

Online Simulations and Inclusivity – Troubling “Authenticity” in Online Practice-Based Legal Education

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Thank you very much for having me. Just by way of background, one of the things I've been working on for the last 12 months in the new PLT program here at University of New South Wales is using online simulations, together with face-to-face simulations. So, I will be focusing on online simulations in this discussion. The importance of face to face simulations is not dismissed. But I think candidates have particular issues working with online stimulations and I would like to talk about that. I should add that nearly everything I know about simulations, in legal education comes from Paul Maharg's work. And you'll probably recognize some of the themes that he has spoken about already. What I'm showing you here is a working screen, from a piece of software called Smart Sparrow.

These are working screens from a platform called Smart Sparrow, and, in essence, they are like slides, they are not that dynamic, but the student can respond to text or the visuals in this... So it could branch off in different directions depending on the student response. One of the things we are experimenting with is teaching skills using this platform. And we've come across a few problems with that. One of the things that you'll notice is the representation of this person. This is a client. He's a self-prescribing client. And he gets angry and upset with the student. And we're looking for responses from the student. Now, they've given some forced decisions to make. None of the responses are absolutely ideal of what we're inviting students to go to think about rationalize these kinds of responses. One of the things that we've struggled a bit within the representations that are used in the simulation. So this fellow is a middle aged, “Anglo” looking person and we asked the team that was developing this material to be a bit more inclusive, and to be a bit more diverse in those representations. But interestingly... they did have a challenge because they want to be able to use public domain imagery and so on, and most of the imagery they were able to access in relation to legal professional type situations, tend to be focused on a particular type of person. And so,

that means we spend a lot of extra time and money developing new material. I just want you to hold on to that thought as I go through subsequent parts of this presentation. So, these are the main talking points I want to talk about and in relation to what our simulations and things like authenticity, inclusivity and some ways of dealing with those things. So I will speak to each of these points quickly as we go along.

Now, earlier I referred to Mcharg and Owen's work, but of course the technology has changed a lot since 2007. But they make some pretty important points about simulations and legal education in that paper. They talk about the definition of simulations, and how that can be a bit loose. One of the types of simulations that I focus on, fall into the category of experiential simulations. So, some of the advantages of experiential simulations are things like active learning for people-focused transactions, and active learning that reflects practice, holistic process, learning process, and ethical learning simulations. And these are probably simpler to do in face to face situations and a little bit more challenging to do in online simulations. But it's still very useful. One of the things that we look for the simulations we're doing at the moment, is to think about the old school idea of a lawyer and a junior lawyer sitting opposite at the desk, and the senior lawyer hands the junior lawyer work and says "just go away on that, bring it back to me, I'll talk to you about it" and that's one of the simulations we are doing for our course - to get them to do something and then we simulate the conversation. After that, the formative process they go on to doing a more demanding task. And that's, that is assessed by a human being. One of the things we can do is to scaffold these simulations, so they're increasingly difficult. So you've got to learn new things. But the other part of the learning process is remembering by doing iterations, with subsequent iterations the student is more likely to remember what they learned later on. And we know from Ebbinghaus's Learning Curve, if you have about five iterations, they are much more likely to remember quite a lot of detail, to heighten the learning experience.

The other thing about simulations is that you can change the learning conditions - you can change the demands on the student in the situation constructively confront the students in difficult situations. You can invite them to reflect on what they're doing. And input text, reflective text as part of the simulation. One of the things we can do with Smart Sparrow, is we can pull this data into analytics. And so we can actually analyze the work of a cohort of students and their responses to these different situations. And then come back to them and give feedback. We can examine whether a student is really engaging in a simulation and say, "well, you know, you need to work a bit harder with this, here are some tips" Another advantage

with simulations is that you could retake them several times. Part of what goes on in some simulations is it's the socialization process. By confronting students with different situations, we can give them a sense of how to practice social relationships with clients and other lawyers and the court and so on. And that leads to an understanding of professionalization. They can also think in novel situations, so that once they've done some of these simulations for a familiar situation, when we see a transfer and apply their understanding to a new situation which is not always readily recognized. And so, with that they engage in "bricolage" to experiment with the materials and the means of executing the application of their legal competency skills.

Something I hinted at earlier is "authenticity" - the profession, and PLT students and everybody are very concerned that we do authentic learning, particularly in post-academic learning and assessment in professional skills. So, practitioners in practice will have particular views about "authentic" practices, and it's worth challenging them and comparing practices because part of what PLT is intended to do is not just prepare students for practice but to improve practice. How we improve practice if we don't critically examine practice. So part of we can do it in simulations is ask. Is there such a thing as best practice? Is this practice something that is actually well-adapted to a particular circumstance? Or should we prefer "good operating practices" rather than thinking of "best" practice? And again, as part of examining authenticity and looking at subject matter experts' inputs into the simulations, we can examine this subjective or espoused position about what is "authentic", and compare those to objective measures. We can sort of critically examine whether what is espoused is actually what occurs in practice. I would mention this, one of the things that seems to happen in this area is that people write about authentic professional practice and learning experiences. The way they describe authenticity is often by reference to the past rather than the focus on the present and future needs. So it's a kind of an idealisation that happens, often reflects a nineteenth century conceptualization of a lawyer. And this has been reproduced for this notion of authenticity. What I am saying simply is that when we represent authenticity in simulations, we need to challenge what that is, and we need to include diversity in our approach to that as well.

The other thing that happens here in a large organization like the University of New South Wales and I'm sure in most of institutions in Australia and in countries around the world, is an increased move towards policies for diversity and inclusivity. In education, higher education and in legal education. So, while we

teach people and practices in online simulation, these need to be considered within those guidelines and those policies. So, when we give consideration to sufficient representation and diversity, we need to include notions about flexible approaches, practices or work generally, whether they are inclusive of the spectrum of gender, culture, and LGBTIQ orientations and the notion of accessibility, particularly for those with a disability. This becomes quite challenging and quite difficult with doing online simulations. Because we need to construct things that are inclusive, and we also need to accommodate for those needs. Part of the challenge with that is to have different ways for the students to acquire information, knowledge, and to acquire skills and to provide them with different opportunities to apply knowledge and skill, and the way they can express themselves in order to be given formative and summative assessment. We need to be sure that we engage the interest and that there's equal access to learning with whatever tools are used. Now this can be quite challenging when doing online simulation, because not all technologies will meet accessibility requirements, in which case you have to redesign with diversity in mind. This takes time it's quite technical and can be difficult to achieve. So what follows on from that is if we are making changes in order to be inclusive and accessible at the same time while we ensure that there's parity and equity of treatment across the student cohort when we use those kinds of technologies. Supplemented by making adjustments for students. One of the questions always worth asking is if we're making adjustment as a temporary one anyway, should we just apply that to everyone as a matter of course. One of the things that can be a bit challenging is that the people who are teaching, mentoring and so on, they want some autonomy in their teaching practices and their assessment practices. We try to use these technologies to have a qualitative fully consistent approach and afford parity and equity to everyone. So there's a balance between humans and systems when it comes to teaching practices and assessment practices.

The other thing I want to pull out here is that, is that after you use an online simulation for a while and you collected the data the students put in, you're in a position to start building artificial intelligence interactions. You need sufficient quantity of data to be able to do that. But the other thing that needs to be considered is the qualitative aspects of that data. Now, if we sort of go off track and miss early warnings about representations and our approaches to inclusivity and accessibility, then that data might not be good. So we have to make sure when we collect data that the learning experience is doing the job it's supposed to do if we are working to use intelligent machine learning as a way of uplifting online simulation. I think we need to watch that space but we're already seeing a lot of media reports around artificial intelligence going a bit rogue. And we need to learn from that. This sort of leads to the manufacture of online

simulations and there's a lot of moving parts. Well, I've certainly worked with this in the last four months, and none of those things happen quickly. One of the biggest issues I've found in adopting online simulations is the way it integrates into existing institutional systems. So just little things like enrollments, or anything like grading reports, some, all of those things have to be integrated with the system. And what I found is that the organisation as a whole when it uses a single approach to these systems, can be very resistant to any change. So, for example, we wanted to use a competency-based grading system because we are a competency-based course, it's taken nearly 14 months to go through the various processes to get this developed. So, there need to be serious discussions about how to integrate that approach with the platform they are using. Because the other thing is that we've got to be able to maintain the currency of the content and the systems need to be reasonably robust. And of course that leads to scalability. Finally, one of the things that can get lost in all of this is attending to learning and teaching considerations. The way people learn and apply information and processes, processes such as heuristics and the ways they embody application of their learning in performances. There is a taxonomy of objectives to consider. So we don't simply want reproduction, or recall of information and knowledge, we need them to use higher level cognitive processes, to problem solve, and to make decisions. We also need to see metacognition, in which they manage their own learning. All of those things need to be designed in from the outset. The other thing, it is important not to lose the social dimensions of learning, the relationships that occur between a cohort of learners between peer to peer and peer to mentor – there needs to be space for that. When use this kind of automated online simulation in legal education. All of those things are quite challenging to implement and take a lot of planning. So my suggestion based on my experience of the last few months, is to spend plenty of time working this out before you begin. And that concludes my presentation.