

Interaction and diversity in the Australian law classroom

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Recognition of increased diversity within Australian legal education means law teachers have to respond to a broader variety of student needs, both at a macro level in admissions and curriculum planning and at a micro level through learning and teaching. Australian law schools have spent the last decade addressing the macro level rather than exploring the needs of the micro. This paper draws on Goffman's ideas of how people engage in a 'quiet sorting' of others according to various attributes to outline strategies for creating and maintaining learning spaces that welcome and engage with diversity.

Keywords: Student diversity, student-teacher interaction, legal education

Law schools and the legal profession in Australia have long been associated with the reproduction of the elite (Goldring & Vignaendra, 1996; Thornton, 1996; Weisbrot, 1990). Scholars have been inclined to reflect on the structural arrangements that sustain this association, which form one important dimension of its persistence. However, the ways in which people interact with each other can also entrench privilege, by quietly indicating that the values, attributes and views of some people are either accepted and wanted or are unaccepted and unwanted; quietly including or excluding. This sorting happens in law schools as well as in legal practice, partly because of the behaviour modelled in law schools.

There is a body of literature on who and what is being taught in Australian law schools, albeit a literature that is frustratingly dated or incomplete. Yet there is little scholarship on how to shape interaction in the Australian law classroom in a way that quietly includes. In this

article, we address this gap in the literature by attending to student-teacher interaction, and explore strategies for creating and maintaining Australian law classrooms that welcome, acknowledge and celebrate diversity as well as responding to the challenges diversity may represent.

Goffman and the Interaction Order

In his 1982 Presidential Address to the American Sociological Association, Erving Goffman (1983) argued the ‘interaction order’ constituted a substantive domain of activity worthy of study in its own right. For Goffman, interaction ‘has a life of its own and makes demands on its own behalf. It is a little social system with its own boundary-maintaining tendencies’ (1967, p. 113), routines and rituals, and spatial and temporal settings. It sits somewhere between the internal micro-world of people’s minds and the macro-level of social structures. Within the interaction order, people who are present in the same space draw on accepted roles and scripts whose performance is mediated through negotiation, transaction and improvisation, and understood according to context. It is the context that provides what Goffman called the ‘frame’ which in turn gives meaning to actions that take place.

Goffman argued that through interaction, people engage in a ‘quiet sorting’ of others according to various attributes. This sorting might reproduce the social order on the basis of hierarchies of class, gender, race and age. However, it might not always do so; the nature of the weighting given by people to various attributes is concealed behind an unlimited set of possible rationalisations. Goffman offered the example of how we go through our lives seeking and obtaining various forms of services from others. How we are treated, by whom and in what contexts (Goffman, 1981) – and the degree to which this reflects our ideas of equality or procedural justice – is likely to influence how we see our place in broader society. If we see ourselves as consistently overlooked and undervalued, we begin to learn how others see us. Although this is not something that Goffman pursued, conversely, if we see ourselves as being treated fairly and with respect, we might also consider that our attributes and views are appreciated.

In this paper, we argue that the law classroom provides a setting for quiet sorting, where inclusion or exclusion of students and ideas can be achieved explicitly or implicitly. Given long-standing concerns about formal and informal barriers to entry to and success within law schools and the legal profession in Australia, we might have expected attention to be paid to how interactions between academics and students might shape which students succeed as well as how and what they learn. However, we argue that there is surprisingly little literature addressing this aspect of law teaching.

Diversity in Australian legal education

The ‘typical’ Australian law student of decades past could have been described as white, English speaking, from a metropolitan area, a recent graduate from an elite private high school, studying full-time in one of the eight ‘sandstone’ research-intensive universities, and with existing links to the legal profession (Weisbrot, 1991). While law is still subject to legitimate public criticism for failing to open up to a broader cohort (Kirby, 2015; Melville, 2014), this stereotype is becoming increasingly inaccurate. A rise in the number of law schools and law students is part of the picture. Only six institutions had a law school in 1960; this had increased to 12 by 1975. By 2015, 37 public and private universities and one non-university provider were offering a law degree.

While there is little recent data available for law schools, we would expect law classrooms to become more culturally and linguistically diverse, as a result of both the large number of international students studying in Australia and increasing diversity within the Australian population. In addition, in recent years an agenda of widening participation has been operating in the Australian higher education sector. So, some students are being drawn from backgrounds underrepresented in the legal profession, including Aboriginal and Torres Strait Islander students, those from low socio-economic status backgrounds, and from remote and regional areas. Many faiths are represented, as are students of different sexualities. The gender imbalance of law schools tipped in favour of women in the 1990s. At the same time, the profile of the average law student has changed from the full-time, just-out-of-high-school, student of the past, with a growing number of more mature students in law schools who have established commitments outside of study and are working to support their education. A variety of measures are also increasing the representation of students with disabilities in tertiary education. As numbers of places in law schools increase and demand declines, it is possible that institutions that act to preserve social exclusivity and fail to cater for a diverse student body will decline in competitiveness and quality.

A commitment to diversity within law schools means that those who teach must be able to recognise and respond to a variety of student needs. To the extent that such assumptions were ever justified, no longer can it be assumed that students do not have family commitments that may limit their classroom attendance, speak English as their first language, have (through an Australian secondary education) developed basic familiarity with legal terminology and process, or have connections with the legal profession.

At a broad curriculum level much has been, and is being, done to accommodate increasing student diversity in law schools particularly through the adoption of the Universal Design to Instruction paradigm (North Carolina State University, Centre for Universal Design, 1997). However, at the micro-level of the interaction order, legal education has been slow to explore how to engage with diversity (Burns, 2013; Melville, 2014; Thornton, 2001). Inclusive initiatives work against the background of a self-reinforcing cycle of gender-, class- and race-based exclusionary practices into which many law graduates, including law teachers, have been acculturated (Commonwealth of Australia, 1991; Australian Law Reform Commission, 1994). Consequently, many staff approach curriculum development or implementation without having experienced an inclusive curriculum, and/or having been educated within a tradition which erases difference rather than welcoming it. Staff may lack the awareness, time, resources or skills to develop appropriate pedagogy, and given the significant proportion who come from a privileged background, may not see inclusive pedagogy as a priority.

While there is a strong emphasis on equity and social justice in many Australian law schools, this foundation is not sufficient to ensure the challenges and opportunities of all types of student diversity are accommodated (Riley, Li & Parker, 2011). These challenges confirm that while we tend to conflate access with social inclusion, it really is only the first part of a comprehensive response. Successful teaching and learning which caters for students' diverse needs and celebrates the variety of student experiences and perspectives must be planned; it cannot be left to chance.

Attending to interaction

Drawing on Goffman, Raf Vanderstraeten, a Belgian sociologist, contended that education depends on ‘face-to-face interactions in which the participants mutually perceive each other’ (Vanderstraeten, 2001, p. 267). Interactions between teachers and students sit within an asymmetrical relationship, recur as a result of formal timetabling and informal signalling of acceptable and desirable communication, and take place within designated physical and digital ‘spaces’. Within this context, it is the teacher’s responsibility to create an environment within which students may learn.

We are running a national project funded by the Australian Government Office for Learning and Teaching, *‘Smart Casual’: Promoting Excellence in Sessional Teaching in Law*. The project is creating and evaluating a suite of interactive teaching development modules aimed at supporting sessional teachers in law. The online modules cover: student engagement; legal problem solving; feedback; legal ethics and professional responsibility; reading law; critical thinking; wellbeing; and communication and collaboration.

In recognition that critical and contextual approaches to understanding law are essential to preparing students to deal with challenges distinctive to law and the administration of justice, we are integrating a series of fundamental strategic themes into the suite of modules: diversity; internationalisation; Indigenous inclusion; digital literacy; and gender. This integration acknowledges and responds to the support needed for staff to face the challenge of incorporating what may be perceived as difficult and unfamiliar organising concepts into their teaching, assessment, support and feedback, as they develop students’ capacity to work in a changing environment.

Using Vanderstraeten’s framework and drawing on our own experience and practices, the *Smart Casual* resources and learning and teaching scholarship, we argue that law teachers would benefit from examining the interactions that occur within the law classroom and the roles and scripts that we adopt. We believe that such an empirically-based research agenda might yield useful prompts and strategies to encourage student-teacher interaction that is quietly inclusive.

Creating learning spaces

Learning spaces extend well beyond the physical classroom and are not simply an extension of or replacement for it. Physical and digital classrooms are complemented by other spaces within which interactions occur: the library; law school student offices; common rooms; academic offices; and outdoor spaces. Palmer defines ‘space’ in this context as ‘the physical arrangement and feeling of the room, the conceptual framework that I build around the topic my students and I are exploring, the emotional ethos I hope to facilitate, and the ground rules that will guide our inquiry...’ (Palmer, 1998, p. 73). Whether interacting with students in a face-to-face or digital environment, formally or informally, we can shape our spaces – Goffman’s frames – to create a safe, welcoming and friendly environment in which students feel free to express their experiences, views and perspectives.

Physical access

Darka stressed the need to ‘convey the message that every student has access to the classroom’ (1996, p. 564) and that, in important respects, each will be treated equally. We suggest assessing the degree to which physical or digital spaces within which teachers interact with students are fit for purpose and safe: are they easily accessible for all students,

including those with a disability; do they have facilities for using visual aids and multi-media; are seats arranged inclusively so that all participants can see each other; are virtual spaces designed to allow access to people with disabilities, slow bandwidth or limited technologies (Wood et al., 2013)? Does the space include artwork, pamphlets, posters, digital files/links or other cues that might signal welcome (such as Indigenous flags, advertisements for queer events, publicity about cultural diversity events on campus, or university policies designed to support diversity, access and inclusion)? If these resources are present but subjected to graffiti or offensive comments — are they promptly removed, replaced or responded to?

Knowing each other

There is safety in familiarity. In *Best Practices for Legal Education*, Roy Stuckey and his colleagues (2007) encouraged law teachers to provide opportunities for teachers and students to get to know each other. Finding out who people are, where they come from, their experiences and how they learn best might be achieved through casual conversation in the first five minutes of class or before or after class, online, or by using a simple ice-breaker in the first class.

It is important, however, not to isolate or embarrass students by highlighting their ‘differentness’ or special needs. Very few students appreciate being ‘singled out’ for any reason, let alone their minority status or disability. Mary Heath uses a ‘welcome postcard’ in her first class inviting students to complete a few simple sentences: my name is...; I am looking forward to...; I am worried about...; I would like you to know ... about me; I would like to know ... about you. Completion of the postcard is brief, voluntary and gives the opportunity to disclose information privately.

Hess (2002) suggested that ‘[p]erhaps the single most important thing a teacher can do to create a positive climate in the classroom is to learn students’ names’ (p. 88). Knowing and addressing students by name removes the anonymity of the collective and helps each student to feel valued. We use a range of strategies to learn students’ names including table name cards, photographs, and seating plans. Teachers can take the initiative to ensure that names do not become the occasion for interactions that communicate exclusion, through the replaying of jokes and mispronunciations some students will have encountered repeatedly, for example.

Being present

While creating a safe learning environment is the first step toward making all students feel welcome and significant, being present in that environment reinforces that message. Our presence as enthusiastic and engaging teachers can be communicated both deliberately and incidentally: explain your interest in the topic; address students by name; smile; make eye contact; listen attentively; use arm and hand gestures and different facial expressions; walk about the room. A good measure of well-judged humour in the law classroom may help create a comfortable, social atmosphere and ‘can carry an awkward or difficult discussion a long way’ (Darka, 1996, p. 571). In these ways, we can show students we are delighted to be teaching law and, more importantly, delighted to be teaching *them* law.

Informal interaction

Some researchers have noted that student-teacher contact both in and out of class can be ‘the most important factor in student motivation and involvement’ (Apel, 1999, p. 371). So, we might engage with students socially by attending student functions if invited, or take a few minutes to chat casually to students out of class, online or in the few spare minutes before

class starts. The coffee shop, the corridor and even the car park offer opportunities for informal interaction.

Addressing the asymmetrical relationship

As Vanderstraeten noted, typically the student-teacher relationship is not one between equals. While most law schools have moved beyond teacher-centred and Socratic teaching styles, our interactions still draw on practices of knowledge transfer from teacher to students, assessment of students by teachers and gatekeeping by law schools and the legal profession. We can flatten hierarchical relationships, and signal and model inclusion, by creating an environment in which each student feels free to speak, express and explore their views and respond to others without fear of intimidation, humiliation or denigration.

Modelling respect

We ought to treat students with respect and model respectful behaviours in and out of class: using language that does not imply hierarchies of attributes according to, for example, class, gender, sexuality, religion, race or ethnicity; giving students the time and resources to prepare for classes and adequate warning of opportunities and expectations to participate in class.

Expectations

A powerful signal to students that we recognise their time and efforts, and are interested in their success, can be given simply by clearly and regularly articulating our expectations, both in relation to students' formal and informal in-class or online performance and conduct as well as in out-of-class assessments. We ought to also provide students with guidance on how they might meet those expectations and how staff in the subject are available to support their success. A process of establishing class norms can present a valuable opportunity for students to articulate their expectations of teachers and for these expectations to be discussed and (where necessary) negotiated.

Class norms

An experienced sessional teacher assisting our *Smart Casual* project described the classroom as the teacher's domain; she argued that it was, therefore, her responsibility as a teacher to fashion and manage a safe and tolerant environment. Negotiating class norms with our students can produce a mutually-agreed framework for identifying and regulating acceptable student and teacher conduct, providing guidance and structure for robust and inclusive class discussion (Arkoudis et al., 2010; Heath, 2005). Students almost always want class norms to encompass respect. Drawing out student perceptions of the meaning and performance of respect and their expectations of us as teachers will often provide windows into their experiences of disrespect in class. As a result, these discussions form a rich resource for establishing inclusive class interactions.

Calling out, debriefing and re-integrating

A common message from sessional teachers with whom we work, as well as the scholarship of learning and teaching literature, is the importance of 'calling out' instances when boundaries have been crossed and class norms flouted (Hing, 1993). These occasions can sometimes be forestalled: where cases might reinforce stereotypes, teachers can offer clear information in passing: for example, by making it clear that there is no evidence for a general association between mental illness and violence. However, this will not always be possible, and improvisation will always be needed. So, Hing urged law teachers to '[s]peak up promptly if a student makes a distasteful remark, even jokingly. Since sensitivity to personal identification differences in lawyering is a skill to be learned, do not let disparaging

comments pass unnoticed' (1993, p. 1833). Rather, teachers need to model respectful interaction, including respectful intervention in discriminatory or offensive speech and interaction. Transgressions of norms may need to be identified, but they should be followed by exploration of the issue and reintegration of the student concerned.

Diversity consciousness

Our style of speech, choice of language and our responses to students who cannot understand what we are saying can signal who or who should not be present in the class. As teachers, we ought to consider how colloquialisms, slang, jargon, culturally specific humour and references or technical language might be understood by a culturally and linguistically diverse student body some of whom did not grow up reading the canon of English literature, playing Australian Rules Football, or watching 1990s Australian television. We should also recognise that students may have differing ability to assimilate information aurally or visually as a result of vision- or hearing- impairment or learning disabilities. We might address some of these issues by speaking loudly and clearly and at an appropriate pace, while facing the class (Burgstahler, 2016). In other cases, strategic choice of examples can give off subtle cues which may quietly include in their contemplation a diversity of religions, family types, levels of wealth, religions and so on.

Learning styles

There is a large body of research that reveals how students, including law students, learn in different ways (for example, DeGroff, 2012). As Paula Lustbader recognised, 'no one teaching method is effective for all students' (1988, p. 455) and we therefore have to use a range of delivery methods to accommodate the breadth of learning styles that may be found in our classroom. We might therefore make material accessible by providing visual aids or even writing difficult concepts, main ideas, technical words and flowcharts on a whiteboard. Online delivery now allows for a variety of modes to be made readily available. Variety may assist students to follow difficult and complex oral discussion, link their aural, oral and written vocabularies, and may also support the learning of students for whom visual learning is most effective.

Shaping communication

Diversity in the student body, and our own backgrounds, can provide rich opportunities to communicate and validate different views and perspectives in ways that include all participants in the discourse. This can be achieved by design as well as by taking advantage of opportunities as they arise.

Diversity in the learning community

There may be value in highlighting our own backgrounds and the fact that we may not fit within stereotypes of the law academic as a way of expanding student perceptions of the discipline and profession. For example, a teachers' accents or appearance may allow them to normalise cultural difference or disability and signal inclusion of a variety of perspectives. Teachers who were the first in their family at university can acknowledge and model pride in their backgrounds, while sending a message of quiet inclusion to first in family students in their own classes.

Student diversity can also be used as a resource to enrich the learning experience. For example, international students from civil law jurisdictions might offer interesting, comparative insight into the advantages and disadvantages of common law. Students with knowledge of *Sharia* or *Halakhah* might volunteer their (diverse) perceptions in

conversations about recognition of religious law or the banning of particular religious practices. This can happen naturally if students believe their contributions will be valued. In contrast, singling students out or seeking involuntary contributions that expose difference may be humiliating and signal exclusion. It can place students in the position of feeling that they must represent or justify a minority position. It can indicate teacher or student perceptions of the student that the student may not share, or may not have been aware of. We should not assume all students with a particular demographic background share the same attitudes or experiences or that students with a particular appearance identify with a particular racial, cultural, religious or ethnic background, or that all disabilities are visible. Far from valuing and validating diversity, assuming a universal experience may entrench stereotypes.

Group work can facilitate learning and the development of cognitive skills in students. It can also enhance intercultural understanding and peer interaction among students from diverse cultural backgrounds. However, the results of a numerous empirical studies suggest that in the United States and the United Kingdom white male students tend to dominate class discussion and teamwork (Grace & Gravestock, 2009; Mertz, Njogu & Gooding, 1998). So, while it is beneficial to encourage teamwork among a diverse cohort, we may need to create mechanisms for ensuring all students are integrated into the collective by, first, allocating groups mindful of gender, age, ability and religious, ethnic and cultural background, and, second, where appropriate, assigning specific roles, such as group leader, scribe, and reporter. Regular encouragement to ensure everyone has the opportunity to participate, and that those who routinely leap into leadership or reporting roles have the chance to share their skills by encouraging others can also influence the tone of classes.

Most, if not all, higher education institutions provide support services and programs for students in need. We need to be familiar with, and provide students access to, details of these services.

We need to help students communicate effectively, identifying and using acceptable and desirable genres, modes and voices in order to engage with each other, with us and with other audiences, formally and informally, inside and outside the classroom. So while students may need to learn to craft an appropriate email, they may also need a safe avenue to communicate their concerns, needs and/or preferences and offer anonymous feedback throughout semester. We can encourage and support their efforts by inviting, and providing routine avenues for, feedback.

Communicating inclusion through teaching

While we need to create hospitable and safe learning spaces, the spaces ought not to be so safe that difficult or challenging issues are evaded or trivialised. We might purposefully expose students to diversity by using materials, activities and examples that respect and signal inclusion and approval of difference. The materials, resources and narratives that we use ought to involve a range of gender, sexuality, and cultural, ethnic and religious backgrounds, while avoiding stereotyping. We might also ensure that we routinely refer to a broad spectrum of role models that might include, for example, LGBTIQ (Lesbian, gay, bisexual, transgender/transsexual, intersex and/or queer) judges, politicians or community leaders, in your class discussions.

We need to have, or acquire through suitable training, the cultural competence and confidence to take advantage of possible segues that incidentally occur in class to introduce discussions about contentious and challenging issues. We might, for example, use a

discussion on violence against women internationally as an opportunity to raise the prevalence of violence against transsexual women and, in turn, contextualise a discussion on gender identity.

Conclusion

The attributes of the ‘typical’ Australian law student may be changing, alongside increasing recognition of diversity that has been previously present but unacknowledged. Certainly, Australian law schools are continually developing and refining their pathways and programs to cultivate and nurture an increasingly diverse student cohort. However, as Gidley et al. noted (2010), simply providing access to a legal education, while a necessary first step, is not in itself inclusion.

We argue that, in this climate of gradual transformation, the law classroom is a critical setting for drawing on Goffman’s exploration of interaction to foster ‘quiet inclusion’ – a place where a broad range of students may come to recognise that they belong in law school and could belong in the legal professions. In the face of little scholarship in this regard, we suggest strategies for how we as teachers might shape our interactions with students in the learning spaces in which we operate, the relationships we cultivate, and the communication we foster, to signal quietly to students that a rich of array attributes and views is welcomed, encouraged and valued within our law schools.

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