How can flexible delivery enhance the facilitation of a critical understanding of law?

Nick James

University of Queensland

Abstract

How can flexible delivery, with its emphasis on more active and collaborative learning through use of new technologies, enhance the facilitation of a critical understanding of law? This paper discusses the benefits of delivering a law course in flexible mode, focussing upon those design features, technologies and learning activities which have the potential to facilitate criticality in law students. It shows how flexible delivery can be an important step towards addressing problems associated with traditional legal education (the emphasis upon training law students to be lawyers; the prevalence of doctrinal approaches to legal education; and the ignorance by many legal educators of contemporary pedagogical theory), and describes how flexible delivery offers an opportunity to encourage consideration of the law from critical perspectives, to develop critical thinking skills and to foster a critical spirit in students.

Introduction

I am a law teacher who believes that the way law is traditionally taught is inadequate in the sense that it is insufficiently critical. I recently became involved in the process of redesigning law courses for delivery in flexible mode, and I asked myself the question: How can flexible delivery, with its emphasis on more active and collaborative learning through use of new technologies, enhance the facilitation of criticality?

My objectives in this paper are:

- to offer a definition of criticality which incorporates critical knowledge, critical thinking skills and critical spirit, and to explain why the facilitation of criticality is a desirable pedagogical goal;

- to outline some of the contextual factors limiting 'traditional' legal education to facilitation of non-critical understandings and to suggest how they can to some degree be overcome by the adoption of flexible delivery approaches; and

- to draw upon my own experiences in developing and delivering law courses in flexible mode, highlighting those design features, technologies and learning activities which have the potential to facilitate criticality.

Although my focus will be upon the teaching of law, I hope that my observations and insights will be of relevance to those who teach in other disciplines and who are similarly concerned to facilitate a form of understanding beyond the doctrinal.
Why be critical?

There are at least three aspects to criticality: critical knowledge, critical thinking skills and critical spirit. **Critical knowledge** is knowledge which reveals the hidden political and cultural bias of conventional knowledge. In the discipline of law, conventional knowledge is legal doctrine, and critical knowledge is knowledge which uncovers the political nature of law and exposes legal doctrine’s exclusion of the perspectives of ‘other’ genders, cultures and classes. **Critical thinking** is disciplined judgement of the statements, arguments and beliefs of others and of oneself. Critical thinking skills include the skills of interpretation, analysis, evaluation, inference, explanation, and self-reflection, and lead to the flexibility of mind necessary to view legal arguments and problems from multiple perspectives and to compare and judge perspectives in order to determine the most appropriate in a given situation. **Critical spirit** is the disposition or inclination to be critical. It inclines a person towards questioning what is taken for granted, seeking critical knowledge and exercising critical thinking skills. It includes personality traits such as inquisitiveness; honesty in facing one’s own biases, prejudices, stereotypes, egocentric or socio-centric tendencies; open-mindedness regarding divergent world views; and the willingness to reconsider and revise views where honest reflection suggests that change is warranted.

For a very long time the discipline of law has been notorious for its conservatism and doctrinalism. However, we law teachers are becoming increasingly aware of the importance of taking a critical approach to legal education. The critical project gained a measure of mainstream credibility in Australian law schools when the 1987 Pearce Report into Australian Law Schools suggested:

> That all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other social forces.

In recent years a few legal scholars have emphasised the importance of incorporating critical approaches into the teaching of law. According to Andrew Stewart in his 1999 article, ‘Educating Australian Lawyers’, ‘a critical understanding of how the legal system actually works is arguably essential to being a good lawyer’. In ‘A Critical Theory of Law’, Gerald Frug argued that an ability to critically analyse the law and legal reasoning helps students to understand the possible choices among kinds of legal analysis and the reasons why any legal argument they make is only one possibility among many. Students who learn how to critically analyse the ways in which preconceptions structure legal argument are better able to make the arguments themselves. According to Marlene Le Brun and Richard Johnstone in their 1994 text, ‘The Quiet (R)Evolution: Improving Student Learning in Law’:

> Since we know that no one has a ‘purchase’ on reality – that our world is made up of a cacophony of voices – we believe that we as law teachers must ensure that our students understand that the knowledge, skills, attitudes, and beliefs that are transmitted in law schools are only perspectives on social life and law. As a result, in our opinion, our job as law teachers is to expose our students to various theories so that they are better placed to select and adapt what they learn to construct their own legal world view. Teaching law in a critical way facilitates this objective.

In ‘Legal education as training for hierarchy’, Duncan Kennedy argued that we usually condition graduates to be ‘willing servants in the hierarchies of the corporate welfare state’ and that ‘what is needed is to think about law in a way that will allow one to enter into it, to
criticise it without utterly rejecting it, and to manipulate it without self-abandonment to their system of thinking and doing'.

These four examples reflect the four most common rationales for providing a critical legal education: (1) a student needs a critical understanding of law in order to be a good lawyer; (2) criticality leads to better legal scholarship, better legal analysis and better legal argument; (3) it is important that a law student as an informed individual in a multi-cultural society be able to view the law, the legal system and legal problems from a variety of perspectives; and (4) a legal education which is not critical does no more than train law students to be docile participants in a hierarchical status quo, whereas a critical legal education encourages students to contribute to the creation of a more just society.

How important is teaching criticality to Australia’s law schools?

I recently conducted a comprehensive review of the policies and programs of twenty seven Australian law schools in order to determine the extent to which each law school sought to facilitate criticality. I concluded that, generally speaking, Australian law schools still gave a low priority to the facilitation of criticality. Only five of the twenty seven law schools expressly promoted themselves as concerned with legal critique. Most law schools appeared to be primarily concerned with advertising their close links with the profession and emphasising the satisfaction of local admission requirements: law schools would rather be perceived as ‘clinical’ than ‘critical’. Only seventeen law schools were guided by teaching and learning policies which encouraged criticality, and of those seventeen policies, only four contained more than a couple of token references to criticality. None of the teaching and learning policies addressed criticality in any depth. Many teaching and learning policies contained little or no reference at all to criticality; those that did contain such references failed to clearly define their terminology or to expand upon their conceptions of criticality in any great detail. None of the law schools had adopted a clear definition of what it meant to teach or study law critically. It almost appeared as if law schools and universities assumed that the meaning of the words ‘critical’ and ‘critique’ are self evident. The proportion of courses offered by each school which were described as teaching some form of legal critique ranged from one percent to only fifteen percent, with most schools falling below the ten percent mark. None of the law schools appeared to have adopted an approach to criticality which pervaded the whole of the law program. By far the majority of courses taught by the law schools were doctrinal or clinical. What few critical courses did exist were in the minority and were generally isolated from the rest of the curriculum.

It appears that the discipline of law has been slow to embrace the recent paradigm shift in other disciplines towards more critical approaches to teaching and learning. There are at least three reasons for this tardiness and ongoing conservatism on the part of legal education.

The first reason is the tendency of many law schools to focus upon training for legal practice and to prioritise the preferences of the legal profession. Most law schools still perceive themselves as training schools for lawyers, despite the fact that recent graduate destination surveys have shown that more and more law students are electing not to practice law. For a law school to proclaim its intention to place a greater emphasis upon facilitating criticality may be perceived by the profession, rightly or wrongly, as a step by the school towards making their courses more ‘theoretical’ and less ‘practical’. There is a fear that taking such a step may result in a loosening of the ties with the profession which law schools have in recent years worked so hard to bind. The law schools thus persist in their attempts to cater to the needs of the legal profession and to teach law from a more ‘practical’ perspective, focussing on technical excellence, advocacy, drafting, court procedures, and negotiation. This often leaves little room for teaching criticality.
The second reason why Australian law schools pay inadequate attention to fostering criticality is the traditional dominance of the doctrinal approach to teaching law. The educational approach traditionally adopted in Australian law schools relies almost exclusively on the formalistic exposition and analysis of legal doctrine. The discipline of law is perceived by many of us as a body of legal doctrine and nothing more, and legal education as the process by which students learn this legal doctrine. We view the law as 'a normative closed field of inquiry, with its own sources of knowledge and its own self validating canons of inquiry'.x Even today, despite criticism of this approach from within and without the discipline,xi Australian legal education and legal scholarship continues to be dominated by doctrinalism. Although other disciplines have long since begun to move away from such a heavy reliance upon doctrinal approaches, we remain relatively impervious to this trend.xii As Ian Duncanson put it:

It seems clear that law as an area of study has not kept pace with the innovation and theoretical heterogeneity witnessed of late within the humanities. Scholars in law have remained disturbingly content with regimes of truth, designed within agencies of the state, which often naturalise or elide questions of oppression and inequality.xiii

In many law courses, the whole of the curriculum is devoted to the exposition of legal doctrine, or ‘black letter law’, with little critical analysis and no consideration of the law from critical perspectives.

The doctrinal tradition is integrally connected with the origins of law as a ‘scientific’ discipline, one which from the beginning has had to defend itself as being as discrete and as rigorous as other disciplines within the university. The institutional autonomy of the professional law school in Australia and elsewhere depended upon the establishment of a defensible body of legal doctrine.xiv We still seem to have an almost paranoid need to defend law as a ‘hard’ science, and consequently we are extremely reluctant to explore philosophical, sociological, literary or other approaches which may result in the dilution of this perception.

The perceived necessity for law schools to comply with admission requirements is another reason for the continued dominance of doctrinalism in legal education. The eleven compulsory law courses in the law degree as recommended by the Priestly Committee clearly reflect a conservative approach to legal knowledge: no mention is made of the history and theories of legal systems and processes, of the social and economic impact of law, of law's international and comparative dimensions, or of critical perspectives on the law.xv

The third reason why Australian law schools pay inadequate attention to fostering criticality is the ignorance by many of us of current theory about the nature of learning. Marlene Le Brun observed that few legal academics describe themselves first and foremost as ‘teachers’, perhaps because ‘lecturer’ or ‘professor’ carries greater status.xvi In denying this connection with the classroom teacher, we have tended to cut ourselves off from the evolving body of knowledge that pertains to 'teaching'.xvii Even today, many of us continue to rely upon lectures to transmit information to essentially passive students, and the student’s primary job in class is still that of scribe. Criticality is only achieved when a student is able to think for themselves, something most educational theorists recognise as unlikely to be achieved using 'traditional' teaching methods. In order to competently facilitate criticality, we need to possess greater pedagogical expertise than the ability to present a lecture and write an exam. What we need is familiarity with contemporary learning theory. Many of us are unlikely to
possess this knowledge and skill because, at present in Australia, a person does not need educational qualifications to teach law at university.

**How can the shift towards flexible delivery help?**
The recent paradigm shift towards more flexible modes of delivery has the potential to address some of the problems identified above.

‘Flexible delivery’ is the broad term applied loosely to the provision of course materials using multi-media technologies, and to the pedagogy by which this is supposed to advance learning. These multi-media technologies are typically facilitated by the use of the World Wide Web. Each teaching institution’s version of flexible delivery varies. There is a spectrum of possible approaches to the ‘delivery’ of teaching: at one end of the spectrum is the traditional method of delivery with its lectures, tutorials, paper materials and compulsory attendance on campus; at the other end is the virtual campus, with all materials and teaching existing on-line, and paper material and the physical presence of the student almost completely redundant. Each institution locates itself at a different point along this spectrum, often combining various elements or even allowing the student to choose for themselves which approach to take: hence the term ‘flexible’ delivery.

My own institution’s version of flexible delivery is one located about halfway along the spectrum. Lectures are still provided, although the emphasis has shifted away from the lecture as the ultimate source of content and towards the lecture as introduction and overview of a topic; consequently lectures are held less frequently. In many of the courses tutorials are still compulsory, and are usually longer in duration than was the case with conventional delivery: contrary to the common assumption, face-to-face contact under the flexible delivery regime has increased. The lectures and the tutorials are supplemented by a range of web-based and paper-based materials, such as learning guides, e-mail facilities, chat-rooms, bulletin boards, online materials and assessment, and internet links.

The following characteristics of flexible delivery have the potential to contribute to the facilitation of criticality in law students:

1. **The responsibility for learning shifts from the teacher to the student.** The conventional role of the teacher was to ‘teach’ the student: the teacher was the all-knowing expert who transmitted their knowledge to the student as willing receptacle. The pedagogy of flexible delivery is constructed upon the premise that learning is the responsibility of the student: it is something which the student does, and the role of the teacher is to help the student to teach themselves. The teacher is not responsible for providing to the student everything that the student needs to learn. Rather, the role of the teacher is to show the student how to locate knowledge for themselves: instead of providing content, the teacher shows the student how to best navigate the information environment.

2. **Students are encouraged to cooperate, to work collaboratively and to share their learning and experience with each other.** In conventional delivery of a course, each student competed with their peers for the best marks. While they may have sat together in their hundreds in the lecture theatre, each student was ultimately on their own in studying the course. The shift towards flexible delivery has been characterised by a greater emphasis upon collaborative learning, small group sessions and exercises, and the encouragement of a greater level of communication between students by way of web-based technologies,
I will explain how each of these characteristics relate to criticality below. I am not suggesting that flexible delivery, in any form, necessarily results in a more critical legal education. What I am suggesting is that a number of the characteristics and technologies of flexible delivery make it possible for a concerned law teacher to make a course more critical.

**Critical knowledge**

The first aspect of criticality is critical knowledge: knowledge which reveals the hidden political and cultural bias of legal doctrine by uncovering the political nature of law and by exposing legal doctrine’s exclusion of the perspectives of ‘other’ genders, cultures and classes.

The conventional approach to teaching law involves the delivery of material by way of lecture and tutorial, supported by one, possibly two, textbooks. The only perspectives on the subject matter to which the student is exposed are those of the lecturer and of the textbook author, and these perspectives are usually identical: positivist, doctrinal, andro-centric and Euro-centric.

When a course is delivered in flexible mode, the emphasis need no longer be upon learning the materials provided by us. Our role is to show students how to seek out and learn information for themselves. By demonstrating how to access a wide range of hard and virtual information sources, the student is encouraged to find and construct their own knowledge. It becomes possible for a range of perspectives to be explored and compared.

In one of the law courses which I teach in flexible mode, ‘Business Law’, I try to take advantage of this possibility in the face-to-face small group sessions. Having spent the first part of the course teaching my students how to locate legal resources in the library and on the internet, we spend the sessions in the later part of the course looking at different ways of viewing and solving legal problems. Working in small groups of two or three, the students are given simple legal problems and a certain amount of time, usually 30 minutes, to locate appropriate resources and to come up with a ‘solution’. Students are encouraged to approach the problem from whichever perspective they consider appropriate, and not necessarily an orthodox legalist/positivist one. We then discuss and compare the various alternative solutions.

Flexible delivery offers many other opportunities to vary the perspectives on law presented to the students. We can organise guest speakers to enable students to meet with, be taught by, and share experiences with people from a diversity of backgrounds. Oral histories or autobiographies, political tracts and film and video productions all enable perspectives normally excluded from the law classroom to be explored.xviii

We can draw our case studies, examples, readings, problems and questions from a variety of social contexts. These can not only reveal the impact of legal regulation on different genders and cultures, but can challenge students’ tendency to generalise and prepare them for the realities of practice in a diverse and multi-cultural community.xix

The redevelopment of a course from a traditional to a flexible mode of delivery can give us the opportunity to rethink the entire syllabus and to include scrutiny of the subject matter from critical perspectives. This process can involve the asking of ‘difficult’ questions about the syllabus such as:
• Does it highlight the fact the doctrinal/positivist approach is only one possible perspective on the subject matter?
• Does it consider the subject matter from non-traditional points of view, such as the perspective of women, the under-privileged, or non-Western cultures?
• Does it positively acknowledge the presence of indigenous peoples and non-Anglo migrants in Australia’s history, culture and development?
• Does it challenge racial, ethnic and cultural stereotypes?
• Does it expressly acknowledge and identify the perspectives of the authors of selected materials?xx

In the conventional mode of legal education, where it is our role to provide what is to be learned in the classroom, it is difficult for a broad variety of perspectives to be presented. Flexible delivery, by emphasising the student’s role in the discovery and sharing of knowledge, offers a wealth of possibilities for alternative and critical perspectives on law to be explored.

Critical thinking

Critical thinking is disciplined judgement of the statements, arguments and beliefs of others and of oneself.

John Dewey, the American philosopher who coined the term 'critical thinking', defined it as ‘active, persistent, and careful consideration of any belief or supposed form of knowledge in the light of grounds that support it and the further conclusions to which it tends’.xxi In 1990 a cross-disciplinary panel, under the sponsorship of the American Philosophical Association, after a two-year project defined critical thinking as follows:xxii

We understand critical thinking to be purposeful, self-regulatory judgment which results in interpretation, analysis, evaluation, and inference, as well as explanation of the evidential, conceptual, methodological, criteriological, or contextual considerations upon which that judgment is based. Critical thinking is essential as a tool of inquiry. As such, critical thinking is a liberating force in education and a powerful resource in one's personal and civic life. While not synonymous with good thinking, critical thinking is a pervasive and self-rectifying human phenomenon.xxxii

Given the importance and obvious benefits of critical thinking skills to law students, one wonders why greater emphasis is not placed upon the teaching of those skills in the law school curriculum. Even though the purpose of legal education is commonly proclaimed to be the teaching of students to ‘think like lawyers’, and the typical approach to achieving this purpose is to focus on the skills required by lawyers, the descriptions of these skills rarely include the ability to think critically. Keyes and Orr suggested that such skills may be seen as too generic: since these abilities are widely needed in academic work, they are not felt to be our primary concern. We either presume them to be present, or else limit ourselves to the teaching of profession specific skills. Alternatively, we may neglect those abilities because of their ‘hidden’ nature: since they are chiefly mental activities, they are not easy to demonstrate and replicate, and not seen as capable of instruction. Instead, we hope that such skills will be acquired subconsciously and over time.xxiv

In some other disciplines, critical thinking skills are taught as a discrete course. I am not suggesting that the discipline of law follow the same path. I would prefer to see each law course expressly include the objective of developing critical thinking skills. The use of a
flexible mode of delivery has the potential to assist in the achievement of this objective in three ways.

Firstly, the de-emphasis upon the learning of unnecessarily detailed ‘content’ in favour of the teaching of key self-learning skills liberates the time necessary to incorporate a ‘critical thinking skills’ element into each course. Secondly, critical thinking skills can be learned by a student using self-paced interactive learning technologies. There are now a number of textbooks which are supported by websites which contain interactive tutorial programs accessible by the student.xxiv

Thirdly, and most importantly, the emphasis in flexible delivery upon collaborative learning has been shown to promote critical thinking abilities in students. There is persuasive evidence that cooperative teams engage in higher levels of thought and retain information longer than students who work quietly as individuals.xxvi According to Vygotsky, students are capable of performing at higher intellectual levels when asked to work in collaborative situations than when asked to work individually.xxvii Shared learning gives students an opportunity to engage in discussion, take responsibility for their own learning, and thus become critical thinkers.xxviii Bruner contended that cooperative learning methods improve problem-solving strategies because the students are confronted with different interpretations of the given situation.xxix

In a study by Gokhale, an informal collaborative learning medium was shown to provide students with better opportunities to analyse, synthesise, and evaluate ideas cooperatively. The informal setting facilitated discussion and interaction. This group interaction helped students to learn from each other’s scholarship, skills, and experiences. The students had to go beyond mere statements of opinion by giving reasons for their judgments and reflecting upon the criteria employed in making these judgments. Thus, each opinion was subject to careful scrutiny.xxx

Not only can flexible delivery assist in the development of critical thinking skills, the contrary is also true: critical thinking skills are essential to make proper use of flexible delivery. When a course is delivered in flexible mode, students are usually encouraged to seek out their own sources of knowledge, and in particular to take full advantage of the internet to access a range of on-line resources. While we can attempt to limit the student’s explorations and research to sites which they have checked for accuracy, it is unrealistic to expect students to limit themselves in this way, and most students will continue to seek out relevant information on their own. Students must be encouraged to critically analyse and evaluate the information they come across.

**Critical spirit**

Facilitating criticality includes the fostering of a critical spirit, the critical disposition which inclines a person towards questioning what is taken for granted, seeking critical knowledge and exercising critical thinking skills. Fostering a critical spirit involves much more than traditional approaches to legal education typically imagine.

Fostering a critical spirit is a delicate process, involving a balance between demonstrating the benefits of criticality and encouraging the appropriate personality traits. Flexible delivery’s emphasis upon encouraging the student to take greater responsibility for their own learning is consistent with the fostering of a critical spirit.
A crucial aspect of the critical spirit is the ability to reflect on one’s own views and assumptions as themselves a particular perspective, a particular cultural and historical formation. This sort of critical reflection is difficult to exercise alone: a student is only able to do it through conversations with others, especially others not like them. Providing the conditions in which such conversations can occur thus becomes a central element of facilitating criticality.

The use of technologies such as bulletin boards, chat rooms and e-mail, when encouraged in an appropriate manner, facilitate a greater level of interaction between students than that associated with more traditional teaching tools. In delivering my law courses, I am concerned to provide as many opportunities as possible for students to interact and cooperate rather than compete. Some of the techniques and technologies which I use are as follows:

1. I explain at the very beginning of the course that the students will be assessed using clearly stated criteria, and that this means the students are not competing with each other to get the best grades.
2. I have set up, and encourage the use of, intra-course e-mail facilities. In the first week of the course I direct each student to use this facility to e-mail another student studying the course at random, and introduce themselves.
3. I have set up, and encourage the use of, an electronic bulletin board for the course. Students are assessed on the quality of their contribution to discussions about legal topics set by me. Students can either submit original contributions about the topic, or submit commentary and critique of the contributions by other students. As well as inviting free-for-all discussion of fixed legal topics, I have set up two non-assessed fora to encourage greater levels of cooperation and interaction between the students. The first is a ‘Help’ forum. Students are encouraged to post bulletins asking for help with any problems they are experiencing, and to answer any other bulletins when they feel they can be of assistance. The second is an ‘Art’ forum. This particular course has an enrolment of approximately five hundred students, so I have given interested students the opportunity to ‘show off’ in front of a large group (anonymously if they like) by posting poetry, prose, jokes or announcements.
4. As outlined above, the ‘tutorial’ sessions are conducted in a way that encourages teamwork and cooperation between students in small groups.

Criticality and legal education

Earlier in the paper I identified three contextual factors which explain why legal education is usually non-critical: the focus upon training for legal practice and satisfying admission requirements; the traditional dominance of doctrinal approaches to legal scholarship and legal education; and the ignorance by many law teachers of contemporary education theory.

How can flexible delivery help to address the problems of law schools defining themselves as training schools for lawyers and focussing upon the exposition of legal doctrine? Deference to the legal profession is an integral fact of legal education in Australia. Although not every graduate chooses to do so, the LLB degree does entitle a person to practice law in Australia, and the admitting authorities in each State specify the particular courses or areas of knowledge which must be included within the law curriculum in order for the LLB to receive their approval or accreditation. On the other hand it is difficult to deny that this close connection between legal education and legal practice necessarily affects how law is thought about and taught. Can law be taught in a way which fosters criticality but which also satisfies the needs of the admitting authorities and of the profession?
Twining has proposed that the standard dualistic conceptions of legal education – academic versus practical, theory versus practice, liberal versus vocational, educating for practice versus educating for the other uses to which law degrees are put – are ‘false dichotomies’. They do not represent dilemmas but different facets of legal education, and far from being in conflict, it is often the case that neither can be effectively addressed without the other. The role of the law school as the training school for lawyers is unlikely to change in the immediate future. However, the traditional emphasis upon the exposition of legal doctrine must change if legal education is to become more critical. The idea that all law students must ‘cover’ certain defined areas of legal doctrine in order to graduate and be qualified to practice is one that is based on an outmoded conception of teaching and learning, i.e. teaching as the transmission of fixed and defined information to students who ‘learn’ by memorising that information and being able to apply it to the solution of simple legal problems. Flexible delivery, on the other hand, is based upon the idea of teaching as facilitating learning and learning as a self-directed activity.

How can these opposing approaches be reconciled? Firstly, the delivery of a course in flexible mode does not necessarily mean that we cannot set the topics which must be learned, only that we exercise less control over how that learning takes place. Secondly, the use of more flexible modes of delivery is intended to result in a ‘better’ level of learning than that associated with traditional modes of delivery. There is ample evidence and literature supporting flexible delivery to convince law firms and accreditation authorities of this.

It is possible to structure a law course in such a way that required topics are covered but the teaching of criticality is still accommodated. When I redesigned the course ‘Property Law’ for flexible delivery I took the opportunity to reorganise the course completely. The course was previously a traditional exposition of certain areas of legal doctrine. I began by determining the six most important topics which needed to be covered. I significantly reduced the amount of ‘content’ associated with each topic: after all, that content was available in sufficient detail in the library and on-line, and easily accessible by the student once I had explained the basic principles of legal information retrieval. This then freed sufficient time and resources to be able to consider each key topic from four perspectives: practical perspectives, historical and political perspectives, doctrinal perspectives and critical perspectives. While I set the topics and the areas within each topic to be learned, how the student then went about learning that material was the responsibility of the individual student.

The shift towards flexible delivery can also have the effect of breaking down the traditional isolation of the law school from other disciplines within the academy. When a student is empowered to take responsibility for their own learning, it is more likely than in their quest for knowledge they will, either deliberately or unwittingly, cross inter-disciplinary boundaries and gain perspectives on the law informed by other disciplines. When the students return to group sessions to share their knowledge, they will bring with them critical inter-disciplinary insights and perspectives to share with their fellow students. It is up to us to overcome the impulse to reject as ‘irrelevant’ knowledge on the subject matter which the student has discovered in disciplines other than that of law.

What of the ignorance by many of us of current educational theory? In my experience, the process of redeveloping a course for flexible delivery is a team project involving not only the law teacher but also educational advisers who are often familiar with contemporary
pedagogical theory. The redesign process thus provides an opportunity for us to learn a thing or two about learning. This does not necessarily mean that every law teacher will thereby gain an appreciation of the importance of facilitating criticality, but the chances of that appreciation developing are significantly improved.

The shift towards more flexible modes of delivery has coincided with some encouraging changes in some Australian law schools in recent times, with more and more of us informing our law-teaching practices with lessons drawn from educational theory, many of us questioning the traditional law-teaching methods, and new perspectives on legal knowledge being developed hand-in-hand with new teaching and assessment methods.xxxiv

Conclusion

The flexible delivery of law courses will not necessarily result in a more critical legal education. However it does make it possible for a concerned law teacher to make the changes necessary to better facilitate criticality.

The placing of greater responsibility for learning upon the student, and the shift in focus from ‘covering content’ to teaching learning skills and information retrieval techniques liberates the time and resources to include in the curriculum the teaching of critical thinking skills and the consideration of subject matter from critical perspectives. Allowing each student to use the learning resources and technologies in their own unique way increases the likelihood that perspectives from other disciplines and cultures will be brought into the classroom. The greater emphasis upon collaborative learning and cooperation means that openness to the perspectives of others and the willingness to reconsider one’s own perspectives will be fostered. And as we devote more time and energy to the way we teach instead of to what we teach, it becomes likely that the importance of facilitating criticality will become more widely recognised.

References


Consultative Committee of State and Territorial Law Admitting Authorities. (1992). *Uniform Admission Requirements: Discussion Paper and Recommendations*. Canberra: CCSTLAA. Under rule 3(b) the following 11 areas (now known as the 'Priestley Eleven') were prescribed: criminal law and procedure; torts; contracts; property both real (including Torrens system land) and personal; equity (including trusts); administrative law; federal and State constitutional law; civil procedure; evidence; company law; and professional conduct including basic trust accounting.


**Contact Details**

<table>
<thead>
<tr>
<th>Name</th>
<th>Nick James</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institution</td>
<td>University of Queensland, Brisbane</td>
</tr>
<tr>
<td>Phone</td>
<td>(07) 3381 1028</td>
</tr>
<tr>
<td>Fax</td>
<td>(07) 3381 1227</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:nick.james@mailbox.uq.edu.au">nick.james@mailbox.uq.edu.au</a></td>
</tr>
</tbody>
</table>