

THE PLACE OF RESTORATIVE JUSTICE AND EXPERIENTIAL ANDRAGOGY IN THE CURRICULUM

Rebecca Samaras (University of Dundee)¹, Richard Grimes (Visiting Professor Charles University, Prague and Honorary Professor University of Dundee),² and Scott Walsh (Restorative Justice Practitioner)³

Introduction

This paper is centred on three fundamental and overlapping points. First and foremost, students in many disciplines, notably Law are, more often than not and regardless of jurisdiction, largely passive participants in their learning, frequently being the recipients of content-driven curricula delivered primarily through lectures and assessed at end of study periods through written and/or oral examinations.

Secondly, although based on a specific case study – the creation and delivery of a new course/module at a leading UK University – we believe that what has resulted from the innovation involved has significant lessons for (legal) education elsewhere and as such we are keen to share our own experience in the hope of informing and inspiring others.

Finally, and with specific reference to the subject matter concerned, most dispute resolution systems in general and criminal ‘justice’ processes in particular take little account of longer-term consequences of adjudications and outcomes for all concerned.

¹ Senior Lecturer, Director Clinical Legal Education, Solicitor (Scotland), University of Dundee. Email: RSamaras001@dundee.ac.uk

² Legal education and access to justice consultant, Visiting Professor Charles University, Prague and Honorary Professor University of Dundee, Solicitor (England and Wales – retired and no longer practising). Email: richard.grimes@hotmail.co.uk

³ LLB, Restorative Justice practitioner. Email: scott.walsh@hotmail.co.uk

This claim is explored as we discuss the course/module itself below. The purpose of this paper is to describe and analyse how a more constructive approach to legal education can take place, exemplified by this study of restorative justice (RJ) and forms of experiential and reflective learning and the impact of this.

Context

The developments addressed in this paper took place at a law school with a strong reputation for the quality of its research and teaching. The university in question is a member of the prestigiously perceived Russell Group.⁴ That said the bulk of educational delivery to students at undergraduate level is delivered through lectures and seminars as it is for the taught masters' programmes.

The university we are speaking of here has, along with many others in the UK and further afield⁵ over the past few years, become increasingly interested in a clinical approach to study with several courses at undergraduate level being developed using either simulation (a human rights clinic) or placements in other organisations).⁶

Following discussions within the law school and recognising student interest (as well as andragogic value) in clinically-styled studies, a set of proposals for new experiential offerings were brought to the Academic Board – the body responsible, amongst other things, for approving curricula content.

⁴ For details of membership of this group of UK universities see: www.russellgroup.ac.uk, accessed 20 May 2023.

⁵ See for example: R. Grimes and J. Sandbach, *Law School Pro bono and Clinic Report*, Lexis Nexis, 2020.

⁶ <https://taxaid.org.uk/>, accessed 15 June 2023.

One was for a course entitled *Restorative justice: principles and practice*. Using a student-centred approach to learning the course proposal was based on the rationale that law students need to see the full workings of the law rather than simply what happens before courts and tribunals. Whilst any lawyer worth their salt must, of course, know the applicable framework and relevant rules in particular cases, it is important to realise that against this background there are many ways of addressing conflicts and problems, some of which may be more constructive than the 'win/lose' or even 'lose/lose' consequences of formal litigation. Given this, it is unsurprising perhaps to see that many aspects of the criminal and civil justice systems, certainly across the constituent parts of the UK, now consider aspects of dispute resolution that work alongside, or as an alternative to, court and other litigious processes. Indeed, there are now requirements in various parts of the UK making such problem-solving approaches to dispute resolution (as contrasted with purely adjudicative proceedings) a recommended or even, perhaps somewhat inappropriately (given the underlying ethos of such approaches as negotiation, conciliation and mediation) a mandatory component of related proceedings.⁷ ADR, as it is popularly termed also includes arbitration although this is perhaps more in the nature of handed down decision-making rather than a process in which the interested parties aim to reach acceptable

⁷ The extent to which ADR forms part of formal dispute processes is complex. The starting position in England and Wales, as provided for in the Civil Procedure Rules 1998 (as amended), is that ADR is recommended to litigating parties although a degree of compulsion is to be found in some pre-action protocols and there has been considerable (and still developing) case law on the consequences, particularly in terms of costs awarded against those unreasonably refusing to engage with ADR, for example see: *Lomax v Lomax* [2019] EWCA Civ 1467.

(to them) outcomes through guided dialogue. Many advocates of ADR favour a restorative approach to problem-solving where the focus is on behaviour rather than offence, on victim rather than offender and on constructive outcomes rather than retribution and punishment.⁸

In this context we use the term restorative justice (RJ) to mean a process where the central issue is problem-address with a view to resolution.⁹ This typically, though not exclusively, involves those who have suffered in some way (criminally or otherwise) at the hands of others and those responsible for that suffering, be they part of criminal proceedings or not. Much has also been written on the restorative approach as a philosophy (even a theology) rather than simply a device.¹⁰ This was explored at various points in our RJ course.

It should also be said that whilst the proposal for a course in RJ was seen to be a useful addition to the undergraduate portfolio, in terms of offering students the chance to study dispute resolution (and the applicable law and processes within which it may operate) in an experiential way, this proposal can also be seen in a wider setting. In the jurisdiction concerned (Scotland) there have been developments at a governmental level to promote RJ¹¹ and a toolkit to support RJ in practice had already

⁸ See for example: R. Mnookin, *Alternative Dispute Resolution*, Harvard Law School, John M. Olin Center for Law, Economics and Business Discussion Paper Series, available at: www.researchgate.net/publication/30504345_Alternative_Dispute_Resolution, accessed 18 May 2023.

⁹ See for example: G. Johnstone, *Restorative Justice: ideas, values, debates*, Routledge, 2011, 1-8.

¹⁰ *Ibid*, 154-159 and 160-162.

¹¹ See: www.gov.scot/publications/restorative-justice-action-plan/, accessed 17 May 2023.

been developed.¹² Were this course proposal to be accepted then it could sit alongside and hopefully compliment these wider developments.

Allowing inexperienced students to facilitate actual RJ meetings was, we felt, inappropriate at least at this very early stage of development. That said we had in our minds two longer-term possibilities – a course in advanced RJ where students would, as a pre-requisite, have taken part in the simulated iteration and could then, under supervision, become more active as RJ facilitators, at least to a closely monitored extent and possibly a training facility for those currently outside the university who wished to undergo RJ induction and development. Both ideas could build capacity for RJ facilitators as well as raise awareness of the scope and value of RJ – in line with the government's own Action Plan.¹³

As anyone who has proposed new curricular content will know, there are procedures to be followed and proverbial hoops to jump through to get the necessary academic accreditation. These invariably (and reasonably in our view) include having a clear rationale for the development, set learning outcomes in terms of what the students are expected to achieve in the course, robust assessment regimes and criteria to measure student performance, a logical and sustainable delivery mode, appropriate risk

¹² R. Hamad, J. Shapland, S. Kirkwood, C. Bisset & E. Edginton, *Designing and Implementing Restorative Justice in Scotland*, University of Edinburgh, 2020 and available at: [www.sps.ed.ac.uk/sites/default/files/assets/pdf/Restorative Justice Toolkit 121020-min.pdf](http://www.sps.ed.ac.uk/sites/default/files/assets/pdf/Restorative%20Justice%20Toolkit%20121020-min.pdf), accessed 20 May 2023.

¹³ Scottish government Action Plan, op cit, fn 11.

assessment processes and adequate resourcing. Space does not permit us to set out the course outline here, but this is available on request.¹⁴

Following detailed discussion at Academic Board and with relatively minor tweaks, to fit in with institutional delivery and assessment rules and procedures, the RJ course proposal was approved and scheduled to begin in the second semester (January 2023). Finally, by way of introduction whilst there is much researched about and written on restorative justice in theory and practice and a large and increasing scholarship on clinical legal education, there is very little published on the learning and teaching of restorative justice at degree-level study. In an interesting article discussing teaching RJ in a graduate school setting the authors, a mix of students and academics, look at what they describe as the 4 pillars of RJ: prioritizing relationships, practicing self-reflection, cultivating dialogue that unearths social systems of oppression, and utilizing strategies for creative and experiential engagement.¹⁵ In this paper we strongly support that assertion but would add that when integrated in a law degree RJ provides a unique opportunity for students to study law and policy in a holistic way by locating RJ as a tool of dispute address, if not necessarily resolution. In addition, as evidenced in much of the rest of this paper, in a legal education context students can be encouraged to consider a wide-reaching legal framework within which the issues or problems sit and in conducting the necessary research students

¹⁴ See: fn 1.

¹⁵ L. Pointer, C. Dutreuil, B. Livelli, C. Londono, C. Pledl, P. Rodriguez, P. Showalter and R. "Page" Tompkins, *Teaching restorative justice* Contemporary Justice Review, 2023 and available at: www.tandfonline.com/doi/abs/10.1080/10282580.2023.2181286?journalCode=gclr20.

must identify and apply rules and principles that come from and compliment their other subject studies.

Let us now look at the design, delivery and evaluation of the particular RJ course in question.

Planning

With accreditation granted the course was advertised. We had immediate take up with demand significantly exceeding supply. This we suggest, indicates the extent of student enthusiasm not only for the study topic but the mode of study itself – experiential. This suggestion was later amply evidenced by the content of students’ assessed reflective journals and end of course evaluation.

The university has its own procedures for allocating places where courses are over-subscribed and we ended up with 34 students enrolled. In order to facilitate student learning we wanted to use a small group structure where students would be allocated to their own team (we used the term ‘student law firm’) to replicate a working environment such as they might experience post-graduation and perhaps for actual RJ practitioners. This also is reflected in one of the specific course learning outcomes. We opted for 6 firms of between 5 and 6 students each. We had used this type of format before in other settings and this number of students seems to produce the maximum opportunity for engagement and accountability (peer and student/tutor). Such ideal

numbers are also broadly supported by published works.¹⁶ The inclusion of a specific team-working component supported our view that such a vehicle would allow for peer support and learning, enabling students to build on their and each other's knowledge and skills promoting and supporting what has been referred to as the 'scaffolding' or incremental building of learning.¹⁷

We designed the programme so that all students could work on realistic RJ scenarios from the initial legal, factual and conceptual research stages including self and group study and through various consultative sessions with relevant stakeholders to (possibly) collective RJ meetings or conferences. These would be played out with one firm acting as RJ facilitators and another firm acting as the relevant stakeholders – victim, offender and other, for example police, schools, social worker, family members and/or affected community groups. In this way students would get the experience of being RJ 'experts' and also see it from the side of other participants. By the end of these initial cases each student firm would have facilitated one case, acted as stakeholders in another and would have witnessed the conferences involving all of the firms.

For assessment purposes we had to ensure a degree of equivalence so that students were being asked to do something and were being assessed in a way that was consistent and fair to all. We therefore decided to get them to do a second case, this time using professional actors. Each firm would be given the same scenario (although

¹⁶ See for example: S. A. Wheelan, *Group Size, Group Development, and Group Productivity*. *Small Group Research*, 40(2), 247–262, 2009

¹⁷ For a discussion of teamwork see: D. Jackson, R. Sibson & L. Riebe, *Undergraduate perceptions of the development of team-working skills*, *Education and Training* 56 (1), 2014. On scaffolding see: K.S. Taber, *Scaffolding learning: Principles for effective teaching and the design of classroom resources*, Nova Science, 2018.

different from the ones they had encountered earlier) with them again having to conduct the initial research, plan and carry out the necessary consultations and facilitate the conference that we had designed as the concluding part of the final case study. Not only did this approach address the need for equivalence but it also gave the students the chance to apply theory to practice a second time using the learning cycle concept outlined above with a clear demonstration of reflection in practice.¹⁸

Given that the course was, at least in the first run, based on simulated RJ cases, the next challenge was designing those scenarios. We needed 7 – one for each of the 6 firms to process their first RJ case and a seventh to allow for the second, assessed, case study.

We will not recount the detail of all 7 cases here but they are again available on request. In the well-established clinical legal education tradition, as far as we are concerned, colleagues are free to adopt or adapt these case studies for their own learning and teaching purposes.¹⁹

The final thing to note in terms of planning was that we left the students playing the roles of the stakeholders in the first 6 case studies to make up their own scripts so that they had to think through what stakeholders in the various cases might be likely to think and say and to add a degree of unpredictability to the proceedings – as may well

¹⁸ Kolb's learning cycle although in part criticised for its suggestion that the process is necessarily circular, provides a clear visual image of what application and reflection can look like – D. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*. Prentice-Hall, 1984. More detailed discussions on reflection, particularly on tools to aid reflection can be found in: J. Moon, *A Handbook of Reflective and Experiential Learning*, Routledge, 2004.

¹⁹ There are a number of resource banks with freely accessible materials developed by those interested in CLE, for example in the context of the UK at: www.cleo-uk.org, accessed 18 July 2023.

happen in real life – which, as is reported below, actually transpired. In case study 7 we provided scripts for the actors so we could control the process to result in consistency and intended outcomes.

Delivery

The course was front-loaded with an intensive one-day session lasting 6 hours. In this time the students were exposed, through a set of semi-interactive presentations, to an outlining of the nature of RJ in terms of theory and practice in the wider context of dispute resolution, including the basics in terms of philosophy of punishment. The students were then allocated to their firms which was done using a simple numbering system where the students in turn would be given a number, 1-6. All of the students with the same number were then asked to form teams. We ended up with 4 teams of 6 and 2 of five. This resulted in groups where not all of the students knew each other with a mix of year 3 and 4 students which is what we intended to aid the possibility of group mentoring. One of the learning outcomes was to develop their team working skills and one way of doing this is to have teams of those who do not necessarily know each other personally. Building such collaborative and employability-focused attributes we suggest is a positive outcome for students to attain and in any event provides rich opportunities for reflection even if the conclusion of that might to do things different and better next time!²⁰

²⁰ Indeed, when it came to assessing student performance on this module credit was, within the confines of set learning outcomes, given to those who could identify what went well and not so well and in the event of the latter what might be done were the experience to be re-enacted. Knowing ones' failings and why they were such

In their newly adopted firms, they were asked to discuss the rationale given for certain approaches to punishment and they were asked to identify how this might be seen differently using an approach that looked at longer-term consequences and what such an approach might look like in practice. In this way the students had to show the extent of their familiarity with traditional forms of adjudication in civil and criminal cases and their awareness, even appreciation, of various alternatives – revisiting in some instances what they had studied elsewhere.²¹

The presentation then moved on to look at statistics in civil and criminal cases in terms of how many cases were settled outside of court proceedings and the impact of punishment in criminal cases in so far as reconviction rates and societal cost were concerned.²² We then compared this with research findings in RJ cases leading to the conclusions for example that in most instances reconviction rates were no worse where RJ had been used compared with other forms of disposal²³ including imprisonment and in some cases (particularly violent crime)²⁴ reconviction rates were

is, in our view, a clear indication of understanding – see: K. B. Laksov and C. McGrath, *Failure as a catalyst for learning: towards deliberate reflection in academic development*. International Journal for Academic Development, 25 (1), 2020, 1.

²¹ For a discussion of this approach of examining previously studies subjects in a new context (albeit in a medical one here – so often a starting point for legal educators) see: R.M. Harden, *What is a Spiral Curriculum?*, Medical Teacher, 21(2), 2009.

²² For example the cost of unresolved legal problems in the UK alone has been estimated at over £3 billion a year – see: P. Pleasance, H. Genn, N. J. Balmer, A. Buck and A. O’Grady, *Causes of Action: First Findings of the LSRC Periodic Survey*, *Journal of Law and Society*, 30(1), 2003, 11.

²³ For a study of the relative effectiveness of RJ in terms of reconviction rates see: A. Wilcox and C. Hoyle, *The National Evaluation Of The Youth Justice Board’s Restorative Justice Projects*, Centre for Criminological Research University of Oxford, Youth Justice Board, 2004; and, J. Shapland, A. Atkinson, H. Atkinson, J. Dignan, L. Edwards, J. Hibbert, M. Howes, J. Johnstone, G. Robinson and A. Sorsby, *Does restorative justice affect reconviction?*, Ministry of Justice (UK), 2008.

²⁴ In relation to the use of restorative justice in cases of violent crime see: A. Vogt and Y. Dandurand *Restorative Justice in Matters Involving Serious Crimes* Restorative Justice Note # 4, International Centre for Criminal Law Reform and Criminal Justice Policy, 2018.

considerably less where RJ was used. We also looked at the cost of RJ and compared this with the financial implications of taking court proceedings. Unsurprisingly RJ was a much cheaper option in almost all cases.²⁵ In addition we referred to user satisfaction rates – for ‘victims’ and ‘offenders’²⁶ and saw that reported satisfaction levels for ‘victims’ who had taken part in RJ were consistently high.²⁷

In the induction the students, again in their firms, were then asked to select a contemporary problem that they thought could be suitable for an RJ approach. Once the problem or issue had been selected, they had to suggest possible stakeholders. They then were asked to research and identify the legal framework relating to the problem topic. For many this involved looking at areas of law that they have not studied before and act out a snapshot of what they imagined might happen in that process.

As is often the case when students are given a little rein in design and delivery they came up with a variety of plausible scenarios and showed, even at this formative stage of the course, both initiative and understanding of how RJ can be used as a constructive response to pressing problems. The scenarios included domestic abuse,

²⁵ For a discussion on the relative cost of RJ and other forms of intervention see: L. Sherman and H. Strang, *Restorative justice: the evidence*, The Smith Institute, 2007.

²⁶ Inverted commas used here as not all participants were technically (or at least not convicted) offenders and not all of those affected by the complained of behaviour saw themselves as victims.

²⁷ See: H. Strang, L. Sherman, E. Mayo-Wilson, D. Woods and B. Ariel, *Restorative justice conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offender recidivism and victim satisfaction. A systematic review*, Campbell Systematic Reviews, 9(1), 2013, 1.

anti-social behaviour, school disputes and parental problems – interesting not dissimilar to the case studies we had pre-designed.

The induction day concluded with a brief presentation by one of the authors of the Scottish RJ toolkit, a researcher at the university, who reinforced much of the coverage of the previous hours and gave the whole session much-needed local and jurisdictional context.²⁸

The day ended with much positive feedback and with many students staying behind to ask further questions and make relevant comments.

Interestingly, most courses of a similar credit-weighting at the university in question require around 20 hours of contact time between tutors and students and then considerable additional periods of student self-study.²⁹ Through using the intensive induction approach we had covered a good 6 hours of this by the end of the day. The rest would be delivered in further discussion workshops and in participating in subsequent case studies.³⁰

We then moved on to the case studies themselves and each firm, in their own time, worked on their allocated case from initial research through stakeholder meetings to possible outcomes, reporting back regularly to us for feedback and discussion. Some cases reached resolution and others did not which provided ample opportunity for everyone to see how RJ processes may or may not work. In these exercises we relied

²⁸ Op cit. fn 12

²⁹ Typically, at the university in question, up to 3 times the amount of lecture/seminar staff-student contact.

³⁰ If anyone would like copies of the PowerPoint presentation used in the induction day please contact us – see: fn 1.

heavily on one of us authors who has direct experience, over a considerable period, as an RJ practitioner. The rationale for this was simple – 2 of us authors were relatively well-read on RJ theory and practice and we both have considerable experience in using experiential learning approaches, particularly through live-client clinics. Using a ‘non-academic’ but subject practitioner we thought would pose a highly complementary contrast. His experience of higher education was just as a mature student taking a law degree somewhat later in life. We anticipated (as pleasingly evidenced in the evaluation) that this juxtaposition of ‘academic’ and ‘practitioner’ would not only provide perspectives in terms of planning and delivery but would also give the students food for thought and interest, especially as the practitioner amongst us has had vast experience in doing RJ in a variety of contexts and whose route to RJ began initially in a prison cell!

As the case studies progressed, we saw twists and turns (some designed and others arising due to the unscripted nature of the stakeholder roles in cases 1-6) and the practical experience of our RJ practitioner author proved invaluable particularly as a reality check.

With their first cases completed we issued student firms with instructions for the final case study (number 7) which each group would handle and be assessed on. The actors used here were unknown to the students – adding much needed reality to the

simulation.³¹ As previously mentioned, the conference had pre-planned outcomes and actors were briefed to this end.

By the day of the final conference itself all the student firms had reached a point where they had reported on the applicable law and procedure, had carried out risk and other suitability assessments and had met with the stakeholders either in person or online and in some cases a number of times (as each firm was free to conduct preparations as they thought fit and which would be discussed post-conference and recorded in the assessed reflective assessment). Each firm was to carry out the final conference. With all stakeholders in attendance, it was up to the firm as facilitators and the case victim as to who they wanted to participate and up to the stakeholders whether they did so or not.

In Case 7 the alleged offenders were not mentioned as stakeholders. On the given facts they were unidentified. This was a deliberate part of the case design so students could see that RJ can take place without offenders being involved and the outcomes from any RJ process could include a community-led response, to address situations, regardless of offender participation, apology or other outcome.

In order to manage time and to give all students the chance to participate we ran the conference over a 4-hour period. All student firms were expected to take part (as they had done in the first set of cases) but on the day one firm was randomly selected to start the conference with relevant stakeholder actors present and other students

³¹ For a discussion on the use of simulation in legal education and on the importance of ensuring simulation appears 'real' see: C. Strevens, R. Grimes and E. Phillips *Legal Education: Simulation in theory and practice*, Ashgate Publications, 2014,

observing. The firm were allowed 15 minutes to conduct the conference after which the non-participating firm members in the cohort were able to interrupt if they thought the proceedings could be conducted any more effectively. The rub however was that if the action was stopped the firm intervening had to take over the conference. Initially people seemed (perhaps understandably) reluctant to do so but this was soon not the case and student firms wanted to 'have their go'. There is an element of competition in the best of us! This method of conducting simulations has been referred to elsewhere as Forum Theatre.³²

From a design point of view, had no interruptions occurred, we would have invited firm by firm to conduct their own conference which is why we allowed such a generous allocation of time – half a day.

The final twist, given that no alleged offenders were initially involved, was to stop the proceedings at the point where an agreement on what action, if any, the stakeholders proposed to take in addressing the case problem (hate crime). The students (and existing actors) were then told that one of the offenders had been found carrying out similar behaviour (and potentially committing criminal offences) elsewhere and had admitted being involved in this case. We then had a further actor enter the room to play the part of that offender. A firm was then randomly selected to conduct a preparatory meeting with the offender that led (again pre-planned and in that actor's script) to a further conference in what might be more traditionally seen as a RJ hearing.

³² A. Boal, *Theater of the Oppressed*, New York: Theatre Communications Group, 1993

In this instance apologies were eventually volunteered by the offender, who was visibly shocked at the impact his actions had had on the individual victim in the case. A discussion followed with feedback being given by all concerned. Again, the students seemed to be highly engaged in the process.

The assessment

Let us now move on to the evaluative stage in terms of student performance in the context of the assessed tasks and the extent of learning outcome attainment. As this was an academic course the students needed to submit assignments and these were to be marked and graded with feedback being given according to university rules and conventions.

We also wished, as course designers and deliverers, to reflect ourselves on what went well and what might be improved and further developed in the future. In addition, as this paper hopefully demonstrates, we wanted to share this developmental opportunity with colleagues across Law and related academic disciplines and to locate our experience within established and growing scholarship on experiential learning.

So far as student performance was concerned this was assessed through two pieces of submitted work, neither of which related to the quality of the student's efforts in actually conducting their cases. We were not interested in their competency as RJ practitioners. That was not a learning outcome nor, we thought, a fair criterion to use given the students' relative inexperience in such matters. We wanted, as the learning outcomes confirm, to focus on the students' understanding of the applicable law and

of the restorative approach to problem solving and dispute resolution, along with team-working capability and reflective capacity. If the students struggled in their actual conduct of casework but could analyse why that was and what they might do to improve in the future, they were likely to get good marks.

The first piece of assessed work was an analysis of case study 7. How did the RJ process work out and what was to be drawn from that in terms of the suitability of RJ as a form of dispute resolution and harm amelioration? This required students to focus on the one case they had all worked on and required reflection on the process involved.

The second assessed submission was a generic reflective journal – looking at the course and RJ as a whole. This document was intended to show what each student had done as part of their firm's work, collectively and independently, how they had planned and prepared for this, their views on what had gone well, their observations as to what may have not and their own assessment of what might be done differently and better next time. They could cross-refer to any specific case study to provide examples of the points they wished to make. The students were somewhat uncomfortable with this form of assessment as it differed considerably from what they were used to elsewhere on their degree programme and as such many felt (as expressed in numerous questions and comments in drop-in sessions and online) out of their comfort zones. Although it was explained, at length and frequently, that this was not 'rocket science' but a simple process of thinking through and recording their impressions of what happened and why and what was to be learnt from that, the

students required considerable reassurance and were given a reflective guide and sample reflections within a spectrum of very good and not so good.³³ The interesting thing is that in the main the students did exceptionally well with a string of top-class marks being warranted in light of the high quality of their thoughtful submissions. It is perhaps unsurprising that students did feel unease as reflection is not commonplace in most educational settings from school to university. Their concerns also show the understandable, if regrettable, focus these days on academic results and the competitiveness that that brings.

Both pieces of assessed work were, following institutional assessment criteria, in the main, very well done in terms of attracting top end grades. Perhaps as importantly many students commented on their perceived value of the course in terms of developing their substantive knowledge across arrange of legal subjects (some newly encountered and others previously studied) and giving them a relatively unique (in the sense of their study experiences so far) opportunity to apply theory to practice. Many also added how much they has enjoyed the refreshingly collaborative nature of the course.

Whilst the assessment was primarily summative in purpose (such are university requirements) detailed feedback was given in each case. Formative feedback (that is not linked as such to the award of marks or grades but focused on enhancing

³³ See: J. Moon, op cit, fn 20. A set of tools for reflection are available at: www.cemp.ac.uk/people/jennymoon.php, accessed 20 May 2023.

learning)³⁴ had been extensively provided throughout the course in the form of comments at drop-in sessions, responses to email queries and in feedback given on various online submissions such as research reports or commentaries on the outcome of stakeholder meetings. We also used the university's e-learning platform to provide supporting announcements and study resources.

We then attempted to evaluate the course from a teaching and learning perspective. The university, as part of its standard mechanisms for quality assurance, asks students to complete a survey part way through any course and at the end. Whilst most feedback from the students was positive at the half-way point some expressed noticeable concern, first about the fact that the course was very different in terms of delivery from other courses they were used to (for example no fixed and repeated weekly delivery sessions) and secondly, about the (then) pending and very different assessment regime. The majority who responded however considered the course to be interesting and valuable, if challenging. The feedback from the same cohort at the end of the course was interestingly and almost exclusively positive (as echoed by many of their assignment comments) with the vast majority of students saying it made a refreshing change to the way in which other courses were taught. Some went as far as to say that the reflective component had given them a new and useful set of tools with which to analyse and appraise what they had been doing and what they might do

³⁴ For an interesting discussion on the role of formative assessment and the management of the resource demands implicit in it see: M. Higgins, F. Grant and P. Thompson, *Formative Assessment: Balancing Educational Effectiveness and Resource Efficiency*, *Journal for Education in the Built Environment*, 5(2), 2015, 4.

career-wise in the future and how they might use the skills acquired in the workplace. It was as if the innovatory nature of delivery unsettled the students but when they had completed the various tasks set, they saw the value. There are limited experiential study opportunities offered at the university at undergraduate level and relatively few students have a chance to take those options that are. We suspect that this situation is commonplace elsewhere.

Interestingly, perhaps in addition to the students acknowledging in their reflective submissions that they found the restorative justice course both stimulating and valuable, some went further. In a somewhat frank and perhaps surprising set of confessions a significant number of students said that they had selected this course because they expected it to be 'easier' than more traditional courses, which are largely assessed through a combination of essays and written examinations. In this feedback some expressed surprise at how rigorous and time-consuming the hands-on elective of RJ was.

We think, on completing these courses, the students appreciated that it was not necessarily that they were easier or harder, or more or less time-consuming – but that they were different. For the students, adjusting to the methods used in teaching and learning experientially that made them 'appear' harder or at least so different as to be particularly concerning. Most of us, after all, find change challenging from time to time.

From our perspective as tutors, we were pleased with the way the course had panned out and were impressed with the level of motivation and consequential engagement

of the students. Whilst we were satisfied overall with the course in that it appears to have achieved the outcomes we set, we want to, ourselves, reflect on the use of the journal as an assessment vehicle. It had taken considerable time to respond to student enquiries and to mark. We are now considering whether there could be more effective assessment means perhaps including an oral examination (*viva voce*).³⁵

We also sought feedback from other colleagues, formerly through the external examiner for the subject³⁶ and from guest speakers. Their feedback was also entirely positive.

So, what does this add to the existing scholarship in the field of experiential learning?

We suggest there are several aspects from the development we have described above that are instructive. Much has been written, especially in the past decade or so, on the value of experiential learning in general and of clinical legal education in particular.³⁷

The requirement in hands-on study to research, analyse, apply and reflect on problems and other issues, often with multifaceted legal subject aspects, is the hallmark of many a clinic.³⁸ This approach not only provides the opportunity for

³⁵ See: R. Grimes and J. Gibbons, *Assessing experiential learning – us, them and the others*, International Journal of Clinical Legal Education, 23 (1), 2016, 107.

³⁶ For those unfamiliar with the UK system universities, as part of their overall quality assurance processes, appoint academics in other institutions and in relevant subject fields, for example Law, to oversee standards. The external examiner looks at a range of issues including a sample of assessments, internal marking outcomes and assessment methods. They then comment if concerns exist, whether procedures have been fairly and consistently followed and if the overall standard is comparable with other higher education providers in that subject area. Many see external examiners as a critical friend.

³⁷ A glance at the number of peer-reviewed articles now appearing in such journals as The Clinical Law Review, the International Journal of Clinical Legal Education and through conference papers delivered at meetings of clinical teachers and students such as the UK's clinic network CLEO (www.cleo-uk.org) , its Europe-wide companion body ENCLE (www.encle.org) and the Global Alliance for Justice Education (GAJE – www.gaje.org)

³⁸ See for example the descriptions given of the nature and extent of clinic work in: D. Nicolson, J. Newman and R. Grimes, *How to set up and run a legal clinic: principles and practice*, Edward Elgar Publishing, 2023, in particular Chapter 4.

students to apply theory to practice but can also allow for encounters with what has been termed elsewhere as the 'spiral curriculum'.³⁹ This concept sees students studying a topic at one stage of their legal education only to encounter it again, at a later point, in the same or subsequent semester of year. The idea here is to revisit rules and principles a number of times allowing for enhanced understanding or, at the very least, a reminder of what may have been learnt before. This can be contrasted with much of more traditional legal education where legal subjects tend to be taught, studied and evaluated in topic boxes that, once completed, are seldom encountered again until perhaps they are needed, perhaps in the context of a law office or other employment setting. In our RJ module students were required, by virtue of the devised scenarios, to research and define a range of possibly applicable legal subject matters in order to have a framework within which to effectively engage as RJ facilitators. They all did this with 2 scenarios and were able to observe 5 others. Whilst RJ practitioners in real life may not examine the applicable law in such detail (nor indeed be lawyers at all) we required our students to do that so that they could appreciate the possible legal and other implications arising in the case studies in line with set learning outcomes.

Then there is the assessment of learning. Experiential approaches, given their likely use of practical application and reflective structures, do lend themselves to innovation in terms of assessing individual and possibly group work.⁴⁰ Whilst more conventional

³⁹ Op cit, fn. 23.

⁴⁰ Op cit. fn 29. A useful guide can also be found at: www.mcgill.ca/tls/files/tls/guidelines_-_assessment_of_experiential_learning_1.pdf accessed 1 September 2023.

forms of assessment can be used such as essays and end of module examinations, assessment in such hands-on courses, as the RJ one being discussed here, fit well with reflective forms of assessment – notably portfolios and journals.⁴¹ The summative requirements of most courses, including this RJ one, can be carried out using reflective devices but the nature of that reflection builds on the formative work preceding and sitting alongside the grade or mark-awarding processes. In our module students received significant amounts of formative assessment in the form of oral and online feedback to their various discussions, performances and submissions. Yes, this has resource implications for teaching staff but can be done in a relatively time and cost-effective way through feedback being given in group settings and not just to individuals.⁴²

Motivation was mentioned above. We maintain (as have others⁴³) that a module designed and delivered to facilitate student engagement through individual and group interactivity is likely, simply through the requirement to engage, to promote interest and impact on motivation. Whilst it does not necessarily follow, more motivated students are likely to work harder and/or more effectively and in doing so

⁴¹ For an interesting article on linking portfolios to reflection see: L. Fernsten and J. Fernsten, *Portfolio assessment and reflection: enhancing learning through effective practice*, *Reflective Practice: International and Multidisciplinary Perspectives*, 6(2), 2005, 303.

⁴² For guidance on group assessment see: T. Mellor, *Group work assessment: some key considerations in developing good practice*, *Planet* 25(1), 2012, 16.

⁴³ See for example: A. C. Burns and J. W. Gentry, *Motivating Students to Engage in Experiential Learning: A Tension-To-Learn Theory*. *Simulation & Gaming*, 29(2), 1998, 133.

are likely to see their efforts reflected in grades and marks. Research elsewhere supports this somewhat obvious conclusion.⁴⁴

Whilst students may see the clinical approach as a very attractive and interesting form of study the resource implications of 'going clinical' can be significant, depending on the nature and extent of the clinical work concerned. It is not difficult however to integrate a more experiential approach to learning and teaching in established courses with limited resource implications, if at all. The use of the 'flipped classroom' for example can be a relatively straightforward way of getting students to assume a level of responsibility for their study by front-loading the course in question, or parts of it, with tasks the students are expected to do before perhaps more conventional forms of instruction, such as a lecture, are used.⁴⁵

Perhaps the most significant implication of the course we are discussing here however is in something far less tangible and potentially controversial. The established hierarchy of teacher and learner relies heavily on teacher-led instruction. Indeed, in some jurisdictions it is even considered disrespectful for students to question of otherwise discuss issues with those instructing them.⁴⁶ Altering the relationship of

⁴⁴ Relatively little exists by way of empirical evidence (anecdotal abounds) of the actual extent of learning impact of experiential education. By the same token little exists to show the effect of more traditional forms. See however: J.S. Coker, E. Heiser, L. Taylor, and C. Book, *Impacts of Experiential Learning Depth and Breadth on Student Outcomes*. *Journal of Experiential Education*, 40(1), 2017, 5; and L. Donnelly, *Measuring The Impact Of Clinic Participation on Law Graduates: a Small Case Study*, *International Journal of Clinical Legal Education*, 29 (2), 2022, 112.

⁴⁵ For more on the flipped classroom see: J. Nouri, *The flipped classroom: for active, effective and increased learning – especially for low achievers*, *International Journal of Educational Technology in Higher Education*, 13, 2016, 33.

⁴⁶ Personal experience of one of the authors doing curriculum development work in Myanmar recently revealed the strong cultural and structural constraints on staff and students when considering changes to the form of curriculum delivery.

teacher and learner to more of a collaborative one where the teacher performs more of a facilitative, if still instructive, role may be, for many, a hard step to take and asking students to play a more direct role in their own learning can be similarly challenging.⁴⁷

In our RJ module we witnessed considerable unease with both the form and content of the course, particularly in the first few weeks, where students were expected to take considerable initiative in doing the groundwork necessary for case preparation and with the uncertainty and sometimes conflicting results following their various stakeholder meetings. However, armed with this experience and supported by ample feedback from us and from their peers and (later) actors and as evidenced by students' feedback at the end of the module the rationale for and approach to this form of study was clearly appreciated.

The reflective assessment components also required the students to express their views on what was both expected and experienced in the module in terms of the value of RJ as a problem-addressing and possibly solving approach – one promoting constructive approaches to lawyering rather than fostering the image of lawyers as 'hired guns'. Despite the increasing emphasis on ADR in many legal systems, for example in the Civil Procedure Rules operating in England and Wales⁴⁸ much of the content of law courses still has a litigation and courtroom focus with lawyers being portrayed in this role, rather than as has been described elsewhere as 'neutral

⁴⁷ For a discussion of the potential facilitative role of the teacher see: V. Goodyear & D. Dudley, 'I'm a Facilitator of Learning!' *Understanding What Teachers and Students Do Within Student-Centered Physical Education Models*, *Quest*, 67(3), 2015, 274.

⁴⁸ See fn 7.

partisans' who are there to help the client get the best possible outcome – rather than to 'win' at all costs.⁴⁹

We also think it is worth saying that student demand for interactive and cross subject study is clear, as evidenced by the oversubscription to the RJ module at this one university and from widespread anecdotal reports elsewhere at conferences and other meetings. It is perhaps unsurprising that students do expect more from their education, especially if you take the cost that students (or others) pay for their studies. All that said evidence abounds of the value of experiential learning more generally, so it is little wonder demand is high. Various studies also suggest that the offering of experiential courses can impact on both recruitment and retention rates – a concern for many higher education providers.⁵⁰ We should also not forget, in England and Wales at least, as in many other parts of the world, students pay heavily for the privilege of their education and as consumers surely have a right to receive what they value providing is has relevant educational content and value?

Finally, what else of note do we consider came out of this RJ module? The clinical movement in the UK and globally has, as noted earlier in this article, a well-established tradition of developing and sharing resources.⁵¹ We have therefore gone to some trouble to refer, in the body of this paper to the RJ course materials, the nuts and bolts of the module and the detail of the case studies. Limited only by whatever

⁴⁹ For further discussion on concept and ethical dimension of this see: D. Nicolson and J. Webb, *Justifying neutral partisanship, Professional Legal Ethics: critical interrogations*, Oxford University Press, 2000.

⁵⁰ See for example: G. Prussia and W.L. Weis, *Experiential Learning Effects on Retention: Results from a Required MBA Course*, *Journal of College Retention Research Theory and Practice*, 5(4), 2003, 397.

⁵¹ See fn 19, 30 and 37.

copyright restrictions imposed by the publisher please feel free to copy, adopt, adapt and otherwise utilise any of all of this material. If you need further information please contact us.

Conclusion

Without wishing to be in any way self-congratulatory we were delighted at the overall outcome of the RJ course. It has tested the students' legal knowledge through their applied research. It provided an opportunity for the students to engage in an active way in conflict resolution (even if, in any particular case, matters were not necessarily conclusively resolved). It required the students to think about how RJ sits alongside and/or as an alternative to formal legal processes. Students had to function in a team setting (even if some struggled, but hopefully reflected on why). It also provided a rich source of material, particularly by reference to published research findings, on the potential impact a restorative approach to justice can have and on the value of learning by doing and reflecting on that doing.

We look forward to running the course again, maybe with a tweak or two on the way.