vivas or oral assessment, as part of the panel discussion ‘Teaching Legal Theory in the Crowded Curriculum’ at the UNSW Legal Education Conference, UNSW Law & Justice, 25 November 2025.