

Fostering “Quiet Inclusion”: Interaction and Diversity in the Australian Law Classroom

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Law schools and the legal profession in Australia have long been associated with social reproduction of the elite.¹ Scholars have been inclined to reflect on the structural arrangements that sustain this association, which form one important dimension of its persistence. However, the ways people interact with one another can also entrench privilege, by indicating that the values, attributes, and views of some people are either accepted and wanted or are unaccepted and unwanted—quietly including or excluding. This sorting also happens in law schools and in legal practice, partly because of behavior modeled in law schools.

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1. See Don S. Anderson et al., *Law and the Making of Legal Practitioners in* UNDERSTANDING LAWYERS: PERSPECTIVES ON THE LEGAL PROFESSION IN AUSTRALIA 181 (Roman Tomasic ed., 1978); JOHN GOLDRING & SUMITRA VIGNAENDRA, *THE SOCIAL PROFILE OF NEW LAW STUDENTS IN THE AUSTRALIAN CAPITAL TERRITORY, NEW SOUTH WALES AND VICTORIA* (1997); PAT O’MALLEY, *LAW, CAPITALISM AND DEMOCRACY: A SOCIOLOGY OF AUSTRALIAN LEGAL ORDER* (1983); MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996); DAVID WEISBROT, *AUSTRALIAN LAWYERS* (1990).

There is a body of literature on who and what is being taught in law schools, albeit a literature that is frustratingly dated or incomplete in the Australian context. Yet there is little scholarship on how to shape interaction in the Australian law classroom in a way that quietly includes, particularly in the face of a cohort that appears to be increasingly diverse. In this article, we address this gap in the literature by attending to student-teacher interaction, and explore strategies for creating and maintaining law classrooms that welcome, acknowledge and value diversity, and also respond to the challenges diversity may represent.

1. Goffman and the Interaction Order

In his 1982 Presidential Address to the American Sociological Association, Erving Goffman argued the "interaction order" constituted a substantive domain of activity worthy of study in its own right.² For Goffman, interaction "has a life of its own and makes demands on its own behalf. It is a little social system with its own boundary-maintaining tendencies,"³ routines and rituals, and spatial and temporal settings. Some interpersonal rituals involve supportive interchange, serving to affirm connections between people and their respective positions in a relationship; others are remedial, repairing relations that may have been compromised by the infraction of norms.⁴ The interaction order sits somewhere between the internal micro world of people's minds and the macro level of social structures. Within the interaction order, people who find that they are present in the same space draw on accepted roles and scripts whose performance is mediated through negotiation, transaction and improvisation, and understood according to context. In one of his earliest works, Goffman argued that some performances occur at front of stage where people generally present themselves in accordance with the conventional expectations of their roles;⁵ other performances occur backstage where people have more latitude to step out of character.⁶

Goffman argued that through interaction, people engage in a "quiet sorting" of others according to various attributes.⁷ This sorting might reproduce the social order on the basis of hierarchies of class, ethnicity, gender, sexuality, and age. However, it might not always do so; the nature of the weighting given by people to various attributes is concealed behind an unlimited set of possible rationalizations. Goffman offered the example of how we go through

2. Erving Goffman, *The Interaction Order: American Sociological Association, 1982 Presidential Address*, 48 AM. SOC. REV. 1, 2 (1983).

3. ERVING GOFFMAN, INTERACTION RITUAL: ESSAYS IN FACE-TO FACE BEHAVIOR 113 (1967).

4. ERVING GOFFMAN, RELATIONS IN PUBLIC: MICROSTUDIES OF THE PUBLIC ORDER (1971) [hereinafter GOFFMAN, RELATIONS IN PUBLIC].

5. ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 22-30 (1959) [hereinafter GOFFMAN, PRESENTATION OF SELF].

6. *Id.* at 112.

7. Goffman, *supra* note 2, at 8.

our lives seeking and obtaining various forms of services from others. How we are treated, by whom and in what contexts—and the degree to which this reflects our ideas of equality or procedural justice—is likely to influence how we see our place in broader society.⁸ If we see ourselves as consistently overlooked and undervalued, we begin to learn how others see us.⁹ Although this is not something that Goffman pursued in his Presidential Address, conversely, if we see ourselves as being treated fairly and with respect, we might also consider that our attributes and views are appreciated.

In this article, we argue that the law classroom and its surrounding physical and virtual spaces provide settings for quiet sorting, where inclusion or exclusion of students and ideas can be achieved explicitly or implicitly. Given long-standing concerns about formal and informal barriers to entry to and success within law schools and the legal profession in Australia, we might have expected attention to be paid to the way interactions between academics and students can help shape which students succeed as well as how and what they learn. However, we argue that there is surprisingly little literature addressing this aspect of law teaching.

At the risk of excessive generalization, three trends may have diverted attention from a microanalysis of the interaction order in legal education. First, the sociology of legal education appears to have been more interested in the macrosocial issues of structure. Second, perhaps as a result of the disciplinary background of most legal education scholars, few researchers have undertaken either qualitative or quantitative empirical research on legal education in Australia. Finally, much work with the scholarship of teaching and learning in law has rested on an often misleading dichotomy between teacher-centered and student-centered approaches to pedagogy. This has spawned a large and influential literature advocating a shift in approach from the former and toward the latter. However, by focusing on the *differences* between teacher and student, we seem to have missed the opportunity to explore the importance and complexity of *interactions* between students and teachers.¹⁰ These trends have significant consequences for teaching and learning in law schools.

Goffman focused on theorizing the interaction order, rather than gathering empirical material or crafting intervention in it.¹¹ However, understanding how microinteractions signal inclusion or exclusion might allow us to identify patterns of behavior that we might wish to encourage, challenge, disrupt, or modify. Indeed, in his analysis of Goffman, Anthony Giddens argued that deep-rooted social changes “by their very nature, involve alterations in the

8. ERVING GOFFMAN, *FORMS OF TALK* (1981).

9. *Id.*

10. Glynis Cousin, *Getting Our Students to Engage: A Review of Two Key Contributions 10 Years On*, 31 HIGHER EDUC. RES. & DEV. 15 (2012).

11. Robin Williams, *Understanding Goffman's Methods*, in ERVING GOFFMAN: EXPLORING THE INTERACTION ORDER 64 (Paul Drew & Anthony J. Wootton eds., 1988) [hereinafter GOFFMAN, INTERACTION ORDER].

character of day-to-day social practices."¹² We do not yet have the empirical basis to identify interventions with confidence.¹³ In the absence of such data, in this article, we use Goffmanesque illustrations drawn from interviews with law tutors to suggest the beginnings of strategies for shaping interactive learning in the Australian law school environment so as to encourage the promotion of diversity in the student cohort and within the legal curriculum. We hope that this initial outline, developed from a project funded by the Australian Government Office for Learning and Teaching (OLT), might encourage researchers to develop the empirical base to assess the value of such strategies.

2. Diversity in Australian Legal Education

Australian universities and law schools have legal obligations to avoid engaging in prohibited discrimination against students on the basis of (inter alia) sex and chosen gender, race, color, nationality, cultural or ethnic origin, sexual orientation and gender identity, age, marital status, and pregnancy.¹⁴ Universities also have particular obligations to accommodate special needs associated with student disability.¹⁵

As public (or, at least, publicly funded) institutions, law schools in Australia have moral obligations to accommodate, embrace, and value diversity that extend well beyond complying with legislative requirements. For the Law Council of Australia, for example, a legal profession that was "strong and fair" would be one "comprising, accommodating, encouraging and respecting a diverse range of individuals and views."¹⁶ And yet, we have struggled to create learning environments that expect, welcome, acknowledge, accommodate, and value diversity in students, and embed a range of diverse experiences and perspectives within the teaching of law. These in turn might help students develop an understanding of the diverse needs of future clients.

Diversity in the student cohort

The "typical" Australian law student of decades past could have been described as white, English-speaking, from a metropolitan area, a recent graduate from an elite private high school, studying full time in one of the eight "sandstone" research-intensive universities, and with existing links to

12. Anthony Giddens, *Goffman as a Systematic Social Theorist*, in GOFFMAN, *INTERACTION ORDER*, *supra* note 11, at 250, 279.

13. Hannah Forsyth & Annette Cairnduff, *A Scholarship of Social Inclusion in Higher Education: Why We Need It and What It Should Look Like*, 34 *HIGHER EDUC. RES. & DEV.* 219, 220-21 (2015).

14. *Age Discrimination Act 2004* (Cth) (Austl.); *Racial Discrimination Act 1975* (Cth) (Austl.); *Sex Discrimination Act 1984* (Cth) (Austl.); CHRIS RONALDS & ELIZABETH RAPER, *DISCRIMINATION LAW AND PRACTICE* (4th ed. 2012).

15. *Disability Discrimination Act 1992* (Cth) (Austl.); *Disability Standards for Education 2005* (Cth) (Austl.).

16. *Diversity and Equality Charter*, LAW COUNCIL OF AUSTRALIA (2015), http://www.lawcouncil.asn.au/lawcouncil/images/Diversity_and_Equality_Charter.pdf.

the legal profession.¹⁷ While law is still subject to legitimate public criticism for failing to open up to a broader cohort,¹⁸ this stereotype is becoming increasingly inaccurate. A rise in the number of law schools and law students is part of the picture. Only six institutions had a law school in 1960; this had increased to twelve by 1975.¹⁹ With the growth of the higher education sector in the 1990s, newer universities, attracted by a mixture of prestige and revenue, have been keen to add a law school to their activities. By 2016, Federation University was the only public university not to offer a professional degree, with three private universities and one nonuniversity provider also accredited as providers—thirty-eight degrees in total.²⁰

In recent years an agenda of widening participation has been operating in the Australian higher education sector.²¹ While there is little recent data available for law schools, students are drawn from backgrounds underrepresented in the legal profession, including Aboriginal and Torres Strait Islander (Indigenous) students, those from low socio-economic status backgrounds, and those from remote and regional areas. Law classrooms are becoming more culturally and linguistically diverse, as a result of both the large number of international students studying in Australia and increasing diversity within the Australian population.²² Many faiths are represented, as are students of different sexualities. The gender imbalance of law schools tipped in favor of women in the 1990s.²³ At the same time, the profile of the average law student

17. See John R. Braden & John A. Farrington, *Student Selection and Performance in the Faculty of Law, The University of Adelaide*, 29 AUSTL. U. REV. 25 (1986); SUSANNE OWEN ET AL., LEARNING AND TEACHING IN THE DISCIPLINE OF LAW: ACHIEVING AND SUSTAINING EXCELLENCE IN A CHANGED AND CHANGING ENVIRONMENT (2009), http://www.cald.asn.au/docs/altc_LawReport.pdf; Michael Kirby, *J L Goldring, Legal Education and a Most Unusual Occupation*, 38 AUS. BAR REV. 226, 233-40 (2014); David Weisbrot, *Recent Statistical Trends in Australian Legal Education*, 2 LEGAL EDUC. REV. 219 (1991).
18. See Michael Kirby, Justice of the High Court of Australia, Leo Cussen Justice Speech: Unmet Legal Needs in Australia: Ten Commandments For Australian Law Schools (July 17, 2015), <http://netk.net.au/MOJGeneral/MOJ3.pdf>; Angela Melville, *Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage*, 24 LEGAL EDUC. REV. 44 (2014).
19. David Weisbrot, *Recent Statistical Trends in Australian Legal Education*, 2 LEGAL EDUC. REV. 219 (1991).
20. Alex Steel, *Law Schools, Law Schools, Everywhere*, LAWSCHOOLVIBE (Nov. 3, 2015), <https://lawschoolvibe.wordpress.com/2015/11/03/law-schools-law-schools-everywhere/>.
21. COMMONWEALTH OF AUSTRALIA, REVIEW OF AUSTRALIAN HIGHER EDUCATION: FINAL REPORT (2008), http://apo.org.au/files/Resource/higher_education_review_one_document_02.pdf [hereinafter COMMONWEALTH, HIGHER EDUCATION].
22. *Education at a Glance 2014, OECD Indicators*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 349 (2014), <http://dx.doi.org/10.1787/eag-2014-en>; *Cultural Diversity in Australia, Reflecting a Nation: Stories from the 2011 Census, 2012-2013*, AUSTRALIAN BUREAU OF STATISTICS (June. 21, 2012), <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/2071.oMain+Feature932012%E2%80%932013?OpenDocument>.
23. Ozlem Susler, *Gender Equality and the Law Profession* (2012), <http://www.latrobe.edu.au/news/>

has changed from the full-time, just-out-of-high-school student of the past, with law schools seeing a growing number of more mature students who have established commitments outside of study and are working to support their education.²⁴ A variety of measures are also increasing the representation of students with disabilities in tertiary education.²⁵

Many Australian universities have introduced equity and diversity pathways that are applicable to their law degrees and a few have pathways that are specific to law. These pathways provide access to legal education to a wide range of students, including students: with an Indigenous or Torres Strait Islander background; from rural and regional areas; for whom English is not the first language; who hold or have previously held a protection, refugee, or humanitarian visa; who are from disadvantaged socio-economic circumstances; and/or who have experienced hardship or disadvantage resulting from disability, a chronic medical condition, gender, sexual orientation, or gender identity.²⁶ As law schools see their number of places increase and demand declines, it is possible that institutions that act to preserve social exclusivity and fail to cater to a diverse student body will decline in competitiveness and quality.²⁷

While some trends are slowly moving in the right direction, the starting point from which these changes have occurred hardly embraced diversity. Consequently, neither university students in general nor the law student body in Australia is representative of Australian society.²⁸ For example, students

articles/2012/opinion/gender-equality-and-the-law-profession (last visited Dec. 21, 2016).

24. Sally Varnham & Wenee Yap, *The Student Experience: The Holistic Law Student* in EXCELLENCE AND INNOVATION IN LEGAL EDUCATION 363, 363-86 (Sally Kift et al. eds., 2011) [hereinafter EXCELLENCE AND INNOVATION]; Alex Steel & Anna Huggins, *Law Student Lifestyle Pressures in Promoting Law Student and Lawyer Well-Being in Australia and Beyond* 50, 57-64 (Rachael Field et al. eds, 2016).
25. PAUL KOSHY & RICHARD SEYMOUR, STUDENT EQUITY PERFORMANCE IN AUSTRALIAN HIGHER EDUCATION: 2007 TO 2014, at 8 (2015), <https://www.ncsehc.edu.au/wp-content/uploads/2015/09/Student-Equity-Performance-in-Australian-Higher-Education-2007-to-2014.pdf>.
26. See, e.g., *Graduate Access Melbourne*, UNIVERSITY OF MELBOURNE, https://futurestudents.unimelb.edu.au/admissions/access_melbourne_and_equity_programs/graduate-access-melbourne (last visited Nov. 8, 2016); *RMIT Equity Access Schemes*, RMIT UNIVERSITY, <http://www.rmit.edu.au/study-with-us/applying-to-rmit/local-student-applications/equity-access-schemes/types-of-equity-access> (last visited Nov. 8, 2016); *Special Consideration Scheme*, UNIVERSITY OF CANBERRA, <https://www.canberra.edu.au/future-students/indigenous-future-students/special-consideration> (last visited Nov. 8, 2016); *Entry Requirements*, UNIVERSITY OF WESTERN AUSTRALIA, <http://www.law.uwa.edu.au/courses/juris-doctor-jd/juris-doctor-selection-criteria> (last visited Nov. 8, 2016).
27. See Gurney Pearsall, *The Human Side of Law School: The Case for Socializing Minority Recruitment and Retention Programs*, 64 J. LEGAL EDUC. 688 (2015). See also Anita Bernstein, *Diversity May Be Justified*, 64 HASTINGS L.J. 201 (2012).
28. See *Selected Higher Education Statistics—2015 Student Data*, DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (2015), <https://docs.education.gov.au/node/41616>;

with lower socio-economic status (SES) are underrepresented, with 2009 socio-economic data revealing that lower numbers of offers of places at law school are offered per application to those from the lowest quartile (60.9%) compared with the middle two (62.5%) or highest quartiles (67.3%).²⁹ Lower SES students face higher-than-average attrition rates and lower-than-average completion rates, though there are no data specific to law.³⁰ Indigenous people continue to be underrepresented.³¹ Rodgers-Falk has argued that “cultural disrespect, lateral violence and/or racial discrimination” are “[p]robably the biggest contributor to the high levels of attrition of [Aboriginal and Torres Strait Islander] law students within a university environment.”³²

Diversity in the legal curriculum

Australian law schools have faced repeated calls to address diversity in their curricula. Law graduates need to expect and be capable of responding appropriately to the diverse nature of the communities within which they will work and live. Recruitment of legal professionals from across the diversity of Australian society is only the beginning of this process. Various reviews have pointed to the need to introduce curriculum that is responsive to gender, Indigeneity, multiculturalism, and international context.

As long ago as 1994, the Australian Law Reform Commission recommended that law school curricula include “content on how each area of the law in substance and operation affects women and reflects their experiences.”³³ Various academic commentators have argued that law schools need to embed the experiences and perspectives of women within the teaching of law; encourage students to build critical understanding of the extent to which legal rules, institutions, and practices are premised upon stereotypical understandings of

KOSHY & SEYMOUR, *supra* note 25, at 5-14; Melville, *supra* note 18; Jill Scevak et al., *Equity Groups and Predictors of Academic Success in Higher Education*, NATIONAL CENTRE FOR STUDENT EQUITY IN HIGHER EDUCATION (Oct. 1, 2015), <https://www.ncshe.edu.au/publications/equity-groups-and-predictors-of-academic-success-in-higher-education/>.

29. NIGEL PALMER ET AL., SELECTION AND PARTICIPATION IN HIGHER EDUCATION: UNIVERSITY SELECTION IN SUPPORT OF STUDENT SUCCESS AND DIVERSITY OF PARTICIPATION 8 (2011), http://melbourne-cshe.unimelb.edu.au/__data/assets/pdf_file/0004/1490980/Selection_and_Participation_in_Higher_Education.pdf
30. COMMONWEALTH, HIGHER EDUCATION, *supra* note 21, at 19-21.
31. Stéphane Mahuteau et al., *Educational Outcomes of Young Indigenous Australians*, NATIONAL CENTRE FOR STUDENT EQUITY IN HIGHER EDUCATION 7 (2015), <https://www.ncshe.edu.au/wp-content/uploads/2015/11/Educational-Outcomes-of-Young-Indigenous-Australians-Report.pdf>.
32. PHIL RODGERS-FALK, “GROWING THE NUMBER OF ABORIGINAL AND TORRES STRAIT ISLANDER LAW GRADUATES: BARRIERS TO THE PROFESSION” 2 (2011), https://docs.education.gov.au/system/files/doc/other/rodgers-falk_2011.pdf.
33. AUSTRALIAN LAW REFORM COMMISSION, REPORT NO. 69, EQUALITY BEFORE THE LAW: WOMEN’S EQUALITY para. 8.1.1 (1994), https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC69_Pt2.pdf.

gender and gender roles; and encourage students to reflect on, identify, and (where appropriate) address their own attitudes to gender. Law schools also need to build inclusive learning environments that promote gender equality.³⁴

Calls for legal education to be more aware of and responsive to the needs of Indigenous people are of even longer standing, dating at least to the 1991 *Royal Commission into Aboriginal Deaths in Custody*.³⁵ In 2012, the *Behrendt Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* recommended that “universities continue to develop and implement a range of strategies to: improve the cultural understanding and awareness of staff, students and researchers within their institution, including the provision of cultural competency training.”³⁶ The implication for law schools is that they need to develop inclusive teaching practices and promote an improved capacity to provide justice for Indigenous people, both through Indigenous participation in the provision of legal services³⁷ and through profession-wide awareness of the needs and aspirations of Indigenous users of legal services. Students need to be equipped to grasp the wider Indigenous context of Australian law as well as Indigenous people’s experiences of the current legal system.

Finally, law academics have argued that Australian graduates must be able to take their place in a multicultural and globally connected society. For instance, the project on *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* urged that “law graduates should be educated for practice in a global, multi-jurisdictional context.”³⁸ Failure to equip students with the

34. Patricia Easteal, *Setting the Stage: The ‘Iceberg’ Jigsaw Puzzle*, in *WOMEN AND THE LAW IN AUSTRALIA* 1, 1-20 (Patricia Easteal ed., 2010); REGINA GRAYCAR & JENNY MORGAN, *THE HIDDEN GENDER OF LAW* (2d ed., 2002); Anthony C. Infanti, *Bringing Sexual Orientation and Gender Identity into the Tax Classroom*, 59 J. LEGAL EDUC. 3 (2009); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or “The Fem-Crits Go to Law School,”* 38 J. LEGAL EDUC. 61 (1988).
35. See COMMONWEALTH OF AUSTRALIA, 5 ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY NATIONAL REPORT para. 299(b) (1991), <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/NATREPV5.rtf> [hereinafter COMMONWEALTH, ROYAL COMMISSION]; Heather Douglas, *Indigenous Australians and Legal Education: Looking to the Future*, 7 LEGAL EDUC. REV. 225 (1996); REFERENCE GROUP OVERSEEING THE NATIONAL REVIEW OF EDUCATION FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES, NATIONAL REVIEW OF EDUCATION FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE: FINAL REPORT (1995), <http://vital.new.voced.edu.au/vital/access/services/Download/ngv:9793/SOURCE2>; Daniel Lavery, *The Participation of Indigenous Australians in Legal Education*, 4 LEGAL EDUC. REV. 177 (1993).
36. COMMONWEALTH OF AUSTRALIA, REVIEW OF HIGHER EDUCATION ACCESS AND OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE: FINAL REPORT 24 (2012), <https://docs.education.gov.au/system/files/doc/other/heaccessandoutcomesforaboriginalandtorresstraitislanderfinalreport.pdf> [hereinafter Commonwealth, Access and Outcomes].
37. *See id.*
38. DUNCAN BENTLEY & JOAN SQUELCH, INTERNATIONALISING THE AUSTRALIAN LAW CURRICULUM FOR ENHANCED GLOBAL LEGAL PRACTICE 67 (2012), http://curriculum.cald.asn.au/media/uploads/Internationalising_Aust_Law_Curr.pdf.

capacity to identify and respond to diversity will leave them inadequately prepared to practice law. Bill Ong Hing, for example, has noted that enhancing the lawyer-client relationship and the effectiveness of the lawyer requires an awareness of cultural diversity.³⁹

For Paul Tremblay (2002-2003), writing in the context of cultural diversity,

A culturally competent lawyer can anticipate the areas where difference is most likely to arise, and, equally importantly, the direction in which the differences are most likely to proceed. Knowing that, the lawyer can anticipate provisionally the places where her [interviewing and counseling] model's world view might not be the same as that of her culturally different client, remaining open to possible misunderstanding and the possibility of conversation about the differences, if appropriate.⁴⁰

Australian law schools (and the graduate qualities statements of many Australian universities) have adopted statements that suggest responsiveness to these calls. The broad expectations of the Australian law curriculum are articulated in the Threshold Learning Outcomes (TLOs) identified by the Australian Learning and Teaching Council's Learning and Teaching Academic Standards Project.⁴¹ The Council of Australian Law Deans endorsed the TLOs in 2010 (LLB) and 2012 (JD) and these were embedded within the CALD Standards for Australian Law Schools.⁴²

While the TLOs might be faulted for failing to deal with diversity explicitly, we might argue that recognition of diversity is implicit within each of the TLOs. So, one driver for supporting and celebrating diversity among the student cohort is its utility in opening all students' eyes to "the broader contexts in which legal issues arise"⁴³ (TLO1). By assisting students to place legal content into broader context we facilitate their ability to recognize the impact of law on various sections of society, which can enhance their growth and competence as professionals and their sense of justice.⁴⁴ An appreciation of diversity also supports students' "ability to recognise and reflect upon the

39. Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1809 (1993).

40. Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 385-86 (2002).

41. SALLY KIFT ET AL., LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT (2011), <http://www.olt.gov.au/resource-library?text=LTAS>.

42. COUNCIL OF AUSTRALIAN LAW DEANS, THE CALD STANDARDS FOR AUSTRALIAN LAW SCHOOLS § 2 (2013), <http://www.cald.asn.au/assets/lists/Resources/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013.pdf> [hereinafter CALD STANDARDS]; COUNCIL OF AUSTRALIAN LAW DEANS, JURIS DOCTOR THRESHOLD LEARNING OUTCOMES (Mar. 2012), [http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon%5b1%5d.pdf](http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon%5b1%5d.pdf).

43. KIFT ET AL., *supra* note 41, at 10.

44. ALEX STEEL, GOOD PRACTICE GUIDE (BACHELOR OF LAWS) LAW IN BROADER CONTEXTS 5 (2013), <http://lawteachnetwork.org/resources/gpg-broadercontexts.pdf>.

professional responsibilities of lawyers in promoting justice and in service to the community”⁴⁵ (TLO₂) and their capacity to reflect on, identify and address their own standpoint-specific responses to law⁴⁶ (TLO₃ and TLO₄). Each is critical if graduates are to be able to “communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences”⁴⁷ (TLO₅).

The TLOs are supplemented by the Council of Australian Law Deans’ Standards for Australian Law Schools, which incorporate the TLOs and also require that students be encouraged to be active participants in the learning process and to engage with the law in an analytical and critical way;⁴⁸ and that students “so far as is practicable” internalize the values that underpin the principles of ethical conduct, professional responsibility, and community service.⁴⁹ However, it is not entirely clear whether, and how, the interaction order of law classrooms might be changing to reflect these policy commitments.

3. Diversity and interaction

A commitment to diversity within law schools means that those who teach must be able to recognize and respond to a variety of student needs. To the extent that such assumptions were ever justified, no longer can it be assumed that students: do not have family commitments that may limit their classroom attendance; speak English as their first language; have (through an Australian secondary education) already developed basic familiarity with legal terminology and process, or have connections with the legal profession. For example, students from backgrounds traditionally underrepresented in the legal profession, including Indigenous peoples and populations from lower socio-economic backgrounds and regional areas, seldom have existing professional networks.⁵⁰ International students and those from diverse cultural and ethnic backgrounds may be even less familiar with fundamentals of Australia’s legal system than some of their domestic, Anglo-Australian counterparts, and may face linguistic and cultural challenges in their study of a legal system that remains rooted in English language and Anglo cultural traditions. Students with disabilities will confront a range of individual challenges linked to their disability and the resources available to support them at law school. Intersex, genderqueer and transgender/transsexual students face particular issues, many of which arise from the social and legal presumption of binary gender inside class as well as beyond. This is not a matter of addressing the perceived “shortcomings” of particular categories of students; it is also about ensuring

45. KIFT ET AL., *supra* note 41, at 10.

46. *Id.*

47. *Id.*

48. CALD STANDARDS, *supra* note 42, at § 2.2.2.

49. *See id.* at § 2.3.3(d).

50. Susan Armstrong & Michelle Sanson, *From Confusion to Confidence: Transitioning to Law School*, 12 QUEENSLAND U. OF TECH. L. & JUST. J. 21, 21-24 (2012).

that strategies for widening participation are based on an understanding of the social causes for their underrepresentation among graduates.⁵¹

At a broad curriculum level much has been, and is being, done to accommodate increasing student diversity in law schools,⁵² particularly through the adoption of the Universal Design to Instruction paradigm.⁵³ However, at the microlevel of the interaction order, legal education has been slow to explore how to engage with diversity.⁵⁴ Inclusive initiatives have to work against the background of a self-reinforcing cycle of exclusionary practices into which many law graduates, including law teachers, have been acculturated.⁵⁵ Consequently, many staff approach curriculum development or implementation without having experienced an inclusive curriculum. Many have been educated within a tradition that erases difference rather than welcoming it. Staff may lack the awareness, time, resources, or skills to develop appropriate pedagogy, and if they come from privileged backgrounds, may not see inclusive pedagogy as a priority.

Some of these issues may be understood in terms of cultural competency among legal academics, which might be addressed by appropriate staff development and peer support. For example, teachers may fear that highlighting diversity issues within the teaching environment (for example, by using teaching examples that raise racial issues) may cause offense and run afoul of recent calls to create “safe spaces” on campuses.⁵⁶ Similarly, there has been a collective and/or individual failure to recognize gender as an important issue in law teaching and, in some cases, law generally. As a result, staff may lack knowledge and/or skills in dealing with gender issues. If nothing else, law teachers may draw on traditional, gendered teaching styles⁵⁷ and/or the model of practice they experienced. This may appear as a failure to recognize

51. Glyn Thomas, *Closing the Policy-Practice Gap for Low-SES Students in Higher Education: The Pedagogical Challenge*, 33 HIGHER EDUC. RES. & DEV. 807, 816-18 (2014).

52. Elizabeth Stevens et al., *Equity, Diversity and Student Engagement in a Law School—A Case Study Approach*, 16 LEGAL EDUC. REV. 1 (2006). See also Melville, *supra* note 18.

53. Center for Universal Design, *The Principles of Universal Design*, NORTH CAROLINA STATE UNIVERSITY (April 1, 1997), https://www.ncsu.edu/ncsu/design/cud/about_ud/principlestext.htm.

54. See Marcelle Burns, *Towards Growing Indigenous Culturally Competent Legal Professionals in Australia*, 12 THE INT'L EDUC. J.: COMP. PERSPECTIVES 226, 226-29 (2013); Melville, *supra* note 18, at 63-66. See also Margaret Thornton, *The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy*, 8 INT'L J. LEGAL PROF. 37 (2001).

55. See COMMONWEALTH, ROYAL COMMISSION, *supra* note 35; AUSTRALIAN LAW REFORM COMMISSION, *supra* note 30.

56. Tessa Akerman, *Safe Spaces: NUS President Sinead Colee Champions Content Warnings*, THE AUSTRALIAN (Jan. 27, 2016), <http://www.theaustralian.com.au/higher-education/safe-spacesnus-president-sinead-colee-champions-content-warnings/news.story/bf898282107514bf5af7434debf649>.

57. Mary Jane Mossman, *Gender Issues in Teaching Methods: Reflections on Shifting the Paradigm*, 6 EDUC. REV. 129 (1995).

"the partiality of gendered (male) experiences masked in apparently neutral legal principles;"⁵⁸ and a lack of appreciation of the differences between and diversity among women⁵⁹ and men.⁶⁰

In the context of incorporating gendered, international, comparative, and Indigenous perspectives into teaching practices, it might be a mistake to assume all academics understand and share positive perspectives on these moves. Australian law academics have displayed a tendency toward legal ethnocentrism and a lack of interest in comparative analysis extending beyond the old Commonwealth (in particular Canada, the United Kingdom and New Zealand) and the United States.⁶¹ Given the demands of common-law-based legal curricula and Australian visa restrictions, international recruitment of staff has tended to be similarly limited. Conversely, it can be difficult for many Australian academics to develop an internationally based analysis if they have a limited understanding of other laws, cultures, and languages. There are barriers to the Indigenisation of the curriculum and the law school. There is a small number of Aboriginal and Torres Strait Islander academics with whom to collaborate, and these staff face disproportionate pressure to meet institutional demands for Indigenisation of the curriculum and support for Indigenous students.⁶²

In addition, teaching that challenges (or is perceived to challenge) contemporary political discourse or ways of understanding the world may generate student criticism. In the Australian context, while initiatives aimed at broadening "many mainstream students' understanding of Indigenous issues" may "increase levels of mutual understanding and tolerance,"⁶³ teaching that addresses cultural awareness and incorporates Indigenous perspectives may attract hostility from some students. It may also create a context in which students reveal cultural ignorance or voice opinions that others find offensive.

While there is a strong emphasis on equity and social justice in many Australian law schools, this foundation is not sufficient to ensure that

58. *See id.* at 138.

59. *See* Eastal, *supra* note 34; GRAYCAR & MORGAN, *supra* note 34; Helen Ward, "The Adequacy of Their Attention:" Gender-Bias and the Incorporation of Feminist Perspectives in the Australian Introductory Law Subject, 11 LEGAL EDUC. REV. 1 (2000).

60. *See* R. W. CONNELL, MASCULINITIES (2d ed. 2005); Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law and Gender*, 33 HARV. J.L. & GENDER 431 (2010).

61. Vai Io Lo, *Before Competition and Beyond Complacency—The Internationalisation of Legal Education in Australia*, 22 LEGAL EDUC. REV. 3, 34 (2012).

62. Christine Asmar & Susan Page, *Sharing the Load: Indigenous Cultural Competency in the Post-Bradley Era: Who Will Do the Work?*, CAMPUS REV. (Oct. 12, 2009), <http://www.campusreview.com.au/2009/10/sharing-the-load/>; COMMONWEALTH, ACCESS AND OUTCOMES, *supra* note 36 at 137-41.

63. Asmi Wood, *Law Studies and Indigenous Students' Wellbeing: Closing the (Many) Gap(s)*, 21 LEGAL EDUC. REV. 251, 270 (2011).

the challenges and opportunities of all types of student diversity are accommodated.⁶⁴ These challenges confirm that “[w]hile access is commonly thought of as being synonymous with social inclusion ... it is only the first step.”⁶⁵ Successful teaching and learning that both caters for students’ diverse needs and values the variety of student experiences and perspectives must be planned; it cannot be left to chance.

4. Attending to interaction

We are running a national project funded by the Australian Government Office for Learning and Teaching called “*Smart Casual*”: *Promoting Excellence in Sessional Teaching in Law*. The project is creating and evaluating a suite of interactive teaching development modules aimed at supporting sessional teachers in law. The online modules cover student engagement; legal problem-solving; feedback; legal ethics and professional responsibility; reading law; critical thinking; well-being; communication and collaboration; and Indigenous peoples and the law.

In recognition that critical and contextual approaches to understanding law are essential to preparing students to deal with challenges distinctive to law and the administration of justice, we are integrating a series of fundamental strategic themes into the suite of modules: diversity; internationalization; Indigenous inclusion; digital literacy; and gender. This integration acknowledges and responds to the support needed for sessional staff to face the challenge of incorporating what may be perceived as difficult and unfamiliar organizing concepts into their teaching, assessment, support and feedback as they develop students’ capacity to work in a changing environment.

In undertaking the *Smart Casual* project, we have worked extensively with sessional teachers in creating, trialing and evaluating the modules and embedding the strategic themes. These sessional teachers represent a wide range of teaching experience and personal, educational, and professional backgrounds and are drawn from across Australia. By sharing their teaching experiences and needs, these teachers have provided rich and diverse insights into teaching practices that might include or exclude a particular student or group of students, and that we believe lend themselves to analysis drawing on Goffman’s concept of the interaction order.

Raf Vanderstraeten, a Belgian sociologist, has applied Goffman’s work to education in the school sector, but some of his observations are relevant to universities. He contended that education depends on “face-to-face interactions in which the participants mutually perceive each other.”⁶⁶

64. Sophie Riley et al., *Student Diversity: Widening Participation by Engaging Culturally Diverse Non-Law Students in Law*, in EXCELLENCE AND INNOVATION, *supra* note 24, at 337, 337-362.

65. Jennifer M. Gidley et al., *From Access to Success: An Integrated Approach to Quality Higher Education Informed by Social Inclusion Theory and Practice*, 20 HIGHER EDUC. POL’Y 123, 124 (2010).

66. Raf Vanderstraeten, *The School Class as an Interaction Order*, 22 BRIT. J. SOC. EDUC. 267, 267 (2001).

Interactions between teachers and students sit within an asymmetrical relationship, recur as a result of formal class timetables and informal signaling of acceptable and desirable communication, and take place within designated physical and digital “spaces.” Interactions involve work for each party. It is the teacher’s responsibility to create a context within which students may learn. Using Vanderstraeten’s application of Goffman’s work and drawing on the existing practices of sessional teachers, our own experience and practices, the *Smart Casual* resources and learning and teaching scholarship, we suggest useful prompts and strategies to encourage student-teacher interaction that is quietly inclusive.

i. Creating learning spaces

While Goffman was concerned primarily with face-to-face interaction, we can now engage in teaching without physical colocation.⁶⁷ Learning spaces extend well beyond the physical classroom and are not simply an extension of or replacement for it. Physical and digital classrooms are complemented by other spaces within which interactions occur: the library; law school student offices; common rooms; academic offices; and outdoor spaces. Palmer defines “space” in this context as “the physical arrangement and feeling of the room, the conceptual framework that I build around the topic my students and I are exploring, the emotional ethos I hope to facilitate, and the ground rules that will guide our inquiry.”⁶⁸ In Goffman’s terms, space has its own complexities of framing, with peer-group pressure, hierarchies, rules, and processes implicitly or explicitly signaling inclusion and exclusion of people and their attributes, values, and ideas. Palmer’s extended conception of space makes this particularly evident.

Whether interacting with students in a face-to-face or digital environment, formally or informally, we can shape our spaces to create a safe, welcoming and friendly environment in which students feel free to express their experiences, views, and perspectives.

Physical access

Dark stressed the need to “convey the message that every student has access to the classroom”⁶⁹ and the message that, in important respects, each will be treated equally. We suggest assessing the degree to which physical or digital spaces within which teachers interact with students are fit for purpose and safe: Are they easily accessible for all students, including those with a disability? Do they have facilities for using visual aids and multimedia? Are seats arranged

67. Richard Jenkins, *The 21st-Century Interaction Order*, in *THE CONTEMPORARY GOFFMAN* 257 (Michael H. Jacobsen ed., 2010).
68. PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER’S LIFE* 73 (1st ed. 1998).
69. Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 *WILLAMETTE L. REV.* 541, 565 (1996).

inclusively so that all participants can see one another? Are virtual spaces designed to allow access to people with disabilities, slow bandwidth or limited technologies?⁷⁰ Does the space include artwork, pamphlets, posters, digital files/links, or other cues that might signal welcome (such as Indigenous flags, advertisements for queer events, publicity about cultural diversity events on campus, or university policies designed to support diversity, access and inclusion)? If these resources are present but subjected to graffiti or offensive comments, is the offensive material promptly removed, replaced, or responded to?

Knowing one another

There is safety in familiarity. In *Best Practices for Legal Education*, Roy Stuckey and his colleagues encouraged law teachers to provide opportunities for teachers and students to get to know one another.⁷¹ In Goffman's language, teachers can show themselves to be "in play," revealing themselves to be "ready for social interaction in the situation."⁷² This can occur through rituals of "supportive interchange."⁷³ Finding out who people are, where they come from, what their experiences have been and how they learn best might be achieved through casual conversation in the first five minutes of class⁷⁴ or before or after class, online, or by using a simple icebreaker in the first class.⁷⁵ Jenny, for example, considered education to be a journey shared by students and teachers:

Jenny: *It's really just about getting to know the students and walking with them.*

70. SHERYL BURGSTAHLER, EQUAL ACCESS: UNIVERSAL DESIGN OF INSTRUCTION, A CHECKLIST FOR INCLUSIVE TEACHING (2016), <http://www.washington.edu/doi/sites/default/files/atoms/files/Equal-Access-Universal-Design-of-Instruction.pdf>; DENISE WOOD & GERRY BLOUSTIEN, FACILITATING FLEXIBLE, ENQUIRY-BASED EXPERIENTIAL LEARNING THROUGH AN ACCESSIBLE, THREE-DIMENSIONAL VIRTUAL LEARNING ENVIRONMENT (3DVLE) 63 (2008), http://www.olt.gov.au/system/files/resources/CG8_73_Wood_Report_2013.pdf.
71. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 84-85 (2007); MARCIA DEVLIN ET AL., EFFECTIVE TEACHING AND SUPPORT OF STUDENTS FROM LOW SOCIOECONOMIC STATUS BACKGROUNDS: RESOURCES FOR AUSTRALIAN HIGHER EDUCATION (2012), <http://www.lowses.edu.au/assets/ALTC%20LSES%20Final%20Report%202012.pdf>.
72. ERVING GOFFMAN, BEHAVIOR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANISATION OF GATHERINGS 195 (1963) [hereinafter GOFFMAN, ORGANISATION OF GATHERINGS].
73. GOFFMAN, RELATIONS IN PUBLIC, *supra* note 4, at 64.
74. James M. Lang, *Small Changes in Teaching: The First 5 Minutes of Class*, CHRON. OF HIGHER EDUC. (Jan. 11, 2016), <http://www.chronicle.com/article/Small-Changes-in-Teaching-The/234869>.
75. SOPHIE ARKOUDIS ET AL., FINDING COMMON GROUND: ENHANCING INTERACTION BETWEEN DOMESTIC AND INTERNATIONAL STUDENTS 13 (2010), http://melbourne-cshe.unimelb.edu.au/__data/assets/pdf_file/0009/1861938/FindingCommonGround_web.pdf.

It is important, however, not to isolate or embarrass students by highlighting their “differentness” or special needs.⁷⁶ Very few students appreciate being singled out for any reason, let alone being reduced to their minority status or disability. Mary Heath uses a “welcome postcard” in her first class inviting students to complete a few simple sentences: *my name is ...; I am looking forward to ...; I am worried about ...; I would like you to know ... about me; I would like to know ... about you.* Completion of the postcard is brief and voluntary, and gives the opportunity to disclose information privately.

Hess suggested that “[p]erhaps the single most important thing a teacher can do to create a positive climate in the classroom is to learn students’ names.”⁷⁷ Knowing and addressing students by name removes the anonymity of the collective and helps each student feel valued. We, and the sessional teachers we work with, use a range of strategies to learn students’ names including table name cards, photographs, seating plans, and memory association.⁷⁸ Many of these strategies also help students learn one another’s names and provide opportunities for them to start conversations with one another. Teachers can take the initiative to ensure names do not become the occasion for interactions that communicate exclusion, through the replaying of jokes and mispronunciations some students will have encountered repeatedly, for example.

Similarly, teachers should endeavor to let students know more about themselves to avoid asymmetrical relationships. Beginning a class, as Fiona does, with a brief work biography and one or two personal facts such as a favorite hobby not only helps build rapport but can also model how students can disclose something about themselves without feeling their private lives have been intruded into.

Fiona: I tell them about myself, my professional background and some personal information that might help them understand me as a person.

Being present

While creating a safe learning environment is the first step toward making all students feel welcome and significant, being present in that environment reinforces that message by being “alive to the gathering ... oriented in it, and ready and open for any interaction it may bring.”⁷⁹ We can convey our enthusiasm and engagement both deliberately and incidentally: explain our interest in the topic; address students by name; smile; make eye contact; listen

76. Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 126 (2005).

77. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 88 (2002).

78. Molly Townes O’Brien et al., *The Power of Naming: The Multifaceted Value of Learning Students’ Names*, 14 QUT L. REV. 114, 123-27 (2014).

79. GOFFMAN, ORGANISATION OF GATHERINGS, *supra* note 73, at 195.

attentively; use arm and hand gestures and different facial expressions; walk about the room. A good measure of well-judged humor in the law classroom creates a comfortable and social atmosphere and “can carry an awkward or difficult discussion a long way.”⁸⁰ In these ways, we can show students that we are delighted to be teaching law and, more important, delighted to be teaching *them* law.

Informal interaction

Some researchers have noted that student-teacher contact inside and outside the classroom can be “the most important factor in student motivation and involvement.”⁸¹ So, we might engage with students socially outside the formalized space of the classroom (“backstage” in Goffman’s language)⁸² by attending student functions if invited or, like Justin, taking a few minutes to chat casually to students out of class, online or in the few spare minutes before class starts. The coffee shop, corridor and even the car park offer opportunities for informal interaction.

Justin: For me the learning and teaching experience is more than just that one class ... as a sessional teacher you’re ... the bridge between [lecturers and students]. Our job is not just that 45 minutes, it is outside that, whether it is staying after a class a little bit or ... putting up my email

ii. Addressing the asymmetrical relationship

As Vanderstraeten noted, typically the student-teacher relationship is not one between equals.⁸³ While most law schools have moved beyond teacher-centered and Socratic teaching styles, our interactions still draw on practices of knowledge transfer from teacher to students, assessment of students by teachers and gatekeeping by law schools and the legal profession. We can flatten hierarchical relationships, and signal and model inclusion, by creating an environment of mutual respect in which students feel free to speak, express, and explore their views and respond to others without fear of intimidation, humiliation, or denigration.⁸⁴ While Goffman largely chose to avoid analyzing asymmetrical relationships,⁸⁵ he did explore how relationships are built and maintained. Within this work, he identified the role of “supportive interchanges” with “access rituals” of greeting and farewell and demonstrations

80. Dark, *supra* note 69, at 572.

81. Susan B. Apel, *Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371, 371 (1999).

82. GOFFMAN, PRESENTATION OF SELF, *supra* note 5.

83. Vanderstraeten, *supra* note 66, at 274.

84. Alex Steel et al., *Valuable Learning, Unwelcome Assessment: What LLB and JD Students Really Think About Group Work*, 36 SYD. L. REV. 291, 295-97 (2014).

85. See Anthony Giddens, *Goffman as a Systematic Social Theorist*, in ERVING GOFFMAN: EXPLORING THE INTERACTION ORDER 250 (Paul Drew & Anthony J. Wootton eds., 1988).

of reciprocity that serve to recognize and in some cases deepen interpersonal relationships.⁸⁶ He also distinguished between information that is given in any social exchange and that which is "given off," perhaps unintentionally, through the manner of talk, body language, and use of space and which may serve to structure the interaction.⁸⁷ It is not difficult to see how teachers' awareness of not only the giving but also the giving off of information might make it easier to signal inclusion.

Modeling respect

We ought to treat students with respect and model respectful behaviors in and out of class, giving students the time and resources to prepare for classes and adequate warning of opportunities and expectations to participate in class,⁸⁸ and by using language that does not imply hierarchies of attributes according to, for example, class, gender, sexuality, religion, race, or ethnicity.⁸⁹ Julian and Yannis both spoke of the need to couple an awareness of diversity with a demonstration of respect:

Julian: [Adopt an] attitude that you are going to treat everyone equally to start with. Teaching with diversity is just another level of awareness—of where diversity potentially lies and that it is able to express itself . . . be cognizant that some students are reluctant to engage—for cultural or other reasons—give students opportunities to approach you outside of the class.

Yannis: My philosophy of mutual respect means we should never isolate or embarrass . . . students in tutes.

Expectations

A powerful signal to students that we respect their time and efforts and are interested in their success can be given simply by clearly and regularly articulating our expectations,⁹⁰ both in relation to students' formal and informal in-class or online performance and conduct as well as in out-of-class assessments. We also ought to provide students with guidance on how they might meet those expectations and how staff in the subject are available to support their success.

Negotiating class norms with our students can produce a mutually agreed-upon framework for identifying and regulating acceptable student and teacher conduct, providing guidance and structure for robust and inclusive class

86. GOFFMAN, *RELATIONS IN PUBLIC*, *supra* note 4, at 62-94.

87. See Adam Kendon, *Goffman's Approach to Face-to-Face Interaction* in Erving Goffman: *EXPLORING THE INTERACTION ORDER* 14, 21-24 (Paul Drew & Anthony Wooton eds., 1988).

88. SOPHIE ARKOUDIS, *TEACHING INTERNATIONAL STUDENTS: STRATEGIES TO ENHANCE LEARNING II* (2006), http://melbourne-cshe.unimelb.edu.au/___data/assets/pdf_file/0009/1761507/international.pdf.

89. Hing, *supra* note 39, at 109-11.

90. DEVLIN ET AL., *supra* note 71, at 26-28.

discussion.⁹¹ As Jenny noted, it also offers students a sense of ownership of the classroom:

Jenny: It needs to be done subtly and deliberately at the same time. Create a situation where students figure there is room for everyone in this room, and this classroom belongs to everyone—it is theirs.

Students often include respect when proposing class norms. Drawing out student perceptions of the meaning and performance of respect and their expectations of us as teachers will often provide windows into their experiences of disrespect in class. As a result, these discussions form a rich resource for establishing inclusive class interactions.

Calling out, debriefing and re-integrating

A common message from the sessional teachers with whom we work, as well as the learning and teaching literature, is the importance of “calling out” instances when boundaries have been crossed and class norms flouted. Jenny, Sam and Liam described instances in which they had to engage in “remedial interchanges”⁹² to re-establish social norms in relation to sexism, racism, and heterosexism. These occasions can sometimes be forestalled. In cases that might reinforce stereotypes, teachers can offer clear information in passing: for example, by making it clear that there is no evidence for a general association between mental illness and violence. However, this will not always be possible, and improvisation may be needed.

Jenny: Explicit racism, you just jump on it, you don't mess around with that, in the same way that you would jump on explicit sexism. It can be done in a respectful way. The beauty about being a teacher is it is your classroom and you're running it ... there is something quite powerful in the rest of the room seeing someone just saying “hang on, that's not on.” That sends a massive message ... there's a boundary. It is for you to manage.

Sam: Draw their attention to [gender stereotyping]. For some students it may cause some discomfort but for others it opens their eyes as to why they shouldn't be making these stereotypes/assumptions.

Liam: I think you have to call [gender stereotyping] out as being inappropriate, to start with. I don't think you can just let it go. I think again you want everyone in the class to be fully aware that it is an open environment in which everyone is welcome to share their views but not an environment where people can be sexist or homophobic. Say it is inappropriate without abusing the speaker and quickly bring it back to the conversation. It is more important that the whole class feels more open in terms of the environment we have than the one student being upset that they have been called out for what is an inappropriate comment in the circumstances.

91. ARKOUDIS ET AL., *supra* note 75, at 9-14; Mary Heath, *Encounters with the Volcano: Strategies for Emotional Management in Teaching the Law of Rape*, 39 *LAW TCHR.* 129, 135-36 (2005).

92. GOFFMAN, *RELATIONS IN PUBLIC*, *supra* note 4, at 95-197.

Transgressions of norms may need to be identified, but they should be followed by exploration of the issue and reintegration of the student concerned. So, Hing recommended debriefing the class: “Be tactful and explain why a comment is offensive or insensitive. Let students know that racist, sexist, and other types of discriminatory remarks are unacceptable in class.”⁹³ But then, as Dark explained “[a] constructive response is still necessary... otherwise the [bigoted] remarks will remain a part of the classroom environment, distorting and undermining the professor’s ability to have open, respectful, and penetrating discussion of diversity issues.”⁹⁴ Remedial interchanges modeling respectful interaction, including respectful intervention in discriminatory or offensive speech and interaction, can be framed in terms of the norms of the classroom—as both Hing and Dark do the skills and professional responsibilities of lawyering or the ethics of citizenship in general.

Diversity consciousness

Our style of speech, choice of language and our responses to students who cannot understand what we are saying can signal who should or should not be present in the class. As teachers, we ought to consider how colloquialisms, slang, jargon, culturally specific humor and references or technical language⁹⁵ might be understood by a culturally and linguistically diverse student body, some of whom did not grow up reading the canon of English literature, playing Australian Rules Football, or watching 1990s Australian television. We should also recognize that students may have different abilities to assimilate information aurally or visually as a result of vision or hearing impairment or learning disabilities. We might address some of these issues by speaking clearly and at an appropriate pace while facing the class.⁹⁶ In other cases, choice of examples will give off subtle cues that can quietly include in their contemplation a diversity of religions, family types, levels of wealth, and so on.

Learning styles

A large body of research reveals how students, including law students, learn in different ways.⁹⁷ As Paula Lustbader recognized, “no one teaching

93. Hing, *supra* note 39, at 1833.

94. Dark, *supra* note 69, at 569.

95. ARKOUDIS, *supra* note 88, at 9-10; BURGSTHALER, *supra* note 71, at 4.

96. BURGSTHALER, *supra* note 70, at 6.

97. See generally Aida M. Alaka, *Learning Styles: What Difference Do Differences Make?* 5 CHARLESTON L. REV. 133 (2011); Eric A. DeGross, *Tomorrow’s Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles*, 36 S. ILL. U. L.J. 251 (2012); Michael Grimley, *Learning from Multimedia Materials: The Relative Impact of Individual Differences*, 27 EDUC. PSYCHOL. 465 (2007); Pinar Nuhoğlu Kibar & Buket Akkoyunlu, *University Students’ Visual Cognitive Styles with Respect to Majors and Years*, 12 EURASIA J. OF MATHEMATICS, SCI. & TECH. EDUC. 321 (2016); John R. Kirby et al., *Verbal and Visual Learning Styles*, 13 CONTEMP. EDUC. PSYCHOL. 169 (1988); Richard Riding & Eugene Sadler-Smith, *Type of Instructional Material, Cognitive Style and Learning Performance*, 18 EDUC. STUD. 323 (1991); Patrick R. Thomas &

method is effective for all students”⁹⁸ and we therefore have to use a range of delivery methods to accommodate the breadth of learning styles that may be found in our classroom.⁹⁹ We might therefore make material accessible by providing visual aids or writing difficult concepts, main ideas, technical words, and flowcharts on a whiteboard.¹⁰⁰ Online delivery now allows for a variety of modes to be made readily available. Variety may assist students to follow difficult and complex oral discussion, link their aural, oral, and written vocabularies, and may also support the learning of students for whom visual learning is most effective.

iii. Shaping communication

Diversity in the student body, and in our own backgrounds, can provide rich opportunities to communicate and validate different views and perspectives in ways that include all participants in the discourse. This can be achieved by design as well as by taking advantage of opportunities as they arise.

Diversity in the learning community

Sessional teachers involved in the *Smart Casual* project emphasize the value in highlighting their own backgrounds and the fact that they may not fit within students’ stereotypes about legal academics or law graduates as a way of expanding student perceptions of the discipline and profession. For example, a teacher’s accent or appearance may allow the normalization of cultural difference or disability and signal inclusion of a variety of perspectives. Teachers who are the first in their family at university can acknowledge and model pride in their backgrounds, while sending a message of quiet inclusion to first-in-family students in their own classes.

Fiona: Sometimes my accent can be a bit of a problem ... it’s not generally an issue and I usually make a bit of a joke about it. I can also use the fact that I come from somewhere else to give them a different perspective and draw examples from my own upbringing—I was brought up in Northern Ireland in the ’70s and ’80s. My unique experiences may be interesting for students to hear about. If there is an international student in the class I can empathize with them.

Justin: My diversity comes from my cultural background: I’m Eurasian. It also comes from my educational background. I studied the commerce, accounting sort of side but I ended up working in human rights, international law, and [students] find that interesting.

Jacinta B. McKay, *Cognitive Styles and Instructional Design in University Learning*, 20 *LEARNING AND INDIVIDUAL DIFFERENCES* 197 (2010).

98. Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 *J. LEGAL EDUC.* 448, 455 (1999).
99. Jolly-Ryan, *supra* note 76, STUCKEY ET AL., *supra* note 71, DEVLIN ET AL., *supra* note 71.
100. BURGSTAHLER, *supra* note 70, Douglas K. Rush & Suzanne J. Schmitz, *Universal Instructional Design: Engaging the Whole Class*, 19 *WIDENER L.J.* 183, 199 (2009).

Jenny: *Be explicit about how you don't fit within the stereotype.*

Student diversity can also be used as a resource to enrich the learning experience. For example, international students from civil law jurisdictions might offer interesting, comparative insight into the advantages and disadvantages of common law.

Yannis: *I've allowed the students from the international background to try and enrich the tutorial by giving examples of their system. So, for example, if the student is from a civil-law background they can give examples of how it compares to our common-law system. Or how an adversarial system compares with an inquisitorial system. I use the international student's perspective to try and enrich the tutorial.*

Liam: *It's really good to engage [exchange students], not to stereotype them or anything, in a discussion about the efficacy of different legal systems The experiences they bring from other countries are really important. I openly recognize and accept especially social and cultural diversity in students. It gives students the idea that we should be a lot more appreciat[iv]e, understanding, and welcoming of other cultures and the benefits they bring.*

Students with knowledge of Sharia, Halakhah, or Christian canon law through their family connections, experiences as tourists, or prior residence in another jurisdiction might volunteer their (diverse) perceptions in conversations about recognition of religious law. This can happen naturally if students perceive their contributions will be valued.

Alya: *Teaching about intersectionality ... is really important, and there is a real opportunity for that diversity to come through in your students and for them to be part of that learning and teaching for other students— ... giving them an opportunity to express their thoughts is an opportunity for that diversity to come out organically.*

On the other hand, singling students out or seeking involuntary contributions that expose difference may be humiliating and signal exclusion. It can place students in the position of feeling that they must represent or justify a minority position. It can indicate teacher or student perceptions of the student that the student may not share, or of which they may not have been aware. We should not assume all students with a particular demographic background share the same attitudes or experiences or that students with a particular appearance identify with a particular racial, cultural, religious, or ethnic background, or that all disabilities are visible.¹⁰¹ Far from valuing and validating diversity, assuming a universal experience may entrench stereotypes. For example, “international students” may have little in common besides the fact that they are administratively identified as other than domestic.

101. Jolly-Ryan, *supra* note 76; THUSHARI WELIKALA & CHRIS WATKINS, IMPROVING INTERCULTURAL LEARNING EXPERIENCES IN HIGHER EDUCATION: RESPONDING TO CULTURAL SCRIPTS FOR LEARNING (2008), <http://chriswatkins.net/wp-content/uploads/2015/07/Welikala-o8-Improving-Intercultural-Learning-in-HE.pdf>.

Group work may enhance intercultural understanding and peer interaction among students from diverse cultural backgrounds.¹⁰² Law students' attitudes about group work are encouragingly positive.¹⁰³ However, the results of numerous empirical studies suggest that in the United States and the United Kingdom white male students tend to dominate class discussion and teamwork.¹⁰⁴ So, while it is beneficial to encourage teamwork among a diverse cohort, we may need to ensure inclusion of, and interaction among, all students by first allocating groups mindful of gender, age, ability and religious, ethnic, and cultural background, and second, where appropriate, by assigning specific roles, such as group leader, scribe, and reporter.¹⁰⁵ As John and Fiona recognized, regular encouragement to ensure that everyone has the opportunity to participate irrespective of gender and other social characteristics, and that those who routinely leap into leadership or reporting roles have the chance to share their skills by encouraging others rather than by being obliged to take these roles repeatedly, can also make a big difference to the tone of classes.

John: ... *[I]t is important to formally create a mechanism by which [all] students are incorporated into the collective ... you have to recognize in using work groups you have to socially engineer them ... so that you have a mix of students, you don't have a clique*

Fiona: *I have tried a number of strategies to address [gender inequality in the classroom]. For example, I will give the whiteboard marker to one of the females [in a group] in the hope that she will take the lead, which sometimes works*

We need to help students communicate effectively, identifying and using acceptable and desirable genres, modes, and voices in order to engage with one another, with us, and with other audiences, formally and informally, inside and outside the classroom.¹⁰⁶ So while students may need to learn to craft an appropriate email to use, they may need a safe avenue to communicate their concerns, needs, and/or preferences and to offer anonymous feedback throughout the semester.¹⁰⁷ Like Liam, we can encourage and support their efforts by providing routine avenues for feedback (3-2-1 evaluations, student polls, feedback opportunities in online quizzes that are otherwise about

102. ARKOUNDIS ET AL., *supra* note 75; Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T. M. COOLEY L. REV. 201, 202-07 (1999).

103. Alex Steel et al., *supra* note 84.

104. Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998). See also SUE GRACE & PHIL GRAVESTOCK, INCLUSION AND DIVERSITY - MEETING THE NEEDS OF ALL STUDENTS 164-65 (2009).

105. ARKOUNDIS, *supra* note 88.

106. KIFT ET AL., *supra* note 41.

107. Rush & Schmitz, *supra* note 100, at 207-08.

content) and by inviting feedback and explaining how it might appropriately be provided in person and by other means.¹⁰⁸

Liam: Implementing feedback is an important thing I have [introduced] an anonymous online feedback system. Any time during the semester ... [students] can go on and send me a comment—and I tell them I will respond in some way to every single comment and take it on board and make sure that I improve my teaching.

Communicating inclusion through teaching

While we want to create hospitable and safe learning spaces, spaces ought not to be so safe that difficult or challenging issues are evaded or trivialized. We might purposefully expose students to diversity and diverse perspectives by using materials, activities, and examples that respect and signal inclusion and approval of difference. The materials, resources, and narratives that we use ought to involve a range of gender, sexuality, and cultural, ethnic, and religious backgrounds, while avoiding stereotyping.¹⁰⁹ Liam, for example, drew on a broad spectrum of role models including LGBTIQ (Lesbian, gay, bisexual, transgender/transsexual, intersex, and/or queer) judges, politicians, or community leaders in class discussions. He also drew on naturally occurring segues during discussions of violence against women as an opportunity to raise the prevalence of violence against transsexual women that quietly signaled recognition of LGBTIQ interests:

Liam: Bring up people in [the LGBTIQ community] that they can use as role models—not in an obvious way. Subtly working them into conversation and also subtly working in your acceptance of anyone who is LGBTIQ could be a good way to do it It is quite a delicate balancing act between not talking about it and talking too much about it.

Violence against women traditionally targeted internationally LGBTIQ women, specifically transwomen. It came up in a presentation, and I used that to ask questions about student views. Most 18-year-olds are accepting of LGBTIQ, so it was not overly risky. It resulted in a really good welcoming discussion for anyone who was trans or LGBTIQ.

We must have, or gain through suitable training, the cultural competence and confidence¹¹⁰ to take advantage of such incidental opportunities in class to introduce discussions about contentious and challenging issues.

V. Conclusion

The attributes of the “typical” Australian law student may be changing. At the same time, there is increasing recognition of diversity within Australian

108. See D. Royce Sadler, *Beyond Feedback: Developing Student Capability in Complex Appraisal*, 35 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 535 (2010).

109. See Hing, *supra* note 39, at 1830–33.

110. Lucas Lixinski et al., Draft Paper, *Comparative Perspectives on Teaching Foreign Students in Law: Pedagogical, Substantive, Logistical and Conceptual Challenges* (under review).

law schools that may have been previously present but was unacknowledged. Certainly, Australian law schools are developing and refining their entry requirements, pathways, and programs to cultivate and nurture an increasingly diverse student cohort. Given projected declines in student demand and the continuing increase in the supply of student places, many institutions have little choice but to cater to a broader student demographic if they wish their law programs to be viable. However, simply providing access to a legal education, while a necessary first step, is not in itself sufficient to create a learning environment inclusive of diversity.

There is a long history of social exclusion in the Australian legal profession. Some of the barriers to inclusion may have been overt; however, we follow Goffman's lead in arguing that the social reproduction of lawyers was often achieved through quiet sorting of those entering and seeking to rise through the profession. We argue that in the current climate of gradual transformation, the law classroom is a critical and appropriate setting for fostering "quiet inclusion"—a place where a broad range of students may come to recognize that they belong in law school and could belong in the legal profession. In the face of little scholarship in this regard, we draw on interviews with law tutors—with whom students spend most of their time in class—and our own experiences and practices to suggest strategies for how we as teachers might shape our interactions with students in the learning spaces in which we operate, the relationships we cultivate, and the communication we foster. We argue that by signaling quietly to students that a rich array of values, attributes, and views is welcomed, encouraged, and valued within our law schools, there is a greater probability that at least one of the barriers to increased diversity within the legal profession might be lowered.