



Embedding Graduate Resilience into Legal Education for a Disrupted 21st Century

Dr. Ozlem Susler^a, Dr. Alperhan Babacan^b, ^aLecturer, Law, Latrobe University Law School, ^bBarrister & Solicitor of the Supreme Court (Vic) and High Court of Australia.

Whilst a fundamental role of legal education is to ensure that graduates are adequately prepared for professional practice, it cannot be said that legal education holistically prepares graduates to cope with the complexities of the 21st Century which is characterised by significant change and disruption. This paper commences with a critical review of the current context, scope and practice of resilience in higher education. Much of the work on resilience undertaken in higher education has focused on the provision of supports to students to transition into university and to cope within an academic setting. Narrow conceptions of resilience which focus on perseverance, as opposed to an adaptive and developmental construct, are context specific and likely to be short lived. It is advanced that resilience building activities for professional practice following graduation can benefit from the incorporation of transformative pedagogies which will provide law graduates with skills relating to endurance and understanding for a disrupted and changing career in the legal profession following graduation. Concentrating on the centrality of critical reflection, dialogue and experiential learning, teaching and learning strategies which are grounded in critical and emancipatory pedagogies are suggested to be incorporated into legal education, as a means of building graduate resilience.

Key words: *resilience, higher education, legal education, emancipatory pedagogy.*

INTRODUCTION

The 21st Century is characterised by large scale disruption and change in society and in the workplace. Globalisation is having a profound impact on the law and the legal profession, which in turn is radically altering the manner in which lawyers interact with each other and

conduct business (Ryan, 2018; James, 2017). Examples of disruptions in the legal profession include the outsourcing of legal work through automation and digital networks. The traditional small to medium legal firm model, is being demised to national and international law firm models (Ryan, 2018; James, 2017). Alternative legal start-ups and ‘do it yourself’ law have emerged to place pressure on the legal profession, to offer cheaper and more comprehensive services (Ryan, 2018). Innovative technology is being utilised in various spheres of legal practice (Ryan, 2018; Hakim, 2018). For example, LawTech is being utilised by people for self-help and advice, which in turn is negating the need for a human lawyer (Ryan, 2018). The provision of online forms and documents is enabling the lay person to access and draft legal documents, once solely in the domain of the legal profession (Hakim, 2018).

Whilst the instilling and possession of lawyering skills are important, the possession of skills does not necessarily mean that graduates will be effectively prepared, informed and adaptable to cope with the changes and disruptions associated with legal practice. These profound changes and disruptions necessitate a new graduate skill set so that graduates not only understand the nature and reasons for the changes within their profession, but are also able to develop capabilities to manage unfamiliar and unforeseen situations and to make informed choices, including navigating change in the face of uncertainty (Scott & Vare, 2008). The ability of a graduate to understand issues, changes and impacts to the workplace from alternative and multiple lenses and perspectives, is likely to enhance a graduate’s resilience capabilities and to thereby enable them to effectively cope with change and uncertainty. Higher education institutions have a positive role to not only support student learning but to also prepare resilient graduates for the workforce.

Whilst resilience research has increased over the last decade, the definition of resilience is unclear and remains as a contested concept (Brewer et al., 2018; Shimi & Manwaring, 2017; Holdsworth et al., 2018; Worsley, 2014; Cosco et al., 2019; Rogers, 2016). In a unique research, Meredith et al (2011) found 122 definitions of resilience across 187 documents. Resilience is seen a set of attitudes and behaviours which are associated with an individual’s ability to cope with and to adapt in the face of risk and stress (Dickinson & Dickinson, 2015; Fuller, Beli-house & Johnston, 2016; Walker, Gleaves & Grey, 2006; Brannick, Miles & Kisamore, 2005; Román, Cuestats & Fenollar, 2008; Winwood, Colon & McEwen, 2013; Holdsworth et al., 2018; Brewer et al., 2018; Toland & Carrigan, 2011; Sanderson et al., 2017; Turner et al., 2017). Central to most definitions of resilience is the concept of ‘enduring through difficult situations’ and ‘bouncing back’ from a risky or stressful situation (Shimi & Manwaring, 2017; Holdsworth et al., 2018; Walker, Gleaves & Grey, 2014; Friborg et al., 2009; Howard & Johnson, 2000; Gerson & Fernandez, 2013; Robbins et al., 2018; Southwick et al., 2014; Brewer et al., 2019).

A significant amount of the resilience building activities by higher education institutions has focused on the provision of supports and strategies to enable students to function and operate



within a university setting and to cope with associated tasks and challenges (Miller & Daniel, 2007). Academic resilience involves the capacity of a student to adapt, cope and develop in response to situations throughout their university experience (Holdsworth et al., 2018; Evans & Hardaker, 2015). Commonly, higher education institutions attempt to enhance academic resilience through activities directed at building capacity and confidence to encourage students to endure through their studies (Evans & Hardaker, 2015). The development of resilience within higher education settings is underpinned by formal and informal processes within and external to classroom settings. Collectively these include learning and teaching policies, pedagogic practices, university clubs, societies and groups, and student support, mentoring and counselling services (Holdsworth et al., 2015).

A significant emphasis of the legal education curriculum focuses on the instilling of legal knowledge and lawyering skills with little attention paid to building resilience capabilities (Field & Duffy, 2012; Field, 2019; Galloway & Jones, 2014; Galloway et al., 2011; Appleby & Bourke, 2014; Bates & Miles-Jonson, 2010; Keyes & Johnstone, 2004). Some law schools have however attempted to build student resilience from time to time. For example, the Queensland University of Technology (QUT) revised its law curriculum in the first year elective unit entitled *Lawyering and Dispute Resolution*. Key changes to the curriculum included variation of the learning outcomes and assessment tasks, the introduction of a focus on positive professional identity, the positive role of lawyers in society and non adversarialism. Active and engaged learning and small group work was encouraged. The unit provided a learning environment that motivated and provided students with the will power to persevere with their studies and the fostering of a professional identity through reflective activities, problem based tasks and interactive classes (Field & Duffy, 2012).

Much of the resilience building activities in higher education, have proved to be difficult to translate into effective educational strategies (Sriskandaraja et al., 2010; Evans & Hardaker, 2015; Holdsworth et al., 2018; Shimi & Manwaring, 2017; Howe et al., 2012). Narrow conceptions of resilience which are context (university and law school) specific, as opposed to broader based adaptive and developmental construct, are likely to be short lived and difficult to transfer to workplace settings following graduation, There are no studies which evaluate the effectiveness and transferability of resilience-building activities following graduation from law school. Legal education predominantly focuses on instilling technical discipline knowledge and lawyering skills with a general absence of the socio-economic and political impacts on the law and legal practice. In a professional career which is subject to constant change and instability brought about by such wider impacts, an essential aspect of resilience building activities in legal education need to be directed at encouraging students to understand these factors which impact upon the law and legal practice and the reasons for change and disruption.



The authors advance that there is a need to reconceptualise the construct of resilience on a broader and longer-term framework. This chapter proceeds with a discussion on the need to reconceptualise the construct of resilience to encourage broader and longer term skills, to ensure that graduates are able to attain the skills necessary to cope with change and uncertainty in the workforce. Transformative pedagogies which encourage students to question and understand wider impacts on the law through critical reflection and dialogue offer a useful pedagogic framework which can be utilised in legal education, with the potential to encourage student resilience to enable students to not only better cope within the university setting, but also their legal workplaces following graduation. Using legal education as a case study, this chapter then discusses how transformative pedagogies can be adopted in the legal education curriculum to enhance graduate resilience skills, for a disrupted and changing career in the legal profession following graduation. Concentrating on the centrality of critical reflection, dialogue and experiential learning, teaching and learning strategies which are grounded in critical and emancipatory pedagogies are suggested to incorporate in legal education as a means of building graduate resilience for a disrupted and changing career in the legal profession.

RECONCEPTUALISING THE CONSTRUCT OF RESILIENCE

How the construct of resilience is conceptualised is important, as this will impact on what pedagogic strategies and interventions are employed by higher education institutions – namely, whether pedagogic interventions predominantly enhance coping and endurance within the higher education setting or whether resilience-building strategies promote broader resilience capabilities, aimed at enabling skills learnt to be more relevant to and translatable into the workforce setting. Broader based resilient building strategies are very relevant to the post-graduation workforce environment as these broader based skill sets can enable students to understand and to cope with unfamiliar and unforeseen stresses and changes within the workforce.

The authors advance that the concept of resilience should not just be connected to robustness and the ability to persevere and to bounce back in times of a crisis or to cope within the university setting. Resilience is much richer than palliative and narrow interventions associated with bouncing back and being able to withstand shocks. A wider definition and one which has the potential to be effectively translated into the workforce following graduation involves an awareness of self, other and wider environments, the ability to maintain a current system, to understand and cope with wider socio-economic-political impacts and change and the ability to influence change of existing systems, where transformation is preferred to maintaining the status quo (Krause, 2017). The ability to effectively identify and understand stressors and changes to the workforce, including socio-economic impacts on the workforce is critical (Shimi & Manwarring, 2017; Walker, Gleaves & Grey, 2006; Evans & Hardaker, 2015).



Transformative pedagogies are proposed as a complementary educational framework, to better prepare students for their careers following graduation (McAllister & McKinnon, 2009). Transformative pedagogies utilise critical and constructive thinking practices to encourage learners to analyse and understand practices, workplace culture, socio-economic-political impacts on the workforce and creative ways of thinking to solve problems and overcome barriers and adversity. It is posited that through transformative pedagogies, longer-term adaptability and endurance will be more effectively translated into the workforce following graduation.

The adoption of transformative pedagogies in legal education can encourage resilience-building activities, which enable students to move from adaptive resilience within the university setting to one where a dramatic change in world view, what is termed a ‘perspective transformation’ is encouraged (Mezirow, 1991, 2000) so that students are able to effectively identify, understand, question and navigate change and the drivers for change within the legal system and workforce. The next section of this chapter provides examples of how transformative pedagogies can be adopted in legal education to enhance resilience following graduation.

BUILDING GRADUATE RESILIENCE THROUGH TRANSFORMATIVE LEARNING

The transformative learning process involves transforming frames of reference through critical reflection, an evaluation of contested beliefs through dialogue, the taking of action about one’s reflective insight, and critically assessing the action taken. Central to transformative learning is that students’ paradigms or views are subject to deep shifts which may create new meanings through expanded consciousness. Such shifts may transform the manner in which students view themselves, society, the law, legal processes and wider impacts on the law and legal system (Mezirow, 2000).

Perspective transformation involves the learner engaging in critical self-reflection of their own assumptions and the ways in which the learner’s views of the world may be distorted or limited (Shore & Friere, 1986; Mezirow, 1991). Through the experiencing of a disorienting dilemma, learners may engender a change about the manner in which they view the law, the workforce and society and thereby opening themselves up to alternatives and in turn, changing the way they see things, thereby enabling the potential for enhanced resilience, effective coping and self-management whilst in the workforce.

Where transformative learning is adopted to building graduate resilience, critical reflection and dialogue need to be positioned as a central aspect of the curriculum, as these provide the tools and opportunities for adult learners to gain personal autonomy and continued self-development (Mezirow, 1991).



CRITICAL REFLECTION

Critical pedagogy has the potential to equip students with critical judgement skills and with knowledge to clearly comprehend the structural and institutional factors which impact and shape their lives and the ability and willingness to participate in on-going change, fostering a sense of public commitment following graduation (Giroux, 2001; Greene, 2017; Liu, 2020; Pawar & Anscombe, 2015). Critical reflection and dialogue can encourage for the contestation of beliefs and biases, thereby creating greater receptiveness and openness to different viewpoints and questioning of established structures and procedures. This adoption of a critical reflection is beneficial for students through the facilitation of deep learning and through encouragement of students to be engaged and active agents in their professions, workplaces and their life more generally. The ability to critically reflect can enable students to see the law, legal problems, the practice of law and the legal profession, the impacts of changes on the legal profession and legal practice, through alternative and multiple perspectives (Way & Gilbert, 2008; Ferguson, 2018; Spencer & Brooks, 2019; Burton, 2015; Liu, 2020; Pittman and Gioia, 2019).

Reflective learning is increasingly used in legal education to enable students to reflect upon and review their performance, and to providing learners with the necessary lawyering skills for legal practice (Ferguson, 2018; Spencer & Brooks, 2019; Burton, 2015). The literature on legal education demonstrates that a range of activities and assessment practices are used to enhance reflection. These include: reflective journals/diaries, case studies, presentation journals and post experience reports (Hyams, 2010; Sparrow, 2009; Burton, 2016; Evans et al., 2017). Common features of all of these include the recording of student thoughts, reflective writing, the sharing of ideas and feedback.

Notwithstanding the use of reflective activities in legal education, insufficient attention is paid to encouraging matters relating to the workplace and organisational cultures, changes to the profession and the impact of wider socio-economic factors. 'Reflection' differs from 'critical reflection' (Moreland, 2005, Greene, 2017; Liu, 2020; Pittman and Gioia, 2019). Reflection enables learners to reorganise knowledge. Acknowledging the social, political and historical aspects of experience, critical reflection encourages students to challenge their assumptions, norms and understandings, and to pay closer attention to assessing and understanding of changes and impacts on the law and legal practice. Although transformations can take place through reflection, social transformation only occurs where learners revise and change their biases, assumptions from their uncritical acceptance of the status quo (Johnston, 2010; Shore & Friere, 1980; Mezirow, 1991). The adoption of critical reflection can enable learners to see the multiple functions of the law, socio-political impacts upon the law, problems and issues with legal workplace practices and cultures, the power of the law and the power it provides to legal professionals (Kinsella, 2001; Greene, 2017; Liu, 2020).



In order to foster transformation through re-thinking, re-examining and reframing of issues, critical reflection needs to be embedded into experiential learning, teaching and assessment (Mezirow, 1990). The inclusion of various questions (e.g. legal, political, social and policy related) can enhance critical reflection (Hill & Kumar, 2009; Burton, 2015; Ferguson, 2018). Such questions can focus on how things are connected. Reflective exercises can include E-portfolios, reflective journals/diaries and case studies which can be used to enhance critical reflection and enhance social transformation. Such activities, however, must be designed to go beyond mere self-reflection to include social and power relations, including questioning the law and practice as well as societal and professional structures. Students also need to critically reflect upon these arguments with fellow students, staff and legal practitioners through dialogue, which closely is related to the strategies and skills used in critical reflection.

DIALOGUE

Andrews (2005) advances that “Motives and intentions do not arise from individuals alone, they are the result of values and belief systems that form across and within social systems that must influence learning through constraining or advancing particular relationships” (p. 3). From a transformational learning perspective, it is important for learners to not only become aware of their own perspectives and frames of reference, but also to engage with fellow students, practitioners and staff to enable learners to create new perspectives and meanings (Taylor, 2007; Paredes, 2018; Pittman & Gioia, 2019). The legal education curriculum generally, does not provide sufficient allocation of time for effective small group dialogue. Fostering personal change through dialogue requires instructors to devise teaching and learning activities which effectively promote information-gathering, critical thinking and reflection as part of the dialogue. Structuring dialogue effectively can enable contestation of beliefs, foster an openness to presenting and assessing arguments regarding problematic and contentious issues, thereby paving the way for the setting aside of biases and a deeper understanding of underlying reasons for impacts on the law and legal processes.

For transformative learning to take place, teaching and learning needs to occur in small group situations, (Fuller & Unwin, 2004) so that learners share and reflect upon their social, legal, political and cultural histories with other people, as this is a vital process which enhances transformation. Fook (2006) suggests that activities which enhance critical reflection and dialogue need to be devised to interrogate assumptions and group evaluations are important to enable a reframing of thoughts and values, in light of information gained from the group. Group work and reflection of this nature enables students to discover the interconnectedness of their learning, whilst deepening their awareness of broader issues and solutions as well as transferring ideas and thoughts to their own unique experiences. Group learning can enable learners to validate contested beliefs, enhance active listening and reasoning and enable an inquiry into the perspectives presented by others (Ziegler et al., 2006).



EXPERIENTIAL LEARNING

Over the last two decades, there has been a major drive to produce ‘work ready’ graduates across all professions including in legal education in Australia. Experiential learning has gained increased importance in developing graduate attributes and employability skills (Universities Australia, 2008; Department of Education and Training, Victoria, 2019; Zyngier, 2017). Experiential learning enables students to learn and understand workplace norms, culture and processes. Various experiential learning programmes are offered in legal education including clinical legal education, placements and internships. Keyes and Johnstone (2008) point out that these programmes are primarily driven by the need to produce work ready graduates who possess the requisite knowledge of the law and lawyering skills. Experiential learning enables students to construct knowledge through engagement with authentic workplace tasks and reflective practices, enabling students to develop personally as well as professionally and to move beyond performative competence, to being able to make professional judgement. Hyams (2010) and Giddings and Weinberg (2020) identify that reflective activities associated with experiential learning offered in legal education focuses on the development of personal, legal and ethical skills. The adoption of such an approach does not address personal issues such as values, beliefs and wider impacts upon the law.

The adoption of this limited approach potentially only results in superficial or short-lived changes (Willis, 2007; Shore & Friere, 1980; Mezirow, 1991), failing to expose students to broader impacts on the law and excluding the social transformation required for emancipatory objectives. Preparation for work through their studies is both ideological and technical (Hill, 2008). Experiential learning trains students to be competent legal professionals. The pedagogic benefits of experiences gained through experiential learning programs are largely based on the extent to which students reflect on these experiences set in this context, coupled with their understandings which are derived from the academic context set by universities – in the context of legal education, this is predominantly skills driven. The increased emphasis on the instilling of lawyering knowledge and skills in legal education, inhibits social transformations necessary for law students to revise their biases and assumptions, with insufficient understanding of the wider impacts upon the law and legal practice. It is therefore vital that experiential learning offered to students in legal education is designed and linked to critical reflection and dialogue, as part of the learning process.

The workplace is an essential environment in which transformative pedagogies can be enhanced through the provision of cognitive tools (ideas, theories, practices and concepts) for students to gain knowledge and skills in their chosen profession. Additionally, through appropriate pedagogic interventions, opportunities can also be provided for students to shape their meanings, perspectives and ideas. Fook (2006) discusses this critical connection and maintains that the linking of experiential learning to reflective processes with an emphasis on



social contexts of reflection, enables learners to comprehend the social and political functions, including dimensions of experience and meaning-making, with an ability to apply this. Furthermore, Brookfield (1995) points out that critical thinking, needs to link personal experience with social and power arrangements. This ties in very strongly with transformative learning outcomes which encourage students to be reflexive practitioners. Fook (2006) advances that reflexive practitioners are able to look back at themselves, their practice and theory and to look inwards and outwards to recognise social, cultural, political and environmental considerations.

In order to foster transformation through re-thinking, re-examining and reframing of issues, critical reflection needs to be embedded into the experiential learning, teaching and assessment (Mezirow, 1990). Critical reflection and dialogue need to be approached in a manner that not only includes an understanding and analysis of the law, but, an understanding of social forces and structures which adversely impact upon the law and workplace practices. Experiential activities and experiences thus, must not be provided in isolation of opportunities to ensure that students regularly get together with other students/practitioners – where they can critically analyse their organisations, organisational culture, processes, socio-cultural – legal issues within the legal industry and profession. This can allow questioning of organisational and individual cultures, functions, practices and changes.

CONCLUSION

This paper has advanced that the dominant conceptualisation of resilience within the higher education sector, is framed upon narrow constructs associated with coping and enduring in a higher education setting and that learnings from this, are likely to be difficult for students to transfer to workplace settings following graduation. A broader conceptualisation of resilience which places emphasis on the self, others and wider social contexts has been advanced, so that students can identify broader impacts, stressors to and changes within the workplace. It has been suggested that transformative pedagogies can effectively encourage and instil the skills and knowledge, to ensure that students are better prepared and resilient to cope with the disruptions and changes associated with the 21st Century workforce.

The suggestions made in this chapter have important implications for teaching and curricular design adopted by law schools. Adequate research does not exist as to the translation of resilience-building activities following graduation. Further research is essential as to how universities may embed practices to ensure that resilience can be successfully carried across to the workforce following graduation, to ensure that students are able to effectively cope with the changes and disruptions associated with the 21st Century workforce and legal practice in particular. The principles and strategies suggested in this paper are relevant to other disciplines such as counselling, social work, community development and health sciences where personal and social transformation is desired.



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