

The Role of Serendipity in Legal Education:

A Living Curriculum Perspective

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This Article evaluates the challenges of modular redesign and the potential contribution of serendipity in legal education by advancing a “living” curriculum model. The archaeology of the curricular redesign process is excavated by exploring the conditions influencing and constraining curricular redesign. Whilst this study is primarily located within the theoretical context of curricular redesign, it is also rooted both in the practice of law and higher education literature. A key concern of this research considers the under-explored interaction between serendipity and curricular design with a particular focus, in the context of the current case study, on how the surrounding serendipitous conditions proved timely and welcome in creating an unanticipated opportunity for such redesign.

There remains a surprising dearth of research evaluating the influence of serendipity in legal education generally and, more specifically, with respect to the challenges of module redesign and delivery. This Article uncovers a research agenda with themes concentrated on the role of serendipity in curricular design and how ‘real world’ relevance can be incorporated into module redesign and delivery. It is suggested that serendipity-sensitive curricula which acknowledge current debates within law and the contemporary contexts within which law operates enhances students’ capacity to recognise the relevance and applicability of their legal knowledge. By remaining alert to the potential for serendipitous innovation in curricular redesign and by re-engineering curricula to facilitate serendipity, legal academics can enhance the incorporation of ‘real world’ relevance into academic teaching.

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(I) Introduction

This Article draws on the experience of redesigning and delivering teaching on an optional Level 6 module, Financial Services Law, and evaluates the challenges and opportunities of module redesign and delivery during a period of change mid-academic year. As such, the Article addresses a discrete, though not uncommon, set of circumstances in higher education which have applicability to legal education beyond the context of Financial Services Law. The Module Coordinator, who had developed the module and delivered it for a number of years, had suddenly taken ill during teaching of the module in the first semester. As a transitional measure, the LL.B. Programme Leader (“Programme Leader”) delivered teaching on the module for a short period before this author assumed responsibilities, as a Visiting Lecturer, for the module late during the first semester.

Part II of this Article excavates the archaeology of the redesign process by evaluating the factors influencing and constraining curricular redesign. Whilst this study is rooted in both the practice of law and higher education literature, it is primarily located within the theoretical context of curricular redesign. The prominence of “threshold concepts”, most conspicuously evident in the formative stages of the curricular redesign process, is considered, but the touchstone factor remains the content of the course specification.¹ Part III deconstructs the concept of serendipity by re-visiting and evaluating the word’s eighteenth century origins and examining the key elements of accident and sagacity which continue to define the term. Serendipity has also proved of “close kin of creativity”² and Part III mines the relevant literature concerning the contribution of serendipity to learning and, more precisely, higher education and curricular redesign.

Part IV evaluates how the surrounding serendipitous circumstances, rather than strategic planning, produced the opportunity for considered curricular redesign and how this ultimately proved both welcome and timely. This provides a context for consideration of the normative relevance of this experience for module redesign and

¹ J. Meyer and R. Land, “Threshold Concepts and Troublesome Knowledge: Linkages to Ways of Thinking and Practising” in C. Rust (ed.), *Improving Student Learning: Ten Years On* (OCSLD, 2003) 1.

² Lindsay, “Engineering Serendipity”, *New York Times: Sunday Review*, 5 April 2013 (available online at: http://www.nytimes.com/2013/04/07/opinion/sunday/engineering-serendipity.html?_r=0) (last accessed 11 February, 2015).

delivery during a period of change. Part V advocates a living curriculum model by exploring curricular changes to enhance the potential for serendipitous opportunities. It is suggested that developing serendipity-sensitive curricula which acknowledge current debates within law and the contemporary contexts within which law operates enhances students' capacity to recognise the relevance and applicability of their legal knowledge. Finally, Part VI uncovers the neglected status of serendipity in studies of higher education before exploring the opportunities facilitated by serendipity to incorporate "real world' relevance" into academic teaching.³ Whilst a living curriculum vision is advanced as a normatively preferable opportunity structure to accommodate serendipitous developments, it is also acknowledged that the contribution of serendipity in legal education still has some distance to travel before we can fully understand the conditions which enhance the frequency of serendipitous occurrences.

(II) Unanticipated Curricular Redesign

As described above, unexpected circumstances provided the subject of this Article. Unsurprisingly the process of managing the resulting change necessarily involved a number of stakeholders. As an optional module, it was reasonable to assume that students may have selected the module on the basis of the indicative syllabic content. The module was taught over a full academic year from September through May. As the module was a final year option, it also contributed to calculating students' degree classification. Given these conditions, ensuring that this period of change was managed sensitively and with minimal disruption to students was of central importance.

One of the first tasks involved determining the progress of the module to date, particularly what precisely had been taught so far. Given the emergency nature of the original Module Coordinator's illness there were no detailed files concerning the syllabus and teaching plan. Consequently, consultations with the Programme Leader

³ S. Fincher and K. Mander, *Serendipity in the Engineering Curriculum*, Proceedings of the International Conference on Engineering Conferences 2001 Annual Conference Proceedings, 6 – 10 August, 2001, Oslo, Norway (available online at: <http://kar.kent.ac.uk/13577/>) (last accessed 11 February, 2015).

and student representatives were crucial in developing an understanding of what had previously been taught. However, as the academic term was still in progress (given that it was late November), there was minimal opportunity to conduct a considered review of the existing syllabus. Similarly, there was also little opportunity to engage in a detailed redesign process. After extensive collaboration with the Programme Leader, a bifurcated approach reviewing/redesigning the syllabus was adopted: first, the subject matter of the outstanding two lectures prior to the December break should be settled; whilst, second, the December break should afford an opportunity to determine the syllabus and teaching schedule from January until the end of the academic year.

As a result, the most immediate task was determining the content of the two outstanding lectures prior to the December break. Given the unsettled circumstances, this was a complicated task requiring considerable collaboration. In close consultations with the Programme Leader, it was decided to focus on exploring two particularly contemporaneous and cross-cutting themes in financial services law: reform of banking structures and approaches to regulation. The reasons for determining the appropriateness of these topics were multi-faceted. First, one of the learning outcomes specifically provided that students, on completion of the module, would be able to “understand the fundamental legal principles behind the regulation of financial services provision and how these are applied in a practical context”. Second, given the heightened contemporary interest in financial services regulation and the backdrop of the Great Recession, the selected topics are particularly relevant to understanding the intricacies of financial services law.⁴ For example, disclosure-based regulation, which formed the subject of the final lecture before the December break, represented something akin to a “threshold concept” and was necessary for students to “appreciate the relevance of financial services law”, a stated learning outcome.⁵

In this context, I am relying on the definition advanced by Meyer and Land which emphasises threshold concepts’ centrality as conceptual gateways opening up

⁴ C. Rampell, “‘Great Recession’: A Brief Etymology”, *New York Times*, 11 March 2009 (available online at: <http://economix.blogs.nytimes.com/2009/03/11/great-recession-a-brief-etymology/>) (last accessed 11 February, 2015).

⁵ A disclosure-based regulatory philosophy focuses on providing a framework for disclosure of material information to investors by an issuer of securities. Theoretically, an investor may make an informed investment decision and ultimately take responsibility for that decision.

“previously inaccessible way[s] of thinking about something” (Meyer and Land, 2003, p1).⁶ Threshold concepts may also quite properly be construed as “ways of seeing”⁷ or “ways of thinking and practicing”.⁸ Threshold concepts are integrative, potentially irreversible, and likely to constitute or lead to what Perkins has termed ‘troublesome knowledge’ – knowledge that is counter-intuitive, strange, or just *prima facie* wrong, and which, as a result, is both challenging and ultimately enriching.⁹ Reaching a deeper understanding of disclosure-based regulation would certainly uncover previously hidden connections between legal rules. This appreciation should allow students to consider the law from a perspective beyond its coercive nature, instead focusing on the behaviour-changing qualities of law. Such a perspective is not unrelated, for example, to Thaler and Sunstein’s research on the creation of “choice architecture” – organising decision-making contexts to promote a preferred or favourable selection.¹⁰ It is a perspective, however, which is far removed from more traditional constructions of legal rules and the role of law in society.

Clearly such “troublesome knowledge” challenges existing perspectives by disrupting orthodox understandings of law. Perhaps more often than not law is portrayed as a blunt instrument, yet unveiling the prospect of refashioning law in a more nuanced and responsive manner presents a new conceptual gateway for students. Consequently, instead of merely ‘learning the law’ it is possible for the law teacher to promote a spirit of enquiry regarding the philosophy underpinning a particular approach to rule-making and ultimately to form value judgments on the normative superiority of such regulatory philosophies. Whilst such an experience is unsettling and disruptive of previously assumed understandings of law, this journey should also prove highly fulfilling and, particularly in the context of financial regulation, ultimately allow students to more fully engage with the professional communities which they aspired to enter. Perkins’ conception of constructivism as “generally cast[ing] learners in an active role” is particularly relevant here,¹¹ though as Phillips has observed, it is possible within the constructivist model of learning to

⁶ *Supra* n. 1, p. 4.

⁷ N.R. Hanson, *Patterns of Discovery: An Inquiry into the Conceptual Foundations of Science* (Cambridge University Press, 1958).

⁸ N. Entwistle, “Learning Outcomes and Ways of Thinking Across Contrasting Disciplines and Settings in Higher Education” (2005) 16(1) *The Curriculum Journal* 67.

⁹ D. Perkins, “The Many Faces of Constructivism” (1999) 57(3) *Educational Leadership* 6.

¹⁰ R. Thaler and C. Sunstein, *Nudge: Improving Decisions About Health, Happiness, and Wealth* (Penguin, 1999).

¹¹ *Supra* n. 8, p. 7.

also identify the “social learner” and “creative learner”.¹² Constructivism generally casts learners in an active role: instead of “just listening, reading, and working through routine exercises, [active students] discuss, debate, hypothesise, investigate, and take views”.¹³ This collaborative learning process proved particularly apt in the circumstances under review, a theme unpacked in more depth in Part IV.

The opportunity to more carefully consider the design of the module for the second semester allowed greater reflection on how the learning outcomes could best be satisfied. However, there were also clear constraints. It was clearly impossible, for example, to alter the learning outcomes for the module given that the process of re-examining the modular content was occurring mid-academic year. Quite understandably students would also have legitimate expectations from the indicative syllabic content.¹⁴ Consequently, whilst it was clear that some creative development was possible, this would have to occur within the immovable boundaries of the existing course specification. To understand the archaeology of this redesign, it is important to unpack the course specification in more detail.

The broadly constructed aims, as contained in the course specification, fortuitously permitted scope for manoeuvrability in redesigning the syllabus. The course specification provided that “[t]he course aims to alert students to the strict regulatory regime that now governs the industry, together with the enhanced enforcement powers that complement that regime”.¹⁵ The second aim envisaged that “[s]tudents will also be made aware of the strict requirements surrounding the offer of securities to the public, and will build on substantive knowledge of criminal and contract law when tackling issues of ‘white-collar’ crime”.¹⁶ The phraseology of the learning outcomes also permitted a degree of creativity. For example, one learning outcome provided that students will “acquire problem-solving techniques and be able to present coherent, concise legal arguments”, an objective which could also be applied to most practitioner-oriented undergraduate law modules.¹⁷ Whilst this was

¹² D.C. Phillips, “The Good, the Bad, and the Ugly: The Many Faces of Constructivism” (1995) 24(7) *Educational Researcher* 5, p. 6.

Yet, as Perkins aptly notes, “in practice, social and creative aspects often accompany [an active role for the learner]”. See *supra* n. 8, p. 8.

¹³ *Ibid.*

¹⁴ See Appendix 1

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

arguably the most broadly phrased learning outcome, it was nonetheless clear that the course specification accommodated considerable scope for imposing a distinctive imprint on the curriculum.

However, certain aspects of the module left minimal space for modification. The specific reference to 'white-collar' crime in the course specification's aims, learning outcomes, and indicative content suggested that the role of the criminal law in this field would have to form an aspect of the course.¹⁸ Financial crime often enjoys an academic emphasis which is arguably less reflective of the realities of practice but, after discussions with the Programme Leader, it was agreed that consideration of financial crime would be limited to one lecture.¹⁹ It was also decided that the module coursework topic would focus on money-laundering, further ensuring that an appropriate financial crime dimension remained embedded in the module, consistent with the course specification.

(III) Unpacking a Serendipitous Journey

Curricular redesign mid-academic year is an unanticipated exercise and, for most law teachers, most probably an unwelcome development. However this research suggests that curricular design generally, including the more discrete context prompted by this study, can provide an opportunity to enhance the incorporation of "real world' relevance" into academic teaching. As a result, this process represented something of a serendipitous curricular redesign. Fine and Deegan have suggested that "serendipity is the interactive outcome of unique and contingent 'mixes' of insight coupled with chance".²⁰ The Concise Oxford English Dictionary, 8th Edition defines serendipity as "the faculty of making happy and unexpected discoveries by accident".

¹⁸ See Appendix 1.

¹⁹ As has been noted elsewhere: "[t]he new statutory objectives of the Financial Conduct Authority represent a departure from the prominent emphasis which the 2000 Act placed on the reduction of financial crime. This concern is no longer afforded 'objective' status, but the 2012 Act continues to impose obligations on the FCA to 'minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime'.... [I]t is hard to deny that the 2012 Act has introduced a clear difference in emphasis". See G. Kelly, *Without Fanfares: The UK's New Financial Regulators Arrive*" (June/July 2013) *Continuity, Insurance, and Risk* 20, p. 21.

²⁰ G. Fine and J. Deegan, "Three Principles of Serendip: Insight, Chance, and Discovery in Qualitative Research" (1996) 9(4) *International Journal of Qualitative Studies in Education* 434, p. 435.

However, beyond the quality of “happy and unexpected discovery”, the concept has also contained, from its earlier usage, an element of sagacity or “insight”.

Merton and Barber’s seminal work, “The Travels and Adventures of Serendipity”, deconstructs the concept’s historical journey and definition.²¹ The Georgian origins of “serendipity” in the writings of Horace Walpole capture the key elements of the concept which remained, until the late twentieth century, confined to “the small stage of arcana [rather] than the larger stage of commonplace usage”.²² However, the sagacity quality alluded to above and emphasised in the literature has been present in understandings of serendipity since its first usage.²³ Walpole was originally inspired by the Persian tale, “The Travels and Adventures of the Three Princes of Serendip”, which had only recently been translated from Persian into French and later into English. The three princes of the title are the sons of Jafer, a legendary king of Solomonic qualities who once ruled Serendip, the island now known as Sri Lanka. Whilst travelling the three princes happened upon a series of discoveries, the most memorable of which – and that which influenced Walpole most – involved discovering a lost camel by the princes’ powers of observation and deduction. As Merton and Barber have elaborated, the “unplanned, accidental factor in the making of the discovery *and* the sagacity necessary to make it” seem to have been the two key ingredients in Walpole’s new word.²⁴ They were, as Walpole puts it, “always making discoveries, by accidents and sagacity, of things which they were not in quest of”.²⁵ More recent constructions of serendipity remain consistent with the concept’s origins. Denrell, Fang, and Winter define serendipity as “effort and luck joined by alertness and flexibility”.²⁶ Thus, whilst elements of the concept may remain ill-defined and subject to continuing academic debate – such as whether serendipity is a known quantity or unknown quantity and whether it is something which may be expected or not – the essential characteristics of the concept have largely settled on the twin qualities of accident and sagacity.²⁷

²¹ R. Merton and E. Barber, *The Travels and Adventures of Serendipity: A Study in Sociological Semantics and the Sociology of Science* (Princeton University Press, 2004).

²² *Ibid.*, p. 298.

²³ R. Roberts, *Serendipity: Accidental Discoveries in Science* (John Wiley & Sons, Inc, 1989) and J. Kjölberg, “Serendipity in Technology and Education” (2003) 11 *Stockholm Library of Curriculum Studies* 1.

²⁴ *Supra* n. 17, p. 20.

²⁵ *Ibid.*, p. 16.

²⁶ J. Denrell, C. Fang, and S.G. Winter, “The Economics of Strategic Opportunity” (2003) 24 *Strategic Management Journal* 977, p. 978.

²⁷ It might be added that happily, in this respect, we are not concerned with an “essentially contested concept” à

Although the presence of serendipity in curricular redesign has been previously identified, surprisingly the research terrain remains particularly fallow.²⁸ Perhaps this should not be surprising: Sawaizumi et al have noted, with respect to the physical sciences, that whilst “[m]any scientists and literary figures have recognised [serendipity].... [s]till they have not openly embraced the practice”.²⁹ However, it is also clear that the normative value of serendipity has penetrated scientific literature to a far greater extent than the humanities generally and legal education specifically. For example, in the context of chemical education, Lenox has specifically encouraged fostering serendipity and specifically advocated training students in making and recording observations, including unexpected and expected results.³⁰ Moreover, Lenox has suggested that such training should require that students keep a laboratory notebook graded with respect to observational and recording skills, as opposed to merely correct or incorrect answers.³¹

Consistently, Roberts has chronicled a series of scientific discoveries which, he suggests, are primarily attributable to serendipity.³² This historical record of serendipity in the process of discovery clearly influences and informs Roberts’ confidence in serendipity as a normatively desirable objective: “students should be encouraged to be flexible in their thinking and interpretations”.³³ Moreover, Roberts’ dichotomy of serendipitous and pseudoserendipitous, the latter of which may be considered as a contrastive concept denoting accidental discoveries of ways to achieve a pre-defined objective, as opposed to the former, which retains Walpole’s distinctive characteristic of an objective “not in quest of” (ie entirely accidental), further demonstrates the multi-faceted dimensions of the concept’s contours.³⁴ It is clear that serendipity has been subjected to a degree of scrutiny and analysis in the context of the physical sciences which, regrettably, is clearly less evident in higher education literature concerning the humanities. This is particularly unfortunate given

la Gallie. See W.B. Gallie, “Essentially Contested Concepts” (1955) 56 *Proceedings of the Aristotelian Society* 167.

²⁸ This is particularly true of the role of serendipity in the social sciences and humanities where its contribution appears to have been largely overlooked, if not entirely ignored.

²⁹ S. Sawaizumi, O. Katal, H. Kawakami, and T. Shiose, “Using the Concept of Serendipity in Education”, *The Second International Conference on Knowledge, Information and Creativity Support Systems: Proceedings of the Conference*, 5 – 7 November, 2007, Ishikawa, Japan (available online at: <http://hdl.handle.net/10119/4087>), p. 2 (last accessed 11 February, 2015).

³⁰ R.S. Lenox, “Educating for the Serendipitous Discovery” (1985) 62 *Journal of Chemical Education* 282.

³¹ *Ibid.*, p. 288.

³² R. Roberts, *Serendipity: Accidental Discoveries in Science* (John Wiley & Sons, Inc, 1989).

³³ *Ibid.*, p. 245.

³⁴ *Ibid.*, p. X.

the literary origins of the concept, even if it has been the physical sciences where the concept is being *applied* with more forensic rigour.

With respect to higher education curricular design, Fincher and Mander have described serendipity as “requir[ing] the teacher to notice, and take advantage of, circumstances which cannot be predicted, but which engage and enhance the students’ learning”.³⁵ As such, this definition retains the twin ingredients which Walpole irrevocably included in the meaning of serendipity: accident and sagacity. Interestingly, Kjölberg has persuasively argued that serendipity is a distinctive educational quality which should, insofar as is possible, be integrated within the learning environment.³⁶ In a similar vein, Kjölberg explores the possibility (and normative desirability) of embedding serendipity within the lecture theatre and it is suggested that a persuasive argument may be made for such a lively and responsive approach to curricular redesign, a theme unpacked more in the concluding remarks in Part V.

In the present context, serendipitous circumstances rather than strategic planning produced the opportunity for considered curricular redesign. This experience is consistent with that of Fincher and Mander who acknowledged, albeit in an information systems context, that “by serendipitously responding to events in the world, and by removing the artificial distinction between what happens in universities and what happens in ‘real life’, we are building relevance into the core of the curriculum”.³⁷ Moreover, serendipity as a normatively preferential quality is gaining prominence beyond academia. Lindsay has observed that, perhaps tellingly, “when Yahoo banned its employees from working from home... the reasons it gave had less to do with productivity than serendipity”.³⁸ Yahoo, in an internal circulation, had explained how “[s]ome of the best decisions and insights come from hallway and cafeteria discussions, meeting new people, and impromptu team meetings”, happenings which Walpole might have readily recognised as essentially serendipitous in nature.³⁹ Unsurprisingly the environmental design implications of such possibilities are being explored, as the prospects of specifically integrating

³⁵ *Supra* n. 2, p. 5.

³⁶ *Supra* n. 23, p. 4.

³⁷ *Supra* n. 2, p. 2.

³⁸ *Supra* n. 1.

³⁹ *Ibid.*

opportunities for serendipity are studied. Indeed, even quite elementary measures, such as positioning couches near doorways and stocking rooms with multiple types of seating to encourage lingering conversations, have been piloted with the specific objective of promoting serendipity.⁴⁰ Indeed, it has even been suggested that businesses should strategically consider where employees are physically located so as to drastically reduce the prevalence of gaps using the power of serendipity.⁴¹

Given the increasing, diverse, and potentially conflictive usages of serendipity within academia and industry, the potential dangers highlighted by Sartori's distinction between "conceptual travelling" and "conceptual stretching" are particularly relevant.⁴² The first of these notions recognises the legitimate application of a concept to new cases. However, the second involves the distortion of a concept by seeking to apply it in circumstances where it does not fit. Whilst travelling is acceptable and appropriate, stretching is more problematic in that "gains in extensional coverage tend to be matched by losses in connotative precision".⁴³ As Sartori cautioned, it may be that "we can cover more – in travelling terms – only by saying less and by saying less in a far less precise manner".⁴⁴ However, it arguably remains the case that the coming of age of serendipity, whilst raising the prospects of increasing promiscuity in the application of the term, should not yet unduly concern us at this juncture in serendipity's journey. It is suggested that only when serendipity has travelled further in hostile academic terrain will we more definitively know if the concept is being overstretched.

(IV) Serendipity and "Real World" Relevance

The circumstances for curricular redesign considered in this research involved conditions which were unanticipated and serendipitous and incorporated "planned insights coupled with unplanned events".⁴⁵ However, although the curricular redesign

⁴⁰ Ibid.

⁴¹ B. Waber, *People Analytics: How Social Sensing Technology Will Transform Business and What It Tells Us about the Future of Work* (Financial Times Press, 2013), p. 175.

⁴² G Sartori, "Concept Misformation in Comparative Politics" (1970) 64(4) *American Political Science Review* 1033.

⁴³ Ibid., p. 1035.

⁴⁴ Ibid.

⁴⁵ *Supra* n. 17, p.435.

had been unplanned, the content of the module – financial services regulation – was also undergoing radical change and moving through a period of unsettled transition. For example, the indicative syllabus, as drafted at the beginning of the 2012/13 academic year, proposed to study the Financial Services and Markets Act 2000 (“2000 Act”) and the Financial Services Authority (FSA).⁴⁶ Yet, by April, 2013, the Financial Services Authority would be abolished and the 2000 Act – the key legislation in this field – substantially overhauled. As Chambers has recognised, “the pace of the financial crisis has often meant confusion for those teaching financial law as to what is the correct regulatory stance to take”.⁴⁷

However, instead of proving unwelcome or even disruptive, the prospect of re-examining and updating the syllabus mid-academic year, whilst unorthodox, presented a most propitious opportunity to develop the module in a highly innovative way by tracking the contemporaneous changes which were occurring in the law whilst the module was being taught. As a result, the syllabic content was re-oriented to recognise these changes with a new focus on the transition from the soon-to-be-abolished FSA to the Financial Conduct Authority (FCA) and the debate concerning the future of financial regulation in the UK and EU. In many ways discussions during lectures and seminars mirrored the debate which was itself raging beyond the confines of academe. Northedge’s observation that “knowledge is not pinned down on the pages of a book [but rather] arises out of a process of discoursing” is particularly relevant given the dynamic nature of the process described.⁴⁸ Indeed, students were actively participating in a process which, far from being confined to the seminar room, had penetrated the professional sectors which they aspired to enter and, beyond this, had become a subject of broad societal contemporary concern.

This discursive learning process, recognised by Phillips as the “social learner”, is of particular relevance in the sphere of legal education.⁴⁹ At this juncture it is also helpful to recall the literature concerning signature pedagogies which have been described as discipline-specific approaches to learning anchored in encouraging students “to do, think, and value what practitioners in the field are

⁴⁶ See Appendix 1.

⁴⁷ C. Chambers, “Banking on Reform in 2010: Is Regulatory Change Ever Enough and Will the General Election Hold the Answers for the Financial Services Industry?” (2010) 44(2) *The Law Teacher* 218, p. 218.

⁴⁸ A. Northedge, “Rethinking Teaching in the Context of Diversity” (2003) 8(1) *Teaching in Higher Education* 17, p. 19.

⁴⁹ *Supra* n. 11.

doing, thinking, and valuing”.⁵⁰ Chick et al have elaborated that such pedagogies invoke the core features of a discipline to help students to think like a practitioner in their chosen field “rather than simply expecting them to passively accept analysis or findings of an expert”.⁵¹ Of course, it is important to acknowledge that the role of lawyers and what lawyers actually do is not always entirely clear. Vos, for example, has suggested that lawyers’ perception of their role in society may vary from jurisdiction to jurisdiction, explaining that he had “heard a French Bar leader objecting vehemently to two concepts which I believe the English profession takes for granted”.⁵² The first apparently offensive notion had been that lawyers provide “legal services”, whilst the second objected to the involvement of non-lawyers in formulating rules which lawyers must follow (Vos, 2008, p1).⁵³ Menkel-Meadow classification of macro and micro theories of lawyering is also instructive.⁵⁴ Macro theories focus on the purposes, power, structure and substance of the legal profession, and lawyers’ role in society, whilst micro theories instead emphasis the different tasks and skills which lawyers carry out and the amount of time they spend on such different tasks and skill sets.⁵⁵ In truth it is likely that the modern lawyer must be a composite of both, demonstrating a competence in the core skills necessary in daily legal practice, whilst also having a clear appreciation of the role of law in society, a dimension which is intrinsically connected to concepts such as justice and fairness (the proper deconstruction of which lies considerably beyond the scope of this Article).

However, if Northedge’s re-definition of “higher knowledge” as “what communities of academic specialists say to each other as they debate issues in papers, books and seminars” is accurate, then the opportunity to redesign the syllabus to specifically track the key *issues* which were being *debated* in the financial services sector provided a particularly fruitful (and serendipitous) opportunity for

⁵⁰ L. Calder, “Uncoverage: Toward a Signature Pedagogy for the History Survey” (2006) 92(4) *Journal of American History* 1358, p. 1361.

⁵¹ N. Chick, A. Haynie, and R. Gurung, “From Generic to Signature Pedagogies” in R. Gurung, N. Chick and A. Haynie (eds.), *Exploring Signature Pedagogies: Approaches to Teaching Disciplinary Habits of Mind* (Stylus Publishing, 2008) 1, p. 4.

⁵² G. Vos, “An Accessible Legal Profession Working in the Public Interest: Dream or Reality?” (1980) 42(1) *The Law Teacher* 1, p. 1.

⁵³ *Ibid.*

⁵⁴ C. Menkel-Meadow, “The Legacy of Clinical Education: Theories About Lawyering” (1980) 29 *Cleveland State Law Review* 555.

⁵⁵ *Ibid.*

curricular innovation.⁵⁶ However, it is also important to note Northedge's corollary caution that students "cannot simply 'dip in' to debates [surface learning], they must learn to use the discourse to make meaning of their own [deep learning]".⁵⁷ Given the unsettled transition in financial services regulation, there was no way to definitively determine how the reform agenda would evolve. By way of example, the Parliamentary Commission on Banking Standards published three reports on the future of banking in the UK as teaching on the module progressed! This experience was not a carefully bounded "case study" and, as is so often the case in legal education (and higher education more generally), there was no right or wrong answer. Instead, students were collectively partaking in a debate which was also of fundamental relevance beyond academe.

Shulman has acknowledged that "most legal education involves learning to think like a lawyer",⁵⁸ a notion described by the Legal Education and Training Review Report as a loosely-defined developmental concept encompassing the acquisition of both core legal knowledge and legal reasoning skills.⁵⁹ In truth, rather than the acquisition of such knowledge and reasoning skills, students' transformation to "thinking like a lawyer" more closely resembles Mertz's characterisation of the term as "an initiation into a particular linguistic and textual tradition found in our society".⁶⁰ The transitional state of financial regulation and contemporaneous changes in the law serendipitously embedded "real world" relevance in the curriculum and contributed to this initiation by demonstrating to students that what they were learning had an appreciable relationship to the practical problems of the world today and, in particular, the legal professions which many of them aspired to enter.

It would be a profoundly reductionist view of legal education to view the curriculum in isolation from contemporary contexts. Whilst one suspects few legal educators would endorse the notion of a fixed and inflexible curriculum without scope

⁵⁶ *Supra* n. 47, p.19.

⁵⁷ *Ibid.*, p. 26.

⁵⁸ L.S. Shulman, "Signature Pedagogies in the Professions" (2005) 134(3) *Daedalus* 52, p. 52.

⁵⁹ J. Webb, J. Ching, P. Maharg, and A. Sherr, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Legal Education and Training Review, 2013) (available online at: <http://letr.org.uk/the-report/index.html>) (last accessed 11 February, 2015).

Shulman is less convinced of the importance of core legal knowledge to the concept of "thinking like a lawyer": "The subject matter is not black-letter law, as, for example, in British law schools, but the processes of analytic reasoning characteristic of legal thinking."

See *supra* n. 56, pg. 55.

⁶⁰ E. Mertz, *The Language of Law School: Learning to Think Like a Lawyer* (Oxford University Press, 2007), p. 4.

for individual imprint or creative development, there remains scope for far more responsive curricular design with a view to constructing what we might consider a living curriculum, a concept expanded in Part V. Wenger's observation that "knowing involves ... participation in social communities"⁶¹ is a reminder that to be knowledgeable, in a legal context, is to be capable of participating in the distinctive discourse of the legal community. Thus, whilst such participation necessarily requires relevant information and a familiarity with specialist concepts such as legal terms of art, these do not constitute the knowledge of the community, but rather enable it.⁶² Initiation into the legal community such that students are *enabled* to actively participate and co-construct knowledge in dialogue with others is arguably a touchstone indicator of progress towards students' transformation to "thinking like a lawyer".

(V) Towards a "Living" Curriculum Model?

The study of curricular redesign mid-academic year offers broader lessons for more responsive approaches to curriculum design, particularly in the context of engineering space for serendipitous developments. Serendipity does not of itself produce discoveries, but rather facilitates opportunities for making discoveries. This is consistent with the earliest constructions of serendipity incorporating the quality of sagacity.⁶³ The quest for serendipity, however, need not prove elusive, but rather engages themes exploring the sociocognitive microenvironments of disciplines or what Merton and Barber have termed the "opportunity structures for serendipitous discoveries".⁶⁴ Regrettably, in the context of higher education, this research terrain remains underdeveloped. Indeed, even in the physical sciences where the incidence of serendipity has been more widely acknowledged, scholarly research remains largely "anecdotal, sometimes hagiographic and rarely systematic".⁶⁵ Further research exploring and unpacking the relevance and normative desirability of

⁶¹ E. Wenger, *Communities of Practice: Learning, Meaning, and Identity* (Cambridge University Press, 1998), p. 10.

⁶² *Supra* n. 50, p. 20.

⁶³ See generally J. Ziman, *Real Science: What it is and What it Means* (Cambridge University Press, 2000), p. 210-224.

⁶⁴ *Supra* n. 20, p. 297.

⁶⁵ J.M. Campanario, "Using Citation Classics to Study the Incidence of Serendipity in Scientific Discovery" (1996) 37(1) *Scientometrics* 3, p. 6.

serendipity in higher education curricular design would significantly enhance our understanding of the conditions which promote serendipity. Consequently, it is clear that there are searching questions regarding the role of academics in the development of opportunity structures which not only exploit, but more elementarily, identify optimal processes for the detection and recognition of the presence of serendipitous conditions which could enhance curricula and teaching. In an industry context, Weber has observed that we remain “in the very early stages of engineering serendipity”.⁶⁶ It is fair to say that with respect to higher education we still remain in the most nascent stages of such engineering.

However, the experiences explored in the current study provide salient lessons by revealing the conditions which enhance serendipitous developments. For example, it is clear that the challenge of devising opportunity structures for serendipitous developments strongly points to the need for a dynamic and innovative curriculum. Such a living curriculum is responsive to accommodating the inclusion of syllabic-relevant developments beyond the confines of the lecture theatre. The concept of a living curriculum is not new. Indeed, in the United States particularly, models of a living curriculum have been theorised and pioneered for some time.⁶⁷ In some quarters, the living curriculum has been conceptualised as the product of a process involving regular review and renewal which ensures that the validation of the curriculum is continuous.⁶⁸ However, in the current study, a more dynamic and responsive curriculum is envisaged, capable of integrating contemporary curricular-relevant developments in learning beyond modular review and re-validation processes. Incorporating contemporary developments and preventing ossification of the curriculum are key themes in the literature. In this context, Fincher and Mander’s events of “real world” relevance represent not merely incidental fortuitous

⁶⁶ *Supra* n. 1.

⁶⁷ For example, the concept of a “living curriculum” was recognised by Rhoades and Rhoades as far back as 1980 and explicitly anchored to curricular-relevant contemporary developments.

See L. Rhoades and G. Rhoades, *Teaching with Newspapers: The Living Curriculum* (Phi Delta Kappa Educational Foundation, 1980).

For a perspective on the counterpart of the “living curriculum”, what Abrahamson in a medical educational context has described as “curriculum ossification”, see S. Abrahamson, “Diseases of the Curriculum” (1978) 53(12) *Journal of Medical Education* 951, p. 957.

⁶⁸ D. Bath, C. Smith, S. Stein, and R. Swann, “Beyond Mapping and Embedding Graduate Attributes: Bringing Together Quality Assurance and Action Learning to Create a Validated and Living Curriculum” (2004) 23(3) *Higher Education Research & Development* 313, p. 325.

Bath et al recognise the fluidity of the concept of a living curriculum and how best to promote such a curriculum: “[t]here are doubtless other ways that might be suggested for achieving a living curriculum”. *Ibid.*, p. 325.

developments, but rather as Rae has succinctly put it “fortunate chance events coupled with sagacity”.⁶⁹

Engineering serendipity in practice will prove challenging and it is acknowledged that there may be limits to curricular redesign. For example, the course specification in the present study imposed clear constraints on any review of assessment design. Although the assessment structure provided for a diversity of regular assessment tasks, the emphasis remained focused on the end of year examination which constituted 70% of the module mark. It has been widely acknowledged that most students’ direct their learning based on the format of the assessment. As Ramsden has noted, “[f]rom our students’ point of view, assessment always defines the actual curriculum”.⁷⁰ The literature acknowledges that examinations may “provide only a one-shot sample of students’ capabilities”⁷¹ and that “paced learning” incorporating regular assessment tasks may constitute a normatively preferable assessment methodology.⁷² However, whilst the more structured processes of module and programme revalidation offers a forum for reflective assessment methodology redesign, the content (as opposed to the methodology) of assessments remains open to serendipitous influences. Consequently, there is no reason why events of “real world” relevance, such as financial regulatory reform in the context of Financial Services Law or perhaps the current constitutional dialogue concerning devolution across the UK in a Public Law context, should not feature prominently in the delivery of teaching and, importantly, the content of assessments. This is a particularly relevant consideration given that many university tutors may find themselves teaching a module that they have had no part in designing.⁷³ Contextualisation of the syllabus by remaining alert to the serendipitous potential of curricular-relevant contemporary events offers opportunities for creative re-imagination of the curriculum.

⁶⁹ D. Rae, “The Contribution of Momentary Perspectives to Entrepreneurial Learning and Creativity” (2013) 27(6) *Industry and Higher Education* 405, p. 410.

⁷⁰ P. Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992), p. 187.

⁷¹ G. Brown, *Assessment: A Guide for Lecturers* (Learning and Teaching Support Network Generic Centre, 2001), p. 20

⁷² C. Rust, “An Opinion Piece: A Possible Student-Centred Assessment Solution to Some of the Current Problems of Modular Degree Programmes” (2000) 1(2) *Active Learning in Higher Education* 126, p. 154.

⁷³ S. Bloxam and P. Boyd, *Developing Effective Assessment in Higher Education: A Practical Guide* (Open University Press, 2007), p. 49.

Yet, there is also a significant difference between, on the one hand, identifying serendipitous opportunities to enhance the “real world” relevance of students’ learning experiences and, on the other hand, engineering curricular opportunity structures to nurture such serendipity. Given this, it is appropriate to consider the design features of a more responsive living curriculum. The Quality Assurance Agency for Higher Education’s (QAA) Subject Benchmark Statement for Law is fundamental to such an inquiry insofar as it sets the national standard through articulation of a “threshold statement which equates to the bottom of the honours class for a bachelor’s degree”.⁷⁴ As the QAA has recognised, however, “[f]ew law schools will probably be content simply to describe the achievements of their students at threshold level”.⁷⁵ Perhaps more significantly, the Benchmark Statement specifically acknowledges that students should be able to demonstrate an understanding of the relevant social, economic, political, historical, philosophical, ethical, cultural and environmental contexts in which law operates.⁷⁶ The explicit recognition by the QAA that it is for each higher education institution to specify the kinds of contexts to which they would expect their students to relate their knowledge of substantive law is particularly significant in considering how best to develop a contextualised living curriculum.⁷⁷ As a result, each law school has considerable latitude to develop a programme specification – and for the purposes of the current discussion, a module specification – which provides scope for organic development, particularly with respect to the contemporary contexts within which law develops.

The learning outcomes for Financial Services Law created space to relate the indicative syllabic content to such contemporary contexts. For example, the expectation that students’ should be able to “appreciate the relevance of financial services law in the legal and economic system and in the study of law” provided space to critically engage with contemporary debates concerning the legal and economic system and the role of the financial services sector.⁷⁸ Consistently, another learning outcome specifically emphasised the importance of understanding “the fundamental legal principles behind the regulation of financial services provision

⁷⁴ Quality Assurance Agency for Higher Education, Subject Benchmark Statement for Law (QAA, 2007), p. 5.

⁷⁵ Ibid.

⁷⁶ Ibid., p. 8.

⁷⁷ Ibid.

⁷⁸ See Appendix 1.

and *how these are applied in a practical context*".⁷⁹ As the fundamental legal principles themselves became the subject of more forensic critical evaluation during the financial crises, it was evident that the curriculum itself must engage with this changing context. The learning outcome's specific reference to applying legal principles in a practical context reinforces the importance of the currency and "real life" relevance of the syllabic content.⁸⁰ In the context of Financial Services Law, this involved moving beyond the legislation to considering draft bills and policy discussions concerning regulatory reform.

Of course, some academics may already pioneer a living curriculum model of modular design and delivery, without perhaps explicitly considering it as such. For example, it is likely that many criminal law academics critically explore the role of the criminal law with respect to deterring particular conduct and consideration of contemporary case studies may at times penetrate the otherwise "black letter" syllabus. Similarly, in EU law, legal academics may encourage students to normatively explore the appropriate limits of EU law and the role of the institutions of the EU with reference to the UK Government's Review of the Balance of Competences. There remains a case, however, for enhanced sensitivity towards the language of module curricula by explicitly embedding contemporary contextualisation. Whilst it was possible to identify sufficient scope within the Financial Services Law module specification to relate the indicative syllabic content to current relevant developments, a more attuned syllabus could specifically acknowledge the importance of contemporary contexts.

A learning outcome which specifically recognises that students should be able to "demonstrate a knowledge and understanding of the substantive principles, application, and *development* of the law *in contemporary contexts*" would provide a clear curricular anchor for introducing contemporary developments into the curriculum. Admittedly, in some legal subjects, this may be more straightforward. For example, in the context of Insolvency Law, it is possible to construct a lively and engaging case study exploring a high-profile corporate administration. However,

⁷⁹ Ibid.

⁸⁰ A further learning outcome also emphasized the importance of applying substantive principles in a practical context: "demonstrate a knowledge and understanding of the substantive principles of the law relating to both civil and criminal aspects of financial services provision as applied in a practical context". See Appendix 1.

even beyond more discrete specialist subjects (which are more likely to be Level 6 elective modules), it remains possible to relate curricular content to contemporary developments in a way which demonstrates the “real world” relevance of students’ learning. Actively engineering module curricula to acknowledge current debates within law and the contemporary contexts within which law develops contributes to students’ confidence in recognising the relevance and applicability of their legal knowledge. Significantly, such an approach also repositions students as actively constructing (and re-constructing) their own knowledge, rather than passively receiving that of their teachers. As Light has emphasised, we also know that important learning takes place outside the lecture theatre when students talk to each other in residence halls or the local cafeteria.⁸¹ Consequently, it is possible for legal academics to engineer their module curricula to recognise the potential for serendipitous developments. By locating curricular content in contemporary contexts and sagaciously appreciating the prospect that such favourable contemporary contexts may exist (or arise), legal academics are explicitly confirming the potential influence of serendipity in their teaching.

Of course, as Fincher and Mander have recognised, “no teacher can expect (or predict) that the right circumstances will occur in the world to enhance any particular piece of teaching”.⁸² However, by conceptualising the curriculum as a living curriculum and remaining alert for serendipitous occasions, it is possible to “use whatever is happening as the basis for teaching”.⁸³ To make serendipitous developments fit a larger curricular scheme in a manner which enlivens the learning experience and potentially unlocks a new way of “seeing” the curriculum is no small achievement. Yet by responding to serendipitous events in the world, and by removing “the often artificial distinction between what happens in universities and what happens in “real life”, we are building relevance into the core of the curriculum”.⁸⁴

It would be remiss to evaluate the significant contribution of serendipity to legal education without also considering the more disruptive and unsettling influence

⁸¹ R.J. Light, *Making the Most of College: Students Speak Their Minds* (Harvard University Press, 2001).

⁸² *Supra* n. 2, p. 6.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p. 7.

of what William Boyd has coined “zemblanity”.⁸⁵ Boyd introduces the antonymous concept in *Armadillo* defining it as the faculty of “making unhappy, unlucky, and expected discoveries occurring by design”.⁸⁶ Whilst serendipity has been recognised in scholarly literature and explored to varying degrees, the concept of zemblanity is almost entirely neglected, even in the physical sciences where the contribution of serendipity has long been recognised. However, instances of zemblanity revealing negative influences are likely to prove illuminating and reinforce the necessity for further research.

(VI) Conclusion

Evaluating the challenges of module redesign and delivery during a period of change mid-academic year has proven a serendipitous journey. However, as has been explored, there was considerable scope to redevelop the module within the broad confines of the existing course specification. In many ways, this curricular redesign opportunity proved particularly serendipitous with the content of the module undergoing radical change whilst the module was being delivered. Fincher and Mander have observed how, in an information systems context, “by the greatest good chance, the real world provided a superb illustration of the issues and problems of a complex information system in the US Presidential Elections of November 2000”.⁸⁷ A similar set of factors was evident in the context of financial services law. Indeed, elements of the module’s indicative content became dated as the year progressed, as the regulatory landscape – the core focus of the module – was reshaped. Interestingly, this serendipitous opportunity facilitated the process of helping students to think like a practitioner “rather than simply expecting them to passively accept analysis or findings of an expert”.⁸⁸

Moreover, the redesigned curriculum encouraged students to actively participate and engage in debates which were contemporaneously occurring within the financial services sector and legal professions. Such unfolding changes could not

⁸⁵ W. Boyd, *Armadillo* (Hamish Hamilton, 1998).

⁸⁶ *Ibid.*, p. 235.

⁸⁷ *Supra* n. 2, p. 4.

⁸⁸ *Supra* n. 42, p. 4.

have been explicitly captured by a module specification, a reality which underscores the importance of the living curriculum model's capacity to accommodate and adjust. As Fincher and Mander have acknowledged: "no teacher can expect (or predict) that the right circumstances will occur in the world to enhance any particular piece of teaching".⁸⁹

As is so often the case during curricular review, close coordination is fundamentally important. The close working relationship shared with the Programme Leader was crucial during this period of modular transition and curricular redesign. The Programme Leader's specialism was also corporate law and this allowed a collective and detailed exploration of the module's syllabus whilst reflecting on external contemporary circumstances. As a result, consistent with Fincher and Mander's experience, it was possible to recognise the potential of the "opportunity that had so fortuitously arisen to respond to the real issues that the students could see emerging in the press".⁹⁰ However, this serendipitous journey has relevance beyond the highly specialised area of Financial Services Law and reveals a research agenda with themes concentrated on the role of serendipity in curricular design and how "real world" relevance can be incorporated into module redesign and delivery, particularly during a period of change.

Whilst responding to unexpected change is certainly not uncommon in legal education, there is a dearth of research evaluating the potential contribution of serendipity in such circumstances. One possible explanation for this neglect results from the fact that in the structured world of programme and module validation (and re-validation), serendipity is an alien force, an intruder from the realm of luck and randomness.⁹¹ Consequently, an uneven and incomplete picture emerges: much greater reflection and evaluation should focus on determining conditions which enhance the frequency of serendipitous occurrences and how the development of opportunity structures can nurture learning. There is potential for more focused research into the role of serendipity in curricular redesign, particularly in scenarios where redesign is not the product of strategic planning as would normally occur

⁸⁹ *Supra* n. 2, p. 6.

⁹⁰ *Supra* n. 2, p. 5.

⁹¹ An observation which Pina e Cunha et al have persuasively advanced in the context of modern organization theory.

See M. Pina e Cunha, A. Rego, S. Clegg, G. Lindsay, "The Dialectics of Serendipity" (2015) 33(1) *European Management Journal* 9, p. 9.

during the process of programme or module revalidation. Whilst this evaluation draws heavily on the experiential lessons of the case study, it also proceeds on the potentially flawed assumption that serendipity is generally positive. The influence of zemblanity has been identified and remains distinctly possible, although the negative implications of this phenomenon have yet to be unearthed in the literature. In sum, it is clear that serendipity remains an under-theorised and under-researched phenomenon in the social sciences generally and legal education specifically.

Evaluating the challenges of module redesign and delivery during a period of change has revealed the positive contribution of serendipity on students' learning. This Article has suggested that serendipity unveils opportunities for curricular innovation by incorporating "real world" relevance into academic teaching and remaining alert to the potential contribution of serendipitous developments.⁹² The living curriculum vision advanced in this study requires that there is scope to integrate serendipity within the curriculum by providing space for novel orientations in response to unplanned opportunities. Significantly, however, serendipity's sagacity ingredient also envisages "discoveries by the exploitation of serendipitous opportunities by persons *already primed to appreciate their significance*".⁹³ There is an expectation that the discoverer will, at least, be sufficiently well-positioned to recognise the prospective role of serendipity. This requires a degree of planning and foresight on the part of legal academics, both in designing and delivering teaching. As Cunha and others have suggested this involves a "promising and paradoxical synthesis of exploitative exploration through engaging in exploratory activities without losing touch with existing plans".⁹⁴ A living curriculum model of legal education which is attuned to contemporary contexts and delivered by legal academics sensitive to the potential serendipitous value of such contexts has much to recommend it.

⁹² *Supra* n. 2.

⁹³ *Supra* n. 61, p. 217 (Emphasis Added).

⁹⁴ *Supra* n. 90, p. 15.