

# Communal reflections on the workplace: Locating learning for the legal professional

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There is an increased public expectation that Australian universities should assume responsibility for ensuring that their graduates are work-ready. Victoria University (VU) in Melbourne has implemented a commitment to Learning in the Workplace and Community (LiWC) which requires that 25 percent of all courses be assessed by situated learning. The LiWC approach seeks to achieve an enriched learning experience for students through workplace learning, an increased industry engagement with curriculum and an enhanced transition to employment.

Workplace training has a long tradition in legal education. The real work environment is seen as basic to the training of legal professionals, through legal clinics, post-degree practical legal training and apprenticeship models such as articulated clerkship. In effect, the legal workplace has been regarded as an actual, physical testing ground that serves to assess whether the law student “can actually be a lawyer” (Hyams, 2006) - a site of summative rather than formative assessment. In the Bachelor of Laws degree at VU, typical of many law degrees, work placements are often extra-curricular and so have been invisible in terms of measurable learning outcomes or measurable LiWC components of a course. *Law in Practice* (LiP) is a unit of study that accredits the workplace experience and identifies and assesses the learning that occurs in the legal workplace. Through structured online learning activities and communal blogging activities, LiP invests workplace learning with academic rigor to ensure that, irrespective of *where* the legal role is assumed, the student is engaged in a professionally appropriate and rich learning experience. We argue that the significance of the ‘de-situated’ online space for both individual reflection and peer interaction is central to the syncretization of various sites of learning. As well as reporting on the curriculum design of the online resources, the discussion will draw on generalized analysis of student journals to report on student responses to LiWC as a learning experience enhanced through personal and social reflection in online discussion. (*Asia-Pacific Journal of Cooperative Education*, 2011, 12(1), 19-30)

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## INTRODUCTION

Victoria University's Learning in the Workplace and Community (LiWC) policy requires that 25 percent of all courses involve learning in and through the workplace and community. The LiWC approach at Victoria University (VU) in Melbourne seeks to achieve a number of interconnected results including an enriched learning experience for students through workplace learning, increased industry engagement with curriculum and more active or applied learning opportunities.

LiWC is an umbrella term that includes all of the teaching approaches that, for legal education programs, includes some engagement with the legal profession or legal roles. This could include live case studies developed, delivered or assessed in collaboration with legal practitioners, simulations of legal situations such as moot court, student observations of court proceedings, working on 'real' legal cases, role playing legal situations with feedback from practitioners or a work placement in a legal role. Work placement (WIL) is a principal approach the Victorian Law School (VLS) has adopted to meet the requirements of the university's LiWC Policy; however, the value of a diverse approach to LiWC is considerable. VLS aims to increase the students' sense of themselves as professionals with a capacity to critique, to reflect and to behave ethically and thoughtfully in the legal workplace. Working in a 'real' legal role allows students to see "law in context" and to develop a range of valuable lawyering skills (Sparrow, 2009, p. 71).

The broad understanding of LiWC at VU means that clinical education programs are just one way to achieve practical, applied and supported experience of being a legal professional. In a legal role, in a legal workplace, the would-be lawyer understands "that real lawyering goes beyond technical judgments based on dry and logical analysis" (Hyams, 2008, p. 27) and learns through that experience. But how do students practice real lawyering?

Law in Practice (LiP), a new subject in the Law degree, is one of several subjects that comprise the VLS's approach to LiWC.<sup>1</sup> Work placements, usually organized by students and often extra-curricular, can be invisible in terms of measurable, comparable and document-able learning outcomes. LiP recognizes the learning that occurs in the legal workplace and invests the workplace with academic rigor to ensure that it is a professionally appropriate and rich learning experience. LiP aims to prepare students who are disciplinarily, ethically and personally ready to work in the legal profession and to teach students to 'act like a lawyer' through "clinical teaching and professional responsibility" (Hyams, 2008, p. 21).

## HISTORY AND CONTEXT

The tradition of internships and work placement in law is strong – but these often occur after the bachelor of laws is completed. Placement, then, is used as summative assessment (assessment *of* learning) rather than formative assessment (assessment *for* learning). While all Australian law programs have included skills-based programs since the late 1970s, true work-integrated learning remains relatively rare. Most of the practical experiences available to VU's law students take the form of volunteering and work experience, generally organized by the students and not always connected to the law degree itself. VLS also runs programs such as the Sunshine Youth Hub and the Magistrates' Court Duty Lawyer support program which provide work opportunities for students. Irrespective of the legal role, WIL is regarded as a rich learning experience, a rite of passage and an important way of acquiring cultural capital (Hagan, Zatz, Arnold & Kay, 1991).

The importance of the legal workplace as a site through which undergraduate students might form a more authentic sense of what it means to be a legal professional, have an opportunity to apply legal theory to practice and be deemed worthy of working in the profession, cannot be underestimated. Work experience has variously been regarded as time served, a chance to put theory into practice, real world learning and “the only way to develop...legal literacy” (Beattie, 2010, p. 6). To succeed, the learning fostered in accredited units of study like LiP, must be rigorously assessed according to specific academic and professional standards. Students must be able to demonstrate a range of personal, academic and professional attributes – from written communication, application of legal principles, the capacity to reflect and the demonstration of legal literacies. LiP, through legal work and personal and social reflection on practice, provides a learning space for students to further develop legal literacies. Assessment of LiP provides an opportunity for students to ‘walk the walk and talk the talk’ of the legal profession which can only be demonstrated in an interactive, communicative, social and structured way. Ideally, students will be empowered to enter the legal profession as literate but critical novice professionals.

## SPACE, PLACE AND LEARNING PRACTICE

The LiP unit of study represents a LiWC opportunity not because of how it is assessed but because of *where* the student is located. This raises the issue of location relative to learning and asks: Are particular places intrinsically more educationally credible or valuable? WIL is widely regarded as the key means through which professional readiness might be achieved but there is some agreement that simply being a in a workplace is not an inherently richer or more valuable learning experience than being elsewhere and that curriculum design is a vital component of all learning (Patrick, Peach, Pocknee, Webb, Fletcher & Pretto, 2009). Even so, WIL is often represented as *the* place to integrate theoretical knowledge and practical skills.

In addition to supplying a space and reason to apply theory in practice, WIL experiences “provide a context for skills development and an opportunity for students to prepare for the transition...to professional practice” (Shirley, Davies, Cockburn & Carver, 2006, 135). The context or site of learning seems to determine the types of learning that can be achieved.

While the educative aims of WIL are admirable, it confronts learners with a distinction between classroom and workplace that requires academics to consider how sites of learning are defined and whether the division between theory and practice can be reduced to the geographical context of the learning. Where learning is understood to be student-centered, why are spatial metaphors used strongly to describe that learning? This paper examines the role of online resources and online interaction from peers and lecturers as the lynchpin of a successful, meaningful and ‘learningful’ placement in a legal role. The ‘de-situated’ online space underpins “how [legal] workplaces can be(come) places of productive learning to learn for students” (McCormack, Pancini & Tout, 2010) and how virtual spaces and the themed, social interaction they enable, rather than actual workplaces, are key to student learning.

#### LEARNING SPACES AND THEORY

There seems to be a clear assumption that, in order for theory and practice to merge, a place other than the classroom is required (Patrick et al., 2009). Brady, Segal, Bamford and Deer (1998), in a discussion of teacher education, comment on the extent to which theory and practice are treated as somehow separate entities that occupy different spaces: “false perceptions of a dichotomy between theory and practice” (Brady et al., 1998) mean that many stakeholders – students, employees and academics – seem to privilege WIL learning over university-based learning and that this privileging could be due largely to the contrast between the familiar and the unfamiliar places rather than any inherent educative value in a place. Law schools invariably position themselves in relation to this binary, as a traditional and theoretically oriented “black letter law” school or as a work-oriented practical school. Spaces of learning often contain implicit critique of the other approach. A practice-oriented curriculum might suggest that theoretical courses lack application and reduce career outcomes. Theory-oriented schools seem to rely on prestige and the cultural capital of their students. Professional education is conducted with a tension between theory and practice, where both are considered important but are often perceived to be oppositional rather than complementary. The theory/practice division is often expressed in spatial metaphors, comparing the classroom and the workplace as competing sites of learning. This should not be a zero sum game. Theory and practice are complementary and the physical place of learning can embrace various outcomes, especially if augmented by interactions in online spaces which render questions of the ‘real’ world and ‘actual’ work places redundant.

Part of the difficulty of privileging modes of learning or educational spaces comes from troublesome spatial metaphors we use that suggest a binary opposition that might not really exist. Spatial models such as the classroom and the workplace are shortcuts that connote a collection of contexts, practices and activities. This binary opposition is a kind of stereotyping that can misrepresent the learning that takes place.

Social theory has engaged with ideas of space. Lefebvre urges caution in using abstract spatial metaphors, simplifications which seem to reject the messy complexity of life (Lefebvre, 1991). Spaces and metaphors can become reified as things in themselves which are at best deceptive. More importantly, Lefebvre's uniting theory of space is useful here. His sense of spatiology entails "a rapprochement between *physical* space (nature), *mental* space (formal abstractions about space), and *social* space (the space of human interaction)" (Merrifield, 2006, p.104). The combination of learning in a workplace that is reflected upon in a communal and social online setting achieves a unified space *of* and *for* learning.

For constructivist curriculum designers, the student is the site of learning, regardless of their geographical situation. Learning experiences are not confined to one place and the student moves from context to context: learning activities accumulate, intersect and resonate, irrespective of student location. The textbook informs the advice in the legal setting and the interaction with a legal mentor informs the online reflection: textual and spatial experiences synthesize to create new knowledge. The classroom learning space has often been devalued – even seen as 'de-situated' (McCormack et al., 2010, p. 43). It is more productive to regard it as merely a different space – valuable for educative reasons and supported by the learning professionals available to universities. Therefore we must reject the false dichotomy between theory and practice and academic versus real worlds together with the spatial metaphors which see learning activities confined to discrete spaces and consider how cyberspace acts as a bridge between different domains.

The creation of cyberspace has disrupted many of our abstract spatial metaphors. It is unsurprising that online tools have had a major impact on teaching and learning practice.

#### STRUCTURING REFLECTION

The design of LiP's online content, delivered through Blackboard, involves highly structured and carefully sequenced online activities, including communicative activities and online journaling. This structure, together with the assessment, ensures that academic rigor is embedded into the workplace learning experience. Through Blackboard, students are supported and directed in learning in legal roles. The curriculum is designed so that relevant and scaffolded prompts for reflection require students to actively engage with specifically legal situative learning. A

transmissive flow of law- and learning-related information to students is important up to a point and students are provided with relevant texts, cases, laws and questions to enable genuine reflection on their individual workplace context. Hyams (2006) suggests that legal WIL experience “is about the development of legal, personal and ethical skills... distinctive to the individual student” (p. 77). In addition to these individual activities, LiP students need to post their reflections in discussion to interact with academics and student peers in other legal work places. This moves personal reflection to a social setting and allows for a broad sense of the legal community to develop.

Discussion provides a vital space for students’ disparate and distinct legal workplace experiences to mingle. The forum exposes students to different workplaces and effectively amplifies ‘the workplace’. This increased awareness of the multiplicity of legal workplaces enhances students’ abilities to generalize their personal experience. Discussion creates a virtual intersection between the professional space, the academic teacher and the students’ emerging professional identity. Finally, as this community of would-be legal practitioners document and reflect on their individual work place experiences, read, comment on and interrogate the reflections of others in the unit, an even broader learning is taking place that makes this situated learning experience holistic, participatory and at the conceptually immersed level of legal discourse. It is possible to discern “the conceptualization of the intimate connection between participation and the social and cultural world within which that participation occurs” (Quay, 2003, p. 109). The learner moves from an individual workplace experience, to the social learning experience of many workplaces to a community of fully participatory novice legal professionals with considerable confidence to critique, and eventually transform, legal roles.

Students collectively make meaningful their individual workplace experiences through online social interaction. Obviously, communication is central to this “effective learning community” (Cassidy, 2008). The communicative role of the legal academic in this learning context is vital. While the shift from teacher to students is essential for constructivist learning, a lecturer’s comments in online discussion are central to the students’ learning experience. Academics observe, prompt and participate in discussions and can extrapolate what learning is happening. In asking the students to comment on their learning, the role of the workplace in learning and the function of the discussions, those extrapolations are extended, challenged and enriched. The idea of the ‘turn to practice’ is useful here: it is “the notion that learning, knowledge and expertise all derive from participation in a social grouping, which possesses and passes on its practices and ways of doing things along with the associated purposes, values, criteria and, stories” (McCormack et al., 2010, p. 42). Online “social grouping” enables students to commence “lawyering”.

## COMMUNITIES OF UNDERSTANDINGS: LEGAL DISCOURSE

Situative learning theories are useful in an analysis of LiWC as they foreground context in learning. In particular, key ideas of constructivism, social constructivism and cultural discourse provide (DeLay, 1996; Quay, 2003) rich theoretical approaches for framing a consideration of LiWC activity. Discursial ideas of how meaning is constructed are broader than social constructivist ideas of collective understanding. Having participated in and contributed to an understanding of legal discourse, students have a better understanding of legal culture and an understanding of themselves as legal professionals, as, in effect, “individual knowing, collective knowledge, and culture become three nested, self-similar levels of one phenomenon” (Davis, Sumara & Luce-Kapler., 2000, p. 70). Those levels are evident in the online activities.

The learning theories that underpin experiential learning and reflective learning are evident in the learning activities and assessment tasks of LiP. Teaching through collaborative reflection using discussion offers a particularly rich example of situative learning whereby the focus moves from “the individual as learner to learning as participation in the social world” (Lave & Wenger, 1991, p.43). While the social world is that of the legal professional and mostly online, it is nonetheless, importantly, social.

## REFLECTION

Constructivist teaching and learning requires a dynamic learning situation; students and teachers need to be interactive and the curriculum needs to be scaffolded and carefully sequenced. Constructivism is a psychological learning experience that focuses on individual learning. As such, a constructivist approach informs the individual reflections required of the unit. Social constructivism informs the purpose of the collaborative online postings and the requirement that students comment on each other’s work.

There is a long tradition of using reflective assessment in work placements to engage learners and assess their understanding of workplace culture and professional identities. The rigor of reflective assessment tasks can be dubious. The reflective genre needs to be explicitly taught and assessed or the danger of students lapsing into merely descriptive ‘dear diary’ reflections is real. Reflective learning is increasingly used in legal education<sup>ii</sup> (Hyams, 2006; Sparrow, 2009). While some academics prefer traditional doctrinal education, reflective learning promises benefits beyond the recognition of situated learning.

Through reflection students open a space of connection and integration between the disparate fields they occupy – work, study, family or friends. Reflection, whether it be writing in a journal or contributing to an online discussion, creates a new personal domain, a connective tissue between these different sites. Genuine and

deep reflection includes stages of learning, reflection about what has been learnt about themselves – as professionals, as people – as well as academic theories of learning and technical legal knowledge (Sparrow, 2009, p. 73). The advantage of reflective learning is that it assesses the student's ability to self assess and learn from the work context, rather than assessing the work itself. This allows students to develop as responsible ethical practitioners, even to collectively learn from reflecting on mistakes rather than attempting to conceal them. It also creates a comparable learning outcome. Diverse work placements are prone to what Hyams (2008) calls "the 'hit and miss' aspect of clinical placement" (p. 29) in terms of learning experience and a focus on learning allows for equivalence of learning.

Hyams (2008) notes that over half of law graduates in Australia "end up in non-legal practicing, but related professions" – so the diverse legal roles that VU law graduates undertake may well indicate a 'real' range of legal roles. Students can experience a broad variety of professional contexts and reflective learning practice allows them to construct their own connections across different contexts.

The role of reflection in experiential learning is well established (Kolb, 1984) and the idea that experiential learning is "learning by doing combined with reflection" (Priest & Gass, 1997, p. 136) is entrenched in WIL. Reflection makes meaning of the individual experience in the workplace. Ledvinka (2006) sees reflection as "the magic ingredient which converts legal experience to education" (pp. 29-30). Reflection in journaling is "crucial...[in] practicums or work-based learning" (Beattie, 2010, p. 6) precisely because it connects knowing content (discipline knowledge), to using that knowledge and then knowing how and why to use knowledge. There is also a link between the capacity to reflect and professional identity: "reflective learning techniques enhance the development of professionalism through ethical engagement" (Beattie, 2010, p. 6). The genre of the reflective journal manages to "tread the fine line between personal issues and professional development" (Hubbs & Brand, 2005, p. 64). Many writers further emphasize the role of reflection in workplace learning and the links with developing critical thinking skills (McNamara & Brown, 2008).

#### ONLINE DESIGN AND REFLECTION

Ostensibly, learning in LiP happens in the workplace but that idea is severely limited. Location, as such, does not engender learning; instead, the learning is facilitated by highly structured activities and prompts for reflection requiring students to make meaning from the discourses of the legal workplace. Importantly, learning also happens in an online community of LiP students. "The space created by each writing technology permits certain kinds of thinking and discourages others" (Snyder, 1996, p. 5) and the space created by online discussion in synchronous forms like chat or asynchronous forms like email and discussion, creates a collaborative, dynamic and social space to reflect and construct meanings

about legal roles, legal concepts and work. For example, one online activity asks students to read an article about public perceptions of lawyers. They then describe the relationship between the clients and the organization they are in. They then need to think about expectations of lawyers, both from the client's point of view and from their organization's perspective. Students then post their thoughts online, read and comment on at least two other postings. This is typical of activities throughout the unit that *use* the workplace – its clients, polices, documents, staff, spaces – to learn. The legal academic is online regularly to comment on student reflections and to reply to emails. The frequency of the online presence of the law academic is essential as students must know that they are writing to someone.

LiP's Blackboard unit encourages structured and rigorous learning in the workplace. Students are directed through learning activities that are scaffolded to make online journaling academically and personally rich. Triggers for reflection ensure that, irrespective of where the student might be, they reflect on comparable aspects of their workplace. As Schön (1983) notes in *The Reflective Practitioner*, reflective practice requires the student be in an unfamiliar situation. Reflections allow each student to debrief (Hyams, 2008) about new experiences. Through online journaling, what the student does is extended to include what the student describes, analyses, imagines, compares, links...in the workplace.

Journaling and reflection through online forums are essential for situated learning. Journaling supports an internal reflective process mindful of Kolb's (1984) emphasis that reflective processes are necessary to both engage the learner and create meaning from the experience. Reflection also aligns with constructivist learning theories that place the learner at the centre of the learning experience as an "active agent in his or her knowledge formation" (DeLay, 1996, p. 77). Kolb's stages of experiential learning fit the approach adopted in LiP: 1) concrete experience; 2) reflective observation; 3) abstract conceptualization (of the law and legal professional); and, 4) active experimentation or application (new meaning). "Reflective journaling, *selectively guided by the instructor*, can help the student progress through Kolb's four stages" (Hubbs & Brand, 2005, p. 61, italics added). This comment provides an important reminder – the curriculum design and the skill of the legal academic are central to the learning experience with peer support forming another essential component.

Social constructivism expands the individual constructivist understandings of learning believing that "collectives of persons are capable of actions and understandings that transcend the capabilities of the individuals on their own" (Davis et al., p. 68). Through online journaling students share their individual experiences and deal with the problem of the limited representativeness of the workplace. Online journaling ensures that students are exposed to multiple legal

work places, roles and issues. This multiplication of workplaces increases the intensity of the students' learning experience.

Employers do not have access to the journals as it would not encourage full discussion of workplace issues. Students report de-identified data and are trained in issues of confidentiality and ethical communication. The reporting of workplace events and issues offers another opportunity for students to apply legal concepts and to reflect on ethics. Apart from the generally positive comments that students make about communicating with peers and receiving support, advice and camaraderie from students and legal academics, there have been situations in which online support has been identified as emotionally crucial for students. For example, as junior members of staff, VU students in legal workplaces have found themselves dealing with difficult clients. The journals have been rich sources of peer support and discussion of client management skills.

Furthermore, students have generally found journals offer a safe space for discussion of professional issues beyond the clients. Law firms tend to be autocratic and students have discussed management styles, demanding employers and the balance between asserting your rights as a worker and the need to maintain good relations within the profession. One student worked in a firm where the partners were undergoing a relationship breakup which provided a challenge to that student to maintain professionalism in a conflicted workplace. Other students have expressed concerns about instances of workplace bullying and rely on peers for online support. In the legal profession, where unpaid overtime and high stress is commonplace, the boundary between acceptable and unacceptable workplace conduct can be difficult to perceive or manage. Unfortunately, then, instances of bullying provide another reason to continue with online journaling and to keep it private from employers.

Work placements mean that the formal legal rules of ethics programs are applied to real legal situations such as duty to a client. One student was involved as a paralegal in a family law conflict where their client had been accused of sexual abuse of the children. The reflective process helped her to balance her personal ethical values and the professional ethical importance of providing fair representation to the client. Several students working in criminal law have discussed the importance of the right to a fair trial and the dangers of any one person deciding on the guilt or innocence of an accused person. Most legal roles require that students are able to act ethically and be seen to act ethically. They need to balance a range of rights and to maintain their own sense of personal integrity. To be able to share reflections and questions about how to behave in the workplace amongst a trusted group of colleagues is an invaluable learning experience.

## CONCLUDING COMMENTS

Many legal academics discuss the need for students to think like a lawyer but “the activities of many communities are unfathomable, unless they are viewed from within the culture” (Brown, Collins & Duguid, 1989, p. 33). Situated learning supported by an online community allows novice legal practitioners to experience the discourses of the legal profession. Situated learning demands that law students are learning in legal situations. Given the diversity of legal roles, it is important that legal situated learning is multiple and varied and that assessment is less about the workplace and fundamentally about what is learnt.

Reflective capacity is a key methodology for developing professional identities – especially when reflections are triggered by workplace practice, culture and events and amplified and commented on in a communal online setting in a context of trust and mutual learning. “Collaborative learning and reflective practice are essential aspects of workplace learning” (McNamara & Brown, 2008) and LiP offers the virtual form for these aspects to develop.

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ii. See Hyams (2006) for an overview of reflection in Australian legal education since 1975.



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#### ABOUT THE JOURNAL

The Asia-Pacific Journal of Cooperative education (APJCE) arose from a desire to produce an international forum for discussion of cooperative education, or work integrated learning (WIL), issues for practitioners in the Asia-Pacific region and is intended to provide a mechanism for the dissemination of research, best practice and innovation in work-integrated learning. The journal maintains close links to the biennial Asia-Pacific regional conferences conducted by the World Association for Cooperative Education. In recognition of international trends in information technology, APJCE is produced solely in electronic form. Published papers are available as PDF files from the website, and manuscript submission, reviewing and publication is electronically based. In 2010, Australian Research Council (ARC), which administers the Excellence in Research (ERA) ranking system, awarded APJCE a 'B' ERA ranking (top 10-20%).

Cooperative education/WIL in the journal is taken to be work-based learning in which the time spent in the workplace forms an integrated part of an academic program of study. More specifically, cooperative education/WIL can be described as a strategy of applied learning which is a structured program, developed and supervised either by an educational institution in collaboration with an employer or industry grouping, or by an employer or industry grouping in collaboration with an educational institution. An essential feature is that relevant, productive work is conducted as an integral part of a student's regular program, and the final assessment contains a work-based component. Cooperative education/WIL programs are commonly highly structured and possess formal (academic and employer) supervision and assessment. The work is productive, in that the student undertakes meaningful work that has economic value or definable benefit to the employer. The work should have clear linkages with, or add to, the knowledge and skill base of the academic program.

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