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Let me introduce my friend, law: a pedagogical tool for supporting diversity and critical thinking in the legal classroom

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ABSTRACT

If law was a person, what kind of person would they be? In this article I discuss the process of designing and delivering a first-year law seminar around this question. I explain how the question was leveraged towards the aims of (a) creating space for diverse perspectives and (b) developing critical thinking skills among the law students: dispositions we felt were important for law students to establish early in their legal studies. I further explain how critical pedagogy and playfulness informed the seminar structure and allowed us to design the class towards these two aims. While both student and tutor feedback on the seminar was positive, I conclude by outlining potential areas for improving the seminar design and delivery.

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Introduction

If law was a person, what kind of person would they be?

This question has intrigued me for some time;¹ I love that it elicits varying answers. In a few short sentences it can disclose people's assumptions, perceptions and unique perspectives on the law. The diverse cast of characters that the question brings to life sets the stage for fascinating conversations about the ways we each see the law. Given this ability to uncover what people think about the law, the question is a useful pedagogical tool for the legal classroom.

In this article I discuss the rationale behind designing and delivering a law seminar around the "law as a person" question. This seminar was delivered in the 2021/22

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¹Joy Twemlow, "Made by Them, Followed by Us: Challenging the Perception of Law through the Deconstruction of Jurisprudential Assumptions" (2019) 6 Griffith Journal of Law & Human Dignity 107.

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academic year at Durham University Law School and formed the first seminar for a compulsory first-year course focusing on legal skills and the English legal system. It was designed to go deeper than traditional ice-breakers such as “why did you study law” to instead create the conditions that fostered important skills for the legal classroom. Because seminars are structured around student participation this first encounter was brimming with possibilities to shape how students experienced the classroom, each other and the teacher. This possibility was heightened even more as it also constituted the very first law seminar of their whole degree. In consideration of this, the session was designed to leverage the “law as a person” question to foster the important conditions of (a) creating space for diverse perspectives and (b) developing critical thinking skills among the law students.

In the first part of the article, I will outline how the dual aims of facilitating diverse perspectives and fostering critical thinking respond to current needs of the legal classroom. These aims speak not only to important skills for the study of law, but to the necessity to respond to polarisation of discourse within the classroom, and how facilitating critical thinking is disincentivised within an increasingly commercialised higher education (HE) sector. The second section will focus on the delivered response to these needs. Here, I will outline the structure of the seminar with enough specificity that it can be replicated by others (if anyone so wishes). The joy of teaching is in the doing; and doing this seminar – being in a room buzzing with personifications of law – brought me a great deal of joy. I hope that it might be an experience that others might delight in as well. Third, linking the seminar structure with the stated aims, I will outline the pedagogical approaches that informed the seminar design: speaking specifically to how critical pedagogy and playfulness tie into the aims of diversity and critical thinking. While there is space for the seminar structure to be improved, the positive feedback from both students and tutors suggests that the “law as a person” question is a useful tool for the legal classroom.

Diversity and critical thinking as seminar aims

The decision to focus on (a) creating a space for diverse perspectives and (b) facilitating skills in critical thinking arose from discussions with my teaching peers in the law school. In choosing to focus on these dual aims, the claim is not that these are the most important skills for a law student, nor that their importance is unique to the study of law; however, they are dispositions that were important for law students to establish from the outset. The opportunity was therefore taken to utilise the students’ first seminar to convey the importance of these two aims.

Universities are implicated in creating, legitimising and transferring knowledge – at times in exclusionary ways.² Further, as a field, law continues to be criticised for failing

²Alan Skelton, “Towards Inclusive Learning Environments in Higher Education? Reflections on a Professional Development Course for University Lecturers” (2002) 7 *Teaching in Higher Education* 193, 196; Veronica A Jones and Kelsey Kunkle, “Unmarked Privilege and Marked Oppression: Analyzing Predominantly White and Minority Serving Institutions as Racialized Organizations” (2022) 47 *Innovative Higher Education* 755; Raquel Wright-Mair, “The Costs of Staying: Experiences of Racially Minoritized LGBTQ+ Faculty in the Field of Higher Education” (2023) 48 *Innovative Higher Education* 329; Chelsea Kwakye and Ore Ogunbiyi, *Taking Up Space: The Black Girl’s Manifesto for Change* (Random House 2019).

to engage with diverse perspectives.³ Thus, the legal classroom risks being a space where students are only exposed to, and thus acts to reinforce, hegemonic ways of knowing the world.⁴ Cynically, one might claim that legal education does “little more than train law students to become obedient and conformist workers in a conservative legal profession, and ... [thus] discouraged from overly challenging the social and disciplinary status quo”.⁵

In contrast to this fear of homogeneity of perspectives, conversations with colleagues unearthed a different issue: that while students were raising various perspectives, they were expressed in a polarising fashion. Recent high-profile examples in the UK demonstrate that divisive rhetoric is an ongoing issue on the university campus⁶ as well as in wider political discourse.⁷ The legal classroom does not exist in a vacuum; the language used by politicians, academics⁸ and other high-profile individuals – along with the social reality of growing inequality⁹ – has a real impact on the discourse between students. Given the convention of adversarial engagement in law, it is unsurprising that this dynamic of polarisation is often replicated in the classroom.¹⁰ While it is important that law students gain debating skills, the habituation of dichotomous and aggressive speech to the exclusion of other forms of tentative and nuanced communication does not allow students to have genuine conversations.¹¹ Within this environment, engagement with contentious issues increasingly becomes a matter of “winning”, distorting the reality that they are *real* issues affecting *real* people – people who might be fellow students in the classroom. Thus, it became apparent that our aim was not merely to increase the number of perspectives expressed, but to create the conditions where people could genuinely and critically engage *with* that diversity.

Sweet and Michaelsen define critical thinking as “a habitual willingness or commitment to engage in purposeful deliberation about claims of ideas rather

³NK Sam Banks, “Pedagogy and Ideology: Teaching Law as If It Matters” (1999) 19 *Legal Studies* 445; Bethany Rubin Henderson, “Asking the Lost Question: What Is the Purpose of Law School?” (2003) 53 *Journal of Legal Education* 48; Kirsten Anker, “Teaching ‘Indigenous Peoples and the Law’: Whose Law?” (2008) 33 *Alternative Law Journal* 132; Henry Jones and Aoife O’Donoghue, “History and Self-Reflection in the Teaching of International Law” (2022) 10 *London Review of International Law* 71.

⁴Foluke Adebisi, “Decolonising the Law School: Presences, Absences, Silences ... and Hope” (2020) 54 *The Law Teacher* 471; Bennett Capers, “The Law School as a White Space” (2021) 106 *Minnesota Law Review* 7; Christine EJ Schwöbel-Patel, “‘I’d Like to Learn What Hegemony Means’” (2013) 3 *Law and Method* 67.

⁵Nickolas James, Clair Hughes and Clare Cappa, “Conceptualising, Developing and Assessing Critical Thinking in Law” (2010) 15 *Teaching in Higher Education* 285, 288; Henderson (n 3); Schwöbel-Patel (n 4); Capers (n 4).

⁶Maya Wolfe-Robinson, “Durham Head Steps Back after Calling Students ‘Pathetic’ at Rod Liddle Event” *The Guardian* (London, 9 December 2021) <www.theguardian.com/education/2021/dec/09/durham-head-steps-back-after-calling-students-pathetic-at-rod-liddle-event> accessed 26 March 2023; Patrick Kelleher, “Students Stage Peaceful Protest against Sussex Professor Kathleen Stock: ‘We Were Meant to Be Safe’” (*PinkNews*, 18 October 2021) <www.thepinknews.com/2021/10/18/kathleen-stock-university-of-sussex-protest/> accessed 26 March 2023.

⁷Ben Doherty, “Stop the Boats: Sunak’s Anti-Asylum Slogan Echoes Australia’s Harsh Policy” *The Guardian* (London, 8 March 2023) <www.theguardian.com/uk-news/2023/mar/08/stop-the-boats-sunaks-anti-asylum-slogan-echoes-australia-harsh-policy> accessed 26 March 2023.

⁸As stated by Jones and O’Donoghue: “As teachers of law, we need to be confident that we equip our students to be able to argue against the idea that rape is just ‘bad sex’, that homosexuality is ‘evil’, or that British colonialism was self-defence.” Jones and O’Donoghue (n 3) 74.

⁹Melissa Gibson, “From Deliberation to Counter-Narration: Toward a Critical Pedagogy for Democratic Citizenship” (2020) 48 *Theory & Research in Social Education* 431.

¹⁰Skelton raises this tendency in the context of scientific debate, stating: “speech that is assertive and confrontational is here more valued than speech that is tentative, exploratory or conciliatory.” Skelton (n 2) 198.

¹¹Iris Marion Young, “Inclusive Political Communication” in Iris Marion Young (ed), *Inclusion and Democracy* (Oxford University Press 2002).

than simply accepting them at face value".¹² Critical legal scholars have long characterised the legal classroom as a place where claims are deposited by teachers into students' minds without a wide scope for questioning the accepted norms.¹³ Because of this, it can be uncomfortable for both the students and teachers to habituate critical thinking in the classroom. Even where this hierarchical structure is not intentionally (re)produced, teacher anxiety about being perceived as knowledgeable might nudge the teacher away from inviting the uncertainty of critical thinking. Put another way, if the teacher feels that their identity rests on the authority of the claims and ideas expressed, they might be reluctant to invite questioning of that authority.¹⁴ Students might be similarly reluctant. As bell hooks expresses it, "students ... often come to classes assuming that thinking will not be necessary, that all they will need to do is consume information and regurgitate it at the appropriate moments".¹⁵ The increased commercialisation of HE, the rise in students being thought of (and thinking of themselves as) consumers, and the pressure to meet external metrics push classrooms towards a place of transaction and away from the space of transformation.¹⁶ It is therefore important to provide them with opportunities to practise the skill of critical thinking at an early stage.

Diversity of perspectives and critical thinking are essential elements of the legal classroom. In fact, influenced by the critical pedagogical concept of the democratic classroom, these two aspects are important elements of teaching more generally. The trend of treating students as consumers under a commercialised HE framework not only is an affront to the way education is delivered, but constrains the role education can play in the lives of students.¹⁷ As Spearlt and Ledesma explain, critical pedagogy highlights that the classroom has the potential to be much more than a place to consume information: it can be a space where students can experience agency, autonomy and what it is like to occupy an equitable space.¹⁸ Treating students as mere consumers is to strip students of their individual agency and, as Freire says, is to dehumanise them.¹⁹ To create a democratic classroom means actively pushing against the dehumanisation of students by fostering the space for their diverse perspectives and providing legitimatisation of academic knowledge that reflects the students' lived

¹²Michael Sweet and Larry K Michaelsen, "Critical Thinking and Engagement: Creating Cognitive Apprenticeships with Team-Based Learning" in Michael Sweet and Larry K Michaelsen (eds), *Team-Based Learning in the Social Sciences and Humanities: Group Work That Works to Generate Critical Thinking and Engagement* (Stylus Publishing 2012) 5, 8.

¹³James, Hughes and Cappa (n 5) 288.

¹⁴Catherine Bovill, Alison Cook-Sather and Peter Felten, "Students as Co-creators of Teaching Approaches, Course Design, and Curricula: Implications for Academic Developers" (2011) 16 *International Journal for Academic Development* 133, 140.

¹⁵bell hooks, *Teaching Critical Thinking: Practical Wisdom* (Routledge 2013) 8; Bovill, Cook-Sather and Felten (n 14) 135.

¹⁶Mark L Spinrad and Stefani R Relles, "Losing Our Faculties: Contingent Faculty in the Corporate Academy" (2022) 47 *Innovative Higher Education* 837; Simone Galea and David Rousell, "Rethinking Teaching: Alternative Ontologies of Educational Praxis and Thought" (2022) 43 *Discourse: Studies in the Cultural Politics of Education* 659, 660.

¹⁷Bronwyn Davies, "The (Im)Possibility of Intellectual Work in Neoliberal Regimes" (2005) 26 *Discourse: Studies in the Cultural Politics of Education* 1, 13; Henderson (n 3) 64; Schwöbel-Patel (n 4).

¹⁸Spearlt and Stephanie Smith Ledesma, "Experiential Education as Critical Pedagogy: Enhancing the Law School Experience" (2013) 38 *Nova L Rev* 249, 251.

¹⁹Paulo Freire, *Pedagogy of the Oppressed* (30th anniversary edn, Bloomsbury Publishing USA 2014) 48.

experiences in the world.²⁰ It involves building the skills within students to engage critically with ideas, not only to adopt and challenge them, but to shape and converse with the concepts within their discipline, of their peers, and their own assumptions. Adopting this position towards education is not merely about a concern for the dynamics within the classroom (although it is that), but it is also about making the classroom a place “where the conditions for democratic consciousness can be established and flourish”.²¹ The classroom might not be the site of formal political processes but, as the issue of in-class polarisation raised by our colleagues shows, it can (re) produce or disrupt the habitual ways members of a society engage with each other. Given law’s close connection with the democratic machinery of our society – that is, the way in which law both defines the contours of our political engagement and is a product of them – establishing democratic consciousness is a particularly important concern for the legal classroom.

Alongside this broad social justice justification, a more targeted reason for the importance of diverse perspectives and critical thinking rests in their relationship to the skill of legal reasoning. Authors concerned with legal pedagogy agree that legal reasoning is a “threshold concept”.²² Threshold concepts are those “from which a new perspective opens up, allowing things formerly not perceived to come into view”.²³

Wallace notes that students often expect legal reasoning to be a formulaic exercise: they presume that if they memorise the mechanical rules, they will be able to reach the “right” judgment about the facts provided. However, students are mistaken in holding this view. Legal reasoning does not produce one “objectively” right answer but “moves from accepted premises ... towards a normative and interpretative statement: how should the law be applied?”²⁴ To successfully undertake legal reasoning, students need to simultaneously keep in mind that there can be multiple paths of reasoning, be able to identify those which are invalid, and have a communicable reason for adopting one of the remaining paths. It is evident that, in order to identify multiple paths in the first place, students must be able to adopt multiple perspectives. They must employ critical thinking to assess those various lines of reasoning against the conventions of the legal community.²⁵ However, really good law students do not merely judge potential arguments against a static notion of legal validity, they have an awareness of how to take up existing ideas, transform them, and present them back in a way that could viably be accepted. It is not the mere exposure to diverse perspectives, but experiences of embodied and genuine engagement with different points of view that instil in students the skills to articulate their own position in a manner that is understandable to another (in the legal community or not). Further, law students must have skills in critical thinking

²⁰Skelton (n 2) 197; Bovill, Cook-Sather and Felten (n 14); Stewart Riddle and Andrew Hickey, “Reclaiming Relationality in Education Policy: Towards a More Authentic Relational Pedagogy” (2022) *Critical Studies in Education* (forthcoming) 11–12; Dennis Atkinson, “Inheritance, Disobedience and Speculation in Pedagogic Practice” (2022) 43 *Discourse: Studies in the Cultural Politics of Education* 749; Gibson (n 9) 441.

²¹hooks (n 15) 16.

²²Chloë J Wallace, “The Pedagogy of Legal Reasoning: Democracy, Discourse and Community” (2018) 52 *The Law Teacher* 260; David Yuratich, “Ratio! A Game of Judgment: Using Game-Based Learning to Teach Legal Reasoning” (2021) 55 *The Law Teacher* 213.

²³Ray Land, Jan HF Meyer and Caroline Baillie, *Threshold Concepts and Transformational Learning* (Sense Publishers 2010) ix.

²⁴Wallace (n 22) 261.

²⁵James, Hughes and Cappa (n 5) 287.

not only to evaluate arguments against the standards of law, but to have the dexterity to transform those standards as they enter the legal community themselves.

Structure of the “law as a person” seminar

The “law as a person” seminar constituted the first seminar of the compulsory English Law and Legal Methods module at Durham Law School. Enrolled students were placed into seminar groups of 12–15 people and the same seminar was delivered to each group over the course of a week. Prior to the delivery of the seminar to students, a test session was run with law school academic and professional staff. The feedback we received from this mock session helped us to make improvements prior to the delivery of the session in class.

The seminar involved online pre-work and a 45-minute in-class session with four different activities. The pre-work consisted of an online survey and instructions to read the facts, but not the judgment, of *Dudley and Stephens*.²⁶

In the online survey, students were given the prompt:

Imagine we live in a fictional universe where concepts (like love or gravity) take a human form. Within this world, you become well acquainted with Law as a person. For each of these questions, provide 1-3 sentence answers that describe what type of person Law is:

This was followed by five compulsory questions:

How would you describe Law (as a person)?

What other concepts is Law friends with?

How would a person who is friends with Law describe them?

How would a person who doesn't get along with Law describe them?

Every person changes over time, how would you like to see Law as a person change?

The following two pages of the survey were optional, allowing students to provide law's demographic information²⁷ and to upload an image/drawing of law. The survey also requested consent to use their answers in subsequent research. Students were instructed to bring this copy of their answers to class.

There was a 93.4% return rate with 380 students out of the 407 enrolled students completing the survey. While it is beyond the scope of this paper to provide a comprehensive overview of the answers provided by students, the following examples to “How would you describe Law (as a person)?” highlight the range of answers they provided:

Law is the person who others can't stand - they always have to prove that they're right, and insist on knowing every detail before they can make a decision. You can't mention or discuss anything you find interesting around them, because they will insist on telling you everything about it.²⁸

²⁶*R v Dudley and Stephens* (1884) 14 QBD 273.

²⁷Gender (non-binary/female/male/not applicable), age (free text), ethnicity (free text), and an open text field allowing students to provide any other demographic information with the prompts: “religion, sexuality, annual income, education level etc.”

²⁸ELLM Tutorial One Survey, October 2021, respondent 81.

Law is someone who helps establish and uphold authority by setting out rules so members of society are able to get along.²⁹

Chaotic old man who has an Iphone with TikTok downloaded but reads the time exclusively off his pocket watch which is tucked into his three piece suit.³⁰

During the seminar students first took part in a “speed introductions” activity. Students were paired with a classmate and instructed to introduce their legal person, spending 16 minutes in total on this activity; switching peers every four minutes and, thus, encountering four different examples of law as a person in total.

Following the “speed introduction” activity, students were instructed to remain with their fourth and final paired classmate. Within these pairs students were given seven minutes to fill out a templated script of an encounter between their respective examples of law as a person. The instructions read:

Imagine that your respective examples of Law as a person meet each other, fill out the following story about the encounter:

The script template included the following four prompts:

Law as a person A and Law as a person B meet each other at a party. As they start conversing, they find they share similar views on:

However, there is some tense disagreement about:

- Law as a Person A comes away thinking that B would make a good_____
- Law as a Person B comes away thinking that A would make a good_____

Students were then placed into groups of four or five. In these groups they discussed how their law as a person would determine the case of *Dudley and Stephens*.³¹ They wrote down who in their group landed on either side of the guilty/not guilty divide, the reasons they would provide for this position, and any identifiable links between a personification’s judgment and their described traits. For example, if they said that their law as a person was stubborn and rule following it might lead them to strictly apply the law without consideration of circumstance. Tutors visited each group, introducing the ideas of *ratio* and *obiter* in reference to the split positions between the students. To conclude the class, student groups shared their discussion to the class and there was a whole-class reflective discussion.

The influence of critical pedagogy and playfulness in the seminar design

In this section I will outline how critical pedagogy and playfulness informed the design of the seminar. I will explain the link between the literature surrounding these approaches with the design of the seminar, and the furthering of the aim of diverse perspectives and critical thinking. While a causative claim linking the design choices to greater diversity of perspectives and engagement with critical thinking cannot be

²⁹ELLM Tutorial One Survey, October 2021, respondent 92.

³⁰ELLM Tutorial One Survey, October 2021, respondent 113.

³¹(1884) 14 QBD 273.

definitively established, both student feedback and tutor feedback provide positive indications that the seminar added value in these two areas.

Critical pedagogy

At its core, the seminar in its design prioritised the existing knowledge students already possessed. Thoughtfully reflecting on the positionality of the student who enters the classroom is not only a key tenet of critical pedagogy,³² but also promoted by constructivist learning theory.³³ It is rare, however, for law tutorials to incorporate – let alone start from – the position of the student. As Wallace articulates, there is a view of law students as sitting outside the community of legal knowledge; students are expected to undergo years of study that rewards (re)production of the accepted legal perspectives rather than articulation of their own positionality.³⁴ By centring the subjective views of students, the aim was to disrupt this convention and create a space where they were able to freely articulate and express their own perspective.

One of the ways in which starting from the perspective of the student feeds into the two aims of diversity and critical thinking is that it invites students to bring their whole self to the classroom. Both students and tutors often feel pressure to perform to the expectation of their role within the classroom. It was felt that designing the seminar so that students could embody their genuine self would allow for diverse views to enter the classroom and invite critical engagement. It would be misguided to claim that performativity was completely avoided, but to mitigate pressures to conform to an abstract conception of how law students should think and behave, students completed the law as a person survey prior to attending the class. This was to avoid group-think and give students ample time to consider the questions. Additionally, by asking them to reflect on, articulate and physically bring to class their response to what law would be like as a person – and then to spend the class time sharing and unpacking those personifications – it was communicated to students that this was a classroom where they would play an active role. We tutors conveyed that we were not calling for one-dimensional predetermined answers, but were seeking students who actively shape how the class engages with the content and ideas discussed. As bell hooks states, “highlighting the importance of independent thinking and each student finding his or her unique voice ... is usually empowering for students”.³⁵ Instilling this sense of empowerment is what underscores students being able to raise their voice in class, try out unique ways of engaging with ideas and conflicting views without falling into defensive habits: in other words this sense of confidence underpins the classroom being a space for critical engagement and diversity.

It was therefore encouraging that in the student feedback survey, students said they were comfortable expressing their perspective in the seminar.³⁶ Further, while it is impossible to make any causative claims, both I and the other tutors observed that students seemed more willing to speak up and engage with each other in latter classes.

³²Freire (n 19); Paulo Freire and Ana Maria Araújo Freire, *Pedagogy of Hope: Reliving Pedagogy of the Oppressed* (Continuum 1994).

³³Paul Adams, “Exploring Social Constructivism: Theories and Practicalities” (2006) 34 *Education* 243.

³⁴Wallace (n 22) 267.

³⁵hooks (n 15) 21.

³⁶In the student feedback survey, the response to the prompt “I felt comfortable expressing my views in the seminar” were 34.1% Strongly Agree, 58.5% Agree, and 7.3% Neutral.

I would like to think that this is because, as one student stated in their feedback, we made students feel “safe to just give out our different opinions”.³⁷

Starting from the perspective of the students also disrupts the expected hierarchical structure within the classroom. HE tends to cast teachers in the role of a “sage on a stage”³⁸ and this can be especially true in legal classrooms as law is a hierarchical discipline grounded in appeals to authority. Tutors had very little input in the conversation until the second half of the session where we engaged with the group application of personifications to the legal case and facilitated a classroom-wide reflective exercise. Thus, for the majority of the class students were talking with each other. Notably, this can be compared to other formats of student engagement which retain teacher authority – for example, a student expressing their view to the teacher with the rest of the class as an audience or peer-to-peer group discussion with the purpose of relaying an answer back to the teacher. Reflecting on delivering the class, one of the tutors noted how unusual it was to hear a classroom predominantly animated by student voices.

Finally, starting from the perspective of the student allowed for the articulation of values and assumptions that facilitated critical self-reflection. As Sweet and Michaelsen identify, critical thinking is not merely about evaluating newly encountered ideas, it also involves habitually reflecting on one’s own perspective.³⁹ It is important that the self is engaged – not just in the sense of being interested or absorbed, but in grasping one’s own positionality and being drawn towards the potentiality of being changed by, and bringing change to, concepts.⁴⁰ The mechanism of personification was chosen as a way both to articulate, and to gain distance from, the assumptions that students held individually about the law. Some students even identified this opportunity for self-reflection as their favourite aspect of the seminar, with one stating:

I liked that we all got the chance to interact with most other students at the seminar which gave me the chance to see other people[s] perspectives of the law. From this, I could compare their answers to mine and develop on what I had in order to improve my understanding on what other people’s interpretations may be.⁴¹

By specifically requiring students to reflect on their assumptions with others – for example by co-writing a narrative about the encounter with their “law as a person” – the seminar drew on research that shows that the reflective process is more productive when undertaken with others.⁴² The additional requirement of explaining their position to others prompts students to go beyond their gut reaction and explore the underpinning assumptions and values. It is worth noting, however, that the seminar design could be improved here. Students struggled to articulate differences between their law as a person when co-writing the narrative. Students also expressed some confusion about the application of their “law as a person” to the *Dudley and Stephens* case,⁴³ noting that

³⁷ ELLM Student Feedback Survey, October 2021, respondent 21.

³⁸ Lauren Stentiford and George Koutsouris, “What Are Inclusive Pedagogies in Higher Education? A Systematic Scoping Review” (2021) 46 *Studies in Higher Education* 2245, 2248.

³⁹ Sweet and Michaelsen (n 12) 7.

⁴⁰ Maxine Alterio and Janice McDrury, *Learning Through Storytelling in Higher Education: Using Reflection and Experience to Improve Learning* (Routledge 2003) 20.

⁴¹ ELLM Student Feedback Survey, October 2021, respondent 18.

⁴² Alterio and McDrury (n 40) 23.

⁴³ (1884) 14 QBD 273.

there was a difference between how they thought the case *should* be decided, and how their law as a person would decide the case. Thus, further thought and experimentation with these aspects of the seminar are required to fully facilitate critical self-reflection.

Playfulness

The second key influence on the design of the seminar was incorporating playfulness. While there is a significant amount of research into the value of play for childhood learning and development,⁴⁴ there is less attention given to the role play could have in adult learning.⁴⁵ In saying this, HE classrooms are increasingly incorporating play and gameful approaches into their pedagogical design.⁴⁶ The research that has been undertaken shows that playfulness can counteract the negative impact of boredom⁴⁷ and facilitate greater student engagement, at least in the short term.⁴⁸ While it is true that being engrossed is a key characteristic of the experience of play, it is also characterised by experiences of agency, exploration and, often, interaction with others. In the seminar design these aspects of playfulness were exploited to: first, create conditions that allowed students to meaningfully engage with each other's diverse perspectives and, second, provide a low-stakes space where students could practise skills in critical thinking without the fear of failure.

The design of the seminar drew on the concept of "the magic circle" from the field of game studies. As Nørgård and others explain, a magic circle:

[D]enotes a (physical or imaginary) play space that is separate from the real world and mutually constructed by those within and around it. As a boundary, the circle demarcates a space of safety, where the rules of the real world do not necessarily apply and the internal mechanisms and experiences of play can emerge.⁴⁹

By opening the pre-class survey with the words "imagine we live in a fictional universe where concepts take a human form" there was an explicit creation of a magic circle; from the outset students were invited into a space that sat outside the "real" world. Subsequently, when the students entered the classroom, they were confronted with a class structure that disrupted the norms of expected classroom practice. Thus, we were able to maintain the magic circle throughout the seminar itself.

Playfulness is a useful tool when designing a classroom for diversity due to the sense of safety and experimentation that characterises the magic circle. As stated above, more than the mere expression of diverse perspectives, it is important that students are able

⁴⁴See for example: Elizabeth Brooker, Mindy Blaise and Susan Edwards, *SAGE Handbook of Play and Learning in Early Childhood* (SAGE 2014).

⁴⁵Rikke Toft Nørgård, Claus Toft-Nielsen and Nicola Whitton, "Playful Learning in Higher Education: Developing a Signature Pedagogy" (2017) 6 *International Journal of Play* 272, 274.

⁴⁶For example of gameful approaches in the legal classroom see: Yuratic (n 22); Ben Waters, "'A Part to Play': The Value of Role-Play Simulation in Undergraduate Legal Education" (2016) 50 *The Law Teacher* 172; Craig Newbery-Jones, "Ethical Experiments with the D-Pad: Exploring the Potential of Video Games as a Phenomenological Tool for Experiential Legal Education" (2016) 50 *The Law Teacher* 61.

⁴⁷René T Proyer, "Playfulness and Humor in Psychology: An Overview and Update" (2018) 31 *HUMOR* 259, 267–68; Sandi Mann and Andrew Robinson, "Boredom in the Lecture Theatre: An Investigation into the Contributors, Moderators and Outcomes of Boredom amongst University Students" (2009) 35 *British Educational Research Journal* 243.

⁴⁸Elizabeth A Boyle and others, "An Update to the Systematic Literature Review of Empirical Evidence of the Impacts and Outcomes of Computer Games and Serious Games" (2016) 94 *Computers & Education* 178.

⁴⁹Nørgård, Toft-Nielsen and Whitton (n 45) 274.

to meaningfully engage with this plurality. The safety of the magic circle, and the curiousness that accompanies playfulness, was thus leveraged to nudge students towards coercion-free modes of relating. However, by beginning the class with one-on-one peer interactions, students directly faced the person expressing their idea of “law as a person”. Within the frame of playfulness,⁵⁰ this direct interaction encouraged social bonding and the curiosity that facilitates respectful and genuine engagement. Subsequently moving from the one-on-one interactions to group works and whole-class discussion allowed for the incremental expansion off the magic circle’s boundary of safety to eventually encompass the whole class. As bell hooks states, “it is the movement of ideas, exchanged by everyone, that forges a meaningful working relationship between everyone in the classroom”.⁵¹ The class was designed to forge this multi-directional relationship by using the bond forged in one-on-one interactions to weave the class together on the assumption that this web of relations would scaffold a wider environment of respect in class relations.

Not only did student feedback show that students enjoyed the seminar⁵² and were able to encounter varying perspectives,⁵³ but a number of respondents stated that the opportunity for peer engagement was their favourite aspect of the seminar. In fact, when asked how the seminar could be improved, more than one student wanted more time to engage with a greater number of their peers.

Additionally, students appreciated the opportunity to genuinely meet and engage with their classmates, stating for example:

I thought it was a good introductory way for us to get talking to people within our seminar groups and it was interesting to hear about everyone’s perspectives on what the law was/represented.⁵⁴

It was a chance for each of us to get to know one another and be comfortable expressing our views.⁵⁵

As Spearlt and Ledesma highlight, studying law is typically a solitary exercise.⁵⁶ Students are largely expected to read, write and learn in isolation; a culture that can breed unhealthy competition and have a negative impact on mental wellbeing.⁵⁷ Again, while there cannot be a definitive link between the efforts in designing and implementing the seminar to measurable outcomes, both student feedback and tutor observations experientially indicate a greater sense of community and safety in this year’s class.

Another advantage of the magic circle is that it is a “safe space which affords freedom to make mistakes”.⁵⁸ As discussed above, students often enter the classroom with the expectation they will be required to provide objectively “right” answers.

⁵⁰Sarah McNicol, “We Can Do It Imaginatively First!: Creating a Magic Circle in a Radical Community Education Setting” (2017) 49 *Studies in the Education of Adults* 45, 47–48.

⁵¹hooks (n 15) 21.

⁵²Responses to “I enjoyed the seminar”: 53.7% Strongly Agree, 34.1% Agree, 9.9% Neutral, 2.4% Disagree.

⁵³Responses to “I encountered a range of perspectives in the seminar”: 43.9% Strongly Agree, 41.5% Agree, 12.2% Neutral, 2.4% Disagree.

⁵⁴ELLM Student Feedback Survey, October 2021, respondent 37.

⁵⁵ELLM Student Feedback Survey, October 2021, respondent 35.

⁵⁶Spearlt and Ledesma (n 18) 258.

⁵⁷Kennon M Sheldon and Lawrence S Krieger, “Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being” (2004) 22 *Behavioral Sciences & the Law* 261.

⁵⁸McNicol (n 50) 48.

However, as legal educators we want students to practise legal reasoning, to critically engage with legal problems that do not necessarily have a single “right” answer. The tension between the students’ fear of making mistakes and the process of legal reasoning can impede their development of this skill. One of the advantages of the magic circle is it provides a low-risk space to make mistakes and, thus, to learn from errors in skill development.⁵⁹ In fact, the structure we implemented within the seminar went further, exiling mistake-making as a relevant frame for the duration of the session. While it was possible for mistakes to be made within our magic circle (eg the student that, when asked to provide a picture of law as a person, submitted an image of a leaf) for most participants, the frame of “being right/wrong” was abandoned in favour of a playful disposition. Proyer defines the characteristic of playfulness as the ability to (re)frame situations in order to see them differently and engage with them more deeply.⁶⁰ This dexterity in framing characteristic of playfulness is also an essential element of critical thinking. Our students were able to leverage the dexterity characteristic of playfulness to critically consider how law might be interpreted differently. They did so not only in the mandated task of applying their “law as a person” to the case of *Dudley and Stephens*,⁶¹ but in the classroom reflections. My students, for example, noted differences in law as a person based on whether the description was intended to be descriptive or critical, and how individual identities and cultural backgrounds of the individual student could have an impact on assumptions about the law. The other tutors noted similar discussions in their own sessions.

Limitations and conclusion

In bringing the “law as a person” question to the seminar, we aimed to make the classroom a space where diverse perspectives are celebrated, and critical thinking fostered. These are important skills not only for the study of law, but for the creation of a democratic classroom. The favourable feedback of both students and tutors is a positive indicator that we made headway towards achieving our aims through our seminar design. However, there were a few notable limitations and opportunities for improvement.

The first area where there were limitations and opportunities for improvement was in the logistics of the class. The 45-minute duration of our seminars was insufficient to adequately cover all the activities. In many classes, the application of “law as a person” to *Dudley and Stephens* and the class-wide discussion had to be cut short because of time constraints. This was unfortunate as it is these last two activities that allow for student perspectives to be linked to the wider study of law and social context. Additionally, the traditional classroom configuration of rows of desks oriented towards the front of the class impeded free movement during the session. A longer session would allow for rearrangement of the physical classroom, and enough time for all the activities.

Second, improvements could be made to the seminar design. For example, in the feedback, a handful of students expressed confusion about the link between the “law as a person” exercise and the application of their personification to the *Dudley and*

⁵⁹Nørgård, Toft-Nielsen and Whitton (n 45) 273; McNicol (n 50) 57.

⁶⁰Proyer (n 47) 263.

⁶¹(1884) 14 QBD 273.

Stephens case. If running this session in the future, I would accompany this component of the seminar with an explanation of how assumptions about the law can have an impact on legal reasoning. More holistically, a significant limit of the seminar design was that it was a standalone session with little formal integration into the wider course or degree. As highlighted by one of the reviewers of this article, there is a danger that this type of activity will be dismissed by students as “a bit of fun” with no significant relevance to their wider studies, a view that was also echoed by one of the tutor reflections. Opportunities for wider integration include, for example, the use of student responses data about the gender of their legal personifications⁶² in discussions about gender diversity in the judiciary. However, my own role as a casual PhD tutor meant that I lacked the institutional positionality to implement these integrations. Deliberately carrying through the student observations about law as a person into other topics could strengthen the aims of the seminar.

Finally, there are some caveats to the claims expressed in this article. While students appeared more engaged in the seminar and the subsequent classes, this could be attributed to the year that the session took place. The class was run at the start of the 2021/22 academic year and constituted the first term of in-person teaching following the two years of Covid-19 online teaching. Thus, the relief of returning to physical classrooms could have increased levels of student engagement. Additionally, while students indicated that they felt comfortable expressing their different perspectives, I don’t think that “law as a person” can fully address the problem of divisive and dehumanising language in the classroom. This activity is directed towards fostering respectful relations and acceptance of difference; however it is neither moral nor reasonable to expect respectability in the face of misogynistic, racist, homophobic or transphobic statements. As Gibson states:

Calls for civility and common ground can create false equivalencies between those who seek to expose and dismantle policies rooted in ... oppression and those who support the ... status quo.⁶³

While “law as a person” might introduce students to the necessary plurality and self-reflection required to think critically, greater engagement with the history and political context of legal development is required for classroom discourse truly inclusive.⁶⁴

With these limitations in mind, I hope that the structure of “law as a person” I have presented in this article can act as a tentative blueprint for fostering diverse perspectives and critical thought in the legal classroom. Perhaps other legal educators will, in the spirit of playfulness, experiment with iterative improvements that allow students to bring their whole selves to the classroom, genuinely engage with their peers, and develop dexterity in their handling of ideas.

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⁶²Student responses on the gender of law were: 11% Woman, 27% Non-binary, 29% Non-applicable, and 33% Male.

⁶³Gibson (n 9) 432.

⁶⁴Jones and O’Donoghue (n 3).

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