Chapter 13

Space, Absence, Silence: The Intimate Dimensions of Legal Learning

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car la musique ne respire que
dans l'oxygène du silence

(Jankélévitch 1983: 168)

Introduction

One way of thinking about a programme of study is that it creates opportunities or spaces for learning. The spaces are there because a learner has laid aside social, domestic or work life for a time, and created space in his or her life to devote to learning. The spaces are defined by the context of higher education: buildings, campuses, materials for study, formalised relationships with tutors and lecturers, with learning resources, with peers, with online environments. The learning events, though, can occur anywhere in people's lives where they grapple with concepts, issues, knowledge and relationships, engaging and re-engaging with the processes of learning. How are we to construct these spaces so as to ensure effective learning?

We can begin by defining how the space is to be constructed by the materials around it. This means thinking about the construction of, for instance, lectures and tutorials, or resource-based learning. Within this will be key spaces, deliberate absences of information or knowledge, where students construct for themselves the knowledge, skills, values that no one but they can learn. In this sense, well-planned absences are critical learning spaces. Nor are they blanks or vacuums only, for their absence is relational to the presence of the learning object, whatever the object happens to be. This applies not just to legal education but to the learning processes of any discipline. Indeed, spaces of absence – biological, ecological, architectural, theological, legal, historical, social, cognitive, literary, musical, educational – are as we shall see critical to the process of learning, which requires an absence, paradoxically, in which it can be enacted. This chapter argues that it is necessary for legal educational design to create this space of absence, and that the space can be uniquely adapted to the serious play of affect.

The relation between space and object has implications for curriculum design, which we often (mis)take for the distribution of resources for learning. We talk of planning classes, organising courses, but in reality the process is often more akin to finding our classes, deeply enmeshed, within a much larger, homogeneous body

of legal information and within conceptual lattice structures, where we identify and frame the information and concepts that we require our students to learn. We set out conceptual teaching, detailing information that students will require to read and master, with associated activities. We fill a curriculum with things, largely readings, discussions, attendances at events (lectures, labs, seminars, workshops). Academics think of curriculum as composed of constructed objects because we see it largely from the point of view of our activity. We seldom think of the spaces in between activities and objects as planned (except in an operational sense – for example bottlenecks in assessment deadlines and the like).

But a curriculum seen from a student point of view often looks quite different. Students are much more aware of the gaps and spaces surrounding such objects in a conventional curriculum: the relation of learning object to intent (why was it put there?), of learning object to other objects, and to the absences and spaces between the objects. Linden West and other adult educators have investigated how curricula look from student perspectives. They point to students' anxiety about the suppression of voice in higher education (HE) curricula. West takes a number of in-depth, longitudinal case studies, whose stories 'highlight the importance of personal narrative in weaving unity and meaning from the fragments of experience and in establishing some sense of self, psychological cohesion and truth' (1996: 15). What West's adult students discover in HE is that within the space, the clearing, they need to integrate prior life experiences with the new and sometimes disturbing experience of learning to read and write the texts of disciplinary genres – texts that both constrain and liberate. The problem is, as West defines it, 'that certain conversations, thoughts and actions are favoured rather than others in a manner which can frustrate the struggle for more integrated learning, selves and stories' (188). Learning a disciplinary discourse is of course a disciplined activity. But the process of learning a discipline need not be separated from the development of our students as persons – indeed the two are closely allied. West pointed this out, drawing from Belenky and others to highlight the gap between private and public lives in HE – a gap that is frequently invisible, in part because the emotional lives of students are unregarded: 'Belenky *et al.* (1986) have documented the fragmenting consequences of privileging rationalistic and abstract understandings while pushing more intuitive and experiential knowledge to the margins' (188).

West's observation is one of many on the subject by educationalists (Stenhouse 1983; Giroux 2001). A key problem inherent in learning to understand and produce any disciplinary text is the gap between the normalising rational power of the discourse – the text as object – and the experiential struggle of the novice to comprehend and to make that powerful discourse part of their own voice – the text as subject. The struggle is not a type of Jacob and the Angel wrestling match: rather, it is a struggle in the writer between attitudes and emotions arising from prior writing experiences, and the need to reproduce the signs of a complex discourse, while negotiating, sometimes suppressing, that prior writing experience. The object on the legal textbook page, so polished, neutral, candid

yet arcane, bears little mark of any such struggle: it has been stripped of emotion. Readers and writers, though, come to the text object with prior emotions about the text, about what to do with it, about their organic lives around the text. The student's task of reading and creating discourse is really a microcosm of the whole transitional status of the higher education experience. The past and its affective freight cannot be ignored; present experience beyond the text presses in upon the reading experience; the academic future lies beyond and is dependent on the student's struggle with the text. As West put it, '… reclaiming a past – emotionally, biographically, intellectually and culturally – is essential to claiming a future, built more on one's own terms than upon those of others' (211).

Case Study 1: Affective Sociolinguistics and Student Writing

We can appreciate this if we consider the following extract as a case study, one based on a project on writing conferences (Maharg 2000, 2007). Writing conferences, a form of dialogue about student writing, has a respectable lineage in the domain of composition and compositional studies in US higher education (Harris 1986). In its general form the conference consists of a dialogue between tutor and student; and the broad range of research that has been carried out on it tends to focus on the type and quality of the dialogue, in order to improve feedback and student writing processes (Walker and Elias 1987). This conference, also a research project, was carried out with first-year students on a law course in a Scottish university and aimed to increase the quality of feedback to students on their writing. In the writing tasks set for students in an introductory writing skills module, the writing conference was employed to enable students to think critically about the legal argument tasks that were set for them, using the approaches outlined by Scardamalia and Bereiter (1986: 797–8).[1] The argumentational models students structured and the writing heuristics they experimented with in one unassessed essay were then used in a subsequent assessed essay in the module.[2]

It became clear after the first few conferences, and on studying the transcripts, that it was difficult for students to discuss the structure of their writing without discussing the social and performative aspects of it, within the context of their own experience of text production. The following extract is typical:

1 Scardamalia and Bereiter (1986) base their approach on 'procedural facilitation' rather than on 'substantive facilitation', the intent of this being 'to enable students to carry out more complex composing processes by themselves' (61). The approach is one variant amongst a number. For a summary of others, see Newell and Swanson-Owens (1994).

2 For more details on the methodology, see Maharg (2000: 90–91). This extract was considered briefly in that chapter and is analysed in more detail here.

Interviewer: … do you think … you're unsure about your writing?

Ian: I don't think – not too much. I suppose there is maybe a possibility that I just don't want to be cornered – I don't want when I'm writing the essay to put it as if – I don't want to be cornered to look as if I haven't got a clue what I'm talking about. So you try and cover as much ground as you can, if you know what I mean, so that you don't, you aren't totally wrong rather than following one chain of thought and then 'Oh that's completely wrong'. If you try and make it a little bit more broader then you've got a better chance of not being wrong. But it's maybe just a habit I've got into trying to do that because I think in a lot of the exams I did in the Higher there wasn't maths or anything like theory, it was like Modern Studies, Geography, Economics, English. A lot of essays I had to write in the exam. I think that's what's got me into the habit of it, writing like that so that when the marker comes to mark it, it's not – they can't say 'Oh that's right or wrong'. I've tried to cover myself.[3]

The discussion above shifted from discussion of textual features to discussion of attitude and emotion.[4] As he found his voice Ian began to reveal deep anxiety and uncertainty about his writing, and his ability to master a discourse shifting from first to second person when he describes being wrong. He produced a clear historical account of the reasons why his writing was vague, diffuse and confusing to read – writing that could not commit to an argument. Ian was well aware of this. 'Covering' – the metaphor is apt in its adamic inflection, redolent as it is of the figure of the dark Miltonic Covering Cherub – was the result of the realisation that he could not see a way to produce coherent legal argument; and that this was shameful. He therefore produced strategies to cover that shame, which in turn prevented him from improving his writing.[5] The problem, both sociolinguistic and affective, is not uncommon in student writing, as a number of commentators have observed (Gee 1996).

The interview also revealed how insular Ian's *writing* practice was. No one else was ever involved in the activity: he had never collaborated with others and very rarely received peer feedback. School teachers had adjudicated on his ability

3 The 'Higher' is the Higher examination which is usually taken in the fifth year of high school. The grades obtained are a key determinant of university entrance in Scotland. Student name has been altered to preserve anonymity.

4 Much of the literature on writing conferences describes how this happens in various ways. See for instance Patthey-Chavez and Ferris (1997), where the researchers note that 'the divergent backgrounds students bring to instructional events have a structuring effect that cannot be dismissed solely as teacher bias and self-fulfilling prophecy' (51).

5 It is also an interesting example of Nussbaum's argument (2004), where she critiques the effects that those two emotions play in legal culture, and argues with regard to shame that 'a liberal society has particular reasons to inhibit shame and to protect its citizens from shaming' (15).

to pass or fail essays and mock exams. Writing was used for little else in his life. His writing *practice*, in the sense of his ability to articulate a set of rules about his writing, was based on fear and anxiety, and became silent, inarticulate. It was an absence, a space of dread and frustration for him.

For Ian, the writing conference was a significant moment as regards the quality of his work. We discussed ways to commit to an argument by planning how research and early writing could be used as tools to break out of the covering cycle and into the lifeworld of legal discourse. In a sense the moment was little more than an exploration of feelings that made Ian realise that legal discourse was formed in his mind, that it was not an object on the page; and that rather than treat it as an object or swerve around it, he needed to understand his own representations of what the discourse was to him, and how he managed to write versions of it. But the affirmation that emotion mattered in writing, as he acknowledged later, was something he had not discussed with anyone before. It enabled Ian (to put it in Derridean terms) to substitute for the space of anxiety his own centre of significance as part of the process of writing and legal interpretation.

It was one way to gain confidence and a sense of energy about his writing, which improved across the remainder of the small writing tasks in the module. It is interesting to compare what happened in the writing conference to the research results on the use of neurofeedback and performance. It has been conclusively proven that alpha/theta neurofeedback is successful in treating addictions and in improving the performances of music and dance students (Gruzelier and Egner 2004).[6] Raymond et al. (2005) analysed the effects of such feedback on personality and mood of medical students, revealing that such feedback produced 'feelings of energy and confidence' (291). Such feelings are not always present when other anxiety-reducing techniques such as the Alexander Technique, aerobics or mental skills training are used. It is significant that the researchers asked the students while they were listening to the neurofeedback sounds that they should 'visualise themselves being the sort of person they most wanted to be and solving problems in the best way possible' (288). Perhaps the best approach for Ian and for students in similar dilemmas might be a combination of both neurofeedback and the mini-conference – forms of self-visualisation and guided affective sociolinguistics – that provide a space within the curriculum for them to construct their own integration of lifeworld and discourse.

If this is true of students, the same is true of teachers and teaching. Writing conferences are still uncommon. The cost of such one-on-one dialogue in terms of time and effort is only one reason, however. If his personal 'state of being' was crucial to Ian's writing, it is also important to teachers too. In Chapter 1 of this book Maughan calls for a re-appraisal of the role of tutors; and the chapters in Part 2, focusing on affect in staff experience, reveal how important the processes

6 Neurofeedback is a form of biofeedback that gives information to persons about their brain activity, based upon electroencephalography (EEG). Alpha and theta refer to forms of brain activity that give rise to oscillatory EEG patterns.

of self-identity are to legal educators. This has consequences for the development of the type of writing conference described above. West noted this, adducing the work of Susan Weil:

> Weil has noted the neglect of the personal and emotional in discussions of teaching in higher education and how these are often focused on subject expertise, technical skill and communicative method rather than relationship and states of being.

If they are to be involved in the analysis of text and personal experience at this level with students, teachers need guided experience in developing their individual expertise in dealing with emotion while giving feedback, and in developing areas such as affective sociolinguistics. The dialogue is much more than pointing out surface features of argument that should be remedied. As the literature on feedback shows, this is often neither a useful nor successful strategy to improve student writing (Walker and Elias 1987; Carothers 2008; Värlander 2008). Instead – and just as Ian needed a space to talk about his writing – teachers need a space to learn how to help Ian to do this. It is a space bounded not just by the borders of other work commitments, but bounded also by life commitments.

Space as Absence

There is of course a much more expansive phenomenological context to the concept of space that we must acknowledge if we are to take the idea of educational space seriously. In the arts, particularly philosophy, theology, music and literature, there is a wealth of literature on the subject of absence, whether as space or silence, and the relations between these concepts.[7] In literature, for example, Samuel Beckett's use of silence as an integral part of dramatic performance in *Endgame*, *Footfalls* and *Waiting for Godot* is one instance of many (as is the difficulty it presents for actors – Bryden 1998: 49, quoting Whitelaw 1996). In education the interest has spanned early appreciation of the effects of physical space (Dewey 1933), to the analysis of cultural space (Bachelard 1969; Lefebvre 1991), to the educational use of such cultural space. The space has been mapped (Zembylas and Michaelides 2004). Chan et al. (2001) for instance describe four learning space models in physical space that interact with time and location. Caranfa (2006) argues that the fostering of critical reasoning, the aim of most liberal arts programmes of study, will fail because the project largely excludes emotion and silence from the thinking process. He proposes an aesthetic method to complement the critical. Leander and

7 In theology, see for instance Davies and Turner (2002), Atchley (2007), Muers (2004). In philosophy, see Bindeman (1981), Dauenhauer (1980), Mortley (1986a, 1986b). In literature and music the bibliography is of course extensive, and I shall be drawing on some of this below.

Sheehy, drawing on Bakhtin, Deleuze and Guattari as well as Lefebvre, analyse how space profoundly affects literacy and rhetorical sophistication (Leander and Sheehy 2004). Savin-Baden (2008) explores what learning spaces are, their increasing disappearance in academic life and the resultant dissolution and fragmentation of the academic community; and she argues (rightly, I think) for a reappraisal and revaluing of learning *spaces* in university today.[8] This is even more pressing given that many of the spaces for learning can now be online and virtual, as well as within physical buildings on or off campus.

It is also pressing because, despite the interest in absence as an educational concept, we are in danger of forgetting such spaces in our pedagogic language in legal education. One of the commonest metaphors to describe the way in which learning can be facilitated is to use metaphors from architecture or construction: scaffolding, for example, by which learners are given help, via examples or models, to understand what it is they are supposed to understand or perform (Bruner 1960). Or we talk of 'foundation courses', drawing on the ancient metaphor of learning as a building process. This draws on a related metaphor – that of scholarly work as architecture. This is represented in our buildings – institutes, for instance, which is less of a word, more a network of constellated meaning, rich in connotations – building, foundation, creation, provision, investiture. It surfaces in Quintilian's *Institutes*, which is concerned with the place of rhetoric in a life of eloquence and service. Justinianic law was termed thus, as were, in Scots law, the foundational works of Mackenzie, Stair and Erskine. As a result 'institution' has a real presence, to adopt a theological metaphor, a reality of presence in the world that law most emphatically possesses, but inarticulately; and which law compensates for by adopting the ancient metaphoric icons of architecture, rhetoric and other disciplines. The process lives on today. In our contemporary curricula we talk of modules, in much the same way that modernist architects talked of modular construction units (Gold 2007). Such language, prevalent in the discourse of QA, focuses on specific forms of educational, construction and interactivity. Space, where discussed, is the arrangement of physical space – again, the presence of things. Space itself, especially as absence, is rarely considered.

But space lies at the historical roots of universities. In their medieval origins, the arrangement of offices, chapel and residences around the space of a quadrangle was adopted as an architectural plan by both Oxford and Cambridge and adapted elsewhere (St Salvator's College, St Andrews, for instance). It embodied the collegial foundation; and Wykeham's educational rules for both Oxford and Winchester Colleges were innovative in their day because, like Benedict's Rule, formed almost a millennium before, they imagined community as composed of social and individual, talk and silence (Smith 1952; Leach 1899). In this sense Wykeham's innovations were, in a sense, an early version of a social constructivist environment (Turkle and Papert 1990), where the physical environment was

8 She points out how important are proxemics, positive kinesics, eye contact, etc., to the learning space in *Second Life*, for instance.

designed to stimulate learning, and where environment, rules and learning had space and absence as integral to their design.

Learning: The Presence of Absence

How can we describe the presence of absence? One way is to draw upon another discipline's use of space and silence, namely music. It is commonly said of music that silence is essential to it, where the intervals in sound define the nature and duration of its acoustic. As Andrew Edgar points out, 'silences that anticipate, accompany and succeed the performance of music may be seen to constitute something of the hermeneutic horizon of that music' (Edgar 1997: 311). That hermeneutic horizon of music is extended by an extraordinary work by Jonty Semper, namely *Kenotaphion*, a collection of Remembrance Sunday and Armistice Day two-minute silences.[9] Each sound event begins in the same way, with Big Ben tolling the hour; and each is different: the sound of rain, of birds, of shuffling, coughing, the murmur of distant traffic, the sense of a throng of people, all more or less silent. Some early recordings have voice-overs, but the overwhelming effect is of a dense, intentional silence, the record of a deliberate absence of sound that is magnified by the random quality of the sounds of the urban world captured on the CD.

Semper's artwork is one more in the tradition of modernist minimalism – John Cage's *4'33"* for instance.[10] Nothing could be further from what we think of as earlier representations of the natural world in Beethoven's *Pastoral Symphony* or Vaughan Williams' *Lark Ascending*. Instead of formal representation within a musical structure, there is a capturing of the absence of sound as nearly as it is in the real world, with the constant tension between absolute silence (whether that is actually possible) and the random sounds that define the silence.[11] But it could

9 The silences, 70 of them in total, are drawn from the period 1929–2000. For a review, see Kennedy (2001).

10 Cage's famous piece, first performed in 1952, was composed for 'any instrument or combination of instruments'. The instrumentalist would arrange his or her instrument as if about to play, then remain like that for a period of four minutes and 33 seconds. The experience of listening is curious: all audible noise begins to enter the aesthetic frame of the time period set by Cage, and becomes part of the performance, as it does in *Kenotaphion*. There have been a number of theories regarding the length of the piece – it is an ironic comment on the typical length of a pop song, for instance; or the total number of seconds equates to the temperature of absolute zero (-273 degrees C – Rayner 2010).

11 The work of Cage, Semper and others follows in a modernist tradition, one wing of which is the interest in 'found' noise – the work of Marinetti for instance, or Luigi Rossolo, in whose work we can find a whole new genre of music, defined as sound. Rossolo, an Italian futurist, argued that what had been regarded as background noise to modern living, the noise of industrial machinery for example, should be heard as music. He designed machines to compose this music (Rossolo 2005).

be argued that the modernist focus on silence is not new. When Vaughan Williams wrote *The Lark Ascending*, for instance, he deliberately sets the freedom of the violin against the impressionistic orchestration from which it springs; and the cadenzas mimic the disappearance of the lark high into the heavens, as in George Meredith's poem from which the piece takes its title (Vaughan Williams 1925; Meredith 1895). Towards the end of the composition, however, Vaughan Williams makes us aware of the encroaching silence: the orchestration falls away, leaving a sublimely weightless birdsong, which of course ends by fading into silence.

But there is a key difference between sitting in an auditorium and listening to Cage's *4'33"*, and listening to *Kenotaphion*, or indeed any CD. *4'33"* is in real time, the CD is not. Indeed, like every CD, *Kenotaphion* consists of highly choreographed silences. When we listen to any contemporary recorded music, we are in a virtual auditorium where sound is deliberately distributed in the stereo field by sound engineers, composers, artists. Instrumental sounds are foregrounded, backgrounded, pitch can be altered, almost every aspect of sound dismantled and reconstructed. The same is true even of representations of recorded silence such as *Kenotaphion*.[12]

This contextual point is symptomatic of a larger issue. Listening to music, even the way we interpret silence, is a social experience. The acoustical properties of what we hear are always understood within a social context of culture, history, artistic production and the like. As Frith puts it, 'musical organisation requires some kind of social organisation and cultural context before it can be created, understood or otherwise invested with meaning' (Frith 1998: 102). Such cultural context imbues performances of *4'33"* with meaning: the silent musicians can be interpreted as a gesture against bourgeois romantic idealism and its belief that music speaks to us as if direct and unmediated (Revill 1991), where Williams' innocent birdsong is interpreted as a lament for a pastoral, pre-1914 England. *Kenotaphion*'s cultural context challenges us to listen to silence simultaneously in many ways: as distributed sound, as an art form, a historical record, a map of changing urban soundscapes, a public and highly political event. But it is also, inescapably in its context, a mourning, in theme and variations, made private and intense because it is stripped of the visual panoply of the Armistice Sunday remembrance ceremonies.

The relationship of music to silence gives us valuable insights into legal education at a profound level. As the sound of the crowd and our knowledge of the event defines our experience of *Kenotaphion*, so too do the boundaries of disciplinary knowledge and educational experience in encounters such as the case study above. The roles that affect and space as absence play are important not just in writing conferences: they can be used in many forms of experiential learning and

12 And the same difference is present in literature too – for instance, Beckett's *Krapp's Last Tape*. Silence signals doubt and anxiety in the younger Krapp's voice. But the existence of the tape recorder means that there are two sorts of silence in the piece – recorded silence, i.e. the absence of speaking, and silence within speech, that is, between words.

they can be encouraged by the design of the space itself. We can see this happening in other, more unusual learning contexts such as games and simulations.

Simulation as Nearly Real, Nearly Now

If games and simulations are to be effective, we know that they need to engage users in the rule-based activities or scenarios that are the core of the game/simulation. When this takes place in legal simulations, the effect can be dramatic and powerful, where a learner playing the part of a lawyer, for example, enters into a relationship with a client. But yet the client is not a *real* client, as may be the case in a clinical setting. A simulation or game is a 'nearly real' object – certainly not a *mimesis* of reality (for as Barton et al. (2007) point out, such a concept is impossible), but the resumption of certain aspects of a possible reality for the purposes of serious play.

'Nearly real' approaches to educational research such as this can be drawn upon and co-opted by those who advocate games and simulations, not to normalise the position of play strategies within a discipline, but to extend and radicalise the pre-existing research bases, and enable the research to work for transformation of disciplinary or professional teaching and learning strategies. An educational simulation, after all, always has a referent in the world of praxis, and there is an implicit analogy that is made between the world of play on the one hand and the world beyond play on the other. For an educational game player, representations of both are necessary to the game. Moreover, the social aspect of simulation and gaming, as Taylor and others have pointed out, is crucial to the experience of the game (Taylor 2006: 21–67); and designers need to plan the social spaces that students will inhabit, where they can reflect in and on action. Heppell's idea of the 'nearly now', a time that exists between now and not now is a useful description of this space (Heppell 2008). He cites Twitter as a classic instance where a user can step outside the momentary activity to record, reflect upon it. Heppell's notion is interesting because it can be seen as one example of many that attempt to describe the subtle processes of time-shifting that take place almost as a matter of course in our daily lives. Technology allows us to split and reshape time and its representations in many ways (Kern 2003). The effect has been observed increasingly since the late 19th century – Benjamin's classic essay on photography is one early 20th-century example of it (Benjamin 1970). We can see it in the narrative techniques of authors such as Proust, who uses syntax and paragraph structure, as Leo Bersani has observed, to abolish the conventions of novelistic time narratives (Bersani 1965: 91–7).

The concept, though, has deeper resonances. Other commentators on technology and media have observed similar processes in the very processes of reading and writing. Walter Ong, for instance, attempted to create a diachronic phenomenology of the process of distanciation that, according to him, writing brought about in our society. His 14 theses are worth rethinking in terms of

Heppell's 'nearly now'. The seventh observes that writing separates past from present, while the first states that 'between knower and known writing interposes a visible and tangible object, the text' (Ong 1986: 39). Ong thus points to the mediatory qualities of text in its control of the presentation of the world to the knower. Because text is fixed and can be revisited endlessly, it also shapes our dwelling upon the world in part because we enter the timeframe of the text. The type of timeframe and the effects it has on us depends on the text itself, as well as our reading and writing activities in and around the text. That disengagement from the world or from text is necessary to engage with the other: absence, in other words, is essential to presence.

However much one might agree or disagree with Ong's central thesis, his analysis of discourse relations helps give us tools to understand how games and simulations can be used for education. His tenth thesis, for instance, states that 'writing separates academic learning (*mathēsis* and *mathēma*) from wisdom (*sophia*), making possible the conveyance of highly organized abstract thought structures independently of their actual use or of their integration into the human lifeworld' (Ong 1986: 42). Whether or not this is always true of the introduction of writing into human societies, it is certainly the case that writing enables the process to happen much further and faster than would otherwise be possible. That process has of course increased exponentially, as many commentators from different disciplines have pointed out (Carruthers 1990; Barnett 1999; Bolter and Grusin 2003).

Games and simulations demand a form of distanciation and the nearly now. The game does take on something of the nature of a text, similar to Ong's 'tangible object' that is interposed between knower and known; and in this sense present is separated from past. But as Csikszentmihalyi (2002) has observed, games also have the capacity to abolish the sense of passing time, the relations between past and present, and to enable the player to enter a suspended mode, where his or her being is not separated from time. Games thus have an ambiguous identity, protean and problematic, where time and emotion play different roles than they do in a conventional curriculum. How does this affect curriculum design and learning?

Simulation as Diegetic and Configurative Learning

Perhaps the first step is to recognise the play element in games and simulations and to *reframe* the curriculum accordingly. But such a process of enframing the curriculum, while it creates difficulties within conventional curricula, becomes even more problematic when planning experiential learning approaches such as games and simulations within a curriculum.[13] These approaches require a *diegetic*

13 The concept of the frame, deriving from the discourse of art and cartography, is used in many disciplines. See for example MacLachlan and Reid (1996). This concept has a number of similarities with Heidegger's concept of 'enframing' (das Gestell), by which

reading of curriculum activity. Diegesis can be briefly summarised as the narrative of a text – commonly regarded, it includes characters, events, storyline and the like (de Freitas and Oliver 2006; de Freitas and Maharg 2011). Within a film, diegesis includes the many devices associated with cinematography: angle of shot, direction of camera gaze, lighting, narratological features such as flash-back and flash-forward – in other words the myriad devices that create a filmic narrative. Non-diegetic elements can also be part of a film's vocabulary, of course. A soundtrack which is inaudible to the characters in the film is non-diegetic, while a door closing, radio music heard by a character, words spoken by one character to another – these are examples of diegetic sound.[14]

However, approaches to learning that use play, simulation and gaming rely on more than diegetic narrative devices to enable learning. They set up imaginary frameworks, often involving extended role-play, where students, staff and others can interact. The interaction is critical, and separates diegetic activity from what one might call (following Aarseth's useful term) configurative activity (Aarseth 1997). In simulations and games, players are active: they configure the environment. But while such games can be wholly immersive, wholly active – single-shooter games are the classic example – they can also be written so that they involve interpretive and reflective activity as well as action. They are then both diegetic and configurative spaces – in Klevjer's comprehensive description, they are at once 'representation and action, reading and configuration, communication and event, mediation and play' (Klevjer 2006).

To someone who has never encountered such an environment, it can seem strange and alien – as it did to Justice Scalia in the Supreme Court case of *Schwarzenegger v. Entertainment Merchants Association*. In this case a group of 82 scholars in the social and medical sciences filed an amicus brief to the Supreme Court against the California law that banned the sale of certain violent films to minors.[15] Mr Smith, acting on behalf of the respondents, describes to a puzzled Justice Scalia the user interactivity of the game:

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representation of the object world is not just a re-presentation, but a rupturing as well as a capturing – Heidegger (1977: 19–20). Very often this 'enframing' goes unnoticed because it must do so in order to work its effect – '[w]hat has produced and manipulated the frame puts everything to work in order to efface the frame effect …' (Derrida 1987: 73).

14 The *locus classicus* is Plato's *Republic*, Book III, 392e, where Socrates defines mimetic art as the forms of tragedy and comedy, and diegetic art as those forms such as lyric and epic poetry that relate a narrative to the listener (Kirby 1996: 30–32). Diegesis is in many respects a contrast to mimetic approaches to art, which emphasise imitation or direct representation.

15 The brief, one should point out, does not argue in favour of children playing violent adult games. Rather it advocates an informed understanding of video game research.

> Justice Scalia: The child is speaking to the game?
>
> Mr Smith: No. The child is helping to make the plot, determines what happens in the events that appear on the screen, just as an actor helps to portray what happens in a play. You are acting out certain elements of the play and you are contributing to the events that occur and adding a creative element of your own. That's what makes them different and in many ways wonderful.[16]

The result of the interactivity that Smith describes well above is that the configurative nature of learning from play cannot be pre-planned in the way that highly teacher-centred activities (lectures, seminar readings, themes, etc.) can be. Simulation is of course sufficiently protean to be used for both open-field as well as highly bounded learning activities (Barton and Maharg 2006); but students can often learn more than the limits of competence-based outcomes from such activities (Stenhouse 1983). Play-learning thus needs more designed spaces where students themselves play and reflect upon that play.

This gives rise to a number of design problems. First, if simulation designers are to create a diegetic narrative that is also a configurative environment, they need to consider not just the events that make up the narrative of the simulation. They also need to think about the density of this narrative, its detailing, purpose and intent. Novelists and poets have always been aware of this, and how the deliberate omission of information rather than its baroquely detailed elaboration has specific effects upon a reader. Robert Louis Stevenson, for example, was well aware of the tendency of fictive reconstruction to become hypnotically self-referential: 'How to get over, how to escape from, the besotting *particularity* of fiction. "Roland approached the house; it had green doors and window blinds; and there was a scraper on the upper step." To hell with Roland and the scraper!'[17] The same holds for game and simulation designers. As with the intertwining of music and silence, they need to design spaces in the narrative, gaps and absences where the designed matrix of the narrative allows not just for configurative activity on the part of the learner but for diegetic interpretive reflection as well, and its recording.

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16 *Schwarzenegger v. EMA*, p.40, 3–12, at http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-1448.pdf. See also SCOTUSblog at http://www.scotusblog.com/case-files/cases/eanf/?wpmp_switcher=desktop.

17 Stevenson (1994–5: 8, 296). It is interesting that Stevenson had just finished recounting in this letter to James how he turned for relief from fiction to *Fountainhall's Decisions*, a collection of 18th-century Scots law reports. He comments: 'There's literature, if you like! It feeds; it falls about you genuine like rain' (296). For some authors, of course, the process of layered detail was endless. Walter Benjamin recounts of Proust:

> From his publisher Gallimard we know that Proust's proofreading habits were the despair of the typesetters. The galleys always went back covered with marginal notes, but not a single misprint had been corrected; all available space had been used for fresh text (Benjamin 1970: 204).

Second, such reflection can be focused on the student's own practice within the simulation. There are many ways of designing this. The reflection may focus only on the user's experience in the game or simulation. It may be bi-focal, on elements of acknowledged good practice that can be compared with the student's own practice. Or it may involve a critique of normalising practice and professionalism, in the light of the student's own experience of the simulation. Two points are critical, however. First, the diegetic interpretive activity can take place within or without the frame of the simulation. Second, the object of analysis – for example, professional legal practice – need not be reified within the diegetic frame of the simulation. Indeed I would argue that simulation is only transformational when allied to an ethical view of social relations that acknowledges the 'broken middle' of the human condition (Maharg 2007, analysing Rose 1996).

Third, the idea that students enter an environment where they play within a designed space is really only enacting what happens when we read text. The concept of the space in narrative that affects our response to text is central to a theory of textual reading called 'reader-response theory' or 'reception theory' (from the original German, *rezeptionaesthetik*). It was developed by theorists such as Rosenblatt (1978), Iser (1978) and Jauss (1982), who explored how meaning derives from the relationship between reader and text and cultural context, and therefore – much as in music production – how the gaps or spaces in the narrative or form are as important to a reader's understanding and engagement as the information that is there on the page. Meaning is thus shaped not by information alone, but by the deliberate absence of information and what readers feel and understand when faced with such a gap.

This is a profound point for all game and simulation designers as well as educationalists; and it could be argued that the educational connection was actually present early on in the development of *rezeptionaesthetik*. The idea of the importance of space originally derived from Roman Ingaarden's concept of the indeterminacies of meaning. In a novel (indeed any text), music text or artwork, an indeterminacy is created by the writer, composer or artist. Rosenblatt was originally a professor of education at Columbia, and was much influenced by John Dewey's concept of transactional meaning creation, as can be seen from the subtitle of her influential text. Her interest in *rezeptionaesthetik* was based upon a phenomenological understanding of relationships between reader and text, which of course included the ways in which text produced and reproduced affective responses in readers. As we shall see in the following case study, the planning of absence is not limited to the creation of fictional narrative or the planning of game designs and curricula: it is as essential a component of communication as silence is to music.

Case Study 2: Communication, Space, Emotion

This case study is a fragment of a discussion forum, within the context of a curriculum-wide implementation of simulation activities within the postgraduate, professional legal educational programme, the Diploma in Legal Practice, described in Chapter 11. For background information and further comment, see Maharg (2004, 2006, 2007) and Barton and Maharg (2007). At the start of the year students are formed into groups of four, each one being a simulated law firm within a fictional town called Ardcalloch. Situated on the south bank of the Clyde, the town acts as a complex simulation of the reality that surrounds actual legal transactions.

In the Personal Injury Negotiation Transaction (PI), the firms act for clients, either the injured claimant or as the insurance company's solicitors, in a personal injury negotiation that extends over 12 weeks. In order to negotiate the case they need to engage in fact-finding by contacting characters and institutions within the virtual community, and by pooling and analysing the factual information they obtain. They then need to carry out legal research on issues such as liability and quantum; set out their negotiation strategy and perform the negotiation, by email and recorded face-to-face meetings. Discussion forums for both sides support students in the complex process of carrying out this legal transaction – a PI solicitor is on both forums to answer student queries and provide information. Postgraduate students are trained to answer emails in the guise of any one of around 12 different fictional characters, and to give the appropriate information to students. They are supported by an online forum where Maharg and the PI practitioner are present (Hennessy was author of the scenario and many other resources associated with the transaction). If they wish, students can meet as a firm with either the PI practitioner or another negotiation tutor to discuss strategy and performance before they negotiate with the other side. This meeting is in effect a form of small-group, salon learning. It is voluntary: there are no face-to-face interventions at all in this module, apart from an introductory and general feedback lecture (students can also, if they wish, obtain feedback on performance from file assessors at the end of the project). The transaction is thus a unique construction of face-to-face and online interventions by staff and fictional characters who form part of the diegetic narrative, and who play essential roles in the configurative role-play.

Table 13.1 is a fragment from a four-person student discussion forum within the firm, on the PI transaction. It occurs early in the process of communication within the firm. Kirsty's first 'hey guys' sets the tone for the rest. Her post ends with a comma, as if the author had hit the send button too early, or had been timed out. She writes a wry apology next, again with the informality that marks conversational discourse online. She then seeks advice from the rest of the firm on a draft letter before it is formally posted to the opposing firm. There are two issues, inter-related. The first is informational largely (she was unsure whether to let the other side know they had no site maintenance records). The second point raises a related issue of specificity, referring to the detail of the legal basis for their claim.

Table 13.1 Discussion forum fragment

Student	Comment	Date & time
Kirsty	hey guys,	20 November 14:23:42
Kirsty	obviously i am not very good at this chat thing since i just posted a post saying hey guys and thats it!	20 November 14:27:33
Kirsty	wot i am trying to say is, i posted my first draft letter to the other firm, although i didnt know whether to tell them that we have no maintenance records, and also, i re read their letter to us and they have already told us the legal basis for their claim but they havent been very specific. do u think i should leave that bit in? [name] x	20 November 14:29:07
Alan	hey guys. cant find my phone at the mo so if you text me I won't get it. If you want to phone about sending off letters I'll be at my parents and their no is [number, possibly landline]	21 November 09:47:17
Alan	Shouldnt we also clarify with the other side the date of the incident cos they said 2008 but the insurance co have confirmed that it was 2007.	21 November 13:49:45

She points out that the other side have not been very specific about the legal basis of the claim, and wonders whether she should ask for more ('do u think i should leave that bit in?'). 'That bit', we must infer, is a reference to the site maintenance records. There are issues of reciprocity of information-sharing raised here in the context of professional practice. There are also contextual issues of confidentiality and negotiation strategy. It is a complex set of issues, raised in casual language that verges at times on textspeak.

Another member of the firm, Alan, then answers the next day, twice within four hours (from two different locations, as it turned out). The first posting deals with communications issues. His second posting returns to a substantive issue of the letter that has been drafted by Kirsty, namely the date of the incident, but without answering Kirsty's points.

Read chronologically, these posts look chaotic. Apart from Kirsty answering her own postings, there is almost no continuity of dialogue here: Alan's point, for instance, does not answer Kirsty. Nor is this an unusual feature of this firm's intra-firm forum. But the discontinuity is not necessarily evidence of chaos

and fragmentation. Discontinuity, like silence in music, is an integral part of communications that we have learned to manage so as to mitigate the anxiety that it can cause in human relations. However, new technologies present new problems for us, and I would argue that such problems are easier to deal with if we acknowledge the discontinuity and necessary absence at the heart of the communicational process. We can see this happening in the fragment above on three dimensions – information management, personal voice and social network.

Information management is surprisingly problematic for students, and we can appreciate this if we are aware of the sophisticated wider context of student communications. The firm members are phoning each other and texting. They also email. In other words, the process of communication about a letter draft in the firm is a complex of different communicational methods, only one of which happens to be the forum. In fact, the firm resolved Kirsty's substantive point about information-sharing by phone (though significantly the issues concerning the long-term effects of Kirsty's point on the firm's negotiation strategy were not resolved). The problem for the firm is not one of forum use (in spite of Kirsty's first attempts), or tone of voice, or even spelling, grammar, textspeak and the like, but the very contemporary problem of managing information and voice across the range of communicational platforms they are using. With the possibilities of at least eight widely used channels open to them (IM, email, mobile phone, landline, voicemail, texting, discussion forum, Twitter), the issue of information management is significant. This was a problem for many firms: they lacked the information management tools to be able to gather, track, archive and recall the information they needed. A number of conscientious firms took the long way round to doing this by manually recording key decisions made in the process of communication – in effect stopping the process of information to summarise it. It may be that students need to be aware of the complexity that this brings to problem-identification and decision-making – after all, Kirsty's issues were only partly addressed by the firm across the communications platforms. The situation requires students to clarify issues and persist in raising them until they are resolved.

If the first problematic dimension is that of information management, the second is the problem of managing voice, register and genre on these platforms. There is a wider context to this communicational fragment. It reads like a fragment from a conversation rather than formal written discourse because students are adopting the discourse of webtalk. This creole of textspeak and email abbreviation worked well for the firm. But just as the casual nature of the intra-firm chat forum (compared with the much more formal discourse on the discussion forums used by all firms) can be a strength in bonding the firm, it can also be a weakness, in that it may not be seen to be a register where persistent logical thought can easily be represented. The ligatures of logical argument do not sit easily with the style of speech or attitude it represents. It may be that the answer is not to insist on formal register, but to help students learn a post-Ciceronian digital rhetoric, in which they can achieve flexibility of tone, linguistic precision and argumentational sophistication.

The third dimension is perhaps the most significant – the socialising process. This forum is an important relational space. Within the formal environment of the case management system that students used, the forum allows a back-channel close to the drafting and posting zones, where students can comment on their work and chat about related issues. In simulation terms this is not quite a debrief – it does not take place with a tutor or coach and outside the domain of the simulation. However, it is not the simulation file itself but talk about the file. It represents a separate zone, where students can discuss and reflect on their work, try out identities that are at once professional but cool, make mistakes or learn from others' mistakes, and learn how to communicate consistently and accurately with colleagues, in any register. The process can help to bind the firm emotionally as a working unit, giving them confidence in their work and in each other.

Conclusion

This book is predominantly an exploration of the affective domain, as well as an introduction to the capacities of neuroscientific exploration of brain architecture that may help us understand the process of learning the law and understand ourselves and our activities as educators. As the first three chapters of the book point out, neuroscience has considerable potential for improving legal education, particularly in the affective domain. This is not a new insight: a decade ago, Goodenough (2001) argued for more interdisciplinary research on the subject. But teaching the law involves innovative curriculum design, and is a craft (in that it consists of a repertoire of skills and practices), and an art (in that it is dialogic, creative and intuitive) and is filled with ethical issues and problems. We need to bring together the paradigms of education and educational psychology with the natural science basis of neuroscience. Researchers are already doing so in other domains (Howard-Jones et al. 2005; Howard-Jones et al. 2007); but this is barely a start: we need much more interdisciplinary research on these issues, particularly in legal education.

In addition, this final chapter argues that we need to consider not just our teaching interventions but our deliberate absence as an essential space adjacent to learning objects, a plenitude of silence. Such absence can act like Heppell's 'nearly now'; and in spaces such as this students may not only discuss work and acquire knowledge but through participation they can create affective bonds that are integral to their work on the course and their development of professionalism (Barton and Westwood, this volume). All learning in higher education, I would argue, requires such spaces, but particularly experiential learning, where students may develop their voices as novice professionals, and support each other in their associative responsibilities, as well as analysing the nature of professionalism and its foundational ethics. Compare the sense of collective effort and collective responsibility that is growing in the forum fragment of the second case study above to the isolation, alienation and shame felt by Ian in the first case study – an altogether

different space of emptiness. Which of these two spaces do we want our students to inhabit? In this way space as constructed absence can help students to negotiate the transitional passages of higher education or, as Flower put it eloquently, can help them understand how the 'negotiation of inner voices shape[s] the *hidden logic* of the text' (Flower 1994: 55, her emphasis). They also provide staff with a concept that is often missing and forgotten – the space of affective learning, with all the enormous advantages that that brings to the learning process. Neuroscience can help us research that domain, can help give us a language that can express new insights into ancient processes. Together, approaches combining educational and neuroscientific methods may reveal new insights, through exploration of the affective domain, that help us understand ourselves as learners and explore the 'intimate dimensions' of learning. The phrase is Linden West's, and to him I give the last word:

> For adults as well as children, affirmation, holding and inclusion, especially for those on the margins, provides a basis for existential legitimacy, core cohesion and authentic engagement in the world. The problem has been that education and educators have lacked a compelling language to interpret and theorize the intimate dimensions of learning and self-development within a connected and historical frame of reference: or, to state it differently, to interpret what it takes, emotionally, socially as well as intellectually, to keep on keeping on even in the most oppressive and fragmented of times. (West 1996: 208)

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