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LEARNING TO FEEL LIKE A LAWYER: LAW TEACHERS, SESSIONAL TEACHING AND EMOTIONAL LABOUR IN LEGAL EDUCATION

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Learning to feel like a lawyer: law teachers, sessional teaching and emotional labour in legal education

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Abstract

Contemporary higher education, including legal education, incorporates complexities that were not identified even a decade ago. Law programs first moved from traditional content-focussed programs toward incorporating critique and legal skills. Many are now working toward recognising inclusion and student wellbeing as integral to law graduates' professional identities and skillsets. Yet the professional dispositions law teachers require to teach in these environments are ostensibly at odds with traditional lawyering identities founded upon an ideal of rationality that actively disengaged from affect. This article draws on our teaching experience and data drawn from the *Smart Casual* project, which designed self-directed professional development modules for sessional law teachers, to identify the limits of a traditional teaching skillset in the contemporary Australian tertiary law teaching context. We argue that contemporary legal education demands considerable emotional labour and we present sample contexts which highlight the challenges law teachers face in doing what is expected of them. The article makes explicit the emotional labour that has often been implicit or unrecognised in the role of legal academics in general, and in particular, in the role of sessional legal academics.

Introduction

Law is a discipline with a strong tradition of understanding justice as divorced from emotion. When justice is depicted as Justitia – a blindfolded woman holding a set of scales in one hand and a sword in the other – the blindfold symbolises the administration of justice without reference to the identity of the parties, unmoved by attachment to or emotion about all that those identities might bring into the courtroom.

The disassociation of law and the legal system from affect[1] has made its way into law teaching, which carries a strong (if not completely accurate) sense of preparation for a specific range of professions.[2] Whether implicitly or explicitly, 'law schools present and transmit powerful norms of professional conduct.'[3] The legal profession has historically associated emotion with an absence of objectivity, and

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[1] Lerner (2011), p 163.
[2] Keyes and Johnstone (2004), p 542.
[3] Meltsner (1983), p 624.

consequently, the norms of conduct law schools transmit to students have often included the capacity to create emotional distance. This emotional distance can be seen as reflecting the stance from which students may ultimately need to view their future clients and the circumstances of their clients' lives and legal matters. In short, 'law schools not only attempt to make students "think like a lawyer" but, perhaps more important … to feel like a lawyer … teaching that it is right and proper to be controlling, cool, dispassionate, unfeeling, arrogant.'[4]

This approach has come under challenge from feminists and other critics questioning the extent to which emotional distance can generate objectivity or justice,[5] and more recently from a burgeoning literature demonstrating that lawyers and law students suffer from well above average levels of emotional distress in environments that have historically been hostile to expressions of vulnerability.[6]

At the same time, legal education is moving from a rigidly doctrinal focus to one that requires the acquisition of skills, including the interpersonal and communication skills that students will require as graduates.[7] These factors combine to suggest that contemporary legal education requires teachers with high level emotional and relational skills.

In law, these changes coincide with rising levels of consciousness about the complexity of many people's experiences of the law. Legal research and legal institutions have begun more directly to engage with the experiences of victims of violent crime; endemic racism; the aftermath of colonisation; and other traumatic experiences which intersect with the law. Teachers addressing these topics inhabit increasingly diverse classes in which students embody divergent experiences of the law. Some of the emotional complexity teachers and students encounter in the classroom arises from the blunt fact of diversity, and the consequent inability to assume that class members have shared knowledge, history, values, social locations, access to resources, or mutually recognised modes of appropriate social interaction. However, we would argue that while inclusive approaches are clearly needed in the context of diversity, inclusion is not sufficient.

Legal education is not only a site of increasing diversity but also a location of power, and thus a site of inequality and resistance. Our research understands law classes as contexts in which access to legal education depends not only on inclusion but on interplays of power and resistance that can invalidate some forms of affect in learning and teaching while validating others that can pass as neutral or dispassionate because they are associated with social privilege.

In this article, we build on this insight to argue that legal education is a site of significant emotional labour. Law teaching requires substantial effort and skill in dealing with emotion. Some of this work bears the hallmarks of emotional labour as initially theorised by Hochschild in relation to other fields of work. Legal academics are expected to manage their own feelings to provide the 'customer service' demanded by universities as employers and students as consumers, as well as to generate particular emotional and relational competencies in others including

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[4] Meltsner (1983), p 624, citing a personal communication with David Kaplan.
[5] See, for example, Bender (1990); Lerner (2011), p 172, 'teaching our law students that the members of their profession that they should seek to emulate are dispassionate analytical machines is to do them a disservice'.
[6] This literature is discussed below.
[7] Weisbrot (2002); Keyes and Johnstone (2004); Field and Duffy, (2012); Howieson (2011).

students. The latter requirement is particularly demanding when the contemporary law curriculum requires teaching that addresses the power of the law and classes may therefore ignite students' necessarily complex and diverse emotional responses to law's involvement in social power, responses in which resistance is, perhaps, inevitable. These are features of work well-recognised as emotional labour in other contexts.[8] They are often crucial to the success of the educational endeavour, and while in some cases they may form aversive aspects of the work environment, in others, they may be experienced as highly rewarding.

Our analysis draws on data from focus groups and interviews with sessional staff undertaken for the *Smart Casual* research project, which was directed at producing discipline-specific professional development for sessional legal academics.[9] In addition to this data from sessional law teachers, we draw on our own teaching experience to illustrate the nature of the skillset required to teach law effectively in a contemporary context and to investigate the increasing emotional labour involved in teaching law, particularly in addressing in-class engagements with power, inequality and resistance.

The emotional labour now required of law teachers renders sessional academics particularly vulnerable. We adopt the term 'sessional' to describe teachers 'who are not in tenured or permanent positions',[10] including teachers employed on an hourly paid basis (but whose commitment to their work may be anything but 'casual').[11] Teaching skills are not distributed according to security (or insecurity) of employment. However, insecure employment tends to correlate with lower access to resources, support, and professional development.[12] Further, institutional expectations of significant unrecognised emotional labour are of particular concern for staff whose employment status is precarious, in terms both of personal stress and occupational security. These issues require further investigation, but their impacts on all legal academics, and especially sessional teachers, are already visible. The centrality of emotion in teaching and learning in law should be acknowledged, and capacity to undertake high level emotional and relational work in a sustainable manner needs to be developed in the legal academic workforce. Were this to happen, legal education might truly be seen to break with the traditional construction of what it could mean to 'feel like a lawyer'.

Emotional labour

Effective law teaching requires both sophisticated and well-honed pedagogy and highly developed relational skills.[13] Law teachers are implicitly (if not explicitly) expected to be able to build rapport with and between students; exercise tact in providing effective constructive feedback; deal with inappropriate and, at times, confrontational in-class interactions; manage the delivery and impact of sensitive and challenging material; [14] encourage confidence, persistence and resilience in students,

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[8] Hochschild (1983), p 7.

[9] Ethics clearance for the Smart Casual 1 project has been granted by the Low Risk Human Research Ethics Review Group (Faculty of Humanities and Social Sciences and Faculty of the professions) Adelaide University, approval no: HP-2013-080. Ethics clearance for the Smart Casual 2 project has been granted by the Social and Behavioural Ethics Committee of Flinders University, project 6866.

[10] Herbert et al (2002).

[11] Cowley (2010), pp 28-29. See also Percy et al (2008), p 4.

[12] Heath et al (2015).

[13] Wimpenny and Savin-Baden (2013); Easteal (2008).

[14] For an overview of these 'broader contexts', see e.g. Steel (2013).

[15] all the while taking care of their own professional and personal wellbeing. For the sessional law teacher this work is expected despite less than ideal working conditions.

These are among the many aspects of academic work which could be characterised as emotional labour.[16] As these examples suggest, academics are routinely expected to manage their own feelings so as to provide the customer service demanded by universities and law students (particularly in the current context of corporatisation and commercialisation) and to generate particular emotions in others (students, for example)—features well-recognised as emotional labour in other contexts.[17]

Emotional labour is a concept long used to understand professions[18] in which managing other people's feelings is a crucial element.[19] Hochschild, Koster and others[20] stress the sheer hard work and consequent exhaustion involved in emotional labour as well as its pervasiveness,[21] features of emotional labour the negative impacts of which are likely to be accentuated for academics as academic autonomy declines.[22] These aspects of emotional labour are especially concerning for teachers who are already required to undertake a high proportion of caring work relative to the entirety of their paid work (as is often the case for sessional staff and female staff), and/or to provide emotional labour under conditions of work intensification.[23] Hochschild focuses on the gendered nature of emotional labour as work women are more likely to care about and more likely to be undertaking, a finding that subsequent research into higher education has confirmed in university contexts.[24]

Some of the expectations of emotional labour in law teaching prevail in any workplace in which the exercise of interpersonal skills is required. Others are inherent in the educational nature of academic work, as suggested by those authors who use emotional labour as a framework for understanding academic labour.[25] Koster describes emotional labour in which a worker is required to manage their own feelings and also the emotions of others as 'extraordinary emotional labour.'[26] Extraordinary emotional labour in higher education is a form of labour with real costs to the academic, since it 'is both self-managed and invisible in institutional terms'.[27] It can be time-consuming and draining, can be displaced from one academic to another, yet remains largely absent from metrics systems and workload allocation metrics[28] despite impacting on matters which directly affect University income such

[15] Wimpenny and Savin-Baden (2013), pp 321, 325.
[16] Hochschild (1983), p 7.
[17] Hochschild (1983), p 7.
[18] Ogbonna and Harris (2004).
[19] James (1989).
[20] Hochschild (1983); Constanti and Gibbs (2004), p 247.
[21] Constanti and Gibbs (2004), p 247.
[22] Hatzinikolakis and Crossman (2010), p 431.
[23] Chowdhry (2014), p 568; Constanti and Gibbs (2004), p 245-6.
[24] Bagilhole and Goode (1998); Ogbonna and Harris (2004); Hatzinikolakis and Crossman (2010), p 429; Bellas (1999); Chowdhry (2014).
[25] Koster (2011), p 69.

[26] Koster (2011), p 69.
[27] Koster (2011), p 61.
[28] Constanti and Gibbs (2004), p 247; Hatzinikolakis and Crossman (2010), p. 429.

as student welfare and retention, as well as measures of current student experience and satisfaction used to attract future students.[29]

We contend that some aspects of emotional labour are specific to teaching law. Learning about the law can involve bruising encounters with injustice that the law does not always adequately redress. Many students find this distressing in itself. Undoubtedly some teachers find it distressing to have the role of inflicting these new realisations on students, even if they also see understanding these questions as essential. Moreover, some law teachers receive student disclosures of trauma associated with the curriculum of their classes.[30] While teachers may have access to their institutions' employee assistance program, neither law teaching nor the working culture of the legal profession embed professional debriefing in the way that professions such as psychology and social work do. These disciplines present alternative models that law — and academia — might draw from in the future. In the present, however, traditions such as client confidentiality and individual competitiveness can result in lawyers being more reluctant to seek assistance on matters of emotional and mental wellbeing than other professionals.[31]

Law teachers are not only undertaking emotional labour, they are training students to do emotional labour. Students are increasingly expected to manage 'their emotions to meet expected academic disciplinary or professional requirements, perform ethical behaviours or engage in critical analysis in an appropriate academic manner'.[32]

Despite the complexity of the emotional territory that law teachers traverse, some teachers, and some students, believe that teaching and learning law requires a degree of distance or even callousness, discouraging optimism and hopefulness and quieting the longing for justice that brings some students into law school.[33] Distance may indeed form a viable strategy for academics in some situations, such as conveying disappointing marks or addressing academic integrity breaches,[34] but it is unlikely to form the best and only response in every situation.

University teachers' work-related emotions and emotional labour are under-researched[35] compared to the emotions of school teachers or those of university students (including law students). Yet, it is clear that many university teachers experience teaching (and even administrative tasks such as extension request management)[36] as emotional, and not merely intellectual, labour. Academia is an intrinsically social profession[37] and law as a discipline has a strong connection to ethics and values.[38] It follows that concern for wellbeing and resilience should extend to care and self-care for teachers and not only for students.[39] Academics confront not only emotional labour that may be satisfying and rewarding, but also emotional

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[29] Koster (2011), p 63; Ogbonna and Harris (2004); Hawk and Lyons (2008).
[30] Zurbriggen (2011); Carello and Butler (2014).
[31] See eg Kelk et al (2009), p 20.
[32] Willis and Leiman (2013), p 688. This is reflected in the professional skill outlined in TLO 6, Self Management - see Kift et al (2010); Field et al (2014).
[33] Townes-O'Brien et al (2011).
[34] Hatzinikolakis and Crossman (2010), p 428.
[35] Hagenauer, and Volet (2014).
[36] Abery and Gunson (2016).
[37] Hagenauer, and Volet (2014).
[38] Barton and Westwood (2011), p 235; Duncan (2011), p 257.
[39] Zurbriggen (2011).

dissonance (a mismatch between felt and expressed emotions) and emotional exhaustion, which present risks to wellbeing and performance.[40] As Mountz et al have said: 'We must take care of ourselves before we can take care of others. But we must take care of others.'[41] Yet the academy is often a context in which staff 'receive little support on how to handle their own and [others'] emotions'.[42]

Asserting the value of emotional labour and making it visible both as teaching and as work form important parts of ensuring reward for what is now an integral part of the academic's role, and one in Australia especially likely to be borne by sessional teachers, often recruited to high student contact and marking roles early in degree structures, and into large classes.[43] This is likely to mean that sessional teachers do more emotional labour than their securely employed counterparts. This may come about though sheer quantity of hours of student contact time, higher levels of contact with students who are facing the challenge of transitioning into university and into law, and because many sessional teachers bear a disproportionate marking burden and thus have more interactions with students about their anxieties and disappointments in relation to assessment. If the legal academy wishes – even requires – law teachers to undertake this emotional labour, it must recognise that it is not currently recruiting, training, rewarding and supporting staff in this aspect of their work.

Indeed, the academy, and we as members of it, may instead be punishing staff who voluntarily assume caring roles in teaching; who are expected to support students who share their minority status; or whose curriculum focus happens to deal with material that is sensitive or distressing, by not rewarding this work within university employment, pay and promotion.[44] As we explain below, this burden is further heightened for sessional staff, whose precarious employment makes them more vulnerable than continuing staff to suffering loss of employment if they do not meet student expectations.

The limits of *teaching* like a lawyer

This article has its origins in our participation in a national project funded by the Australian Government Office for Learning and Teaching called *'Smart Casual': Promoting Excellence in Sessional Teaching in Law*. The project developed a suite of interactive online teaching development modules aimed at supporting the pedagogical skills of sessional teachers in law.[45]

The *Smart Casual* project had a strong initial focus on core legal skills and the central skills and information needed to teach them to students. This focus emerged from a survey of the priority concerns of law schools across the country, from relevant literature, and through interviews with sessional legal academics.[46] This initial focus also reflects the Threshold Learning Outcomes for law: the minimum skills and understandings that a law graduate is expected to possess, formed through a

[40] Hatzinikolakis and Crossman (2010), p 428.
[41] Mountz et al (2015), p 16.
[42] Koster (2011), p 69.
[43] Hatzinikolakis and Crossman (2010), p 431.
[44] Galloway and Bradshaw (2010); Bagilhole and Goode (1998); Heath et al (2017); Koster (2011).
[45] The project modules can be found online at https://smartlawteacher.org/available-modules/.
[46] The first three modules in the project dealt with Problem-solving in law, Engagement and Feedback. They can be found in their current forms at https://smartlawteacher.org/available-modules/.

consensus-based process in which law teachers, law schools and the legal profession were participants.[47]

The *Smart Casual* professional development modules were trialled by sessional staff and feedback on the content and quality of the draft modules was gathered by way of semi-structured focus groups.[48] Third parties not associated with the School or Faculty in which the participants were employed facilitated the focus groups and de-identified the data. Focus group discussions were audio recorded with express written consent provided by each participant. In order to ensure anonymity and confidentiality of participants, we have removed potentially identifying information from our reporting. Institutional ethics approvals were obtained before the study commenced.[49] The sessional teachers participating had a range of legal and teaching experience. Some had concurrent roles as PhD students or members of the legal profession; for others sessional teaching was a primary focus following other professional careers.[50]

By the end of the pilot project, it had become clear that the challenges for sessional staff in law were not limited to the teaching of core legal skills. Evaluation of the first tranche of modules by sessional teacher focus groups revealed that for many sessional law teachers, the modules merely touched on some of the more challenging aspects of their work: negotiating relationships with students and managing interactions over assessment and level of understanding in which students' sense of self and emotions were engaged. Some sessional teachers were consciously involved in the wider wellness focus[51] of their law schools and in that context were

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[47] Kift et al (2010), 6. The Juris Doctor Threshold Learning Outcomes endorsed by the Committee of Australian Law Deans can be found at http://www.cald.asn.au/assets/lists/ALSSC%20Resources/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf.

[48] In the pilot project, 2 focus groups were held on campus at Flinders University, each attended by 3 sessional law teachers. Two other teachers provided written feedback. Two focus groups were conducted at UWA with 11 participants in total. Three others supplied written comments. Two focus groups were run at Adelaide University, with a total of 11 participants. In the subsequent project, 5 focus groups were held (one at each of James Cook University, Flinders University, University of Adelaide, University of NSW and the University of Western Australia).

[49] Research ethics approvals are listed in footnote 9.

[50] For the pilot project: 28 sessional law teachers were recruited at the institutions engaged in the pilot project: Flinders University, University of Adelaide and University of Western Australia. They were paid award rates for their time. Six focus groups, ranging from 45 to 60 minutes, were conducted in 2014. Focus group participants were asked to comment on the modules as they related to their teaching experience in law. The questions were structured around 4 main topics: (1) module content and utility for sessional teachers; (2) format (including accessibility); (3) areas for improvement and (4) additional content/topics with which sessional teachers require assistance. Thirty-three participants for the second trial and evaluation were recruited from sessional law teachers at James Cook University, Flinders University, University of Adelaide, University of NSW and the University of Western Australia. The question schedule guiding focus group leaders asked: How long did it take to complete the modules? Did you find the modules to be accessible and user-friendly? How useful do you think the modules are for facilitating teacher development? To what extent were the modules relevant to your teaching experience? Did you find the discipline-specific approach more or less useful than generic teacher development? The modules incorporate a number of key themes: Internationalisation, Digital literacy, Gender, and Diversity. What is your evaluation of the integration of these themes in the modules? How could the modules be improved? Are you aware of any additional resources that would complement the modules? Please provide details. How useful would you find a private Facebook group as a support for these modules? What promotional materials or strategies would assist in making these resources widely available? What topics would you suggest for additional modules?

[51] For an overview of the movement for wellness in Australian law schools, see Field et al (2016).

seeking support with emotional and relational skills as well as support in teaching core skills and curriculum content. Indeed, some saw emotional and relational skills as crucial to the effective teaching of core legal skills, but did not know how or where to deploy these skills effectively in teaching law. In the focus groups, sessional law staff expressed a need for strategies to deal with both their students' emotional needs, and their own emotional responses to teaching law—key aspects of what we have argued can be understood as emotional labour.

In one pilot project focus group, for example, participants with a variety of teaching experiences responded to a question about the utility of the professional development modules. Their responses included many references to the impact of the modules on their struggles with confidence, uncertainty and anxiety: 'It [the module] was validating … that gives you more confidence'; 'I went through each of [the modules] before I'd taken any classes … and I think that kind of calmed me down a little bit, just gave me a little bit of reassurance'. Participants in focus groups evaluating the modules created in the subsequent *Smart Casual* 2 project, across a broader set of institutions, expressed similar experiences. One person in their second year of teaching said

it just made me feel some of the concerns and worries I had, I wasn't so dumb. Actually they're general things. And if I'm worried about these things I'm probably on the right track because other people are worried about them too.

When asked what kinds of material they would like to be covered in any future *Smart Casual* project, focus group participants spoke about content, skills and their role in supporting student retention. However, they also requested support around managing their own emotions. For example: 'What to do when you perceive that your intellectual and emotional perceptions of the teaching environment diverge'; 'Receiving feedback from students: being gracious, remaining relaxed, being prepared to respond'.

Sessional staff were also seeking assistance with managing students' distress in contexts that went well beyond any teaching setting, underscoring the requirement for emotional labour outside class as well as in class: 'Pastoral care and student wellbeing: students with life crises, problems, inter-student issues…'; 'Supporting students through that transitional experience to … facilitate the student finding support they need so that they can continue to study and not spiral into having mental health issues associated with coming to university'; 'Dealing with disabilities in [the] classroom and how to manage student stress and promote wellness'.

Others expressed concerns about dealing with challenging situations that arose in their teaching itself, such as: 'Dealing with sensitive topics that require specific boundary-setting' (examples provided included abortion and sexual violence); and 'Addressing student interactions and responses based on prejudice'. When asked about the content they would like to see, another participant offered:

If you are teaching torts and you are dealing with stolen generations, that's a subject with implications for students in your class. … you are going to have people in the class who know the family or the people involved. I think having some sort of resource about ways to deal with that … would be very useful.

An ever-increasing literature suggests that high-level pedagogical skills cannot be separated from skills in building rapport with and between students, exercising tact in the provision of effective constructive feedback, addressing in-class dynamics and

supporting student confidence, persistence and wellbeing.[52] Nor can they be separated from the skills required to teach challenging and sensitive material, which is embedded across the law curriculum,[53] beginning with colonisation as the root of the current Australian legal system,[54] through to human rights abuses, family breakdown, domestic violence,[55] and interpersonal violence.[56]

In dealing with the realities of the contemporary curriculum, the limits of teaching like a lawyer become apparent in the discipline's ostensible rejection of emotional and relational skills as professional skills particularly in the face of high rates of emotional distress reported by law students. However, some aspects of the emotional labour described by sessional staff point to the complexity of addressing social power in the teaching environment and in the subject matter covered in the curriculum.

Affect and the gender of law

Law is a professional discipline in which the 'benchmark man'[57] established by social history continues to cast a long shadow. The notional lawyer's features include a strong emphasis on rationality to the exclusion of engagement with emotion and, in particular, care. The constructed binary of rationality versus emotion and care, in which rationality is valued but emotion and care are seen as weakness, reflects long-standing gender stereotypes deeply embedded in both the text and the practice of law.

This traditional construction of lawyers (and by extension, legal academics[58] and law students[59]) is not a map of the reality of lawyers' lives,[60] nor is it a map of law schools. However, it has had some long-standing impacts including a steadfast absence of discussion of emotion in the classroom and an absence of processes that are standard in other professions that involve dealing with traumatic life events and stressful contexts. These include debriefing, concern for vicarious trauma and secondary traumatic stress, routine availability of mentoring and support, and recognition that emotional labour is an important part of the job.[61]

The absence of these layers of support is particularly concerning in relation to sessional law academics, who frequently have greater levels of immediate student contact than permanent academic staff (for example, teaching small group classes rather than large lecture classes), often without control over delivery or construction of the curriculum as a whole. Further, as we explain below, the consequences a sessional academic can face if students complain about their work exceed those faced by tenured teachers.

The wellbeing project in law schools

While there continues to be debate over the possible causes of the much-publicised statistics on the high levels of substance abuse, suicide, and psychological distress among lawyers, it is indisputable that many lawyers experience excessive workplace

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[52] Easteal (2008); Wimpenny and Savin-Baden (2013).
[53] Steel (2013).
[54] Falk (2005).
[55] Stubbs (1995).
[56] Heath and Humphreys (2015); Heath (2005).
[57] Thornton (1994).
[58] Thornton (1994); Galloway and Jones (2014).
[59] Townes-O'Brien et al (2011).
[60] See eg discussion Barnett et al (2007).
[61] Shirley (2011); Silver et al (2004); Ineke Way et al (2004).

stress that they are ill-equipped to manage in healthy ways.[62] There is a growing body of associated research that reveals parallel concerns for law student wellbeing. In a 2009 study involving law schools across Australia, over 35 per cent of Australian law students, compared with 13 per cent of the general population, reported experiencing symptoms of high or very high psychological distress.[63] More recent studies suggest that this trend is not abating.[64] While these studies are based on self-selecting samples and non-clinical assessments,[65] the data suggests that, from the first semester of their law studies,[66] a significant proportion of law students report experiencing excessive psychological distress. Whatever the cause, and irrespective of whether law students have higher rates of distress than other university students, the underlying evidence of distress requires a response from law schools. [67]

It is clear that the law classroom (face-to-face and digital) is an environment many students find distressing and in which law teachers are, therefore, under increasing pressure to adopt strategies to support student wellbeing. Indeed, some suggest that psychological distress in law students should be understood as a teaching and learning issue[68] which is the broader 'responsibility of the Australian legal academic community'.[69] The qualitative *Smart Casual* research discussed above suggests that many sessional law teachers are experiencing concern about this issue and failing to find institutional support to build their capacity to undertake the labour—emotional and otherwise—required to respond.

Some excellent work has been, and continues to be, done on promoting and supporting student wellbeing in law schools through changing the culture of legal education and through pedagogical good practice[70] as well as through curriculum design.[71] However, there are fewer resources available to individual law teachers dealing with supporting the wellbeing of their students, and indeed their own wellbeing: two issues of concern in the *Smart Casual* focus groups.

There are emerging signs however, that the focus on student wellbeing has begun to create interest in teacher wellbeing.[72] Similarly, although there is far less scholarship, practical guidance and support for individual law teachers on promoting wellbeing and resilience among their students through their in-class (and online) teaching strategies and practices[73] is emerging in this context also. A substantial, recently released Office of Learning and Teaching-funded project led by Wendy Larcombe and Chi Baik now provides professional development and resources for

[62] See eg Kelk et al (2009); Helm (2014); Kendall (2011).
[63] Kelk et al (2009).
[64] See eg Field et al (2016); Larcombe et al (2015); Skead and Rogers (2014).
[65] Parker (2014).
[66] Townes-O'Brien et al (2011); Lester et al (2011); Sheldon and Krieger (2007).
[67] Field and Kift (2010), Skead and Rogers (2014).
[68] Dresser (2005).
[69] Field and Kift (2010), p 67.
[70] See, eg, a synthesis of the literature translated into practical strategies in the Good Practice Guide written by Baron et al (2013).
[71] See, eg, Field (2014); Field and Duffy (2012); Howieson (2011); Field and Kift (2010).
[72] A pilot study led by Pauline Collins is under analysis and another led by Colin James and Rachael Field also in progress.
[73] See eg Bromberger (2010); Galloway et al (2011); Galloway and Bradshaw (2010); Hess (2002).

tertiary educators seeking to support student wellbeing.[74] A welcome and significant contribution to practical support, it also includes a module on teacher wellbeing.

Despite these resources, professional knowledge and expertise – and even teaching experience – does not guarantee that a law teacher will have the skills required to support the wellbeing of their students. Additionally, due to the precarious nature of their employment, these concerns are heightened for sessional law teachers. Sessional law teachers' other professional obligations[75] sometimes mean they have little or no access to professional development opportunities for teaching even where they are offered by the employing university.

Context for sessional law teachers

While the experiences of sessional law teachers are varied, the employment of all sessional teachers in the tertiary sector is, by definition, precarious and unpredictable.[76] Unlike their tenured or permanently employed colleagues, sessional law teachers often do not have the benefit of formalised recruitment processes, induction programs and routine ongoing academic appraisal and management, or paid professional and career development opportunities.[77] They are commonly excluded from conditions and benefits, workplace and infrastructure support outside narrow interpretations of their contract terms (including, in some cases, access to the internet and library services),[78] and meaningful recognition and reward initiatives.[79] In addition, in many instances, sessional teachers do not have ready access to a private space for pre-class preparation, post-class reflection, and informal discussions with colleagues or students. Where sessional staff do have access to office space (which is usually shared) they are frequently not paid for out-of-class interactions with students[80] and have limited access to the stream of information about institutional or faculty-based services to which students who are at risk can be referred. All this despite the fact that the availability of these 'basic amenities, resources and job and career supports … contribute to a sense of belonging … and is a necessary precondition for the performance of semester-based casual academic work to a reasonable minimum standard'.[81]

Sessional law teachers are less likely to have opportunities to engage with colleagues either informally in the staff room, corridors and neighbouring offices, or formally at staff meetings, academic and social events. This may compound feelings of isolation and is not conducive to a healthy, collegial and supportive work environment. Yet, despite these less than ideal working conditions, sessional teaching staff are just as prone to having their work scrutinised and evaluated and are more liable to lose work over concerns resulting from student complaints, poor student evaluation of teaching results and casual commentary, than their tenured and permanent colleagues, because the terms of their employment offer few protections.[82]

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[74] Enhancing Student Wellbeing: Resources for University Educators, http://unistudentwellbeing.edu.au

[75] Heath et al (2015).

[76] Tweedie (2013); May et al (2013); Briar and Junor (2012); Gottschalk and McEachern, (2010).

[77] Percy et al (2008); Cowley (2010); Ryan et al (2013), p 165.

[78] Ryan et al (2013), p 165.

[79] Percy et al (2008); Cowley (2010).

[80] These interactions may be deemed to be a part of the lecture hourly rate in Enterprise Agreements. See, for example, https://www.hr.unsw.edu.au/services/indrel/Academic_EA_2015_Final.pdf p 62.

[81] May et al (2013), p 19.

[82] Percy et al (2008), p 18.

Best practices in hiring, training, and rewarding sessional teaching, grounded in strong and sustainable policy approaches within institutions would go a long way toward addressing these concerns,[83] and benchmarks to support best practices in recruitment and employment have been developed.[84] Yet Australian research shows that these are not yet in widespread use[85] despite recognition by quality assurance agencies that casualisation may pose a risk to the quality of the student experience.[86] Employment and support practices in Australian universities have simply not kept pace with the speed and degree of casualisation of the academic workforce.

Affect in learning law

Learning is well recognised as an inherently emotional process.[87] It challenges self-perception and confidence. It requires persistence and self-belief. It creates life-changing moments.[88] It involves feedback that can be exhilarating or crushing (or both). It is social, calling upon skills that vary widely across the class. The affective aspect of learning is therefore recognisable even if the subject of learning is abstracted from any obvious personal emotional context.

Despite the law's best claims to neutrality and objectivity, learning law is not context free. Law classes contain confronting material. Law deals with traumatic events such as family breakdown, crime, social harm and war. Law as a set of institutions and practices is implicated in the creation or legitimisation of forms of trauma such as immigration detention, mental health-related incarceration and colonisation.[89] Law fails to address (or offers only partial address to) social issues that cause widespread suffering, such as poverty and climate change.

As evidenced by the results of the *Smart Casual* focus groups, for teachers, the challenge of responding to student emotion on these topics, and teaching in ways that are appropriate to the subject matter, is considerable. Some legal academics prefer to ignore the evidence that students' experience of study is at least partly emotional, and that students' emotional responses to study will affect the learning outcomes they are able to achieve.[90] There is resistance within law schools to changing the way law is taught to encompass broader contexts,[91] and at least some law teachers appear to hold the view that 'it is not the duty of law professors to correct the deficiencies that students bring to law school.'[92] Current requirements for accreditation of law schools only list areas of law to be taught, with no reference to pedagogy – let alone the role of emotional and interpersonal skills.

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[83] Percy et al (2008), p 18.
[84] *BLASST: Benchmarking Leadership and Advancement of Standards for Sessional Teaching* (http://blasst.edu.au/index.html)
[85] Percy et al (2008), p 18.
[86] See, for example this statement from TEQSA: 'Unusually high reliance on casual staff poses risks for the quality of the student experience, and TEQSA will investigate where high reliance on casual staff is combined with data indicating lower student outcomes. TEQSA does not set a threshold for the ratio of ongoing staff to casual staff, except for the purpose of risk assessment. Findings are made after considering contextual factors including qualifications, experience and depth of scholarship in academic leaders and the nature of the field.' http://www.teqsa.gov.au/hesf-domain-3-teaching .
[87] Beard et al (2007); see overview in Bromberger (2010); Del Mar (2011), p 177.
[88] Mezirow (2000).
[89] Watson (1996).
[90] Wimpenny and Savin-Baden (2013).
[91] James (2013).
[92] Niedwicki (2007), p 40.

On the other hand there is significant work on broadening the aims of legal education by law schools. One national expression of this push for a broader focus, the Threshold Learning Outcomes, has been endorsed by the Council of Australian Law Deans and acknowledged and considered by the Legal Admission Consultative Committee[93] – though widespread implementation into pedagogy is a long-term project.

Our efforts to integrate the themes of gender, diversity, internationalisation and digital literacy into the *Smart Casual* modules made the implications of in-class affect in teaching law increasingly clear. Developing the modules involved not only synthesising literature on the scholarship of teaching and learning, but providing concrete examples to illustrate how to apply otherwise theoretical approaches in teaching law. Drawing on the literature, our collective experience, and the data from the focus groups to develop working examples of teaching, lent clarity to the enormity of the task facing legal academics, both sessional and continuing.

Attending to student diversity

Transition into law school and achieving success is a complex experience, with cognitive, affective, and social components which are increasingly well recognised.[94] However, their recognition in the literature does not ensure that they are receiving the sustained attention that might be required to assure success in law school for students in all their diversity. Nor does it demonstrate that law teachers are well-equipped and supported to assist students in developing the affective skills they may need to succeed, or that all of the sources of difficulty faced by entering law students are theirs to address.

As student diversity has increased, at least in some law schools,[95] levels of academic preparedness have also diversified. Some students come to law school without the level of secondary preparation that might be ideal for tertiary study, or the affective capacities that would support academic success, because they have not had as much opportunity as others to develop these skills prior to entry into university.[96] Students may not arrive with a well-entrenched sense of self-efficacy,[97] because their prior experience has not supported them to acquire the belief that if they work hard and persist they will succeed.[98] They may not feel comfortable in an academic environment, nor feel at ease accessing support services.[99] They may not feel entitled to do so, or may feel that to do so is a betrayal of the trust of their family. They may not come to university with the self-regulation skills necessary to spend the time on a task needed to succeed, nor be aware of their lack of these skills.

These features of the contemporary law class could be understood only as issues of diversity, which could be addressed with sufficient attention to inclusive teaching directed at meeting widely varying needs which have educational, social and affective components. Certainly, we believe that inclusive teaching is profoundly important.[100]

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[93] Kift et al (2010), p 6; Law Admissions Consultative Committee (2011), pp 1-2.
[94] Zalesne and Nadvorney (2011).
[95] Zalesne and Nadvorney (2011), p 269; Galloway and Bradshaw (2010), pp 103-5.
[96] Tinto, (2012); Nelson, (2014), pp 9-10.
[97] Van Dinther et al (2011); Komarraju and Nadler (2013).
[98] Zalesne and Nadvorney (2011), p 268.
[99] Zalesne and Nadvorney (2011), p 268.
[100] Israel et al (2016).

Social power and diversity

However, constructing this as a question of diversity alone elides the analysis of power that might be required to recognise and respond appropriately to the wider context in which diversity is never a neutral social feature. Rather, the association of specific forms of diversity with social power or relative social powerlessness means that the consequences of diversity are profound and unequal. Further, when diversity is stripped of the context of social power in which it must be lived, it is individualised in ways that tend to produce blame for individuals whose characteristics do not conform to predominating social norms, despite the context of power and access to resources which produced this social artefact. It also means that individuals are often granted credit for capacities which they could only have acquired with significant access to the benefits social power attracts.

The work involved in responding to social power and inequality also forms part of the emotional labour undertaken by academics.

Students' encounters with social power

The social environment of university often does not feel like home to students without a family history of university study.[101] Their self-presentations may be entirely suitable and appropriate, even required, in the work, cultural and social contexts in which they have previously engaged. However, those same self-presentations and styles of social interaction may mark them as different from some of their teachers and co-students, potentially jeopardising the levels of teacher support and social connection that might support their success.[102]

Some students spend a lot of time on public transport to reach university, have no control over their capacity to arrive on time but face the conclusions drawn about their late arrival by staff or fellow students. Students who arrive at university after night shift at work or as carers may face judgments about their fatigue based in the expectation they spent the night partying. Similarly, students' use of their phones in class might invite judgment from the teacher as a marker of the students' distraction.[103] Yet the student who is a sole carer of a child may need to text on their phone to ensure their child's safe arrival home from school.[104] The student dependent on picking up casual work may be responding to a message from an employer who will take the work elsewhere if there is no immediate response. It is easy for staff and fellow students ignorant of students' circumstances to interpret these behaviours as individual laziness, rudeness or lack of engagement[105] rather than as manifestations of students' social obligations or lack of access to resources and social capital.

In such cases, both the students' experience and the reception they receive from peers and teachers are encounters with social power. To the extent that this interferes with student learning, we suggest that it is incumbent on the teacher first to recognise the possible issue, and then to respond appropriately. Taking the steps

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[101] O'Shea (2016).

[102] Zalesne and Nadvorney (2011), p 268.

[103] This takes form, for example, through bans on electronic devices in the classroom. See recently, Williams, (2017). Such bans may well be necessary in schools to prevent task switching and increase concentration (see eg Gazzaley and Rosen 2016), but at tertiary level adult learners can expect teachers to be aware of the broader life issues we discuss.

[104] A recent study showed that while some students used devices to defray boredom, 37.1 per cent of respondent students used their electronic devices to monitor an emergency. See McCoy (2016).

[105] See Mangan (2016).

needed to promote inclusion and to recognise and respond to the context of social power in which exclusion arises requires an investment of time and effort by the law teacher that draws on a set of interpersonal skills that may be well outside the academic's toolkit.

Teachers' roles in social power

In an academic environment, social factors unrelated to a student's intellectual capacity may be misinterpreted by their classmates and teachers (and in some cases, the student themselves). They may be seen as evidence of lack of intelligence, lack of commitment, lack of focus in class, unfriendliness or lack of professionalism. The teacher has an obligation to be vigilant against such misinterpretations:

> As law professors, we must examine our own perceptions and assumptions about entering students, which often are based on our own academic experiences that do not parallel those of the students we are concerned with here.[106]

Before we consider how teachers can acquire and build the skills needed to intervene in interactions between students, therefore, we need to consider how we can ensure that teachers are not themselves the source of students facing invalidating and demeaning interactions in class as a consequence of a failure to recognise the root of students' behaviours as well as our own, in social inequality. In some U.S. studies, teachers have been identified as the primary source of invalidating and demeaning interactions in tertiary teaching contexts.[107] Law teachers charged with promoting an inclusive student experience may themselves face a challenge to their own identity and beliefs. This too is a form of emotional work.

We have proposed elsewhere that 'the law classroom and its surrounding physical and virtual spaces provide settings for quiet sorting, where inclusion or exclusion of students and ideas can be achieved explicitly or implicitly'.[108] We contend that law teachers who wish to ensure that legal education meets the needs of every student must actively choose to foster inclusion in their classes, and that in the absence of active efforts to ensure inclusion, classes are likely to harbour processes of exclusion. These processes, and the emotional dimensions of inclusion and exclusion, are at their most prominent when the curriculum itself raises confronting material.

Confronting curriculum and social power

The law curriculum can be 'confronting [and] personal'.[109] When classes discuss the 'reception' of colonial law, incarceration, sexual assault, family law, domestic violence, marriage equality, abortion, forced migration, these (and many other) issues can touch upon the life experience of some members of the class in very painful and personal ways. Yet they touch the lives of other members of the class only in ways that indicate their relative privilege.[110] The role of the teacher in influencing social

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[106] Zalesne and Nadvorney (2011), p 270.
[107] See, for example, Suárez-Orozco et al (2015), p 157.
[108] Israel et al (2016); see also Steel et al (2013), pp 30-55; Huggins (2012), pp 683-716.
[109] The quote is taken from a qualitative interview with an Indigenous law student excerpted in Stevens et al (2006), p 10.
[110] Wildman (1995), p 91, points out that '[a]nalyzing privilege is complicated by the reality that one individual may be privileged in one respect and not in another. …each of us lives at the juncture of privilege and subordination. We may be privileged in some respects while being subordinated in others.' See also Kennedy (2007), pp 1-7.

power in the classroom can be profound, and can also carry heavy emotional burdens for the teacher.

For some students, learning about racism, sexism and other forms of discrimination is empowering, profoundly moving or life changing. For others, this learning may be challenging or confronting. The nature of the experience differs within every class. Some students are hearing about their own people and may have lived the experiences being discussed in class.[111] They may know people and have relatives who have lived these experiences. They may fear that they will in future share these experiences with the people they are reading about, because learning about these things discloses or reinforces that they have characteristics that will make them the targets of illegal, immoral or impolite behaviours from others.

These students share their classes with other people who may be, or become, those who mete out distressing treatment. When law teachers speak about Sharia law, there may be Muslim students who are sharing the class not only with non-Muslims but quite possibly also with students who are ignorant of, or prejudiced against, Islam.[112] When they learn about sexual assault, young women who are in the peak period of their lives (statistically) for being assaulted are sitting beside young men who are in the peak period of their lives (statistically) for perpetrating sexual assault[113] – and our classes likely contain plenty of people who share rape myths with the wider community. There is nothing straightforward about managing classroom conversations in which racism, religious bigotry, gender stereotypes, homophobia and class superiority are explicitly or implicitly raised.

These topics may arise in the context of teaching and learning, or they may be part of social interaction before, after or during class.[114] Thus, some students are exposed to their 'difference' outside the formal or explicit curriculum, in ways that are likely to elicit in them an emotional response. They may hear jokes about people from the working-class suburbs of their city, for example. Kennedy cites an example:

> Sometimes I catch a look, a fleeting expression hidden from the other students in the room, on the face of a student listening to another student . . . The look says, 'I can't believe he (or she) just said that.'
>
> Sometimes it's surprised, sometimes disgusted; sometimes there is a shrug of contemptuous familiarity. The remark that provokes the look won't be overtly racist or homophobic or anti-Muslim. It is that the class's discussion of the race or class or gender or religious issue comes from deep in the 'mainstream'.[115]

Addressing ignorance or prejudice that touches on the lived experience of members of the cohort raises complex interpersonal issues for law teachers. Staff responding to prejudice and discrimination in class face a host of complex issues in attempting to ensure that the learning environment is inclusive of all students. When discriminatory or offensive statements or interactions occur, it is the teacher's role to intervene and maintain a learning environment for students who may be discriminated against.

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[111] See, for example, Falk (2005); Crenshaw (1988).
[112] Asmar (2005).
[113] Heath (2005). See also Australian Human Rights Commission (2017).
[114] Stevens et al (2006), p 10.
[115] Kennedy (2007), p 2.

However, it is also the teacher's role to ensure that the class remains an environment in which it is acknowledged that all are present in order to learn and that ignorance is therefore to be expected as well as to be addressed.

There is considerable skill involved in determining whether addressing an issue publicly or one-on-one most effectively addresses what has occurred in class, and how best to ensure that any student who may have been affronted by a statement made in class does not suffer further consequences later because of an intervention made in class by the teacher. Sessional teachers with whom we worked on the *Smart Casual* module videos[116] shared their nuanced approaches to expressions of discrimination in class:

> It is important as the facilitator of the class that you do talk about it rather than ignore it – that you do try to unpack what was said and why it was offensive … and give the students the tools to think about it in a slightly different way because it is coming from a lack of understanding rather than maliciousness.
>
> The simple answer is to jump straight on it and don't leave anybody in any doubt that that behaviour is not appropriate and that can be done in a firm way that is also respectful of the student you are speaking to … and if [it] can be done in a way that doesn't make the student feel personally attacked or that they need to defend themselves that will be a more productive exchange.
>
> A difficult conversation is best had, I think, away from the group, but I think there is something quite powerful, particularly if someone has been overtly racist, in the rest of the room seeing someone straight away saying 'hang on, that language is not on…' or 'I'm not comfortable with that comment'. I come from … the position of being the person in the room who is empowered to deal with it and taking advantage of that particular opportunity to hopefully create a positive experience out of that as well as ensuring that it doesn't continue and it isn't tolerated.

The impact on teachers

Teachers entering into this kind of territory (which is always latent in a law classroom) may be perceived as having 'an agenda' by members of their classes. It is not possible to teach without a learning objective, and sometimes students may not recognise the legitimacy of objectives that do not fit squarely with their worldviews. For example, consider these comments on one of the authors who was teaching a first semester, first year subject that introduced a critical approach to the Australian legal system:

> X has a very polarized view of politics, feminist issues, male dominant roles and contributions to early colonial history which compromise open debate and analysis.
>
> X imports [their] political and racial views too strongly in lectures. In contrast to other lecturers who are impartial about 'programming' students to think and believe in certain ways. Other lecturers are not like this.

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[116] The professional development modules created for the project include videos from sessional teachers speaking about their quality teaching practices. Each interview was unique and addressed to the expertise of the teacher as well as to the focus of the modules and themes. Ethics approval for use of the video content in subsequent publications was granted (see footnote 9). Each participant cited has provided consent for the de-identified use of their statements.

> Felt material was biased at time[s] teaching [their] own agenda.

On the other hand, and highlighting the diverse student experiences of learning and openness to new perspectives, in the same class other students commented:

> X put in A LOT of time and effort into this subject and is very, very passionate about certain topics in this subject such as aboriginal [sic] land rights and feminism.
>
> Engaging and friendly. Actively encouraged relevant discussion and allowed all views to be aired.
>
> Very friendly and approachable. Enthusiastic about the subject even though some of the content was dry. [They] had strong opinions about things without being pushy about it.
>
> Approachable, interesting and open to questions and discussions from the class. [Their] delivery of all material was excellent and inspired interest especially when discussing topics that would normally be considered complex and boring.[117]

The diversity of students' emotional experiences of curriculum illustrates not only its confronting nature, but also the possibility, indeed likelihood, of student resistance. Any form of teaching that invites students to reflect on their social attitudes is likely to encounter student resistance. Teaching that touches upon gender issues, cultural difference, colonisation, homophobia, religious diversity, social class or poverty is likely to generate resistance.[118] Students who find that their own previously unquestioned views on an issue run counter to the majority class opinion are also likely to experience an emotional response.[119] A fundamental disposition of a lawyer is to be able to imagine issues from the perspectives of other people. This is often a skill learned in law school. Teachers can bear the emotional brunt of students' struggles to understand alternative perspectives, an emotional burden not always recognised.

Administrative processes and the student experience

In addition to classroom experiences, there are likely other less visible layers in the student experience that may weigh on students' emotional wellbeing. Administration of teaching – and sometimes assessment conditions – that acknowledge and respond to students with disabilities through differential treatment may implicitly, if not also explicitly, highlight the privileges enjoyed by others. There is a responsibility on staff to make reasonable adjustments for students with disabilities, and perhaps a responsibility on students to inform staff so that those adjustments can be made. For students requiring accommodation with other needs, the processes may not be so well articulated. In either case, the potential for affective consequences may arise through students' own feelings of confidence to engage in such discussions, and staff willingness and capacity to accept and accommodate student needs.

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[117] Comments from student evaluation of teaching, used pursuant to institutional ethics approval H6714.
[118] See, for example, Haddad and Lieberman (2002); Webber (2005); Pitt (1997).
[119] See Kennedy (2007).

Sometimes these issues travel below the radar for staff, but this is not without consequence for students. For example, neuroatypical students[120] whose social skills might attract immediate attention and discomfort from other class members and who may prefer not to disclose their status to the teacher are not likely to receive the support they need to enhance their classroom experience and consequently their learning. Their reluctance to disclose may reflect their feelings of difference and/or their expectations of poor treatment. The teacher's challenge in managing the class and engaging with the student is similarly likely to draw on an emotional skillset.

In a different vein, administrative processes that presume fairness through general application but that are ignorant of diversity and the consequences that social power attaches to it, create difficulty for students. Some students may hold cultural, religious or familial obligations that require their absence from class. Their cultural or religious norms or family structures may not be shared by, and may fall outside the experience of, the teachers who make decisions about penalties for absence from class. A lack of understanding of students' personal contexts may result in a tendency by academic staff implicitly to question the student's commitment to study.[121] In the absence of confidential, arm's-length procedures that students see as safe, some students will choose not to disclose their commitments rather than face staff commentary or judgement. Students with chronic illness or other invisible disabilities may make the same decision for different reasons.[122] The degree to which students are prepared to disclose such personal information is linked to their perceptions of the consequences they anticipate might flow from disclosure.

At the same time, a university environment has the potential to engender a strong sense of belonging that can surmount previous life experience. This highlights the potential of good teaching that engages with affect. The teacher has it in their power to recognise, respect and value the rights of the 'outsider' student in a way that embraces the student's emotions, and provides the space for student learning.

Resistance, inequality and power

We would argue that merely recognising diversity in the classroom and student cohort is insufficient to effect meaningful change. The student whose relationship to social power renders them an 'outsider' will be marked out for differential treatment in many settings regardless of the university's or the teacher's commitment to diversity practice. Instead, what is called for is a shift in thinking about law and legal education beyond issues of diversity and inclusion[123] to engagement with resistance, inequality and power.[124]

While promoting and celebrating a diverse student cohort is widely accepted as enriching both the overall student experience and society more broadly, it does not engage necessarily with the ways in which a student will themselves experience university life, and their own learning. Student encounters within and outside the classroom, with fellow students, teachers, the university, and the curriculum, represent dynamic and fluid engagements, each one itself a representation of power,

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[120] '[N]euroatypical most often indicates persons on the autism spectrum but has also been used to refer to persons with mood disorders and traumatic brain injuries…' Price (2010), p 121. For the learning needs of neuroatypical university students, see Richdale and Cai (2016).

[121] See, for example, insights into staff perceptions of student behaviours, in Mangan (2016).

[122] See the case study at Stevens et al (2006), pp 15-17; Richdale and Cai (2016).

[123] See, for example, Tienda (2013).

[124] See, for example, Ball (2012).

and therefore of resistance. Power exists for example, through the curriculum,[125] the authority invested in the teacher,[126] and the multiple cultural hierarchies within the cohort[127] and staff. Resistance might manifest covertly through silence, absence, or lack of engagement, or overtly, through argument, complaint, or demonstration. For the law teacher, we suggest that it is the ability to read these interactions as evidence of inequality, power and resistance, that is likely to shed light on students' emotions and their learning more than a mere understanding of diversity per se.

Responding to student resistance to the material and practices is a demanding task. This is particularly so for staff who are visibly part of the communities being discussed – Aboriginal and Torres Strait Islander academics, women, Muslims, GLBTQQIA,[128] academics with a disability, and (other) racialised academic staff. Systematic studies reveal that student evaluations of teaching say as much or more about student prejudice as they do about teaching quality.[129] In these circumstances, high-quality teaching may place these teaching staff at disproportionate risk of student complaints and poor evaluations of their performance and, for those who are precariously employed, even unemployment. As a result, it is not only the student who is emotionally confronted: so is the teacher, and the confrontation may have material repercussions both for the student and for the teacher. Such repercussions can only increase as universities move to more metrics-based assessments of teaching quality, and where ongoing sessional employment may be dependent on being judged to have succeeded within the terms of such metrics.

Recognising and supporting emotional labour

Within neoliberal discourse, suffering is routinely cast as an individual matter to be addressed by the individual, while success is depicted as the sole achievement of the individual. Resilience is the responsibility of the individual and the failure to be resilient is likewise attributed to the individual and not to the institutional and societal setting in which they are located.[130] However, with Jackson et al[131] who advocate cultural safety (for Indigenous teachers), mutual respect among teachers, collaboration and the adoption of teaching teams, we argue that mutual support, collegiality and collaboration are critical to supporting, and taking care of, law teachers undertaking the emotional labour inherent in law teaching. They are all the more important for sessional teachers, whose employment conditions often drive levels of isolation that make accessing collegial support more difficult.

The process of writing *Smart Casual* has drawn out for us the complexity of what it is that law schools now ask all law teachers to do in order to implement a quality curriculum. More specifically, it has led us to question the potentially heightened impacts of these explicit and implicit expectations for sessional teachers, and to ask whether adequate support is being provided for this large and growing cohort of teachers.

Subject co-ordinators, often the people responsible for recruiting and supervising sessional teachers, offer one potential avenue for support and recognition

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[125] Ball (2012), James (2004).
[126] Brookfield (1995) addresses the role of power in the classroom.
[127] Kennedy (2007).
[128] Gay, lesbian, bisexual, trans, queer, questioning, intersex or asexual.
[129] Boring et al (2016).
[130] Mountz et al (2015); Parker (2014); Thornton (2016), pp 42-50.
[131] Jackson et al (2013).

whether that means ensuring access to office space and professional development or co-operating in timely payment for marking.[132] But that can only be a solution if the school itself in turn provides adequate support for co-ordinators. A thoroughgoing recognition by permanent academics that sessional colleagues are vital to the work of the university and, hence, colleagues in every sense, would also make a difference. That cultural shift needs to be embedded institution-wide in order to reach all sessional staff effectively. Institution-wide policy and procedural scaffolding are required for sessional staff to be accorded the dependable support necessary to ensure that they are able to contribute their best teaching and to receive their entitlements as employees.[133]

It is incumbent on those of us who employ sessional teachers to ensure we understand that they too undertake emotional labour, and require the same forms and level of support as their permanent colleagues. Indeed, sessional teachers and early career academics may require, and should be able to expect, more structured and overt support in this area than their permanent colleagues. This is not because of any anticipated deficit in sessional teachers but because sessional law teachers may not have the privilege of an office on a corridor where they may have colleagues available for interstitial conversation, support or debriefing. Nor are they likely to be routinely included in formal and informal staff meetings, seminars, and other professional and social functions at which there may be opportunities to interact and share experiences with colleagues. Sessional law teachers interviewed for the *Smart Casual* project emphasised the importance of connecting with colleagues for support:

> I seek support by making friends with members of the team where I can, I meet with other tutors and exchange ideas about how [we're] coping in [our] classes.
>
> I think it is important to debrief and talk to other staff members that have been through the same thing or that are just a friendly person to talk to.

Importantly, while providing this collegiality and support is necessary, it may not be sufficient. Given the extent and importance of the emotional work inherent in being an effective law teacher, we call for more explicit recognition and reward of, and better preparation and support for, this emotional labour.

Professional development is one part of an effective response to which the *Smart Casual* project has sought to contribute. Opportunities for debriefing, institutional recognition of vicarious trauma and secondary traumatic stress, mentoring and support programmes, and institutional recognition that emotional labour is an important part of academic work might all form part of responses adopted for the support of staff.[134] All need to be constructed in such a way as to make them available and adapted to the needs of sessional staff as well as those with more secure employment.

Conclusion

The nature of contemporary legal education requires law teachers with the ability to undertake their work with emotional and relational skill. Affect has a clear role in learning, and students of law are likely to encounter emotion in a variety of ways. The contemporary curriculum requires the student – and their teachers – to engage

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[132] Percy et al (2008).
[133] *Blasst: Benchmarking Leadership and Advancement of Standards for Sessional Teaching*, http://blasst.edu.au/index.html.
[134] Shirley (2011); Silver et al (2004); Way et al (2004).

critically with diverse contexts and perspectives. These will inevitably run counter to the experiences or standpoints of some students in any class, sometimes illuminating power and generating resistance between students and/or between student and teacher.

Further, the law curriculum now emphasises a variety of skills, including interpersonal and dispute resolution skills, which require emotional work of the students themselves. At least in part, this aspect of teaching responds to high rates of emotional distress in law students and the need to promote student resilience and wellbeing. This aspect of learning may fall on the law teacher, who may be an expert in doctrine or in practice, but may not themselves be skilled in supporting student wellbeing.

For sessional staff inculcated into the norms of a profession that has long proclaimed its rationality devoid of emotion, the skillset required to manage student emotions can prompt specific concern. Our work on *Smart Casual* has highlighted the extent to which the law curriculum requires an emotional engagement by law teachers. Further, our work with sessional law teachers reveals their practical experiences of emotional labour, and the vulnerability it can engender.

While all law teachers require the capacity to engage in this work, the precarious nature of sessional law teaching is likely to compound the stress of managing significant unrecognised emotional labour. The lack of discipline practices of self-care coupled with the isolation of sessional work often leave sessional law teachers to manage their own emotions while tending to the emotions of their students, and to do all this without training or support. Institutional processes and the power imbalance inherent in industrially precarious work mean that broad-brush institutional wellness or resilience programs will likely fail to provide sessional law teachers with the support they need. Their emotional labour inevitably comes at a cost to self; a cost that the academy would do well to consider and respond to.

In our view, these issues are under-researched. In particular, the power that plays out in both the casualisation of the workforce and in the experiences of students from non-traditional backgrounds in the law classroom warrant examination in terms of the dynamics of emotion, wellbeing, learning, and teaching. We suggest that we can begin to respond by looking for ways of enhancing collegiality, institutional support and recognition for sessional law staff. However, these are just starting points. There is an urgent need to raise the profile of emotion in the learning and teaching of law to bring the topic into mainstream teaching and to build capacity amongst all law teachers to engage in emotional work in a sustainable way. We must look beyond the traditional *thinking* like a lawyer, to embed within law teaching *feeling* like a lawyer in a way that might genuinely break with tradition.

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