

The value of analogue educational tools in a digital educational environment

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ABSTRACT

There is a powerful rhetoric in all aspects of tertiary education today in favour of the adoption of, and increased role for, digital platforms and virtual learning environments in the design of course curricula. We are told that these tools will have a transformative effect and will lead to a blended learning experience. This paper argues that these platforms may not be the panacea suggested, and may in fact lead to a conflict of pedagogical values between local vocational, or Shulman, values and the wider pedagogical values behind the design of the platform or VLE. Using as a case study an alternative, analogue, supplementary educational platform used in the Cyberlaw class at the London School of Economics in 2013/14, the author argues that pedagogy, and indeed andragogy, must drive curriculum design not the availability of technology platforms or their adoption at institutional level.

Keywords: Legal Education; Pedagogy; Andragogy; Blended Learning; Digital Platforms; Course Design.

INTRODUCTION: PEDAGOGY, VLES AND TLES

The value of digital educational tools such as educational platforms (e.g. Blackboard and Moodle), MOOCs (Massive Open Online Courses), VLEs (Virtual Learning Environments) and TLEs (Transactional Learning Environments) in legal education are not in doubt. Professor Paul Maharg, one of the UK's pioneers of the use of VLEs and gaming in the study and teaching of legal skills, has an unbroken record of research in this area going back over more than ten years which clearly shows the benefits that may be reaped.¹ The benefits of digital educational tools in teaching Generation Y (or Millennials) who have grown up surrounded by digital technology are plentiful. Bernier & Greene for instance point out that technology in the classroom facilitates "a broader capacity for the student to access methods of complementing their learning style to the teacher's teaching style"² and in addition note that VLEs can be "constructed to affect the exposure of the students to work experiences and environments which would not normally be possible in the real world of the law student."³ This last point is of course one area where Maharg established his reputation. The development of his Ardcalloch TLE for use by students at the Glasgow Graduate School of Law (GGSL) is probably the best-known case study of this type of digital legal education tool.⁴ The story of the original Ardcalloch is told fully in Maharg & Owen's 2007 paper *Simulations, learning and the metaverse: changing cultures in legal education*.⁵ This paper describes the development of the TLE environment, which began as a simple web platform built by Maharg and others at the GGSL using ColdFusion, SharePoint and Visual Basic, before becoming a much more complex build following a successful grant application in 2005. This led to Ardcalloch ver.2.0, based upon a platform called SIMPLE (SIMulated Professional LEarning). Maharg then takes up the story of this development in his later book chapter *Simulation: a pedagogy emerging from the shadows*.⁶ Here Maharg completes the Ardcalloch story by taking us through the difficult birth of Ardcalloch 2.0 which involved a two-year complete redesign of the software to provide "a toolset with which academics could construct complex simulations, and a platform upon which they could run the simulation with students."⁷ The final result of all this effort was the excellent, although apparently no longer supported, Simshare project⁸ an Open Education Resources (OER) web platform for the development of simulation resources.

¹ There is an extensive body of literature produced and edited by Professor Maharg. A beginner may wish to start by reading Part 3 of his book *Transforming Legal Education* (Ashgate Publishing, Aldershot, 2007); his contribution (with Sara de Freitas) "Digital Games and Learning: Modelling learning experiences in the digital age" in *Digital Games and Learning*, eds Maharg & de Freitas (Bloomsbury, London, 2011); his chapter "Simulation: a pedagogy emerging from the shadows" in *Educating the Digital Lawyer*, eds Goodenough & Lauritsen (LexisNexis New Providence, NJ, 2012) or his early work such as his chapter (with Abdul Paliwala) "Negotiating the Learning Process with Electronic Resources" in *Effective Learning and Teaching in Law*, eds Burridge, et al. (London, Kogan Page, 2002).

² B.L. Bernier & F.D. Greene "Law School Reset - Pedagogy, Andragogy & Second Life" in Goodenough & Lauritsen *Educating the Digital Lawyer*, above n.1 at 527.

³ *ibid*, 528.

⁴ The Ardcalloch page may be accessed at:

<http://www.ardcalloch.ggs.l.strath.ac.uk/introduction/index.htm>.

⁵ 2007(1) *Journal of information, Law and Technology*:

http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2007_1/maharg_owen/

⁶ Above n.1.

⁷ *ibid*, 404.

⁸ J. Priddle et al, *Simshare Final Report*, May 2010. Available from:

<http://78.158.56.101/archive/law/files/downloads/558/1091.147db4fd.SimshareFinalReportprintedversion.pdf>

Why did Maharg and colleagues spend so much time building the Ardcalloch TLE? Educators have hobbies as much as the next person and some may dismiss Ardcalloch as either a hobby activity, or as a petri dish that allowed Maharg to study his theories of game based education and the use of simulation in the teaching and study of law. There is no doubt Maharg did extract a lot of value from his studies of the Ardcalloch TLE as his list of publications demonstrates,⁹ but to suggest that Ardcalloch was simply an experimental resource is to ignore the clear pedagogy employed by Maharg. As he explains in *Simulations, learning and the metaverse: changing cultures in legal education* there were six guiding principles for transactional education at the root of both versions of Ardcalloch. These were (1) Transactional learning as active learning: in transactional learning students are involved in activities within legal actions, rather than standing back from the actions and merely learning about them (as the Socratic method reinforces); (2) Learning to do legal transactions: students take part in the transaction, thus they learn about the transaction itself; (3) Reflection: the ability to rise above detail, and see all of (and thus reflect upon) a transaction; (4) Collaborative learning: the opportunity to break down the isolation and alienation of what might be regarded as isolated or cellular learning; (5) Holistic process learning: giving professional studies students a more holistic understanding of legal process and legal procedure as distinct from the “chunking” process often found in undergraduate teaching; and (6) Ethical and professional learning: the dynamic practice of ethical learning.

Ardcalloch was designed around these six foundational values; a set of principles which Maharg notes, “have become guiding principles for our practice.”¹⁰ This is good pedagogical practice; in essence Maharg designed Ardcalloch to, through a digitally mediated virtual environment, fulfil Professor Lee Shulman’s “signature pedagogies of the legal profession”. Shulman has made extensive study of the distinctive pedagogies of a number of professional educational programmes from medicine and engineering to psychiatry and law. In so doing he has identified signature pedagogies suited to the different vocations students are being prepared to enter. His study of law is found in several of his publications but none explain it more clearly than his 2005 paper *Signature Pedagogies in the Professions*.¹¹ Here Shulman notes: “a signature pedagogy has three dimensions. First, it has a *surface structure*, which consists of concrete, operational acts of teaching and learning, of showing and demonstrating, of questioning and answering, of interacting and withholding, of approaching and withdrawing. [It] also has a *deep structure*, a set of assumptions about how best to impart a certain body of knowledge and know-how. And it has an *implicit structure*, a moral dimension that comprises a set of beliefs about professional attitudes, values, and dispositions.”¹²

In legal education Shulman sees the application of these principles in the mostly Socratic pedagogy found in US law schools. As Shulman notes:

⁹ See e.g. Simulation: a pedagogy emerging from the shadows, above n.1; Simulations, learning and the metaverse: changing cultures in legal education, above n.5; “Virtual communities on the web: transactional learning and teaching”, in *Aan het werk met ICT in het academisch onderwijs*, ed Vedder (Nijmegen: Wolf Legal Publishers, 2004); “Cyberdam and SIMPLE: a study in divergent developments and convergent aims” in *Learning in a Virtual World: Reflections on the Cyberdam Research and Development Project*, eds Warmelink, & Mayer (Nijmegen, Wolf Publishers, 2009) (with Emma Nicol).

¹⁰ Simulations, learning and the metaverse: changing cultures in legal education, above n.5 at [15].

¹¹ L. Shulman, Signature Pedagogies in the Professions, 134(3) *Daedalus* 52 (2005).

¹² *ibid*, 54-55 (emphasis in the original).

This signature pedagogy's surface structure entails a set of dialogues that are entirely under the control of an authoritative teacher; nearly all exchanges go through the teacher who controls the pace and usually drives the questions back to the same student a number of times. The discussion centres on the law, as embodied in a set of texts ranging from judicial opinions that serve as precedents, to contracts, testimonies, settlements, and regulations; in the legal principles that organize and are exemplified by the texts; and in the expectation that students know the law and are capable of engaging in intensive verbal duels with the teacher as they wrestle to discern the facts of the case and the principle of interpretation.¹³

Here we see clearly that the employment of the Socratic method in the teaching of law is no historical artefact. The skills taught in this method including, self-discipline, self-reflection, criticism, interpretation and contextualisation are extremely valuable to students entering the legal profession, and related professions, to hone the skills required for both inductive and deductive reasoning, principally the skills applicable to the deductive analysis of legal principles and to apply the results to instant cases. Shulman goes on, "the deep structure of the pedagogy rests on the assertion that what is really being taught is the theory of the law and how to think like a lawyer, the subject matter is not black-letter law, as, for example, in British law schools, but the process of analytic reasoning characteristic of legal thinking."¹⁴ Aside from the clear implication that the traditional UK model of legal education is outdated, a fact that has long been acknowledged by a number of UK legal education theorists,¹⁵ Shulman here demonstrates that, as highlighted, the pedagogy of North American law schools is as much about the skills one needs to practice as a lawyer as they are about learning the academic subject of the law. Finally Shulman turns his attention to implicit structures: "the implicit structure of case dialogue pedagogy has several features. We observed several interactions in which students questioned where a particular legal judgement was fair to the parties, in addition to being legally correct. The instructor generally responded that they were there to learn the law not to learn what was fair – which was another matter entirely. This distinction between legal reasoning and moral judgement emerged from the pedagogy as a tacit principle. Similarly, the often brutal nature of the exchanges between instructor and students imparted in rather stark terms a sense of what legal encounters entail."¹⁶ This provides a different but equally valuable set of transferable skills for the lawyer; personal detachment, self-confidence and stolidity in the face of criticism.

Returning briefly to Maharg & Owen's six guiding principles for TLE we can see symmetry between these and Schulman's signature legal pedagogy. Like Schulman, Maharg and Owen's principles are designed to equip students with the skills needed to enter the profession and the Ardcalloch TLE is designed to as closely as possible, mirror the vocational experiences of a new solicitor working in Scotland. Transactional legal education may thus be seen as an operationalization of signature legal pedagogy with a

¹³ *ibid*, 55.

¹⁴ *ibid*, 55.

¹⁵ See e.g. F. Cownie, "Alternative Values in Legal Education", 6(2) *Legal Ethics* 159 (2003); R. Collier, "We're All Socio-Legal Now - Legal Education, Scholarship and the Global Knowledge Economy - Reflections on the UK Experience", 26 *Sydney Law Review* 503 (2004); F. Cownie, "Exploring Values in Legal Education" [2011] 2 *Web Journal of Current Legal Issues*: <http://www.bailii.org/uk/other/journals/WebJCLI/2011/issue2/cownie2.html>.

¹⁶ Shulman, above n.11, 55.

different focus. While Socratic pedagogy, as used in North American law schools, instils in students the skillset needed to become an effective practicing lawyer (and does not as Maharg and Owen suggest merely teach students about legal actions from a distance) the transactional pedagogy focuses on the narrower vocational skills of the modern lawyer – how to transact, collaborate and learn processes. By examining these two approaches side by side we develop a fuller picture of the rounded pedagogical model that best prepares law students for life as a legal practitioner. To be a lawyer requires both an interpersonal and a vocational skillset. The Socratic pedagogy instils the necessary interpersonal skills: self-discipline, self-reflection, criticism, interpretation, contextualisation, personal detachment, self-confidence and stolidity in the face of criticism. This though does not form a complete lawyer. In addition to these interpersonal skills the necessary vocational skills require to be developed. These are transactional skills such as collaboration, drafting, negotiation, legal process skills and more mundane skills found in the Ardcalloch model such as time management and planning. A wholly rounded legal educational training relies on both skillsets being taught. Once you recognise this, a fuller picture of the complete pedagogy for legal skills training emerges which contextualises TLE. The Ardcalloch model was developed for students at the Glasgow Graduate School of Law. This operated the vocational programme, the Diploma in Legal Practice (now the Diploma in Professional Legal Practice), a one-year postgraduate Diploma course required for entry into the Scottish legal profession. The Diploma takes students who already have been instilled (one hopes) with the necessary interpersonal skills as part of their undergraduate LLB degree and complements these with advanced professional transactional skills. Ardcalloch was therefore ideally designed for its function; a role often fulfilled in North American law school through vocational clinic work and editorial positions on student law reviews.

What we see emerging is a complete pedagogy for legal training, a mixture of interpersonal and vocational skills taught by a variety of instructional techniques. Interpersonal skills are usually taught through traditional classroom pedagogy. The use of techniques such as Socratic instruction reinforces these skills. A good law degree programme will not be simply a “black letter” experience, although as Duncan Kennedy notes a badly designed programme may fall precisely into this trap: “the modern law school seems intellectually unpretentious, barren of theoretical ambition or practical vision of what social life might be. The trade school mentality, the endless attention to trees at the expense of forests, the alternating grimness and chumminess of focus on the limited task at hand... The actual intellectual content of the law seems to consist of learning rules, what they are and why they have to be the way they are, while rooting for the occasional judge who seems willing to make them marginally more humane.”¹⁷ Hopefully since 1982 when Kennedy wrote this most legal education in the UK and North America has improved and today a good legal education will mix the interpersonal and vocational at all levels with a tilt towards one or other depending upon the programme in question, thus the Diploma in Professional Legal Practice (or its English equivalent the Legal Practice Course) is tilted toward the vocational/transactional skills while an undergraduate LLB is tilted towards the interpersonal. Whichever programme one examines though there is not exclusivity in favour of one or other. Extracurricular and clinical programmes used in LLB courses develop the vocational and transactional skills alongside interpersonal skills. At Strathclyde University (where Paul Maharg worked while developing the Ardcalloch model) the LLB develops vocational and transactional skills though a number of routes open to undergraduates, including the option of a full clinical LLB degree available to

¹⁷ D. Kennedy, ‘Legal Education and the Reproduction of Hierarchy’ 32 *Journal of Legal Education* 591 (1982) at 591, 594.

students who join the law clinic. For those wanting a more traditional LLB experience with some vocational aspects, they may choose to supplement their degree programme from a number of extracurricular activities including volunteering at Strathclyde University's award winning law clinic or mediation clinic, roles within the student law review or through the mooting society. The Ardcalloch TLE may be seen as part of this framework: a vocational skills training tool similar to vocational programmes such as clinical programmes, mooting or negotiation workshops. In fact as someone who underwent the Diploma in Legal Practice in 1994/95 the author recognises much of the transactional legal educational programme found in Ardcalloch: the exercise of negotiation workshops in personal injury case studies; the drafting of conveyancing documents; the creation and then winding up of imaginary companies; and more such as drafting civil court pleas, delivering criminal pleas in mitigation as well as mock trials were all part of the curriculum of the postgraduate Diploma in Legal Practice. Thus it was well-established analogue practice to use experiential simulations, "simulations, often collaborative, based upon case studies or scenarios, which include role-play and activity, in an authentic environment that in some way or other re-constructs aspects of real-life tasks"¹⁸ to train students for the next stage of their legal career. In essence, and not to belittle the achievement of Ardcalloch which was extraordinary, what was achieved at GGSL through the Ardcalloch model was the integration and digitisation of simulations already implanted into the curriculum. Rather than a piecemeal programme of simulation exercises embarked upon through a number of modules, and with no overarching narrative, Ardcalloch created a single narrative and virtual environment for those simulation exercises. It is argued that in effect the success of Ardcalloch was the learning resource itself not the principles of transactional education for the transactional educational principles were already in place through analogue, classroom-based, simulations already employed. This is the first thesis argued in this paper: that digitisation is rarely of itself transformative of the educational experience if there is already good underlying pedagogy, or andragogy, in curriculum design. That is not to say that curricula cannot be improved or that the careful application of digital educational tools such as VLEs, TLEs or educational platforms alone cannot improve the student experience merely to highlight they are mere tools of the teacher that if used well (as with Ardcalloch) can produce an improvement in student experience.¹⁹

TOOLS: DIGITAL AND ANALOGUE

The disruptive effects of digital technology have been discussed extensively in the literature and it is clear that, as with all aspects of modern life, digital technology has the capacity to alter instructor delivery methods both in the classroom and of supplementary materials, as well as the communications dynamic between instructor and class members.²⁰ The contributions of digital platforms, MOOCs, VLEs and TLEs should not

¹⁸ Maharg and Owen, above n.5; P. Maharg, "Authenticity in Learning: Transactional Learning in Virtual Communities." (2006). Available from:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2432596.

¹⁹ See D.R. Garrison & H. Kanuka, "Blended learning: Uncovering its transformative potential in higher education", 7 *The Internet and Higher Education* 95 (2004); R. Lasso, "From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students", 43 *Santa Clara Law Review* 1 (2002), 47-52. Available at:

<http://digitalcommons.law.scu.edu/lawreview/vol43/iss1/1>.

²⁰ See e.g. G. Conole *et al*, "Disruptive technologies", 'pedagogical innovation': What's new? Findings from an in-depth study of students' use and perception of technology", 50 *Computers and Education* 511 (2008); B. Somekh, "Taking the Sociological Imagination to School: An Analysis of the

be underestimated. As higher education passed through a transitional phase, both in terms of delivery of content and in terms of an expanded and more heterogeneous student body, delivered through processes such as widening participation, teachers face new and difficult challenges.

As Hicks, Reid, & George note there are demands for universities to “provide for a larger and more diverse cross-section of the population, to cater for emerging patterns on educational involvement which facilitate lifelong learning and to include technology-based practices in the curriculum.”²¹ This growth in demand, increase in heterogeneity of the student body and drive for universities to remain relevant in the modern world has driven the adoption of digital tools as a core part of the learning experience. This is a process that Garrison & Kanuka labels “blended learning”.²² They describe blended learning as “both simple and complex. At its simplest, blended learning is the thoughtful integration of classroom face-to-face learning experiences with online learning experiences. There is considerable intuitive appeal to the concept of integrating the strengths of synchronous (face-to-face) and asynchronous (text-based Internet) learning activities. At the same time, there is considerable complexity in its implementation with the challenge of virtually limitless design possibilities and applicability to so many contexts.”²³ As can be seen the core of this concept is a mix of traditional and modern techniques, or for the purposes of this paper, analogue and digital. Blended learning is therefore not the use of technology platforms to deliver education as with MOOCs or virtual distance learning, nor it is merely the delivery of traditional lectures and classes supplemented by digital tool such as PowerPoint or Prezi. Blended learning is taking the best of both and, by careful application, developing an enhanced experience for students.

For each teacher and each class the optimum balance of traditional delivery and digital delivery will be different, but Garrison & Kanuka give us a roadmap of the beneficial advantages of each. Digital tools offer interactivity in an asynchronous environment: this “facilitate[s] a simultaneous independent and collaborative learning experience. That is, learners can be independent of space and time – yet together.”²⁴ In addition, digital tools will emphasise and reinforce the student’s reading and writing skills: this is valuable for “[u]nder certain circumstances, writing can be a highly effective form of communication that encourages reflection and precision of expression.”²⁵ Garrison & Cleveland-Innes warn of the dangers of over-reliance on interactions carried out over digital platforms.²⁶ They emphasise the value of instructor-student interaction in the digital environment finding that “teaching presence in the form of facilitation is crucial in the success of online learning... ‘instructor-to-student interaction was the stronger of the two interaction measures [student-student the other] in terms of predicting effectiveness for both types of delivery.’ The primary reason is that instructors are more concerned with fulfilling interaction needs.”²⁷ The role of the instructor thus

(Lack of) Impact of Information and Communication Technologies on Education Systems”, 13(2) *Technology, Pedagogy and Education* 163 (2004); M. Sharples, “Disruptive Devices: mobile technology for conversational learning”, 12 *International Journal of Continuing Engineering Education and Lifelong Learning* 504 (2003).

²¹ M. Hicks, I. Reid, & R. George, “Enhancing on-line teaching: Designing responsive learning environments”, 6(2) *The International Journal for Academic Development* (2001) 143, 143.

²² Garrison & Kanuka, above n.19, 96.

²³ *ibid.*

²⁴ *ibid.*, 97.

²⁵ *ibid.*

²⁶ D.R. Garrison & M. Cleveland-Innes, “Facilitating Cognitive Presence in Online Learning: Interaction Is Not Enough”, 19(3) *The American Journal of Distance Education* 133 (2005).

²⁷ *ibid.*, 136. Quoting Hay *et al.*, “Interaction and virtual learning”, 13 *Strategic Change* 193 (2004).

remains central to the action of learning. There is a key distinction between dialogue and learning, which Garrison & Cleveland-Innes pick up on: “interaction is not equivalent to critical discourse or sufficient for sustaining a community of inquiry.”²⁸ Left undirected there is a risk that discourse leads only to surface learning: the deep learning one hopes to instil from a course of higher education must come from directed discourse: “higher-order learning emerges in a community of inquiry.”²⁹ To achieve this, students must have time free from distraction and with the direction of instructors for “contextual factors such as workload and time constraints, type of learning evaluation, the opportunity for metacognition, the shift of learning management to the students themselves, and instructor explanation, enthusiasm, and empathy have all been indicated in the development of deep learning.”³⁰ To achieve this one can use digital tools but the quality of student experience is likely to be more limited by any number of factors such as connection speeds, environmental distractions and a feeling of separation from the instructor and fellow students. Much better, and this is the message of blended learning, to pair digital tools, which allow asynchronous interactivity, with traditional classroom teaching which fills in these blanks. As Garrison & Kanuka note this provides the stabilizing and cohesive functions that are perhaps missing from digital interaction.³¹

BLENDING LEARNING IN ACTION

Any good university teacher today will use traditional classroom-based education supplemented by digital platforms. In this paper I will be using as a case-study students enrolled in the LLM option in Cyberlaw at the London School of Economics. This is a model of how I imagine many instructors teach Masters level courses in the UK. The programme is of considerable size; in fact by single year student numbers it is larger than the LSE’s (and many) LLB programmes. In 2013/14 it attracted over 360 students choosing from a menu of over ninety half-unit modules of which Cyberlaw is one. The programme, and course, attracts students from all corners of the globe. In 2013/14 of fifty-five students who took the course 19 were European (including Russia) with 4 of these being from the British Isles including Eire, 9 North American, 8 were South East Asian (including China), 8 were South American or Caribbean, 4 were African, 3 from the Indian subcontinent, 2 Australasian and 2 from the Middle East. The only continent not represented was Antarctica. The LSE LLM programme thus represents about as diverse a student body as you would find anywhere. They are equally diverse in terms of skills and life experiences. Some students come straight from an LLB or JD degree (or equivalent) while others come from practice having spent usually between 2-5 years in a post qualification seat. In addition this particular group is slightly more diverse in skills and experiences than most other LSE LLM courses in that we welcome students from the MSc Media and Communications Regulation and the Master of Public Administration programmes. These tend to be non-legally trained students with a background in communications. The class is taught by traditional Socratic instruction by mid-size seminar groups (maximum group size 30 students). Due to the diverse experience, education and cultural background and familiarity with English Language instruction and Western Socratic method found within the group the class is taught an accordance with blended learning techniques. In addition to weekly seminars students are supported through a Moodle page that includes a “capture” of each seminar allowing for

²⁸ *ibid.*

²⁹ *ibid.*, 137.

³⁰ *ibid.*, 138.

³¹ Garrison & Kanuka, above n.19, 97.

later revision, reflection and asynchronous learning. In addition group work is used with groups, where possible, being commixed to ensure that cultural and language hegemonies are disturbed. Interestingly although Moodle has a native discussion tool it has been discovered that the rigidity of the nested discussion system fails to foster student discourse, even with instructor participation. Instead given that it provides a point of shared cultural reference and experience for most students a closed Facebook group is used for discursive activities. Here students post news stories of interest to the group, pose and answer questions, interact with instructors, and giving an added value not available in Moodle or Blackboard can interact with class alums who now work in the profession but who have retained membership of the group. This is a very simple model which blends virtual platforms, in this case Moodle, Echo360 and Facebook with class instruction and discursive to produce a blended experience.³² This is probably a pretty standard model for many UK Masters Level courses (absent the Facebook group), a mix of standard Socratic classroom instruction with digital resources, perhaps seminar capture and an online environment such as Moodle or Blackboard which allows for student interaction, self-testing and reflection. In many cases these digital platforms have simply been bolted on to a traditional classroom based course of instruction, leading to students experiencing poorly designed, digitally enhanced classroom courses. Worse, as evidenced by the experience of LSE Cyberlaw students, the most commonly used tools, usually Blackboard or Moodle, may fail to provide the correct support for a positive student experience and lack the correct pedagogical design needed for a true blended educational offering.³³ Not everyone has the time or money to build from the ground up a digital platform like Ardcalloch.

Herein is the problem with digital educational platforms and tools. If you want your course or programme to be genuinely transformative, a course of instruction which fully employs blended learning, then you must, as Paul Maharg did with Ardcalloch, put the pedagogy (or andragogy) first. Instead what seems to occur with depressing frequency in law schools across the UK (and probably further afield) is that instructors, usually following some institutional instruction or guide, integrate VLE platforms like Moodle, Blackboard and Echo360 quite mindlessly into their course offerings. Instead of using old-fashioned reading lists digital readings are provided. Instead of seeing students in office hours an online drop-in session is organised and instead of distributing handouts PowerPoint slides are uploaded. There is no consideration of whether they are making the correct educational use of the platform in question. The question of whether, say Moodle's pedagogy accords with theirs, is never addressed. Worse still as most academics have to make use of an institutionally pre-selected VLE platforms they are forced to bend their pedagogy to fit the platform's pedagogy (or allow the two to conflict). This is that well-known problem of technological determinism.

³² It is arguable that this represents an enhanced experience rather than blended. An enhanced classroom uses tools like Echo360 and Moodle to enhance the standard educational experience through asynchronous delivery and digitisation of a standard model course option. Blended education "represents a fundamental reconceptualization and reorganization of the teaching and learning dynamic, starting with various specific contextual needs and contingencies." [Garrison & Kanuka, above n.19, 97]. As this course has been designed since inception to use digital tools for critical discourse and analysis, and for group work and group discourse and as all formative assessment is carried out through digital platforms I argue this is a blended not enhanced course.

³³ The design and development of Moodle is guided by a "social constructionist pedagogy". Students are empowered to construct new knowledge as they interact with their environments and to construct knowledge for one another, collaboratively creating a small culture of shared artefacts with shared meanings. [<https://docs.moodle.org/27/en/Philosophy>]. However as we have seen, left undirected there is a risk that discourse leads only to surface learning. Often Moodle is seen as a simple digital add-on to existing courses, this often means the pedagogy of Moodle and the pre-existing pedagogy of the course design fail to compliment each other or even conflict with one another.

TECHNOLOGICAL DETERMINISM

Technological determinism in its simplest form is the argument that technology shapes society.³⁴ The theory is not new, nor in any way exclusive to the digital telecommunications world. In 1922 William Ogburn was one of the first advocates of the “impact theory” the theory of technology impacting (and thus shaping) society, in much the same way that a billiard ball hits another, thereby pushing the other in motion.³⁵ More recently, and in particular following the development of modern telecommunications media, we have seen the development of a school of thought on technological determinism in communications media and culture. Most famously Marshall McLuhan stated, “the medium is the message” in his 1967 book of the same name.³⁶ This is the extreme of the hard deterministic stance where technologies take on the mantle of message themselves. McLuhan’s branch of determinism sees little scope for autonomy from technology. As one of his followers John Culkin famously declared “we shape our tools and thereafter they shape us.”³⁷ Theories of technological determinism have become more sophisticated over time. Now most scholars talk of hard and soft determinism. McLuhan is at the leading edge of hard determinism. This holds that “agency (the power to effect change) is imputed to technology itself, or to some intrinsic attributes; thus the advance of technology leads to a situation of inescapable necessity. In the hard determinist’s view of the future, we will have technologized our ways to the point where, for better or worse, our technologies permit few alternatives to their inherent dictates.”³⁸ At the soft end of the spectrum human autonomy is reasserted: “soft determinism is related to the philosophical notion of compatibilism that holds out the prospect of free will in a deterministic universe (i.e., a universe where every event is causally related to past events). Compatibilism accepts that human choice is constrained by the fact that everything outside the mind (the natural environment, parental, and peer influences, etc.) and everything inside the mind (genetics) constrains individual decision-making. Yet compatibilism suggests we can still exert free will as long as we do not act out of compulsion by another person.”³⁹ Hard determinism seems difficult to support unless one believes that the constraint of technology is such that individualism and free will is so constrained as to render one subject to the technology that frames our society. Nevertheless there remain strong advocates of this movement.⁴⁰

Whichever flavour of determinism the reader wishes to ascribe to the effect on traditional pedagogy of digital platforms and VLEs is clearly deterministic. As Castells attempts to tease a middle ground between soft and hard determinism (an approach which probably reflects the truest reflection of our relationship with technology) he places people and their artifacts in a mutually bound relationship. He believes that you cannot move a technology or the conception of a technology from the network of relations which bind it. Equally you cannot remove the relationship humans have with

³⁴ See V. Mayer-Schönberger. “Demystifying Lessig”, (2008) *Wisconsin Law Review* 713, 737.

³⁵ W.F. Ogburn, *Social Change with Respect to Culture and Original Nature* (B.W. Huebsch, New York, 1922).

³⁶ M. McLuhan & Q. Flore, *The Medium is the Message* (Harmondsworth, Penguin Books, 1967).

³⁷ J. Culkin “Each culture develops its own sense ratio to meet the demands of its environment.” in *McLuhan: Hot and Cool*, ed G. Stearn (New American Library, New York, 1968), 60.

³⁸ L. Marx & M.R. Smith, “Introduction” in *Does Technology Drive History?: The Dilemma of Technological Determinism*, eds M.R. Smith & L. Marx (MIT Press, Cambridge Mass., 1994), xii.

³⁹ A.J. Cockfield, “Individual Autonomy, Law, and Technology: Should Soft Determinism Guide Legal Analysis?” 30(1) *Bulletin of Science, Technology & Society* 4, 6.

⁴⁰ D. Pereboom, *Living without free will* (Cambridge, CUP, 2001).

technology from the network. Thus both humanity and technology are bound by these relationships.⁴¹ In this way neither drives the other instead both are entwined.⁴² The use of “off the peg” VLEs for university education is deterministic. It drives all pedagogy towards the inbuilt pedagogy of the platform or VLE creating a hegemonistic pedagogical approach. This is extremely undesirable for, as demonstrated by Shulman, different forms of professional education (and indeed different academic disciplines) have unique signature pedagogies.⁴³ To use the same platform to design and deliver a course in advanced legal skills and a course in advanced biochemistry or complex mathematics is as ridiculous as suggesting all professions from Doctors to Fireman by way of Lawyers and Sanitation Engineers wear the same clothes to work. We design bespoke clothing for each profession and we have developed bespoke pedagogy for each unique academic discipline. Why do we continue to pedal the false belief that all can use the same digital tools and platforms in programme design and delivery?

RECLAIMING PEDAGOGY/ANDRAGOGY

It is proposed that traditional analogue platforms and systems can offer the instructor greater flexibility on curriculum design and allow for Shulman values to be emphasised. To test this hypothesis an extracurricular programme designed around analogue tools was instituted for students taking the option in Cyberlaw on the LLM programme at the LSE in the 2013/14 academic year. The programme was a simple book club centred on three texts, which would introduce themes, and contexts, which would be developed and explored in formal classes. The book club was designed to meet two distinctive demands. The first was to provide a community building exercise. As already noted, the Cyberlaw class is heterogeneous in terms of geographical spread and cultural background but also in terms of knowledge and experience. The book club assignments, and meetings, were designed as a shared cultural experience for the group. If they had little else in common they could discuss the texts and as the texts selected were ones which commonly students may have read in school or recreationally as teenagers, George Orwell’s *1984*,⁴⁴ Aldous Huxley’s *Brave New World*⁴⁵ and Franz Kafka’s *The Trial*,⁴⁶ they would allow the class to further unearth cultural commonalities from their secondary education experience which otherwise may remain undiscovered. I assigned the texts to be read, as a purely voluntary exercise, over the course of the ten weeks of the Cyberlaw course with book club meetings in weeks three, five and eight. The books assigned matched themes discussed in class so *1984* in week three matched a discussion of regulation through power and sanction (direct regulation); *Brave New World* in week five matched with a discussion of regulation through influence and choice (self-regulation), while *The Trial* coincided with a discussion of regulation through bureaucracy and competition. I suggested to students that they obtained hard copies of the books rather than digital copies as I felt the physical copy gave them a common artefact and a shared purpose. In addition the use of analogue/physical, copies provided two further benefits. Firstly they were a social equaliser. Although most students today have either a laptop or tablet computer, not all do. While not all can afford a new piece of hardware for class, all can afford a cheap (second-hand if necessary) paperback copy of a book or can rely on a library copy. Secondly, in the book club meeting, physical copies would be picked up

⁴¹ M. Castells, *The Rise of the Network Society*, 2 ed. (Oxford, Blackwell, 2000), 500-502.

⁴² Cockfield, above n.39, 6.

⁴³ Shulman, above n.11.

⁴⁴ London, Secker & Warburg, 1949.

⁴⁵ London, Chatto & Windus, 1932.

⁴⁶ Berlin, Verlag Die Schmiede, 1925. Trans. London, Victor Gollancz, 1937.

and put down again, students would not keep the books open and in front of them in the way that they do with laptops and tablets. In this way the physical barrier between the student and the rest of the group was removed creating an open arena for discussion as the barrier of the screen was broken down and removed. Most did obtain physical copies, a few used digital copies, no remedial action was taken against those who used digital copies as it was felt this would harm the open group dynamic. These classic works of literature, and the discussion of them in book group meetings, quickly became common points of language and culture among a diverse and heterogeneous student body and provided simple points of reference that both the students and myself could use in class.

While this was in itself valuable, the experiment was not about foundational reference points: it was designed to provide, for students unfamiliar with it, entry, via familiar and shared artefacts, into the pedagogy of a Western European LLM programme and more importantly to give students the tools for self-led and self-evaluated education using principles of andragogy.

THE LLM PEDAGOGY AND ANDRAGOGY

The pedagogical design of the Cyberlaw course is to develop six general skillsets as well as to specifically educate students on the structures and designs of state and decentred regulation in the Internet environment. The six skillsets are: (1) self-reflection; (2) critical analysis; (3) interpretation; (4) contextualisation; (5) internalisation and ordering of complex arguments and concepts; and (6) presentational and oral skills. Self-reflection is the ability to establish one's own strengths and weaknesses and to determine internally which skills and knowledge one possesses, and more importantly lacks, to tackle a problem, transaction or situation. This is a vital skill for a lawyer to possess in the workplace, but equally is a vital skill for students to possess if they are to get the most from their educational experience. Critical analysis is again a general skill common to good lawyers and good students. One must have the ability to weigh up evidence, and argument, in a critical manner. If an argument is made that copyright infringement costs the creative industries in the United States \$58 billion per annum,⁴⁷ a critical lawyer or student will question the methodology which led to this result.⁴⁸ Like self-reflection a successful lawyer must have critical analysis in their life skills toolbox. Interpretation and contextualisation go together. Interpretation is the ability to read and interpret complex arguments and presentations; to draw out the key facts, messages and figures. Contextualisation is the ability to place that information in context, both the context it was placed in the original, or source, document and the context you are giving it in your analysis or argument. It is vitally important both as a student and as a practicing lawyer that information is not taken or used out of context as this may undermine the application of the information to that analysis or argument. Internalisation and ordering is the ability to manipulate the information from a source document to apply it to your output argument or document. This is the vital processing skill that both student and lawyer must have: the ability to remove part of an argument or document, in context,

⁴⁷ S. E. Siwek, *The True Cost of Copyright Piracy to the US Economy*, Policy Report 189, Institute for Policy innovation, Center for Technology Freedom, October 2007. Available from: http://www.ipi.org/docLib/20120515_CopyrightPiracy.pdf.

⁴⁸ See e.g. K.Y. May, *The Numbers Behind the Copyright Math*, TED Blog, March 20 2012: <http://blog.ted.com/2012/03/20/the-numbers-behind-the-copyright-math/>; J. Sanchez, *How Copyright Industries Con Congress*, CATO at Liberty, 3 January 2012: <http://www.cato.org/blog/how-copyright-industries-con-congress>.

and to apply it in their output argument or document. This above all else is the key transferrable skill of the law student and the lawyer, the ability to turn source material into a winning position, argument or essay. Finally the presentational and oral skills are the key skill of being able to present your output in a way to ensure success for your argument, position or message. Taken together these skills are a mixture of Shulman's surface structure and deep structure pedagogies but with some significant differences. Firstly the book club is specifically designed to be an informal, student-led environment. It does not see in Shulman's words "a set of dialogues that are entirely under the control of an authoritative teacher".⁴⁹ This is a deliberate pedagogical, or rather andragogical, choice designed to meet the specific needs of LLM students.

As has already been discussed the LLM students on the Cyberlaw course are a heterogeneous group. They have though a few things in common: (1) all are students who have achieved a good undergraduate degree and are therefore taking their second or even third degree and; (2) due to commonality (1) they are slightly more mature with all being over twenty-one and with a median age of twenty-six. In addition a substantial majority of the group (around 65%) have worked in professional practice before taking the course and are therefore experienced in a way undergraduate students are not. This is the driver behind the decision to place responsibility for direction, discourse and outcomes within and resulting from book club meetings with the student rather than the instructor. Shulman's model of the authoritarian teacher fulfilling the role of judge or senior partner, useful as a pedagogical model for recent undergraduate and less mature students, is not as effective when one is dealing with mature, life-experienced adults. Here we must abandon pedagogy for andragogy or teaching strategies focused utilising the life experience of more mature students through engaging with their pre-existing learning experiences. Jean Sheridan, referring to the pioneering work of Malcolm Knowles, describes andragogy as "an interactive student-driven classroom in which content is embedded in activities designed to engage students cognitively, emotionally, and socially."⁵⁰ In essence andragogy places the learner in control of their learning experience. This is extremely important for more mature and life experienced students who often react poorly to traditional lecture/class/seminar structures with their emphasis on the teacher a power figure/source of knowledge. In fact as Easteal has pointed out such an approach "does not evoke the tools and self-confidence that promote lifelong independent learning. Ironically, the opposite may be engendered even in classes that actually aim to challenge students to question the 'Conventional Wisdom of the Dominant Group (COWDUNG)' by paradoxically spending much time telling the students how to do it."⁵¹ Thus the problem with using pedagogical techniques with adult learners is that pedagogical techniques are designed for students with less life experience, as a result they reinforce the teacher as dominant figure: this both marginalises the life experience students bring to the class and reinforces a conventional wisdom (the teacher as oracle) which we, at Masters level, are seeking to train students to challenge.

The andragogy model employed in the book club is a development of that established by Malcolm Knowles in 1970. In his ground-breaking book, *The Modern*

⁴⁹ Schulman, above n.11, 55.

⁵⁰ J. Sheridan, "Lifelong Learning in a Postmodern Age: Looking Back to the Future through the Lens of Adult Education", (2007) 2 *The Lifelong Learning Institute Review* 4. Available from: http://www.faithinformationlearningexchange.net/uploads/5/2/4/6/5246709/lifelong_learning_in_a_post_modern_age.pdf.

⁵¹ P. Easteal, "Teaching About the Nexus Between Law and Society: From Pedagogy to Andragogy", 18 *Legal Education Review* 163 (2008), 164. Electronic copy available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1429185.

*Practice of Adult Education: From Pedagogy to Andragogy*⁵² Knowles set out the key distinction and differences of assumptions between pedagogy and andragogy. The key distinction is the application of the learner's experience and knowledge. As Knowles notes:

To children, experience is something that happens *to* them; it is an external event that affects them, not an integral part of them. If you ask children who they are, they are likely to identify themselves in terms of who their parents are, who their older brothers and sisters are, where they live and what school they attend. Their self-identity is largely derived from external sources. But adults derive their self-identity from their experience. They define who they are in terms of accumulation of their unique sets of experiences. So if you ask adults who they are, they are likely to identify themselves by describing what their occupations are, where they have worked, where they have travelled, what their training and experience have equipped them to do, and what their achievements have been. Adults *are* what they have *done*.⁵³

For Knowles this makes the educational experience different for adults:

Because adults define themselves largely by their experience, they have a deep investment in its value. And so when they find themselves in situations in which their experience is not being used, or its worth minimized, it is not just their experience that is being rejected – they feel rejected as persons. These differences in experience between children and adults have at least three consequences for learning: (1) adults have more to contribute to the learning of others; for most kinds of learning they are themselves a rich resource for learning; (2) adults have a richer foundation of experience to which to relate new experiences (and new learnings tend to take on a meaning as we are able to relate them to our past experience); (3) adults have acquired a larger number of fixed habits and patterns of thought, and therefore tend to be less open-minded.⁵⁴

Due to this key distinction in the approach of the learner we must modulate a number of our assumptions about them. As Knowles notes the pedagogical concepts of the learner as dependant, inexperienced and ready to learn must be replaced with the assumptions that the learner is independent experienced and looking to augment their already developed skills and knowledge.⁵⁵ The key is to “create a learning environment where students develop the confidence and skills needed to challenge accepted views and norms.”⁵⁶ This is the vital role of the book club. As students are coming (mostly) to the complex subject of Internet governance and regulation as inexperienced and dependant students it would not be suitable to replace a pedagogical approach with an andragogical approach throughout. The seminars, by employing traditional Socratic methods provide the pedagogical support needed by students to meet the challenge of absorbing and contextualising these complex academic and policy arguments. The book club, being an environment that plays upon the familiarity of the texts in discussion, employs andragogical techniques to soften the impact of pedagogy on adult learners. It places the

⁵² New York: New York Association Press, 1970.

⁵³ *ibid*, 50 (emphasis in the original).

⁵⁴ *ibid*.

⁵⁵ *ibid*, 43-44.

⁵⁶ Easteal, above n 51, 168.

students and their experiences at the heart of the learning experience. It was commonly observed during meetings that students would begin discussion of the text in an anecdotal form: "I once had a case which..."; "back home in [country] we have a problem like this..." or "in college we discussed this in a different way...". This employment of the anecdotal is andragogy in practice: the student bringing their life experience into the classroom. The benefit of this andragogical educational platform was then felt in the classroom where formal, pedagogical, discussion of concepts, authors and authorities would often play out against the backdrop of discussions had and lessons learned in book club. In this sense the integration of the books chosen for book club and the structure of classes was essential. For this reason *1984* was discussed early where it could provide a backdrop to discussions of regulation and control by power and hierarchy in class through set texts such as Lessig's *Code and Other Laws of Cyberspace*⁵⁷ and Wu's *The Master Switch*.⁵⁸ Huxley's *Brave New World* was placed in the centre of the programme where it could be used to discuss regulation through community controls set against Murray's *The Regulation of Cyberspace*⁵⁹ and Reed's *Making Laws for Cyberspace*.⁶⁰ Finally Kafka's *The Trial* was placed towards the end of the course where it could provide a backdrop to discussion of regulation by design and competition and set texts such as Benkler's *Wealth of Networks*⁶¹ and Goldsmith and Wu's *Who Controls the Internet?*⁶²

CONCLUSIONS: SO WHY NOT MOOC CLUB?

There remain two key questions: (1) was the experiment a success? and (2) were analogue tools preferable to digital platforms? The answer to the first question, based on available evidence, seems to be yes. Despite having a full academic programme, and despite the book clubs being voluntary, a strong turnout was recorded at each meeting. The strongest turnout was for *1984* and the weakest was for *Brave New World*. This would seem to reflect *1984*'s position and the pre-eminent text on dystopia and abuse of power and also its instant recognition among the student body. Many students had read it at school or college and felt instantly comfortable discussing its themes and concepts. The turnout for *Brave New World* was markedly lower than for the other two texts. This may reflect its relative lack of recognition outside of the English language world. Certainly the take up for that meeting was higher among students who came from English speaking nations and it was students educated in English language institutions, especially in the United States, where recognition of the novel was strongest. Take up for *The Trial* was stronger than for *Brave New World*, but not quite as strong as *1984*. This meeting was particularly popular with students from German speaking nations, perhaps unsurprisingly, and from Scandinavian students. Concepts discussed in book club meetings would frequently be referred to in class and anecdotal evidence from students was that they found the more complex concepts of set text authors such as Lessig, Wu and Benkler easier to contextualise with the broader concepts found in the book club texts. In class assessments, both formative and summative, a small improvement in performance was recorded but not enough to be statistically significant and in any event data from one year is insufficient to establish a pattern or cause. What we do have is strong feedback from students in class evaluation forms. These anonymous teaching

⁵⁷ Ver2.0, New York, Basic Books, 2006.

⁵⁸ New York, Knopf, 2010.

⁵⁹ Abingdon, Routledge, 2007.

⁶⁰ Oxford, OUP, 2012.

⁶¹ New Haven, Yale UP, 2006.

⁶² Oxford, OUP, 2006.

feedback forms contain a blank free comment space that attracted a number of positive comments on the book club experiment including “more book clubs please”, “The extracurricular activities (guest lectures and book clubs)⁶³ were a particularly positive addition to the course”, “I particularly enjoyed the book club”, “Class integration and book club was very well done and very enjoyable”, and “Loved/enjoyed the book groups as they provided a different approach to applying information learned in class.” Perhaps equally importantly no negative feedback comments were received on the book club experiment. Taking all this on board the book club experiment will be repeated with the addition of a fourth book specifically about rhetoric and control, and the only book in the selection that discusses the power of the Internet specifically, Dave Egger’s *The Circle*.⁶⁴

This leaves a final question, the question that has been behind all this discussion. Why adopt traditional analogue educational techniques to supplement the learning experience of students in class? Could a technological platform not provide a much rounder and richer experience integrating discussion boards, video and audio content, self-tests and group work? In other words why book club and not MOOC club?⁶⁵ It is argued that any digital platform, absent one designed and built from the ground up like Ardcalloch, would simply repeat the pedagogical weaknesses of any instructor-centric learning environment. Digital educational platforms reinforce pedagogy over andragogy and rely upon the role of instructor or teacher as organiser and designer. In addition it would depersonalise the discourse. The particular, andragogical, value of physical meetings and physical artefacts is that it encourages the sharing of experiences, a deeply personal act but central to andragogy. Digital platforms in short depersonalise and reinforce traditional pedagogical learning culture. This is everything that the book club was designed to escape from.

There is clearly a place for digital learning platforms and tools in the modern blended educational environment. It is not the place of this paper to suggest otherwise. Used well and innovatively they add layers of instruction and educational value, which provide a more rounded and fuller educational experience for students and staff alike. This paper is merely a reminder of the pedagogical and andragogical value of traditional tools and artefacts. In the rush to embrace the new we must not forget the value of established educational tools and techniques. Sometimes they can do something quite different to the digital tools available: this is the value of analogue educational tools in a digital educational environment.

⁶³ In addition to the book club the Cyberlaw course employs a series of practitioner and guest seminars. These are given by a mix of professionals in practice and visiting academics on subjects relevant to the course. These are intermixed with the book club meetings to ensure students do not have two extracurricular events in one week wherever possible. As these do not form part of the case study in this paper they have not been discussed.

⁶⁴ New York, Random House, 2014.

⁶⁵ The author understands MOOCs could not provide the kind of education experience of the book club but prays you indulge this play on words. In essence the question is actually why use analogue platforms rather than any one of the variety of digital educational platforms that would allow for an interactive online experience similar to the book club experience with similar pedagogical design.