

## GOOD PRACTICE AND THE UK LLB DEGREE OR: HOW I LEARNED TO STOP WORRYING AND LOVE THE 21<sup>ST</sup> CENTURY

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### ABSTRACT

Law schools have - unlike for example the arts or humanities - been resistant to change when it comes to progressive student pedagogies, preferring to hold on to traditional models of teaching and learning. This paper looks at what is considered to be good practice in the current higher education landscape broadly, and then develops what it considers to be good practice for law schools specifically. This law-specific definition of good practice encompasses both active as well as reflective learning that can be facilitated by means of a blended classroom. Whilst traditional pedagogies remain prevalent in law schools generally, this paper questions whether a teaching-intensive modern UK higher education institution like Abertay University is able to break the mould. To this end the paper explores to what extent this definition of good practice is reflected within Abertay University's law school using as a case study the Public Law module of 2017/2018. It concludes by finding that, contrary to popular belief, there is much that ancient institutions can learn from modern establishments when it comes to the student experience.

**Key words:** legal education, good practice, reflective learning, active learning, problem-based learning, blended learning.

### INTRODUCTION

Once the people were ruled by monarchs supposedly appointed by the hand of God; today, we are ruled by the democratic process of an election by the people and for the people. The world is changing at a rapid pace, and those who were once considered meek have come to inherit the Earth. However, are law schools for the taking, or are they the bastions of last resistance, relentlessly holding on to the traditions of days gone by? Have law schools accepted the notion of a student-centred classroom and, if so, have they been able to implement good practice in achieving this aim? In order to answer these questions, one must first understand what is meant by 'good practice'. The first part of this paper will unpack the notion of good practice generally, including an analysis of concepts such as active studentship and blended learning. It will conclude with defining what this means in the legal context. It will then look at how law schools continue to fail in implementing good practice. The next part of the paper will question whether teaching-intensive post-1992 institutions in the UK are the exception to the rule. The National Student Survey is used across the UK as a benchmark for student satisfaction. Students are asked opinions about their experiences within their institution, and to rate their satisfaction overall. In 2016, what seemed like a forgone conclusion left many dumbfounded. According to the NSS results, the only law school in the UK to receive a 100% rating for student satisfaction was not Oxford or Cambridge, but that of a post-1992 modern Scottish institution, Abertay University (HEFCE, 2016; King 2016). This success has been carried through to The Guardian's 2019 University League Tables, where Abertay University was ranked the top modern university in Scotland (University League Tables 2018, p. 1). Its Law programme has seen particular success within the league table, coming 2<sup>nd</sup> in Scotland and 7<sup>th</sup> in the UK overall, as well as being ranked 1<sup>st</sup> for student satisfaction and feedback within the UK as a whole (University League Tables 2018, p. 1). This paper will therefore examine as a case study Abertay University's Public Law (LAW105) module – for which I am the module tutor - and critically assess how it holds up against the definition of good practice in law.

### Good practice in higher education and the LLB degree

A student-centred approach to learning is, simply put, an example of good practice. It requires students to learn by doing rather than listening. According to Gerald Hess:

[Good practice] [e]ncourages active learning. Learning is not a spectator sport. Students do not learn much just sitting in classes and listening to teachers, memorising pre-packaged assignments, and spitting out answers. They must talk about what they are learning, write about it, relate it to past

experiences, apply it to their daily lives. They must make what they learn part of themselves (1999, p.401).

The idea of learning theory in a practical context is premised upon John Dewey's revolutionary approach to education, which posited that humans learn faster and better through participating in (i.e. active learning) rather than by receiving (i.e. passive learning) knowledge production (1902, pp. 7 - 9). He argues that traditional pedagogy sees the subject-matter of the curriculum rather than the student's experience as central. In other words:

The subject-matter furnishes the end, and it determines the method with the ideal student being a 'ductile and docile' receptor (Dewey 1902: pp. 7- 8).

Instead, Dewey states that the student rather than the subject-matter ought to be the starting point of education, with the student's experience being central. The growth of the student is the ends, and the curriculum is only relevant in so far as it can provide the means for this growth to take place. Educators are therefore facilitators of knowledge construction rather than arbiters of intellectual enlightenment. His progressive approach to education can be summed up as follows:

Learning is active. It involves reaching out of the mind. It involves organic assimilation starting from within. Literally, we must take our stand with the child and our departure from him. It is he and not the subject-matter which determines both quality and quantity of learning (Dewey 1902, p. 9).

It is upon Dewey's work that David Kolb's Experiential Learning Theory emerges (2015, pp. 49 – 51). Kolb posits that experiential learning is based on a learning cycle driven by how a person processes information (Kolb 2015, pp. 50 - 51). This learning cycle consists of four stages: Concrete learning; reflective observation; abstract conceptualisation; and active experimentation (Kolb 2015, p. 51). Concrete learning means that the student encounters new information. Once encountered, the student reflects upon what they have observed. Next, the student forms new ideas based on his reflection. Lastly, the student will use these new concepts/theories to problem-solve and test the implications of these ideas in practice. In this sense, learning is continual (Fry et al 2009, p. 16). This is a refined take on Dewey's theory, as Kolb's cycle requires students to learn not simply by doing, but by reflecting and processing information in such a way that they reconsider what they previously thought of as being objective truths (Fry et al 2009, pp. 16 - 18). Dewey sees the growth of the student as the ultimate end or central aim of education; Kolb agrees, but argues that in order for this growth to take place a degree of self-actualisation on the part of the student is required as he must step outside of himself to take stock of any shortcomings in his own knowledge or perceptions and adapt his approach accordingly. The importance of reflecting – either in a single session or over an extended period of time – in experience-based learning is highlighted by Boud and Walker (1998, pp. 191 - 193). Therefore, good practice is broader than Hess initially suggests: Good practice requires active learning, as well as educators facilitating opportunities for students to reflect upon their practical experiences meaningfully and grow based upon this exercise.

One of the ways to optimise active learning is by broadening access to information. A key way to do this is through blended learning, where parts of what would have occurred in the traditional classroom are moved to the online environment. Garrison and Kanuka describe blended learning as:

[T]he thoughtful integration of classroom face-to-face learning experiences with online learning experiences (2004, p. 96).

This leaves one with a broad definition that can include online collaborations among students, such as participating in online chatrooms (Bugden et al 2017, pp. 90 – 98), to the use of online technologies as platforms for reflective practices and the submission of assignments/projects (Garrison and Kanuka 2004, pp. 96 - 100). Technology is therefore a key tool to facilitate active studentship (e.g. making lecture slides and reading materials available online at the start of a module for students to read ahead), both in real-time and away from the four walls of the classroom. It is central to good practice.

The above theoretical framework has been viewed by some as an ‘attack on the lecture’, which has itself been positioned in the media as archaic and ‘dead’ (Pickles 2016, p. 1; Arthur 2015, p. 1; Woolcock 2017, p. 1). This popular opinion has been fuelled by advocates of the above definition of good practice, most notably Nobel laureate and Stanford University Professor Carl Wieman, who argues in a radio interview that lectures are ‘one of the most ineffectual teaching tools ever created’ and likens them to ‘the pedagogical equivalent of blood-letting’ (Blewett 2016, p 1). He makes these statements premised upon research comparing the failure rate in modules and the performance on tests of traditional lectures versus active learning (Wieman 2014, pp. 8319 – 8320; Freeman et al 2014, pp. 8410 - 8415). Researchers found that the average failure rate decreased from 34% with traditional lecturing to 22% with active learning, whereas performance on identical or comparable tests increased by nearly half the SD of the test scores (an effect size of 0.47). These benefits of active learning were consistent across all of the different STEM (science, technology, engineering, and mathematics) disciplines and different levels of courses (introductory, advanced, majors, and nonmajors) and across different experimental methodologies (Wieman 2014, pp. 8319 – 8320; Freeman et al 2014, pp. 8410 - 8415). When considering these findings, Wieman states the following in a radio interview:

‘You give people lectures and they go away and they learn the stuff. But it wasn’t that they learned it from the lecture; they learned it from the homework, they learned it from the assignments. When we measure how little people learn from an actual lecture, it’s just really small [sic].’ (Blewett 2016, p. 1)

I would respectfully argue that the statements made by Wieman are both short-sighted and hyperbolic in nature. This is because his claims are built upon the supposition that lectures are the antithesis of active learning; in other words, that a lecture can never be part and parcel of active learning. I would argue that this supposition is incorrect, and therefore creates a false dichotomy within which the unquestioningly invaluable research findings he refers to operate. The lecture is not meant to stand on its own as a means of learning any more than a hammer could stand alone as a means of construction – to this end, the findings that lectures reap worse results than active learning provides leverage for the position that lectures *alone* are ineffectual teaching tools and must be coupled with other modes of teaching. Instead of being the antithesis of good practice, lectures form a vital part of good practice, because good practice is – as we have seen above – not a singular concept, but an assortment of different learning methodologies. Carrying forward Wieman’s metaphor of ‘ineffectual tools’, we can liken students of law to the concept of an apprentice carpenter. In his toolbox is an assortment of tools: A hammer, a screwdriver, a set of pliers, measuring tape etc. With these tools, the carpenter knows he will eventually be able to make any number of items, the trade with which he plans to earn his bread. However, in order to put these tools to effective use, he must be able to practice using them before endeavouring to create an item good enough to sell (which he will do by way of tutorials, practical workshops and so on). In order for the carpenter to practice using his tools, he must first have knowledge as to what each item in his toolbox is, what it is used for, how it is used on its own and in conjunction with other items in his box etc. This foundational theoretical framework – or prism of understanding which will form the starting point for the student’s understanding of the various components of the module – is refined in the lecture. A good lecture should aid in optimising the student’s performance during practicals, tutorials and other forms of active learning.

Another issue with Wieman’s statement is that it is premised upon the traditional ‘sage on the stage’ style lecture, which presupposes two things: Firstly, that the lecturer’s ego is too awesome for him to open himself up to criticism, consider alternative points of views, questions and ultimately the possibility of learning from the learner’s themselves (in which case the lecturer is left wanting); and secondly, that the student’s do not engage with the subject materials before the lecture itself, coming to the class as empty vessels (in which case, the students are left wanting). Assuming the lecturer is not left wanting, there should be the expectation on the part of the lecturer that the classroom is not intended to be the initial source of the student’s understanding, let alone the sole source. For example, if the carpenter knows he will be taught about the various uses of a hammer in the coming week’s lecture and will be expected to demonstrate his finesse with the object in a future practical workshop, he ought to have taken steps outside of the classroom to source out as much information as he can about this object beforehand so that when he comes to the lecture, he will be somewhat well-versed in the topic at hand and be able to actively participate in the classroom, creating a dialogue between lecturer and student

which will enrich the theoretical framework upon which his practical workshop will be dependent. This is one of the reasons why good practice would have the lecture materials made available to students well in advance of the lecture itself (Bugden et al 2017, pp. 90 – 98; Garrison and Kanuka 2004, pp. 96 - 100). It is the reason why Wieman’s statement that ‘You give people lectures and they go away and they learn the stuff’ is problematic. There should not be an assumption that students will learn information *de novo* in a lecture: Lecture theatres are not to be seen as the academic equivalent of Mount Senai, where divine intervention can be expected to impregnate each member of the audience with a miraculous understanding of the subject-matter. On the student’s part, lectures as per Kolb’s theory require independent investment by the students both before, during and after class-time in order for the lecture to be effective as a teaching method, for students will not (as per Wieman’s findings) reap many benefits if they are to be passive recipients of the information necessary to succeed within the module and the programme as a whole. Students should be expected to take control for a large part of their own learning, for this is the price they must pay if they are to sit at the centre of a Dewey-like classroom. On the tutor’s part, giving a lecture should force him to communicate, defend and – if the class is particularly engaged and the lecturer is a particularly good one – broaden his knowledge through argument in real time (Tokumitsu 2017, p. 1). As Amanda Fulford and Áine Mahon explain:

The lecture [should] be seen as a special form of human encounter where the voice of the lecturer is modulated specifically for the hearing of the student. The lecture [...] is, in fact, the initiation of a dialogic relationship between teacher and student. (2018, p.1)

In addition, there is a social benefit to be reaped from the lecture:

The regular timing of lectures contributes to their sociality, establishing a course’s rhythm. The weekly lecture, or pair of lectures, draws students together at the same time and place, providing a set of ideas to digest while reading supplementary material and breaking into smaller discussion sections. Classrooms are communities, and typically lectures are the only occasion for the entire group to convene physically. Remove the impetus to gather [...] and the benefits of community disappear. (Tokumitsu 2017, p.1)

Indeed, in Kolbian terminology, the lecture can provide a place for concrete learning as well as reflection, both on the part of the student as well as the lecturer. This is so if we consider that the lecturer will provide additional information and insights into the material in the lecture rather than simply reading the prescribed materials to the classroom, as well as the fact that reflection is not a single event but an ongoing process (Boud and Walker 1998, pp. 191 - 193). As reflecting is ongoing, there is no reason why it cannot either begin or continue within the communal environment of a lecture theatre, a good lecture being one that espouses a host of viewpoints and arguments, and which encourages students to think critically of the topic at hand and share these thoughts in a safe communal space so as to learn not only from the lecturer, but from each other.

Within the LLB degree, active learning would therefore primarily consist of problem-based learning where students are required to apply the law – which will have been objectively explained and discussed within the lectures – to a complex set of facts in a particular medium, e.g. in the format of a moot or written opinion. Clients are unlikely to be concerned with what the law *is*, but with what the law *means* for them and their individual circumstances (West and Turner 2016, pp. 2 – 4; Varnava and Webb 2009, pp. 367 - 371). Therefore, within the context of the LLB degree, good practice would require problem-based active learning coupled with the opportunity for students to reflect upon their experiences and evidence their development throughout the course of the module.

### **Bad practice in higher education and the LLB degree**

A survey for the UK Council on Legal Education on teaching, learning and assessment methods used in Scottish law schools found essays (96%) and examinations (94%) were overwhelmingly the commonest forms of assessment (Varnava and Webb 2009, p. 374). Such assessment methods neither acknowledge nor reward student development, but passive knowledge retention. Law has therefore tended to not adopt the

aforementioned active, student-centred approach to learning and instead largely maintain more conservative methods of teaching and assessment (Havelock 2013, p. 383). Traditionally, law has been taught by way of the case method of learning. In this method, the outcomes of legal cases and relevant pieces of legislation are analysed by students in order to learn what the law is, and classes are conducted with a view to helping students understand why this is so. Interaction with students is primarily premised upon the Socratic method, whereby the lecturer poses questions to students in class on said cases and legislation to ensure the students have correctly understood it as well as to assist students in identifying any ambiguities/lacunae in the law (Bugden et al 2017, pp. 86 – 87; Havelock 2013, pp. 382 - 384). Legal education centralises the subject-matter within the curriculum and utilises a pedagogy that is premised upon being able to read and correctly interpret legal writings in an abstract manner, with the ideal student being one who can retain all the principles and rules encountered throughout the module and recant them in the final examination. It is one of the few environments in which Wieman's 'sage on the stage' traditional lecture still exists.

Rohan Havelock, who chastises the fact that there has been little 'genuine and sustained commitment' in the legal field to move away from traditional methods of teaching the LLB degree as identified in the time of Dewey (2013, pp. 401 - 402), warns that:

At best, steadfast adherence to the traditional and prevalent transmission-based lecture serves to reinforce [...] passive behaviour [such as automated notetaking with little to no active engagement]; at worst, it actively facilitates it. This style of lecture deprives students of the opportunity to learn the crucial skill required to succeed in final examinations and in legal practice: problem solving (2013, p. 388).

Many law students suffer from high levels of stress, competitiveness, alienation and (unsurprisingly) substance abuse (Hess 2002, pp. 75 – 78; Havelock 2013, pp. 382 - 383). An Australian study revealed high levels of psychological distress and a high risk of depression in law students and practicing lawyers when compared with Australian community norms and other tertiary student groups (Kelk et al 2009, pp. 10 - 19). While no such study has been done in the Scottish context, according to the Scottish Young Lawyers' Association stress is the biggest single issue affecting Scotland's young lawyers (2016, p. 1). The traditional method of legal education both fails to optimise the capabilities of the students, as well as being detrimental to their overall well-being.

However, one must acknowledge that within the UK context most post-1992 universities are at least aspiring to change, which can be garnered from what is called 'graduate attributes' identified by many such institutions. These graduate attributes highlight the skillsets students ought to have acquired upon completion of their degree. When one examines the Abertay University Graduate Attributes, one can see that there is indeed a genuine and sustained commitment on the part of Abertay University to adopt an active, student-centred approach to legal education (and education in general). Among the attributes the university promises to instil in its graduates are the ability to critically evaluate information; be decision-makers and problem-solvers who can tackle complex issues using creativity and considered judgement; understand and embody self-awareness, honesty and integrity in their professional and personal lives; and know how knowledge is generated, processed and disseminated. All of these attributes require active learning and the ability to reflect upon their practice with the aim to personal and professional growth. That said, how is this being incorporated into the Abertay University LLB degree? Is the law degree being offered one that evidences good practice, or is it – like many of its historic counterparts - resistant to change and maintaining the traditional model of transmission-based learning in a curriculum-centred classroom?

### **Case study: Utilising good practice within Abertay University's LLB degree**

For the purposes of this study, I have chosen to focus on the compulsory core first-year module of Public Law (LAW105), a first semester module taught in 2017/2018. At the time there were 71 students registered for the module. For Public Law, assessment was done by way of a four-part portfolio amounting to 100% of the final summative grade. Each of the four units were able to be submitted electronically for formative feedback at different dates prior to the one final summative submission date. Additionally, 20% of this portfolio's grade



came from the completion of a reflection exercise. Each of the four units in the portfolio sought to enable students to practice a different legal skill they would need both throughout their LLB degree as well as in the legal profession. For example, one unit required the students to find a case based on its neutral citation and draft a case summary (evidencing skills such as case referencing, searching legal databases, identifying key points of law within hundreds of pages of legal text etc); another unit required the students to conduct a literature review based on one of a shortlist of textbooks provided on the topic of constitutionalism (evidencing skills such as traditional research methodologies, familiarising themselves with legal language and literature, learning how to extrapolate key ideas from content-rich text etc); another unit required the students to find and summarise a piece of legislation based on its title as well as apply it to a handful of fictional scenarios (evidencing legal research, application of objective law to subjective facts etc); and yet another unit required students to write an opinion piece on the voracity of the rule of law in the present-day UK (evidencing skills such as formulating coherent arguments, structuring legal writing in a stylistically appropriate manner, referencing according to the OSCOLA style guide etc). As the portfolio exercises were individual tasks, tutorials (which took place for one hour each week) were used as an opportunity for groupwork and workshopping (contrary to the double lectures which also occurred each week). For example, in one tutorial students were tasked with forming groups of four and working together to create a single document answering a legal question I had posed to them. The groups had 24 hours to email me their answer, which was then collectively discussed in the next week's tutorial. The incentive to participate in these tutorials were that they covered work relating to the individual portfolio units each student would need to submit, thereby enabling students to learn from each other before they had submitted their own unit for formative assessment to me.

Utilising the above approach to teaching and assessment *in lieu* of a traditional end-of-year examination model (perhaps coupled with a lesser essay to make up the coursework component of the module) meant students were able to engage in a Kolbian experiential cycle of learning throughout the progression of the module. It enabled students to construct their own prisms of learning through active participation in the portfolio and tutorial exercises, meaning my role as tutor was to facilitate their professional development rather than to 'teach to the syllabus', transforming the classroom from curriculum-centred to Dewey's preferred student-centred platform. The use of a portfolio as the summative assessment provided a fairer, truer reflection of the students' growth and capabilities for which they were rewarded, rather than assessing them based on the degree to which they could memorise the required syllabus. The use of digital technology was crucial in achieving this aim as students were able to submit their units and reflections for formative feedback on PebblePad and for summative submission on Turnitin, as well as utilising lecture slides and additional materials from the start of the semester via Blackboard (so as to create a dialogic lecture environment where they would have been expected to read ahead of the scheduled lecture). Despite the large cohort, of the students who submitted for the summative assessment, only two failed to successfully complete the module. In terms of anonymous module feedback received, students generally found the use of a portfolio-based assessment to be a positive experience.

That said, one cannot divorce technology from the environment within which it is to operate. As Abertay University operates in Dundee and recruits most students from surrounding areas, the socio-economic realities faced by a large portion of its student body must be acknowledged. Dundee has an unemployment rate higher than both the Scottish and UK average, and in 2014 it had the highest rate of unemployment in all of Scotland (Dundee City Council 2016, pp. 45 - 53). Recent news reports reveal that secondary schools run by Dundee City Council underperform (based on the number of students who would be expected to achieve five or more Highers) to the greatest degree in the country, even when government benchmarks allow for factors such as deprivation (Sanderson 2018, p. 1). One must therefore accept that not all students will have 24/7 access to, or the technical know-how to use, technologies such as Skype or PebblePad. However, a counterargument would be that technology can help to solve some of the socio-economic issues experienced by the student cohort. For example, Dundee has the highest rate of teenage pregnancy in Scotland, and only recently lost its dubious claim to being the teenage pregnancy capital of Europe (NHS 2017, pp. 4 - 6). The use of blended learning may help to alleviate the childcare burden of students, therefore increasing participation throughout the LLB degree and a higher prospect of overall success.

Another issue is the sheer quantity of marking that comes with such a structure. For Public Law, there were at the time 71 students registered for said module. This would translate into 284 units of marking for formative feedback (four units per portfolio), and twice that when summative marking is included. This equates to 568 units of marking for a single lecturer, which must be balanced with other duties such as class preparation and teaching, research etc. This is not an uncommon occurrence within LLB degrees, as more people choose to study law. One of the ways this marking load could potentially be lightened – and which I would like to explore in the future – is the use of audio-visual feedback for formative assessments. There is a multitude of recent literature showing that students respond more favourably to video rather than written feedback (West and Turner 2015, p. 248; McCarthy 2015, pp. 164 – 166). A recent study conducted at the University of Glasgow found not only did 75% of students agree that they preferred to receive video feedback instead of traditional written feedback, but staff reported they returned more feedback as a result of this method (Kerr et al 2016, pp. 3 - 20).

## CONCLUSION

Good practice within the LLB context requires both lectures as well as primarily problem-based active learning coupled with the opportunity for students to reflect upon their experiences and develop throughout the course of the module, this being facilitated by the utilisation of a blended approach to learning where appropriate. Based on my case study, this definition of good practice is indeed being implemented within the Abertay University LLB degree in so far as possible, differentiating it from the trend of traditionalist law schools. Indeed, modern teaching-intensive universities are more likely to embrace contemporary notions of student-centred pedagogy than their historic counterparts. Regardless of the cause and based on this very limited study, there is value in historically established institutions looking beyond their highly-ranked fortresses to modern places of learning for the benefit of their students' overall experience. Whilst the importance of teaching and student experience can all too easily get lost within the recent impetus for strong research profiles in a REF-centred environment, it is worth remembering that a university only exists as a place of higher education because it has someone to teach.

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