

REFLEXIVE PROFESSIONALS OR DISEMPOWERED TECHNICIANS? A CASE STUDY OF THE RISKS OF 'M^CLEARNING' IN A REGIONAL LAW SCHOOL.

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A guiding thought for me, as a legal ethics teacher in a tertiary institution in the 21st century, is that ethics is like a slow release fertiliser; it must be introduced slowly. Too much too fast can be harmful. If introduced slowly and consistently, however, its nourishing benefits can be lasting and visible.

In 2006, at the James Cook University Vice Chancellor's Teaching and Learning Symposium on Assessment and Feedback, keynote speaker Richard James from the Centre for Studies in Higher Education at the University of Melbourne and principal author of the influential book *Assessing Learning in Universities* spoke of the disempowerment of students in assessment in university courses. The message was clear. While assessment is a highly influential force on students' choice in terms of which subjects to undertake as part of their university learning experience, student input in terms of setting and developing assessment is generally excluded. This paper offers a case study of a trial, in a professional legal ethics subject, to use assessment as a vehicle for student empowerment in order to enhance and promote reflexive professionalism. The response by students was surprising. The experience stimulated some observations about changes in higher education within present-day modernity.

I. INTRODUCTION

This paper is as much about exploring why an attempt at empowering a group of university final-year law students was unsuccessful as it is about describing the change in their assessment. There are two main parts to this paper. In the first part, modernity is used as a theoretical framework for examining and explaining wider changes in universities in Australia. Such changes are associated with the evolution of what I call 'McLearning'. I use the term McLearning to explain a manifestation of change in higher education that is part of more comprehensive and widespread societal changes described by some observers as 'the McDonaldization of society'.¹ The distinguishing features of McLearning are that the delivery of knowledge must be fast, easy and palatable for students, the 'new knowledge consumers'. Increasingly, students have become knowledge consumers in a cutthroat market environment in which they no longer have the time (if ever they did) to study without the pressures of debt, work and family.

The underfunding of legal education and the correlated underdevelopment of students' reflexive capacities is the present order of the day, at least in regional law schools. Being reflexive, in the sense that it is used here, means being first aware of your behaviour and how your behaviour can affect others so that you can then engage in a constant process of change in response to this new knowledge — ultimately, to achieve a higher degree of ethical literacy. Normally, everyone 'is aware' of the basis of what they do as an integral part of doing it and can explain this. This is simply being able to reflect. Being reflexive, however, is to be aware of what you do, why you do it, what the implications of what you do are on others and the environment, and constantly monitoring, examining and readjusting all of this in light of incoming information about those very practices. Only then can persons engage in a process of readjustment, altering the character of their actions and practices.

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1 See, eg, George Ritzer, *The McDonaldization of Society: An Investigation into the Changing Character of Contemporary Social Life* (1995).

Casualised black-letter law teaching and examination-based assessment are the chief processes that interfere with students learning to become reflexive professionals. In many respects, we have reverted back to the 1950s trade school where article clerks came in from a day's work to attend night-time lectures and to be coached for their exams. With the conversion of legal education to academic rather than trade school form came opportunities for reflection and the development of assessment such as essays and research projects which assisted students to place the law in its social, political and economic context.

Far from producing 'clever' people to manage the challenges of life in present-day modernity, it is suggested that the neoliberal university may be dulling and narrowing student self-constructs and risks, becoming an assembly line for 'unreflexive' technicians. The absence of reflexivity means that students, like university managers, have succumbed to the neoliberal paradigm. They are deprived of the ability to reinvent themselves as empowered agents in their own destiny. Instead, they become technicians — the unquestioning victims of neoliberalism.

Part IV of this paper presents the case study of a trial, in a legal ethics subject, of the use of assessment as a vehicle for student empowerment in order to enhance and promote reflexive professionalism. What the teaching/learning experience disclosed, was the hegemonic place of the passive consumer amongst a group of final-year law students, and their disempowerment.

II. THEORISING ABOUT CHANGE IN HIGHER EDUCATION

Modernity, as I use it here, refers to the entire Enlightenment quest for perfection manifest in its contemporary form. As Zygmunt Bauman states, the 'project of modernity, if there was one, was the search for the state of perfection'.² For Bauman, modernity is characterised as economic progress and the quest for order. It is a 'liquid' process; neither fixed in form nor in time.³ For others, like Anthony Giddens, modernity is analogised as the erratic juggernaut — a force that cannot be harnessed by man.⁴ Such constructs of modernity, as a 'liquid', incessant and erratic process, are useful frameworks that can be used to understand other changes like corporatisation, globalisation and consumerism⁵ — three modern forces that impact on the 'enterprising' process of universities in Australia.⁶

Corporatisation refers to a modern trend whereby public institutions mimic private corporations and assume the trappings of the market and competition policy.⁷ This trend represents the transformation of higher education into a commodity and the necessary shift to economic considerations in order to sustain competitiveness in a process of globalisation. Globalisation, through its increased irresistibility and wide use in the latter decades of the 20th century and beyond, has come to represent an overarching modernising process. The term is sufficiently elastic to encompass all interpretations of fundamental trends, transitions and transformations that are considered a revolutionary departure from the past.⁸ As the production of knowledge replaces primary industry and manufacturing,⁹

2 Milena Yakimova, *A Postmodern Grid of the Worldmap? Interview with Zygmunt Bauman* (2002) Eurozine <<http://www.eurozine.com/articles/2002-11-08-bauman-en.html>> at 2 December 2008.

3 Bauman's use of a liquid metaphor also 'makes salient the brittleness, breakability, ad-hoc modality of inter-human bonds' of present-day modernity: Zygmunt Bauman, *Liquid Modernity* (2000) 2.

4 Anthony Giddens, *The Consequences of Modernity* (1990).

5 These terms have come to mean much more than the continued global expansion of 'capitalism of the West' or the development of a 'world system'. See, eg, Anthony Giddens, *Beyond Left and Right: The Future of Radical Politics* (1994) 80.

6 See Simon Marginson and Mark Considine, *The Enterprise University: Power Governance and Reinvention in Australia* (2000).

7 Ibid.

8 For an interesting account of the meaning of globalisation and associated trends and changes, see Will Hutton and Anthony Giddens, 'In Conversation' in Will Hutton and Anthony Giddens (eds), *On the Edge: Living with Global Capitalism* (2000).

9 'Modernity', Bauman says, is the registered name of society; a brave new world of producers. See Zygmunt Bauman, *Work, Consumerism and the New Poor* (2nd ed, 2005)10.

higher education, for instance, is becoming the ‘product’ made available to ‘consumers’ both locally and globally. This change is associated with the corporatist trend and the application of business practices in Australian universities.¹⁰

As Margaret Thornton puts it, instead of being regarded as a ‘public good provided by the state’, higher education can now be bought and sold through a ‘quasi-private user pays system’.¹¹ This shift towards a user pay ‘consumer culture’¹² is part of wider fundamental change in the form and function of the state, described by Mark Considine as the ‘enterprising of the state’.¹³ Responsibility for quality of education and research has been divested by government to the institutions themselves and, as Simon Marginson says, ‘it is no longer in the interest of the institutions to acknowledge problems or fault, regardless of the real state of affairs’.¹⁴ Indeed, the pace of accelerated change since the 1980s is such that some commentators question whether ‘any existing set of public institutions in any one nation [or even the] collective behaviour’ of human beings have the capacity to come to terms with it.¹⁵ To use Will Hutton’s imagery, such change is so overwhelming because of ‘the sense of there being no escape’ from this juggernaut as it comes ‘down the tracks straight at you’.¹⁶

For smaller regional universities, like James Cook University, the commodification of education and the associated need to compete in the national and overseas marketplace in order to close the gap in Commonwealth funding shortfalls, has involved the overextension of its existing resources. Law teachers, for example, are expected to develop undergraduate and postgraduate short courses for full-fee paying students while moving towards ‘flexible learning’ — yet to be defined methods of teaching for mostly HECS (Higher Education Contribution Scheme) students.

We are, some might say, ‘in the midst of a transition era’,¹⁷ — a period Giddens describes as ‘exemplifying the movement from simple modernization to reflexive modernization’.¹⁸ An interesting dimension of Giddens’ concept of ‘reflexive modernization’ is the unfortunate growth of ‘ontological insecurity’.¹⁹ Ontological insecurity involves a process of continuous struggle by individuals to come to terms with who society wants them to be and who they are.²⁰ It sits alongside other insecurities like personal insecurity and material insecurity experienced by everyone in present-day modernity.²¹

10 For a succinct analysis of the transition to a consumer culture in higher education in Australia, see Margaret Thornton, ‘Universities: The Governance Trap and What To Do About It’ (Paper presented at Wednesday Night at the New International Bookshop, Australian Fabian Society, Association for the Public University/Akademios, Melbourne, 16 March 2005) <<http://www.fabian.org.au/876.asp>> at 2 December 2008.

11 Ibid.

12 Ibid.

13 In the quest to build and maintain order, modernising societies have demonstrated regulatory innovation and flexibility in the redesign of governance regimes. The process depicts changing relationships between public and private sectors reflected in the role of actors, the nature of mechanisms and ideological content of principles. See: Mark Considine, *Enterprising the State: The Public Management of Welfare-to-Work* (2001); Matthew Diller, ‘The Revolution in Welfare Administration: Rules, Discretion and Entrepreneurial Government’ (2000) 75 *New York University Law Review* 1121; David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (1992).

14 Simon Marginson, ‘Universities — Where to Now? Conditions for an Education Revolution’ (2008) 27 *Dialogue* 3, 5.

15 Eric Hobsbawm, *The Age of Extremes: The Short Twentieth Century 1914–1991* (1994) 15.

16 Hutton and Giddens, above n 8, 4.

17 Guy Standing, *Globalisation: the Eight Crises of Social Protection* (2001) International Labour Organisation, Geneva 3.

18 Paul Havemann provides a comprehensive list of diverse ‘emancipatory goods’ and ‘apocalyptic bads’, which he has drawn in part from the literature, that characterise the contradictory and complimentary dimensions of reflexive modernisation. See Paul Havemann, ‘Social Citizenship, Re-commodification and the Contract State’ in Emiliós Christodoulidis (ed), *Communitarianism and Citizenship* (1998) 135.

19 Giddens defines ‘ontological security’ as ‘a sense of continuity and order in events, including those not directly within the perceptual environment of the individual’. See Anthony Giddens, *Modernity and Self Identity: Self and Society in the Late Modern Age* (1991) 243.

20 Ibid.

21 For a discussion of such insecurities and their effects, see: Alain De Botton, *Status Anxiety* (2004); Jock Young, ‘Cannibalism and Bulimia: Patterns of Social Control in Late Modernity’ (1999) 3(4) *Theoretical Criminology* 387; and Helga Dittmar, *The Social Psychology of Material Possessions* (1992).

The self in ‘high’ modernity, Giddens says, can experience radical doubt about the reliability of certain forms of social and technical framework.²² In a secular ‘risk’ culture such as Australia, such doubts can filter into most aspects of day-to-day life, causing feelings of restlessness, foreboding and desperation.²³ As people become more ‘segmented and differentiated’, they become ‘more wary and appraising of each other’, constantly seeking out ‘someone or some group as blameworthy’ for their anxieties.²⁴

Therefore, if we accept there is such a thing as ‘a reflexive project of the self’ as part of modernisation,²⁵ then ‘clever’, healthy and wealthy student consumers are in a better position to successfully reinvent themselves. They have adopted rational, economic man’s approach to their education and the way they organise their lives. Their rationality is a direct response to the neoliberal market model of society in which everyone wants to get the most for the least, regardless of the impact on others. Indeed, such people are potentially those that have been categorised by some observers as members of ‘Generation Y’. Col McCowan, for example, has made the following observations about some of the characteristics of ‘Generation Y’.²⁶ In his opinion, these students tend to:²⁷

- Lack awareness of, and respect for, the needs of others
- Make unreasonable demands and expectations
- Refuse to take personal responsibility — blame others
- Eagerly wait for a lecturer to slip up
- Make derogatory comments based on superficial features
- Have arrogant, inflated egos — posturing, not genuine
- Be image obsessed — either ‘in’ or ‘out’
- Have limited attention span, lack of focus
- Have poor organisational ability.

As is discussed below, such characterisation may help to explain why changes in assessment aimed at empowering a group of final-year law students by becoming more reflexive are not necessarily welcomed. Of course, not all students fit this stereotype. Those students that struggle to manage mounting anxieties associated with a range of social, health and financial problems, for instance, may not have the means or ability to reinvent themselves as successful, self-confident professionals. They may nonetheless all share the same tendencies and desires that contribute to, or result from, the McDonaldisation of society.

Consumerism represents another important force in the history of the modernisation of society. Consumption is the lifeblood of a modern economy. Like demand for other consumable products, the demand for knowledge is partially responsible for the employment of administrative and academic staff in universities. Processes of ‘reflexive modernization, detraditionalization and individualization’ characterise the transformation of state-based institutions, like learning institutions, into organisations where students have become consumers in a ‘weightless society’²⁸ where everything is computerised. New economists have replaced the old system of inputs and outputs with cost-effective calculations. Such change, however, is not without consequences. Indeed, the emergence

22 Giddens, above n 19, 181.

23 Ibid. 24 Young, above n 21.

25 Giddens defines this as a project ‘whereby self-identity is constituted by the reflexive ordering of self-narratives’:

Giddens, above n 19, 244.26 Col McCowan is a registered psychologist, teacher, and counsellor who has been Manager of the Careers & Employment service at the Queensland University of Technology (QUT) for the past 13 years. Prior to that, he worked in private practice and over 15 years in government at service-delivery, training, management, and senior policy levels. He created a presentation that was referred to at James Cook University as a useful reference point.

27 See Col McCowan, ‘Gen Y: A New Breed of Students’

<www.fyhe.qut.edu.au/past_papers/2006/Workshops/McCowan%20.ppt> at 2 December 2008.

28 Charles Leadbeater, *The Weightless Society* (2000).

of a widening penumbra of unavoidable risks and insecurities has led to the blaming of the modernisation process itself for inducing such ‘risks’.²⁹

III. MANAGING TIME, RISK AND OPPORTUNITY IN HIGHER EDUCATION

In *The Consequences of Modernity*, Giddens introduces the compression of time and space (mobility and speed) as significant features of modernity.³⁰ Giddens points out that ‘emptying’ of space can be understood in terms of the separation of space from place; two separate concepts. Place refers to the setting or locality of social activity, which was historically dominated by physical ‘presence’. Modernity increasingly separates place from space by fostering relations between ‘absent’ others, with locality having little relevance on face-to-face interaction.³¹ This compression, or ‘emptying’ of time and space, is driven by technology, markets and powerful corporations. Corporations assist in the modernisation of higher education by producing and then selling modernising products such as videoconferencing and online teaching technologies as advancement. Indeed, it is challenging to imagine our lives without global communications, the latest and most profoundly significant being the internet and associated tools like portable computers and mobile phones; fast travel for local and global work experiences; fast food and fast medicine to help manage our accelerated consumption; and so on. These are all significant ingredients for achieving ‘success’ in consumer societies (howsoever that is defined).

Indeed, modernity offers an ever-expanding and improving array of such goodies to keep student consumers hungry for more — more choice, more speed, more fantastic. The notion of the digital classroom fits well with ideas (central to modernity) that man as master and processor of the universe can achieve anything. Indeed, scientific and technological reach appears boundless, save for our imagination. Teachers of today must invest their energy in aiding students to consume knowledge through methods of assessment that promote ‘deep learning’ as opposed to ‘surface learning’.³² The contradiction is that on the one hand we have an institutional rhetoric that calls for the promotion of deep learning, while on the other hand the institutional reality structures McLearning as the only option for many.

Our value as teachers is also being measured by the institutions in which we work and beyond, at least in some part, by how well we use technology to give consumers what they want and increasingly expect. In other words, to meet the expectations of today’s so-called ‘Generation Y’³³ students, teachers must also master the art of technology assisted ‘edutainment’.³⁴ Edutainment refers to the relationship between learning and play or entertainment in a presentation such as a television program (*Play School* and *Humphrey B Bear*) or a website (The Visible Human Project with 3D anatomy).³⁵ This is partly because today’s consumer students have grown up with a culture of edutainment and technotainment.³⁶ As Kim Veltman explains, while the notion of linking teaching, delight

29 Ulrich Beck, *Risk Society: Towards a New Modernity* (M Ritter trans, 1991 ed); David Goldblatt, *Social Theory and the Environment* (1996) 165. See also Paul Hirst and Grahame Thompson, *Globalization in Question: The International Economy and the Possibilities of Governance* (1996); Scott Lash and John Urry, *The End of Organized Capitalism* (1987); Jonathan Perraton, David Goldblatt, David Held and Anthony McGrew, ‘The Globalisation of Economic Activity’ (1997) 2(2) *New Political Economy*.

30 Giddens, above n 4, 17.

31 Ibid 18.

32 The theory has been developed by Paul Ramsden, *Learning to Teach in Higher Education* (1992); John Biggs, *Teaching for Quality Learning at University* (1999); and Noel Entwistle, *Styles of Learning and Teaching; An Integrated Outline of Educational Psychology for Students, Teachers and Lecturers* (1981) amongst others.

33 Generation Y is described by Avril Henry as being born after 1980 and therefore also known as the Millennium generation. See Avril Henry, ‘Recruiting and Retaining Different Generations at Work’ (2006) AH Revelations pdf <http://www.matereducation.com.au/ssl/1/avril_henry_2006.pdf> at 2 December 2008.

34 For the definition of edutainment, see Whatis?com <http://whatis.techtarget.com/definition/0,,sid9_gci538402,00.html> at 2 December 2008.

35 United States National Library of Medicine, *The Visible Human Project* <http://www.nlm.nih.gov/research/visible/visible_human.html> at 2 December 2008.

36 Kim Veltman, ‘Edutainment, Technotainment and Culture’ (2004) *Civita Annual Report*

and effect on persons is not new (the concept arose in the 1950s), radical technologically driven changes in this direction in higher education are relatively new, occurring since the late 1980s.³⁷

Traditionally, law teachers were assumed to have expertise in complex areas of law. Today, expectations are higher, with student consumers and university employers demanding more from teachers of higher education. Law teachers, like others, must be technicians versatile in the use of videoconferencing, *PowerPoint* and ‘clicker’ technology in the classroom, as well as an array of online teaching tools. The layers of complexity increase when teachers are compelled to manage their own travel and work-related expenses through the introduction of online systems like Spendvision.³⁸ This increase in administrative work impinges on any timesaving innovation made available through the mastering of new technologies in teaching.³⁹ Innovation is, in effect, stifled and hopes of becoming effective edutainers through the use of the latest, ‘fantastic’ and desirable technologies to assist student learning can be thwarted.

For those teachers who grew up without the benefits of Wikipedia, Facebook, YouTube and Google in their early childhood, the use and adoption of new technologies like Blog Tools, Digital Libraries, My Grades, Podcasts, Wiki Tools (to name but a few) which can be delivered individually or as a pre-packaged solution like Blackboard.⁴⁰ Such solutions incorporated into their teaching can often take more time to ‘master’ than is offered by a few hours of intensive training. Failure to do more (like integrating new technologies into teaching, administration and research) due to lack of time, at least at the outset, can be a source of mounting anxiety and stress. Ontological insecurities in the teacher ‘self’ are enhanced by stories in the popular media that claim ‘switched-on teachers’ are those who are technology savvy.⁴¹

Further, in universities in the neoliberal age, the process of learning stresses ease of assimilation of the ‘product’. The role of academics must be as customer-focused service providers. Consumerism, however, also has economic, environmental, and social costs. The act or practice of consumption also inevitably involves the possible destruction or expenditure of whatever is consumed.⁴² This expanded and accelerated approach of consumption may be hindering digestion and absorption, which helps explain the absence of reflexivity. Of course, what we see as potentially worth consuming (that which attracts desire) and how we consume may differ depending on the time and place. When students consume new knowledge as part of their professional degree, for instance, they don’t tend to consider the ‘product’s impact on their physical and intellectual wellbeing. Students tend to be ends focused (the LLB) rather than means focused. The desire for McLearning (fast: intensives/block mode; easy: online, less material covered and smaller books) is reflected in the regularity of questions posed by mainly Generation Y students like: ‘Can I pass this subject if I don’t attend classes?’ or ‘How much work do I have to do to pass?’ and ‘Can I complete this degree in three years or less?’ So apart from palatability (familiar and entertaining/fun), students are focusing on ease and speed of obtaining their degree

<<http://sumscorp.com/articles/pdf/2004%20Edutainment.%20Technotainment%20and%20Culture.pdf>> at 2 December 2008.

37 Ibid. Also see Dee Dickinson’s website, New Horizons for Learning, which promotes edutainment as useful in terms of explanatory learning, learner driven studies, team learning and technology-based learning enhancements. See New Horizons for Learning <<http://www.newhorizons.org/nhfl/about/dickinsonbio.htm>> at 2 December 2008.

38 According to the James Cook University (JCU) user guide, Spendvision is an ‘internet based Expense Management System for processing corporate credit card transactions, reimbursements for “out of pocket” University expenses, managing University travel administration and general purchase expense’.

39 My comments are part of a context that resonated with a resounding majority of delegates who attended my presentation of a version of this paper at the Australasian Law Teachers Associations Conference, James Cook University, Cairns, July 2008.

40 These options are currently available at James Cook University’s online teaching website, Learn JCU. See also ‘Blackboard Academic Suite’

<http://www.blackboard.com/clientcollateral/Academic_Suite_Brochure_New.pdf> at 2 December 2008.

41 ‘Games are Key for Switched-on Teachers’, *The Higher Education Review, The Australian* (Sydney), 2 July 2008

<http://www.theaustralian.news.com.au/story/0,,23953522-12332,00.html?from=public_rss> at 2 December 2008.

42 Bauman, above n 9, 23.

product. They, too, want to collapse time and space, consistent with the modernisation of modernity.

As with the myriad of other products we consume, the ecological footprint of the product, the product's origin or the environmental consequences of its manufacture or disposal are secondary considerations; afterthoughts, if considered at all. Take fast food for instance. The embrace of fast-food outlets like McDonalds is 'glocal'⁴³ (including and combining local, regional, and global stretch). In Australia, it is accompanied by other popular outlets like KFC, Red Rooster, Hungry Jacks, Domino's, Eagle Boys and Pizza Hut. Our growing addiction to fast foods has led to findings that Australians eat 3.4 times a month on average at one of these fast-food outlets, often because people are in a hurry and feel they have not time to cook.⁴⁴ We have yet to evaluate the impact of McLearning socially, culturally, ethically, environmentally or professionally. That said, there appears to be a pattern emerging indicating that there are negative impacts associated with the rapid embrace and over-consumption of new products and technologies in the university classroom. The learning environment is similarly susceptible to becoming 'polluted' by the tools and practices of McDonaldised teaching which favour fast yet 'fun' (at least at first until they are replaced by 'improved' products/versions) learning of facts that can be memorised and then communicated on the test. Students soon learn that if further supported with a 'bit of factual information', they can achieve a good mark.⁴⁵ This type of system is described by Biggs as a 'poor, non-aligned system' that puts at risks the conditions for quality learning.⁴⁶

In terms of risks associated with information and communication technologies like mobile phones and computers, scientists are now arguing about the serious harms associated with their high use — physical, environmental and social. The physical risks associated with mobile phones, for example, are said to increase with heavy and prolonged usage.⁴⁷ With an estimated 3 billion mobile phone users worldwide, disposal of mobile phones is also an environmental challenge due to the high toxicity of some of their components. The concept of privacy is also evolving as mobile phones are carried everywhere, including the classroom, impinging on ideas of confidentiality and eroding telephone etiquette.

The use of computers and the internet has been associated with heightened stress and anxiety in users who feel unable to manage the increasing volume of emails, spam and junk mail generated daily.⁴⁸ Speed risks eroding effective professional communication. Even 'spellcheck' has become too bothersome and slow, spurring some consumer students to create innovative abbreviations and acronyms in a 'liquid' language which teachers struggle to decipher. Electronic correspondence from students often begins with a 'hey' which is more likely to have originated from American television programs than from the

43 The term 'glocal' was proposed by Ronald Robertson in 1995 to explain interrelations between the global and the local. See Ronald Robertson, 'Glocalisation: Time-Space and Homogeneity-Heterogeneity' in Mike Featherstone, Scott Lash and Ronald Robertson (eds), *Global Modernities* (1995).

44 University of Adelaide and CSIRO Human Nutritionist Researcher Emily Brindal reportedly surveyed more than 500 South Australians about their take away habits. See 'Australia's Fast-Food Addiction', *Daily Telegraph* (Sydney), 19 December 2007

<<http://www.news.com.au/dailytelegraph/story/0.22049.22943911-5006007.00.html>> at 2 December 2008. Also see, more recently, 'Obesity to be Treated Like Smoking to Beat Cancer', *The Age* (Melbourne), 17 August 2008

<<http://www.theage.com.au/national/obesity-to-be-treated-like-smoking-to-beat-cancer-20080817-3wxr.html>> at 2 December 2008.

45 Paul Ramsden, 'The Context of Learning' in Ference Marton, Dai Hounsell, and Noel Entwistle (eds), *The Experience of Learning* (1984) 144.

46 John Biggs, 'Aligning The Curriculum to Promote Good Learning' (2002) Imaginative Curriculum Project, Learning and Teaching Support Network Generic Centre, 1

<<http://www.palatine.ac.uk/files/1023.pdf>> at 2 December 2008.

47 Asher Moses, 'Brain Cancer Fears over Heavy Mobile Phone Use', *Sydney Morning Herald* (Sydney), 31 March 2008, 2. Others studies play down the risk of developing glioma (a common type of brain tumour) as a result of mobile phone use. See, eg, 'Study Debunks Mobile Phone Cancer Link', *Sydney Morning Herald* (Sydney), 22 January 2006

<<http://www.smh.com.au/news/breaking/study-debunks-mobile-phonecancer-link/2006/01/22/1137864809270.html>> at 2 December 2008.

48 Ian Mayes, 'Email Anxiety, the Search for a Cure', *The Guardian* (London), 23 July 2008

<<http://www.guardian.co.uk/media/2004/jun/19/pressandpublishing.technology>> at 2 December 2008.

old English words ‘*hal*’ meaning safe, or sound⁴⁹ or ‘*hail*’, meaning literally ‘good health to you!’.⁵⁰ The communication style used by the group of legal ethics students discussed below reflects the difficulty that these students have with two key concepts: voice and audience. As a legal ethics teacher, I try to help these students understand that in their professional lives they will likely be communicating with members of the judiciary and the legal profession as well as with a wide range of clients who are not necessarily of their age and stage. In fact, the legal ethics subject is also about training people to be professionals in all of their behaviour, including their communications. The same can be said of all the law subjects of the law degree. The development of these types of ‘good’, or professional, and ethical communication skills ought not to become a focus only in the final year of the law degree when the profession’s rules of conduct are examined.⁵¹

Globalisation of crime must also be included on the ‘risks list’ of McDonaldised learning. Internet anonymity has created opportunity for cyber-bullying and harassment; problems perhaps better recognised as associated with school-aged children. However, higher education students and even their teachers can be victimised in this way by email or on internet sites like ‘Facebook’.

In some universities in Australia, student feedback systems (SFS) provide an internet system that, despite its intended benefits, is open to misuse. Guaranteed anonymity of participant students and the absence of any opportunity of reply for teachers mean that inappropriate, personal and rude communications from disgruntled students can overshadow the good work of teachers in especially non-elective subjects.

The next part of this paper focuses on responses to assessment designed to empower final-year law students, yet seemingly disempowering them through the raising of a typical affective and cognitive expectation for a McLearning environment.

IV. EMPOWERING STUDENTS: A CASE STUDY

A counter-hegemonic ideology to the neoliberal construct of the university as a marketplace for consumer students reflects the presumption that students are reflexive citizens. Such learners are engaged in the reflexive project of the self. They seek self-determination and empowerment to actualise their own potential, and university lecturers guide, facilitate and evaluate this process through aligned teaching. Aligned teaching is problem-based learning that aims to get students to solve professional problems by building on the skills and knowledge base that students possess. According to Biggs, teachers ‘set up a learning environment that supports the learning activities appropriate to achieve the learning outcomes’.⁵² Ideally, the learner then constructs meaning out of the learning activities.⁵³

The counter-hegemonic ideology exists simultaneously with the neoliberal ideology in Australian universities, creating contradictory and conflicting expectations on the part of both learners and teachers. The ontological insecurity that characterises modernity is one that Giddens suggests can be successfully combated by reflexivity.⁵⁴ Structured processes and learning contexts that deny students the ability to develop reflexivity are a source of ontological insecurity because they interfere with the students’ ability to reinvent themselves as modernity demands.

The legal ethics subject is a requirement for the purposes of admission as a legal practitioner in Australia. At James Cook University, the subject is concepts based,⁵⁵ aiming

49 Gordon Edlin and Eric Golanty, *Health and Wellness: A Holistic Approach* (1988) 1.

50 Arthur Leslie Banks and James Alexander Hislop, *Health and Hygiene* (2nd ed.1962) 70.

51 Of the 83 consumer disputes finalised by the Queensland Legal Services Commission in 2006-07, three quarters of them were about costs and quality of service, including communication. See *Legal Services Commission Annual Report 2006-07*, 23 < <http://www.lsc.qld.gov.au/22.htm> > at 2 December 2008.

52 Biggs, above n 46, 2.

53 Ibid.

54 Giddens, above n 19.

55 The core concepts include power and vulnerability; trust and duty; denial and acknowledgement; responsibility and accountability; and dignity and apology.

to create reflexive professionals and including the teaching of professional conduct.⁵⁶ The subject is designed to assist law students to develop ethical awareness and literacy by learning how to evaluate the outcomes of their face-to-face encounters with other people based on analysis of the process and the way processes can sometimes produce or generate undesired outcomes. The subject examines the consequences of behaviour and responsibility for outcomes based on the harm or good of processes that legal practitioners are empowered to initiate as professionals. Some of the outcomes generated by the behaviour of lawyers in the practice of law are explored in the various sessions of the subject. The classroom is effectively converted into a laboratory in which students are given opportunities through discussions, role-playing (student-to-teacher and student-to-student interactions) and observation. The teaching occurs in small groups of no more than 25 students.

Today's legal practitioners must be highly skilled, reflexive and flexible professionals, able to critically analyse and solve complex legal and ethical problems and communicate effectively with a diverse range of people from different cultural, social, political and economic backgrounds. Power imbalances (inherent in the lawyer-client relationship) are a key concept woven into the various sessions to help explain the risk of unintentional harms associated with how legal practitioners behave. The legal ethics subject, therefore, was considered an appropriate opportunity to incrementally introduce assessment that may help to address the disempowerment of law students. The assessment was aligned to the objectives of the subject in such a way as to present students with the opportunity to have an active role in evaluating and grading the subject's sessions and their learning experience — a form of empowerment through constructive alignment.⁵⁷ Typically, law students have been denied participatory roles in the assessment and grading processes. Since the analysis of unequal power relationships is a core concept in the subject, it is well-suited to assessment initiatives that aim to broaden understanding of power imbalances in lawyer-client relationships and having to meet new and unfamiliar challenges.

The first piece of assessment in this subject involves the writing of an Ethic CV to help students gain a better understanding of their values and ethical self. It was inspired by a document published in 2006 by the Queensland Law Society's ethics consultant, Max Del Mar, as part of the Professional Ethics Project.⁵⁸ The aim of the Ethic CV is to encourage ethical awareness and 'a way to provide incentives for ethical aspirations' through the recognition of ethical achievements.⁵⁹

A. The Ethic CV

Essentially, the Ethic CV was used in the legal ethics subject as self-concept assessment; that is, to assist students to develop an ethical sensibility and awareness of their own ethical development to date. This piece of assessment required students to create a section that could be inserted into their curriculum vitae that described in a few lines, their:

- Community involvement (for example, membership of non-profit organisations, law-related volunteer work, non-law related volunteer work)
- Ethical courses attended or presented
- Professional pro-bono work
- Community awards
- Community fundraising
- Cultural awareness (recent/favourite books/articles/law cases/reform papers/movies)

⁵⁶ The Australian Law Reform Commission recommended the addition, in university legal education in Australia, of 'high level professional skills development and a deeper appreciation of ethical standards and professional responsibility' to the study of core areas of substantive law. See Australian Law Reform Commission (ALRC), *Managing Justice: A Review of the Federal Justice System*, Report No 89 (2000) 'Education, Training and Accountability', 142.

⁵⁷ Biggs, above n 46.

⁵⁸ Queensland Law Society, 'Professional Ethics Project' Discussion Paper (2006).

⁵⁹ *Ibid* 8.

- Submissions to ethics committees or other committees; and/or
- Any other examples of ethical development.

These subheadings are suggestions raised in the Law Society's ethical CV documentation. It is not an exhaustive list. The idea was to help students build on their awareness of their ethical 'self' in a positive and practical way by showcasing their values and ethical and moral development to future employers. The assessment was worth only 5% of the total marks in the subject. It was to be handed in after commencement of the semester but prior to first teaching session.

This process also allowed for an informal assessment of the student's existing skills in finding the electronically available document from the Law Society website and independently following the instructions in the detailed outline. Students were informed that feedback on the results would be provided at the first session and students would be given the opportunity to amend their CV entries and resubmit at the end of semester as part of a larger ethics portfolio.

Since the lecturer had not met with the students in the classroom environment, emails were the only mode of communication used by students to contact the lecturer. Some of the emails were polite but others were not. For example, one email received from a student simply stated: 'Hey, I can't find it.' This was not considered an inappropriate communication by a final-year law student with a lecturer that the student had not previously met; in essence, a stranger. Another said, 'How are we to know the meaning of ethics if we haven't yet been taught the first lecture?' This is a disturbing response not only because of what it is suggesting about the student but what it is telling us about what the student has extracted from the law degree. It ought to be reasonable to expect that anyone who has completed four years of a law degree has some understanding of the meaning of ethics, something that can be assimilated from almost any subject in a law degree in the 21st century. Finally, another student wrote 'Do you want all of my CV? It's personal'. This statement indicates confusion about the role of the CV as a fundamental document used by those seeking employment or to evidence scholarship. In this sense, the CV is a public domain document intended to inform everyone who receives it that the person described in the document has value and worth.

Another incremental step towards empowering students through their assessment was to allow students to design their own assessment rubric. The rubric could then be used to assess the actual workshop sessions, in a sense 'turning the tables', with students acting as assessors of the subject content based on their own instrument created for this purpose. The expectation that students would draw up an evaluative rubric generated the most email exchange and yet there was a stark change in the style of the emails; they were far less demanding and far more courteous and respectful. Such emails were received after the first workshop, which focused on the development of 'good'/professional communication skills.

B. The Rubric and Ethics Portfolio

The ethics portfolio is a progressive work that is made up of three A4 pages relating to each of the three workshop days. The portfolio represents the end product of the students' learning journey in this subject through the evaluation and grading processes that they developed by constructing their rubric at the beginning of the subject. This assessment task was intended to assist students to develop and articulate a clear understanding of the purpose of a marking rubric as a tool to assess how well the preset objectives have been met by the individual students. More importantly, the idea was for students to gain a better understanding of the relevance of legal ethics as expressed in the subject's objectives in terms of their day-to-day lives and as future reflexive professionals.

Students were required to develop a simple rubric. An example of the rubric appears below. The intention of this part of the assessment was discussed in detail both in the

subject outline, which included the following example of a rubric, and at the first face-to-face session at the start of the subject.

Assessment Rubric

Session	Outstanding <i>(insert your own words)</i>	Reasonable	Unsatisfactory
Value	<i>(assessment descriptions to be inserted by student must refer to objectives of this subject)</i>	<i>(assessment descriptions to be inserted by student)</i>	<i>(assessment descriptions to be inserted by student)</i>
Impact	<i>(assessment descriptions to be inserted by student)</i>	<i>(assessment descriptions to be inserted by student)</i>	<i>(assessment descriptions to be inserted by student)</i>

This piece of assessment involved students constructing a tool with which they could critically assess their chosen sessions. The assessment was in terms of the value and impact of the session. The value of a session was to be objectively determined by comparing the content of the session with the subject aims and objectives listed in the subject outline. Students were to critically analyse the value of the session in terms of assisting students to develop the knowledge and skills described in the objectives listed in the outline. Students were encouraged to support their critique with appropriate authorities, whether from the legal, educational or social science literatures or case law. For example, if critically assessing the value of the session on ‘interactive listening’ in terms of preparing students for legal practice as ethical professionals, the students had to support their assessment. On the other hand, in terms of the session’s impact, students were asked to subjectively grade whether, if at all, it had an impact on their own knowledge, understanding or skills development — again, in line with the outcomes defined in the subject outline.

The rubric was worth 5% of the total marks for the subject. It was in the portfolio pages that students could describe how and why they evaluated and graded the sessions of their choice, good or bad. The main focus was to give students the impetus to consider the connection between the curriculum and the assessment, all aimed at assisting students in becoming better equipped to deal with the ethical dilemmas that may present themselves in busy legal practices. The ethics portfolio was to consist of four pages in which students described their assessment of the sessions in accordance with their rubric. The portfolio was worth 10%.

C. Findings

A significant minority of students openly described their overwhelming fear and panic at having to complete the assessment in this subject during a classroom feedback session. What became evident was that very few students had a clear understanding of the role of the assessment criteria (generally within a rubric) which appeared in their subject outlines over the course of their studies in previous (and current) university study periods. Many admitted to not having really looked at the criteria after their first year of study because it ‘all looked the same’ and appeared ‘straightforward’. This lack of understanding of the meaning of the different assessment criteria in subject outlines was not expected as it was assumed (perhaps naively) that these final-year students would be well versed in the meaning and use of such criteria.

Surprisingly, while some of the students found the assessment in this subject interesting and of some value, most said that they did not want to be empowered in this way and did not enjoy the deviation from the usual assignment and examination forms of assessment that they felt comfortable with. This was the case regardless of any stated or perceived benefits of the assessment in this subject. It seems that some of the students did not see the exercise as empowering.

Some students could not complete the tasks independently because they lacked the skills (for example, some emailed the lecturer stating that they could not find the Max Del Mar document on the internet despite attempting to do so).⁶⁰ Alternatively, they may have lacked the confidence or the will to engage in the process or there may have been other factors at play.

The university's electronic student feedback system (SFS) confirmed that students preferred the familiar forms of assessment like assignments, tests and examinations. A sample of some of the comments is as follows:

- 'I didn't like the form of assessment. Teachers have more knowledge and it is our place to learn from them'
- 'Overall subject matter and teaching were good but did not understand the written assessment and why it was used'
- 'Challenged by the assessment but do not agree as to its validity'
- 'I did not like the assessment at all ... I found it to have no real relevance and would much rather have just written an assignment.'
- 'It's [sic] quality and interest was good, however the assessment was ridiculous and unstructured'
- 'I found the assessment to be different but I don't like it ... I would prefer assignments'
- 'The rubric was a nightmare and irrelevant'

IV. SHARING IDEAS ABOUT MY JOURNEY: SOME CONCLUDING REMARKS

An important lesson learnt was that the lecturer cannot assume that students necessarily possess all of the knowledge, skills and graduate attributes attached to lower-level subjects in the degree simply because they have completed and passed those subjects. The tertiary education system is not well equipped at measuring how well students have mastered new skills and attributes other than the basic critical analysis and problem-solving skills acquired through written assignments and examinations. The empowering, reflexive professional approach is more likely to lead to consumer dissatisfaction while high SFS and university teaching awards seem more likely to flow to producers adopting the consumer-driven approach.

Also, I acknowledge that I have some way to go in learning how to make assessment more empowering for this group of students. My intention is to help students become the graduates that employers and professional groups expect them to be in terms of effectively coping with the world of work. However, this must be achieved by also engaging students in assessment activities that they perceive as being meaningful to them. The student feedback is clear that the novel assessment introduced in this legal ethics subject requires further development. I draw some comfort however, from the words of Max Del Mar when he says:⁶¹

⁶⁰ In response to the emails, I checked the site to ensure the document was still available. Further, I asked a final-year student that was not enrolled in the subject to search for the document. It was located by the student based on the same information as was given to the legal ethics students within five minutes.

⁶¹ Queensland Law Society, above n 58, 8.

All of us experience the frustration and disappointment of not being able to interest someone else in something we feel passionate about. It is a frustration that lies at the heart of problems associated with the teaching of ethics.

In conclusion, I find that McLearning and the push by universities to build the higher education market remind me of the current yearning for fast food. Fast food is quick, easy, palatable and glocal. However, it lacks nutrition and can be bad for you, society and the environment.

