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Deep Learning, Critical Thinking and Teaching for Law Reform

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TEACHING NOTE

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Introduction

The legal system does not always operate fairly. Some lawyers, including myself, become law teachers because we hope we can make a difference. We teach so that students understand the injustices of our legal system and become motivated to reform the law. To assess our progress towards this goal, it is important to periodically reflect on the effectiveness of our teaching approaches. Are current approaches helping or hindering students to become critically and socially aware? This teaching note questions the effectiveness of current teaching approaches, and explores alternatives that might better motivate students to take responsibility for social and legal change. I will argue that the most effective approach to engage students is one that facilitates deep learning.

The first section of this article sets out to describe the educational research that links deep learning and social change. The second section explores a framework for analysing the effectiveness of current teaching approaches to support deep learning. I will propose that the most effective approach is one that focuses on the critical and active engagement of the student. In the third section, I describe an example of my own teaching to illustrate how this approach can be used to design learning experiences, despite the limitations of large group teaching. To conclude, I discuss some implications of a teaching approach that focuses on deep learning and critical thinking.

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Deep Learning and Change

The founding assumption of this article is that social change can be achieved through deep learning. But what is deep learning and why does it lead to change? To explore the concept of deep learning and explain why it is associated with social change, this section will briefly review the literature in this area.

Learning has been defined as a process by which we quite simply come to understand a topic/concept /idea differently.[1] When we have learnt something, our approach to the world, or our world-view, is re-organised. Following this re-organisation, our understanding is usually more sophisticated and multi-faceted. The type of learning that leads to this internal change has been described as "deep learning".[2] "Deep learning" can be usefully contrasted with "surface learning". "Surface learning" emphasises the ability to memorise and list information. Surface learning might lead to an ability to apply knowledge, but only in a limited way. This is because the content of the learning is not connected to other concepts within the learner, nor internalised into ways of understanding the world or related experiences.

The concept of deep learning links learning with social change. If deep learning permits us to see our world differently, then we have changed. Change is therefore a consequence of deep learning. Thus, if deep learning results in experiencing a new understanding about society, then deep social learning can result in *social* change. The next important question to address is how to effectively facilitate deep learning in law.

Teaching Approaches that Encourage "Deep" Learning

It can be generally observed that law schools across Australia intend that their students learn deeply. In many course outlines, students are directed to do more than memorise information.

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1 J Biggs, *Teaching for Quality Learning at University* (Buckingham: Society for Research into Higher Education and Open University Press, 1999); N Entwistle, *Styles of Learning and Teaching* (New York: John Wiley & Sons, 1981); M Prosser & K Trigwell, *Understanding Learning and Teaching* (Buckingham: Society for Research into Higher Education & Open University Press, 1999); P Ramsden, *Learning to Teach in Higher Education* (London and New York: Routledge, 1992).

2 The concepts "deep learning" and "surface learning" were developed by Marton & Saljo. See F Marton & R Saljo, On qualitative differences in learning: outcomes and process (1976) 46 *British Journal of Educational Psychology* 4.

Students are frequently asked to critically analyse laws, legal systems, procedures and methods in creative and insightful ways. However, are our teaching approaches effective in supporting deep learning? This section will outline a useful framework for understanding different teaching approaches. I will then analyse the teaching approaches observed in law schools, and argue that the most effective teaching approach to facilitate deep learning and social change is one that focuses on "what the student does" .

Influential educational researcher John Biggs has developed a useful framework for understanding teaching approaches. Biggs identifies three different teaching approaches that educators use.[3] The first teaching approach is described as being focused on "what the student is". This teaching approach is manifested in the belief that student learning is limited by individual characteristics, and that these characteristics do not change over time. Students are empty vessels. Learning is an ability to absorb information, which is determined by personal ability and level of commitment and motivation. Thus, when a student fails to learn, the student is to blame. The second teaching approach identified by Biggs focuses on "what the teacher does". This teaching approach is manifested in a focus on clarity and diversity in methods of communication. While this approach acknowledges that the teacher can have an impact on the quality of student learning outcomes, the student is still a passive recipient of information. This second teaching approach attempts to improve teaching by looking at the learning environment and teaching methods. The third teaching approach that Biggs identified emphasises "what the student does". This third teaching approach focuses on what the student will understand differently after the learning experience. Like the first and second teaching approaches, this third approach requires clear presentation of information although clarity of communication is not the focus. Rather, the third teaching approach emphasises framing the learning experience in a way that leads to conceptual change in relation to the student. While Biggs' framework is not the only one that might be used to analyse teaching approaches in law schools, applying this framework leads to new insights when used to evaluate current teaching approaches in legal education to achieve social change.

It can be observed that approaches to teaching social change in law schools focus on students absorbing information. For

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3   J Biggs, What the Student Does (1999) 18 (1) *Higher EducationResearch and Development* 57.

example, legal education, which attempts to affect social change, generally focuses on making heard the silenced perspective. I want to be clear that awareness about the silenced perspective is relevant and important to achieving social change. However, if we as teachers focus on giving information as our primary purpose, has our teaching changed the understanding of society in the minds of the people we are talking to? We may well have provided an insight into the perspectives of other groups, but has our teaching resulted in deep learning which will trigger a change in social understanding? Applying Biggs' framework, I propose that legal educators generally adopt either the first or second teaching approach in teaching for social change. Yet, this is to the detriment of deep learning and change.

Writing about education generally, Paulo Friere[4] makes a similar observation about teaching approaches that attempt social reform. Friere warns that any "pursuit of liberation"[5] is defeated by teaching which operates on a "banking model". The banking model of teaching is undesirable because it alienates the student from the world by rendering them passive recipients of information. This in turn reduces a student's capacity to take responsibility to critically reflect for themselves and instead only encourages students to memorise and rote learn.

The key insight to be drawn from these educational theories is that in order to facilitate social change, teaching approaches must enable a deep and critical *understanding*. Teaching practices must focus on students' actions and provide opportunities for students to question, extrapolate and hypothesise. It is not sufficient to have emotive stories, more rigorous arguments or more persuasive communication techniques. Students are simply not empty vessels. Rather, change through critical understanding is something that students will need to construct for themselves through actively engaging with topics of social importance in personally meaningful ways. The next section describes an example of teaching that has implemented this approach.

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4   P Friere, *Pedagogy of the Oppressed* (New York: Continuum Books, 1993) http://www.webster.edu/~corbetre/philosophy/education/freire/freire-2.html (accessed 3 February 2005).

5   Id at 5.

Demonstrating Alternative Teaching Practices for Deep Learning in Large Groups: The Conference Experience

The teaching experience described in this section is a legal conference presentation. The presentation provided an opportunity for approximately 60 participants (mostly lawyers and legal educators) to develop their understanding of teaching approaches and practices.[6] So that the conference session might facilitate "deep learning", the session focussed on how the conference participant could understand the topic "legal education" differently. This section describes the unique issues and considerations involved in implementing this alternative approach, and how those considerations informed the design of the session's goals and activities.

The Goals – How the Understanding of the Conference Participants would be Developed

Before the session's goals could be articulated, a number of preliminary issues required examination. Firstly, it was necessary to identify the participants' current teaching practices and the conceptual understanding supporting those practices. In other words, it was critically important to ground the deep learning experience by recognising that these learners were not "empty vessels". Indeed, the conference participants were likely to already have views about effective teaching practices. I hypothesised that the predominant teaching approach would probably be the banking model (as discussed earlier), and that this approach would likely be based on the assumption that a speaker can overcome ignorance with information. The next preliminary issue was to clearly articulate what I wanted to achieve in the session. I concluded that I wanted to suggest that engaging students actively and critically would be more effective in encouraging deep learning than other approaches. It was only after identifying where the participants were starting from and comparing that with the understanding that I wished participants to leave with, that I was able to articulate what they would need to understand *differently*. Only then was it possible to construct learning goals for the session that would facilitate this process.

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6   For a recording of the session go to http://law.anu.edu.au/alsc/ Presentations.asp and select the video file for the plenary session "Legal Education" conducted Friday 24 September, 2004. The conference presentation referred to in this article starts at approx 51 minutes and runs for 11 minutes.

Five specific learning goals were subsequently articulated to describe how conference participants would come to understand teaching approaches differently. The learning goals for each participant were to:

1 identify their own teaching practice explicitly,

2 identify the assumptions underlying their own practice,

3 identify discrepancies between their own teaching practices and underlying assumptions so that a desire to change and consider alternatives might be stimulated,

4 question information transmission as the only teaching practice possible, and

5 explore alternative teaching practices, including "what the student does" and hypothesise on other contextual possibilities.

Together, these goals reflect learning stages which would enable each participant to step from their prior understanding of teaching approaches to new understandings. These goals therefore structured the development of each participant's understanding of teaching in a personally relevant and immediately applicable way. In this way, the intention was that the learning experience would be deep, and that it would actively and critically engage the participants. The next step in designing the session was to identify the learning activities that would facilitate these learning goals.

The Activities – What the Conference Participants Did and Why

To construct appropriate learning activities, it was necessary to identify a meaningful conceptual framework through which participants' understanding of teaching approaches might be re-organised. Such a framework had to permit participants to identify and understand their current practices, yet also provide them with an opportunity to critically examine and challenge them. I concluded that the research on the Five Perspectives on Teaching developed by Pratt and Collins[7] would be a suitable framework to facilitate this learning. Once the framework had been identified, the activities could be planned.

Five learning activities were then designed for the 10 minute session. How each of the activities drew upon the framework to address each of the five learning goals is explained below.

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7 For the complete quiz http://www.teachingperspectives.com (accessed 21 June 2005).

Activity 1: Introduce the framework for analysing teaching approaches. Introduce the Five Perspectives on Teaching developed by Pratt and Collins through an abbreviated version of their quiz. The quiz would be used in the next activity to stimulate conference attendees to consider their own teaching perspective in the light of the extensive research on teaching approaches.

Activity 2: Ask the conference participants to apply that framework to analyse their own personal teaching approaches. Applying this framework to their personal teaching experiences allowed each conference participant to apply the Five Perspectives on Teaching in a personally meaningful way. The quiz itself not only asked information about actual teaching approaches, but also required participants to rank the desirability of each of the different teaching approaches. This activity addressed goals 1 and 2 of the session by facilitating individuals to explicitly identify their own teaching practices and assumptions.

Activity 3: Ask participants to compare and contrast different approaches used by other participants. This comparison was conducted by organising small group discussions in the lecture theatre (a "buzz group"). The focus of each small group discussion was to achieve consensus on the desirability rating for each of the different approaches. The purpose of discussing the results in a small group was to share different teaching approaches and related teaching practices. The reasons for adopting different practices in different settings might also be articulated through the attempt to achieve consensus. This activity addressed goal 3 of the session by permitting individuals to identify discrepancies between their own teaching practices and assumptions so that a desire to change and consider alternatives was stimulated. This activity also addressed goals 4 and 5 of the session to expose participants to the idea that information transmission is only one mode of teaching and to start to generate alternative approaches from their experiences .

Activity 4: Generate new ideas and contexts for teaching practices. The small groups were asked to share their findings with the entire group to draw out different perspectives on teaching and teaching practices. This comparison was facilitated firstly through gathering the responses to Activities 1 and 2 by a show of hands. The possible reasons for inconsistencies generated in the small group discussion in Activity 3 were then called for and written on a whiteboard. This activity

addressed goals 4 and 5 of the session to; expose participants to alternatives and to generate alternatives.

Activity 5: Reflect in the large group on any discrepancy between actual approaches used and the desirability of the different approaches through facilitative questioning. A brief dialogue between the facilitator and the conference participants was held. The facilitator asked questions which were designed to motivate the conference participants to critically examine the alignment between the teaching approaches, contexts and intentions. This large group dialogue, with the conference participants, also served to allow an informal assessment of how effective these activities had been in achieving the four goals of the session. This activity furthered addressed goals 4 and 5 of the session through generating and exploring alternative teaching approaches by drawing upon the experience of the entire group.

The Outcomes – Evaluating the Experience

The five activities were designed to model an alternative approach to teaching that attempted to achieve "deep learning" by facilitating active and critical engagement. As there was no means of formally assessing the quality of participants' understanding in this conference setting, information about the session's effectiveness is limited. However, some measure of the session's effectiveness can be gathered by analysing the verbal and non verbal cues observed during the presentation, as well as the informal and indirect feedback that was received following the event.

During the session and particularly during the small group activity, many of the participants were animated and involved in discussion. When the participants were asked to identify their own teaching approach and assumptions through a show of hands, a large majority of the group participated, which reflected an understanding of the key concepts in the quiz. During Activity 4, there were a number of contributions made from a variety of groups that demonstrated serious thought and consideration of the issues. At the conclusion of the session, there was an audible "aha" moment when the concluding comments drew each participant's attention to how their own learning had happened. The concluding comments identified that their leaning had happened because the session had engaged them through personal critical reflection, not because they had been persuaded to change through lecturing.

The informal feedback received, following the session, also suggests that the presentation was effective. A number

of participants approached me specifically to further discuss the topic. One participant was also overheard to have said "Well, that session on interactive teaching certainly woke me up"! The conference organisers have also received positive feedback on the session generally.

It could be argued that the message might have reached equally as many people if it had been presented as a lecture discussing various teaching perspectives. The added advantage of a lecture is that the presenter has more control over the rate of transmission of information and its form. However, allowing the audience to construct new and personal understandings of teaching is preferable because deep learning has the potential to lead to concrete and lasting changes in teaching practices.

Implications

There are a number of implications that emerge from a teaching approach that focuses on active critical thinking or "what the student does". Three significant implications are considered briefly below.

While the conference presentation describes the facilitation of a deep learning experience for professional legal educators, the effectiveness of the approach is applicable to many other legal educational contexts. The key to the versatility of this teaching approach is that it necessarily recognises the complex interplay of particular and different contextual factors. For example, in order to articulate what the student needs to do to understand differently as a result of a particular learning experience, a teacher must be aware of the general understanding each student group starts out with. Of course, this starting place will change for different student groups and will depend on a range of other contextual factors. The range of contextual factors includes (but is not limited to) the particular university context, the student characteristics and skills, the expectations of the faculty, the expectations of the teacher and the nature of the content of the particular course. Constructing learning activities that recognise the complex interplay of these elements is the skilful art of effective teaching, and each learning experience will be unique. However, focusing on "what the student does" acknowledges these differences, and thus the effectiveness of the teaching approach is not limited to any particular context, subject, or type of student.

To further illustrate the adaptability of this approach to different legal educational contexts, it is perhaps useful to briefly consider a second teaching example. In the context of an undergraduate family law course, I was responsible for a

section that covered theoretical frameworks and the substantive area of marriage. One of the learning goals identified was that the students should be able to use theory to generate critical insight into their own thinking about marriage law reform. The activity designed to facilitate this learning required the students to identify their view on same sex marriage and write a page of supporting arguments. This activity was carried out individually in the lecture theatre during the first class. The following classes presented information covering the different theoretical approaches to family law and the substantive law surrounding marriage formation and divorce. At the conclusion of my section, the students were asked to refer back to the statement they had made in the first class. To begin with, they were asked to analyse their arguments for any similarities with other theoretical positions that had been covered. Then with the knowledge they had gained from discussing the theoretical frameworks, the students were asked to identify the discourse that would respond critically to their initial position and explain why. Finally, they were then required to either develop counter arguments to the critique, or accept the critique and modify their position. The activity did not attempt to persuade the students of a particular outcome of law reform. Rather, the activities were structured so that students used their critical thinking skills and recently acquired legal and theoretical knowledge to learn deeply and engage with their own perspectives on issues relating to law reform and social change.

Secondly, it is important to qualify the potential success of a teaching approach which focuses on "what the student does". There is no direct causal relationship between teaching activities and social change. Even the most effective teaching practice is neither necessary nor sufficient to facilitate social change. Good teaching is not necessary because some students may learn deeply anyway. Nor is good teaching sufficient because there is an element of agency in the student where they need to engage in the construction of their own learning. Therefore, while focussing on "what the student does" is not a guarantee for success, a teaching approach that focuses on "what the student does" may enhance the potential outcomes of legal education.

Finally, if good teaching practice is equated with critical engagement rather than information transmission, the question of whether or not we *should* teach to create social change becomes irrelevant. While the concern about whether or not to teach for social change has different forms, the core concern appears to be the ethics of forcing students to

adopt a particular opinion or "side". This concern reveals an assumption that teaching to change and information absorbed by passive students, are one and the same thing. Using the analysis of teaching approaches developed by Biggs we see that this is not the case. Teaching to achieve a deep learning experience for students is very different. Teaching to change is facilitated by the teacher through critical activities, but it is ultimately constructed by the student. An approach that focuses on "what the student does" recognises student choice in the process of learning because they are made active participants in their own change.

Conclusion

This article has demonstrated how adopting a teaching approach that focuses on what a student does is more effective in achieving social change than teaching by providing information. Focusing on what the student does is more effective because it emphasises the importance of teaching practices that provide critical and personally engaging activities and deep learning. Moreover, deep social learning leads to a more sophisticated understanding of social issues and reaffirms the student's agency to act in the real world. Legal educators have a responsibility to develop these critical skills in their students to enable more students to translate their understandings into actions beyond the lecture theatre.