

# Towards a Sound Pedagogy in Law: A Constitutionally Informed Dissertation as Capstone Course in the LLB Degree Programme

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## Abstract

The Bachelor of Laws (LLB) degree programme should adequately prepare graduates for the demands set by both legal practice and the greater South African society. Law schools are not tasked with producing future legal practitioners, but rather critical thinkers who can engage with the relationship between law and society in a meaningful way, and who recognise their duty to uphold the values of the Constitution of the Republic of South Africa, 1996 when performing their professional duties. Resultantly law teachers should construct learning environments that engage students in ways that help them develop creativity; embedded subject knowledge; and autonomous learning, critical thinking, and lifelong learning skills. A well-structured LLB degree programme should focus on this broader conception of legal education and a dissertation module as capstone course should be closely aligned with this objective. A greater academic influence could result in an academically rigorous degree programme that produces more mature graduates who possess competencies and attributes that exceed that which is demanded of them by legal practice. One way to establish a greater academic influence in a degree programme would be to include a final year dissertation module which demands that students illustrate the ability to think critically. The final year of a degree programme should provide the student with several opportunities aimed at culminating the learning experience and consolidating the skills and knowledge acquired throughout the preceding years of study. Capstone courses facilitate in-depth learning and should be employed to teach crucial skills related to the purpose of the degree. A compulsory dissertation module as capstone course, which embodies the pedagogical approach of transformative legal education, should be included in the revised curriculum of all law schools in South Africa. This dissertation module should demand that students engage critically with the principles of transformative constitutionalism in order to facilitate thinking that goes beyond traditional and conservative constructions of the South African legal system and its purpose. Such a dissertation could develop a student's metacognitive ability and result in the development of new legal skills, and the sharpening of existing skills. When producing a dissertation a student is learning to write as well as writing to learn. Crucially, the process of disserting also requires legal research skills and the ability to formulate effective research strategies. A law student who is capable of utilising various sources of law, synthesising the information found therein and presenting it effectively is illustrating elements of authentic learning. But this form of authentic learning in will be near impossible to achieve without the active guidance of a willing supervisor. Law teachers perpetuate legal culture and the supervisor-student relationship creates the opportunity to sculpt the culture instilled so that it may have the desired impact on the student. The supervisor could advance this process by empowering the student to construct critical and transformative views of South African law. A dissertation module presented in this manner could produce students who are able to engage with law constructively and who will graduate as responsible citizens and aspiring legal professionals who are excited about inspiring social justice and transformation in their communities.

## Keywords

Transformative legal education; transformative constitutionalism; pedagogy for law; capstone module; undergraduate dissertation; LLB review; writing skills; graduateness.....

## 1 Introduction and background

Extraordinary levels of knowledge and competence are expected of the 21<sup>st</sup> century graduate because of the outstanding quality of the resources available.<sup>1</sup> Accordingly, educational practices must be re-imagined assiduously in attempts to produce proficient citizens willing to take up the moral and ethical responsibility to develop the society they will serve as graduates. In order to prepare graduates adequately law teachers are tasked with constructing learning environments that engage students in ways that help them develop embedded subject knowledge, problem identification and solving capabilities, and lifelong learning skills.<sup>2</sup> The process of writing a dissertation provides the opportunity to refine these skills. Embracing a problem-centred teaching and learning strategy that relies on the constructivist pedagogical hypothesis that learning is a result of social and cognitive exchanges<sup>3</sup> may be successfully implemented in an undergraduate dissertation module.

Research activities such as dissertations at undergraduate level have enticed little academic attention, both internationally and locally. This disregard is startling, since the dissertation provides the opportunity to acquire and develop a plethora of skills which include generic and academic skills, and those prized by South African legal practice. In this contribution I explore the notion of a compulsory and comprehensive final year dissertation, informed by the *Constitution of the Republic of South Africa, 1996 (Constitution)*, as a capstone course of the South African Bachelor of Laws (LLB) degree. I argue that the value of such a dissertation is immeasurable and, if presented congruently with the principles and methodology of transformative legal education (TLE), it could ultimately lead to the graduation of prospective legal practitioners who are responsible for their own learning. I will further argue that the dissertation could be a learning tool used to transform the legal reasoning of students by challenging them to think critically<sup>4</sup> and engage with

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<sup>1</sup> Ramphele *Focus* 1.

<sup>2</sup> Grabinger, Dunlap and Duffield 1997 *ALT-J* 5.

<sup>3</sup> Dunlap 2005 *Educ Technol Res Dev* 65; Quinot 2012 *SALJ* 418-425.

<sup>4</sup> In this contribution I employ "critical thinking" as relational to critical legal theory (Van Marle and Modiri 2012 *SALJ* 209-219). Van Marle 2009 *Stell LR* 286-301 expounds transformative constitutionalism as an embodiment of legal critique. I use "critical thinking" as referring to both thinking about and judging law and society in order to

legal materials on a deeper, more enriching level. This will result in graduates who are conscious of and excited by their duty to uphold the *Constitution* and its principles and to transform aspects of South African law that have remained inequitable, in order to ultimately transform the greater South African society.

The South African Council on Higher Education (CHE) is in the process of reviewing the individual LLB degrees currently presented by South African law schools in order to determine whether these are presented consistently with the Qualification Standard for the LLB degree<sup>5</sup>. The review will also evaluate how the degree should be developed in order to ultimately produce better-rounded graduates who display the gradueness attributes<sup>6</sup> desired in legal practitioners. Another justification for the review is the fact that law schools have incessantly been criticised for not teaching sufficient practice-orientated skills.<sup>7</sup> The dissertation module I propose should be incorporated into the LLB curriculum at all law schools in South Africa, regardless of the form the degree programme will ultimately take upon recommendation by the review panel.

All law teachers in South Africa have first-hand experience of the "articulation gap"<sup>8</sup> illustrated by first-year students who are under-prepared for tertiary education.<sup>9</sup> Unfortunately most existing skills courses in South African LLB degree programmes are insufficient to close this gap and consequently large numbers of graduates enter legal practice without mastering the basic skills required of legal practitioners.

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challenge the validity of law and the status quo; the ability to evaluate law from within its innately political milieu; and providing suggestions for circumventing these existing challenges entrenched in South African law (Van Marle and Modiri 2012 *SALJ* 210-217). This mode of critiquing should take place alongside an acknowledgement of the post-apartheid context, which should address the unique historical challenges experienced under South African law.

<sup>5</sup> Chosi *et al* 2015 [http://www.che.ac.za/sites/default/files/LLB%20Qualification%20Standards\\_%20LLB%20final%20version\\_20150921\\_3.pdf](http://www.che.ac.za/sites/default/files/LLB%20Qualification%20Standards_%20LLB%20final%20version_20150921_3.pdf). CHE 2016 [http://www.che.ac.za/che\\_online\\_accreditation\\_system/national\\_reviews\\_system](http://www.che.ac.za/che_online_accreditation_system/national_reviews_system).

<sup>6</sup> For a detailed exposition of the specific gradueness attributes that should be instilled in LLB graduates in South Africa, see Smith and Bauling 2013 *Stell LR* 601-617.

<sup>7</sup> Greenbaum 2012 *De Jure* 110.

<sup>8</sup> Quinot and Greenbaum 2015 *Stell LR* 33; Campbell 2014 *Stell LR* 31; Quinot 2012 *SALJ* 430.

<sup>9</sup> See Woolman, Watson and Smith 1997 *SALJ* 30-64.

Two distinct approaches to teaching law exist, and the "trade school mentality"<sup>10</sup> has been criticised harshly.<sup>11</sup> The notion that law teachers have a duty to produce "technocratic legal graduates"<sup>12</sup> or "[churn] out functionaries who can serve the current system without thinking critically",<sup>13</sup> is fundamentally flawed. Campbell calls for "a more 'academic' legal education".<sup>14</sup> The inclusion of courses from disciplines beyond law and a greater academic influence could result in an academically rigorous degree programme and produce more mature graduates who possess competencies and attributes that exceed those which are demanded by legal practice.<sup>15</sup>

One way to embed a greater academic influence in a degree programme would be to include a final-year dissertation module which demands that students illustrate the ability to think critically. Working towards social justice can be attempted only if a broad understanding of the society in question is developed. Knowledge about the world constructed in non-legal contexts will be necessary if a student is to think creatively about law and its role in a society. A well-structured LLB degree programme should focus on a broader concept of education and a dissertation module should have the same aim.

The vast majority of researchers in post-apartheid South African legal education are of the opinion that legal skills and writing skills should be taught throughout the curriculum and that the focus on the development of skills should not be present exclusively in the first year of study,<sup>16</sup> since "basic legal skills simply cannot be taught without a good theoretical base".<sup>17</sup> Congruent with this approach, persuasive arguments have been made for "writing-across-the-curriculum programmes"<sup>18</sup> which, I argue, should culminate in a

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<sup>10</sup> Kennedy 1982 *J Legal Educ* 591.

<sup>11</sup> Campbell 2014 *Stell LR* 19-22; Van Marle and Modiri 2012 *SALJ* 211-212; Quinot 2012 *SALJ* 412; Zitzke 2014 *Acta Academia* 54; Quinot and Greenbaum 2015 *Stell LR* 30, 37.

<sup>12</sup> Van Marle and Modiri 2012 *SALJ* 214.

<sup>13</sup> Van Marle and Modiri 2012 *SALJ* 212.

<sup>14</sup> Campbell 2014 *Stell LR* 21, 30.

<sup>15</sup> Campbell 2014 *Stell LR* 21.

<sup>16</sup> Bangeni and Greenbaum 2013 *Per Linguam* 72, 81; Biggs and Hurter 2014 *JJS* 9, 24-26; Broodryk 2014 *Obiter* 453-466; Broodryk and Buitendag 2015 *Obiter* 615-630; Swanepoel and Snyman-Van Deventer 2012 *Obiter* 126; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 510-527; Quinot and Greenbaum 2015 *Stell LR* 39-41; Fourie 2016 *PELJ* 11.

<sup>17</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 512-513.

<sup>18</sup> Broodryk 2014 *Obiter* 453-466; Broodryk and Buitendag 2015 *Obiter* 615-630; Quinot and Greenbaum 2015 *Stell LR* 40, specifically n 62. Both the UFS and Stellenbosch University have implemented integrated approaches to teaching skills, and more specifically legal writing skills, across the whole curriculum of their respective LLB degrees. Great successes have been noted and the methodologies adopted by these law schools could be implemented by others with equally great success. In this regard

dissertation module in the final year of study. Each module in the LLB curriculum should be utilised to teach referencing, critical reading, legal research, and writing and drafting skills in a manner that integrates skills development with the course content. These skills are by their nature learned in relation to one another and are often developed in combination,<sup>19</sup> since writing may be viewed as an articulation of thinking.<sup>20</sup> Skills should initially be learnt, then practised, and finally effort must be put into their maintenance until the skills in question become second nature to the student.<sup>21</sup>

Legal writing is a specialised form of academic writing.<sup>22</sup> Final-year LLB students cannot successfully complete a substantial or meaningful dissertation unless fundamental legal writing skills have been mastered before the final year of the degree. The dissertation module I suggest in this contribution is intended to follow on and be the culmination of a skills development initiative,<sup>23</sup> which should be implemented in all years of the degree programme preceding the final year. I therefore presuppose that all law schools will embrace these complex strategies to facilitate and develop legal writing skills, in order to ensure the successful presentation of a dissertation module in the final year. Initialising a writing-intensive skills development approach in the first year, continuously developing these skills in conjunction with substantive law in the following years of study, and culminating the development of these skills in a final year dissertation is supported by Snyman-Van Deventer and Swanepoel.<sup>24</sup>

A great body of South African knowledge exists on the importance of pedagogies for and approaches to teaching legal writing and generic legal skills to law students.<sup>25</sup> Contributions to this crucial body of work fall beyond the scope of this contribution.

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see Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 510-527; Broodryk 2014 *Obiter* 453-466; Broodryk and Buitendag 2015 *Obiter* 615-630.

<sup>19</sup> Heringa *Legal Education* 57.

<sup>20</sup> Broodryk 2014 *Obiter* 455.

<sup>21</sup> Bangeni and Greenbaum 2013 *Per Linguam* 72, 75-76, 79; Swanepoel and Snyman-Van Deventer 2012 *Obiter* 122, 125; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 526-527; Heringa *Legal Education* 57.

<sup>22</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 515.

<sup>23</sup> Generic academic skills and skills specific to legal practice as well as legal writing skills should be the focus of such an initiative.

<sup>24</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 516-520.

<sup>25</sup> The contributions of the past five years include Broodryk and Buitendag 2015 *Obiter* 615-630; Broodryk 2014 *Obiter* 453-466; Biggs and Hurter 2014 *JJS* 1-30; Bangeni and Greenbaum 2013 *Per Linguam* 72-84; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 510-527; Swanepoel and Snyman-Van Deventer 2012 *Obiter* 121-134.

The purpose of my contribution is to provide an outline for a proposed compulsory dissertation module to be included in the revised curriculum of all law schools in South Africa. Each institution has its own unique strengths and challenges and therefore it would not be possible or practical to present a dissertation module according to an identical tuition methodology at all law schools. The underlying pedagogical approach of TLE should still be employed by all when a dissertation module is designed, since its value is infinite, as I will illustrate. In order to outline the final year dissertation that I propose, I define the "capstone course", "dissertation", and the "dissertation as capstone course". I then endorse the pronounced importance of TLE and its relation to the dissertation module. I detail the value of the constitutionally informed dissertation as a capstone embodying the TLE principles, which are capable of developing metacognitive skills that are crucial to academic skills acquisition and development. I explain how such a dissertation would provide the opportunity to build the crucial supervisor-student relationship, as well as the multitude of benefits emanating from this relationship. I finally discuss some anticipated restraints and challenges before making concluding remarks.

## **2 The dissertation module as a capstone course**

As the word suggests, a capstone course should represent a student's definitive achievement in a degree programme. The capstone course is typically defined as a crowning course or experience coming at the end of a sequence of modules with the specific objective of integrating a body of relatively fragmented knowledge into a unified whole.<sup>26</sup> The capstone course should aim to assess both theoretical and practical knowledge, help students to identify valid and important questions in a particular field, provide them with the opportunity to evaluate the interaction and interrelatedness of the sub-categories of a field, and open their minds to the fact that there may be more than one approach to every problem.<sup>27</sup>

Levine<sup>28</sup> suggests that the capstone course may be viewed either as a transition<sup>29</sup> or a conclusion. As a rite of passage, this course provides an experience through which undergraduate students both look back over their

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<sup>26</sup> Brooks, Benton-Kupper and Slayton 2004 *JGE* 276.

<sup>27</sup> Davis 1993 *Teaching Sociology* 233.

<sup>28</sup> Levine "A President's Perspective" 52.

<sup>29</sup> Also see Quinot and Greenbaum 2015 *Stell LR* 41.

undergraduate curriculum in an effort to make sense of that experience, and look forward to a career which builds thereon.<sup>30</sup>

The type of learning a student experiences when participating in a capstone course must, in order to achieve the goals of the degree programme it serves, be sensitive to the context in which it is situated.<sup>31</sup> Within the South African LLB degree that context is the understanding that law functions within a constitutionally-conscious sphere which sees law as inherently immersed in the greater South African society. A capstone course also demands students' active participation in order to facilitate their own learning and enhance their understanding of the field they are attempting to master.<sup>32</sup> Capstone courses allow educators to assess various crucial aptitudes and capacities for learning, which are not as easily evaluated by conventional means such as written tests or examinations.<sup>33</sup> By their nature capstone courses involve problem-based learning environments designed to develop students' ability to solve problems by identifying the problem in question, conducting research, designing and implementing a solution, and developing field-specific knowledge and lifelong learning skills.<sup>34</sup> A prime example of an accepted capstone course which encapsulates these skills is the dissertation.

Day and Bobeva<sup>35</sup> provide a comprehensive definition of the dissertation:

An individual piece of work demonstrating understanding of the research process and critical understanding of a substantive knowledge domain is usually called a 'dissertation'. This type of studies (sic) often commands a prominent position as the 'flagship' of most business, information systems, social science, humanities or law degrees and their completion is deemed by many institutions to be the element demonstrating the 'honours worthiness' of the award.<sup>36</sup>

The dissertation is unlike any learning or assessment tool the student has encountered in her preceding years of study. The undergraduate dissertation may be viewed as one of the most significant and intense pieces of academic work required of a student.<sup>37</sup> It awards students the autonomy to select their research topics, decide how to approach and conduct their research, and self-regulate and manage their research projects.<sup>38</sup> A dissertation provides

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<sup>30</sup> Durel 1993 *Teaching Sociology* 223; Gardner "Capstone Experiences" 301; Quinot and Greenbaum 2015 *Stell LR* 41.

<sup>31</sup> Dunlap 2005 *Educ Technol Res Dev* 66.

<sup>32</sup> Dunlap 2005 *Educ Technol Res Dev* 66.

<sup>33</sup> Stefani *et al* 1997 *Assess Eval High Educ* 284 as quoted in Feather, Anchor and Cowton "Value of the Undergraduate Dissertation" 42.

<sup>34</sup> Dunlap 2005 *Educ Technol Res Dev* 66.

<sup>35</sup> Day and Bobeva 2007 *IJQS* 219.

<sup>36</sup> Day and Bobeva 2007 *IJQS* 219.

<sup>37</sup> Feather, Anchor and Cowton "Value of the Undergraduate Dissertation" 43.

<sup>38</sup> Feather, Anchor and Cowton "Value of the Undergraduate Dissertation" 43.

the student with the opportunity to plan and complete an individual project through sustained independent effort.<sup>39</sup> Ultimately identifying and unpacking the problem by completing the dissertation provides the student with an invaluable learning experience, as is required of a capstone course.<sup>40</sup> This boosts the student's self-esteem greatly, confirming the value of the learning experience.

No South African data on the suggested length of an undergraduate dissertation exists. Edge Hill University (UK) evaluated all undergraduate dissertation modules presented at the institution and found that the required length of the dissertations varied between 5,000 and 12,500 words, with the most common requirement being 8,000 to 10,000 words.<sup>41</sup> The majority of the modules required varying combinations of an initial proposal, a research plan, a draft introduction and methodology, a literature review, an oral defence, peer review, a poster, and personal reflection, to be assessed alongside the final dissertation.<sup>42</sup>

The dissertation has been described as the assessment of the gold standard of a degree programme, the indispensable component of an honours degree, and an appropriate capstone course.<sup>43</sup> Watson argues that if the educational purpose of a dissertation is not clearly identified and defined, such a dissertation will serve little purpose within the degree programme.<sup>44</sup> The degree of depth and complexity that the dissertation will demand of the student would be unknown to her.<sup>45</sup> Students therefore need to know exactly what their supervisors expect of them and what they should have learned or achieved upon the completion of the module.

The final year of a degree programme should provide the student with several opportunities and experiences aimed at culminating the learning experience and consolidating the skills and knowledge acquired throughout the preceding years of study.<sup>46</sup> Capstone courses facilitate in-depth or deep learning<sup>47</sup> and a degree programme may encompass more than one capstone course. If several capstone courses are prescribed, each must focus on the development of a different crucial skillset related to the purpose

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<sup>39</sup> Levine "A President's Perspective" 56.

<sup>40</sup> Levine "A President's Perspective" 56.

<sup>41</sup> Greenbank *et al* 2008 *IJQS* 9.

<sup>42</sup> Greenbank *et al* 2008 *IJQS* 9.

<sup>43</sup> Watson 1983 *Improv Coll Univ Teach* 182; Heringa *Legal Education* 57.

<sup>44</sup> Watson 1983 *Improv Coll Univ Teach* 184, 186.

<sup>45</sup> Watson 1983 *Improv Coll Univ Teach* 183.

<sup>46</sup> Chickering and Schlossberg "Moving On" 37.

<sup>47</sup> Durel 1993 *Teaching Sociology* 223.



of the degree. The combination of various capstones might be required to fully facilitate the deep learning necessitated by a specific field of study.<sup>48</sup>

The complex nature of the South African legal system adds to the already challenging demands set by the South African LLB degree. No single capstone course could comprehensively assess all the skills an LLB graduate is expected to have mastered during her studies. It would thus be a pedagogically-sound approach to utilise a variety of capstone courses. The combination of a dissertation module, moot court course and practical legal experience, such as that provided by structured work in a law clinic or compulsory community service,<sup>49</sup> would provide final-year law students with an enriching array of learning experiences. A greater array of skills and gradueness attributes may be instilled in the student if several capstone courses are implemented in a structured and cohesive manner.<sup>50</sup> The student will be granted several learning experiences during which to grasp the plurality of the South African legal system as well as the role of the *Constitution* in an unequal and continuously transforming society.<sup>51</sup>

A compulsory dissertation spanning the final year of study<sup>52</sup> would therefore be a suitable capstone course within the revised LLB degree since it would be able to guide a student to achieve a great number of learning and gradueness-orientated goals. This dissertation should be at least 8, 000 words in length in order for the student to attain the desired benefit from completing such a substantial research and writing project.

The "agenda" of a discipline<sup>53</sup> should be accommodated by all capstone courses in the degree programme granting access to that discipline, and the LLB dissertation is no exception. Here the agenda must be that of transformative constitutionalism and the urgent need to transform the

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<sup>48</sup> Durel 1993 *Teaching Sociology* 223.

<sup>49</sup> The important role of the moot court and the law clinic within the South African LLB degree warrants in-depth further research which falls beyond the scope of this contribution. In this regard see Iya 2001 *Africa Insight* 47; Swanepoel and Bezuidenhout 2012 *De Jure* 46-60.

<sup>50</sup> Examples in this regard are those of oral advocacy skills and the ability to work collaboratively. These capabilities are not learnt in a dissertation module, but rather in the moot court and practical legal modules, whilst the understanding of the imperative of ethical conduct could be fostered in all three of these modules.

<sup>51</sup> The dissertation module's capacity to infuse the student's knowledge base with the transformative values of the *Constitution* is expounded in 4.1 below.

<sup>52</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 518-520 make a compelling argument for introducing the student to the research proposal in the year preceding the final year of study.

<sup>53</sup> Shah 1999 *Area* 308.

unequal South African society by legal means. Quinot<sup>54</sup> indicates that TLE demands that the substance of what is taught in the LLB degree programme, as well as how it is presented, should be transformed to meet the paradigmatic demands of transformative constitutionalism.

### 3 Transformative legal education

Possibly the most emphatic description of the law school and law teacher's inherent effect on the perception of students is that provided by Kennedy:<sup>55</sup>

Because students believe what they are told, explicitly and implicitly, about the world they are entering, they behave in ways that fulfil the prophecies the system makes about them and about that world.

It is therefore of the utmost importance that the law teacher understands her inevitable impact on her students and the impact her teaching will ultimately have on their role in society.<sup>56</sup> The ethical duty to harness this influence may not be ignored. Quinot<sup>57</sup> argues that it is the duty of all law teachers to adopt the critical consideration of educational theory and a sound pedagogy for teaching law, since law must be taught responsibly.<sup>58</sup> The theoretical framework suggested as being appropriate in this regard is that of TLE.<sup>59</sup>

Transformative education involves an adult student, who has existing beliefs and opinions, being exposed to and influenced by a different worldview.<sup>60</sup> TLE entails a student-centred approach and non-linear concept of transferring and constructing knowledge, and calls for substantive rather than formalistic legal reasoning.<sup>61</sup> It acknowledges that teaching law is a highly complex endeavour since law has a complex relationship with the society it serves.<sup>62</sup> According to Quinot, transformative constitutionalism has several implications for legal education, one of these being that an egalitarian mode of legal reasoning should be instilled in students.<sup>63</sup> But teaching students to

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<sup>54</sup> Quinot 2012 *SALJ* 414.

<sup>55</sup> Kennedy 1982 *J Legal Educ* 591.

<sup>56</sup> Smith and Bauling 2013 *Stell LR* 604-606; also see Fourie 2016 *PELJ* 2-3.

<sup>57</sup> Quinot 2012 *SALJ* 412, 432.

<sup>58</sup> Van Marle and Modiri 2012 *SALJ* 211-212; Smith and Bauling 2013 *Stell LR* 616; Campbell 2014 *Stell LR* 18-19; Davis 2015 *Acta Juridica* 177.

<sup>59</sup> Quinot 2012 *SALJ* 412, 416, 432.

<sup>60</sup> Smith and Bauling 2013 *Stell LR* 604.

<sup>61</sup> Quinot 2012 *SALJ* 412, 415.

<sup>62</sup> Quinot 2012 *SALJ* 431.

<sup>63</sup> Quinot 2012 *SALJ* 414-416; Quinot and Greenbaum 2015 *Stell LR* 38.

think critically and to develop a critical approach to law is not a straightforward task.<sup>64</sup> Guidance can be found in the three essential elements of TLE.

Firstly, it must be acknowledged that TLE as pedagogy for legal education in South Africa is first and foremost rooted in the egalitarian and constitutionally inspired principles of transformative constitutionalism.<sup>65</sup> Transformative constitutionalism as theory and methodology was first outlined by Klare<sup>66</sup> as:

... a long-term process of constitutional enactment, interpretation, and enforcement committed...to transforming a country's political and social institutions and power relationships in a democratic, participatory and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law.

Klare explains that it is the duty of legal academics and law teachers to research, advocate and teach the *Constitution's* inherent ability to transform South African law into a more egalitarian system, and that conservative readings of the law should be abandoned in order to truly realise the transformative aims of the *Constitution*.<sup>67</sup> In answer an enormous body of work emerged, celebrating and developing the concept.<sup>68</sup> The over-arching theme of this *corpus* is the importance of understanding law and specifically the *Constitution*, as set in a political and socio-economic context, which should support the society in which it operates.<sup>69</sup> The TLE pedagogy provides a platform from which to facilitate a transformed approach to understanding law,<sup>70</sup> but in order for it to be effectively implemented a novel approach to teaching is required.

Secondly, TLE demands a constructivist approach to education, which entails that "knowledge is not found, *but made*".<sup>71</sup> New knowledge is assimilated alongside existing knowledge and world views through learning

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<sup>64</sup> Van Marle and Modiri 2012 *SALJ* 210.

<sup>65</sup> Quinot 2012 *SALJ* 411-412; Quinot and Greenbaum 2015 *Stell LR* 34-35.

<sup>66</sup> Klare 1998 *SAJHR* 150.

<sup>67</sup> Klare 1998 *SAJHR* 166; Davis 2015 *Acta Juridica* 181.

<sup>68</sup> This list is not exclusive, but seminal sources are indicated: Moseneke 2002 *SAJHR* 309-319; Botha 2002 *TSAR* 612-627; Botha 2003 *TSAR* 20-36; Davis "Elegy to Transformative Constitutionalism" 57-66; Botha 2004 *SAJHR* 249-283; Le Roux 2004 *SAPL* 629-664; Pieterse 2005 *SAPL* 155-166; Langa 2006 *Stell LR* 351-360; Van der Walt 2006 *Fundamina* 1-47; Liebenberg 2006 *Stell LR* 5-36; Van Marle 2009 *Stell LR* 286-301; Klare "Concluding Reflections" 423-432; Davis and Klare 2010 *SAJHR* 403-509.

<sup>69</sup> Klare 1998 *SAJHR* 168-172.

<sup>70</sup> Quinot 2012 *SALJ* 418, 431-432; Quinot and Greenbaum 2015 *Stell LR* 30; Smith and Bauling 2013 *Stell LR* 608-609; Fourie 2016 *PELJ* 3, 7; Zitzke 2014 *Acta Academia* 55; Campbell 2014 *Stell LR* 27-28.

<sup>71</sup> Quinot 2012 *SALJ* 419; Quinot and Greenbaum 2015 *Stell LR* 35 (own emphasis).

experiences.<sup>72</sup> Constructivism demands that all students must actively engage in their own learning in order to create knowledge and facilitate understanding.<sup>73</sup> Students must thus be guided in their learning and not merely be provided with information handed down as absolute truths. The way in which law is taught must strengthen the idea that law itself is not cast in stone.

Finally, Quinot's approach involves understanding and embracing the relationship between the creation of knowledge, teaching and learning, and the information and communications technology (ICT) environment.<sup>74</sup> Engaging ICT tools in finding and creating knowledge is of the utmost importance and a failure to acknowledge and effectively harness these tools could result in ostracizing law students.<sup>75</sup> Effectively incorporating ICT in teaching will mean that innovative learning environments must be created to accommodate these changes.

TLE embraces the notion of teaching "context" instead of purely "text".<sup>76</sup> Law students should be taught to critique judicial decisions, that socio-economic and political factors should influence and are influencing the law, and that the prevailing ideology of a society plays an undeniable role in its law-making process.<sup>77</sup> The value of infusing transformative constitutional principles and the teaching methodologies of TLE into a compulsory dissertation module for final year LLB students is immense and deserves detailed discussion.

#### **4 The value of a constitutionally informed dissertation as a capstone**

The sole reason for including a dissertation module in a degree programme cannot be that it is a bridge to postgraduate studies,<sup>78</sup> or a form of teaching and learning not yet experienced by the student.<sup>79</sup> A well-defined rationale is required to ensure the efficient presentation of such a module.

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<sup>72</sup> Quinot and Greenbaum 2015 *Stell LR* 35.

<sup>73</sup> Quinot and Greenbaum 2015 *Stell LR* 36.

<sup>74</sup> Quinot and Greenbaum 2015 *Stell LR* 36-37, 51-58.

<sup>75</sup> Quinot 2012 *SALJ* 430; Quinot and Greenbaum 2015 *Stell LR* 37.

<sup>76</sup> Van Marle and Modiri 2012 *SALJ* 210; Quinot 2012 *SALJ* 420-422; Quinot and Greenbaum 2015 *Stell LR* 30, 37.

<sup>77</sup> Nicholson 2011 *Fundamina* 113. Also see Van der Walt 2006 *Fundamina* 29-30, 32, 36-37; Zitzke 2014 *Acta Academia* 68.

<sup>78</sup> Hauhart and Grahe 2010 *Teaching Sociology* 4; Rowley and Slack 2004 *Education and Training* 176.

<sup>79</sup> Greenbank *et al* 2008 *IJQS* 16; Watson 1983 *Improv Coll Univ Teach* 184.

The capacity to conduct independent research as is illustrated by completing a dissertation is regarded as an expression of gradueness.<sup>80</sup> When this is coupled with the suggested foundation of gradueness for law students in South Africa, namely the ability to see the value of transforming the South African society at large through the application of law and the *Constitution*,<sup>81</sup> it becomes evident that a final-year LLB dissertation grounded in constitutional principles must be demanded of LLB students. The pedagogical value of including a compulsory dissertation module based on the principles of TLE is immense. Such a dissertation could serve as an embodiment of the principles of TLE in the curriculum, develop a student's metacognitive ability, and result in the development of new legal skills and the sharpening of existing skills, ultimately contributing to the academic rigour of the LLB degree programme. The value of the role of the supervisor in the student's development is also of pronounced importance.

#### **4.1 The dissertation as the embodiment of TLE**

A dissertation is an extensive individual research project which demands research, critical reading, and critical thinking skills; the synthesis of information; and the ability to write well. The various individual challenges set by a dissertation are related to the essentials of TLE. By aligning the proposed dissertation module with the requirements inherent in a TLE approach to teaching and learning, the student will have a more enriching learning experience which is better-suited to instil the required gradueness attributes<sup>82</sup> in the student.

The demand for critical engagement with the theory of transformative constitutionalism can be addressed directly by the student's research question. The importance of the social context of the topic selected should be addressed in order to reinforce the concept of law as a social construct that affects the daily lives of citizens.<sup>83</sup> There are various ways to inspire a student to consider, at the centre of the dissertation, the effect of the *Constitution* on the law, and if the student is not able to find such a link, she should be instructed to explore another research topic. The impact of the *Constitution* (or lack thereof) on the law at the focus of the student's dissertation must be a central theme thereof. Ideally the student should also illustrate an understanding of the plurality of the South African legal system.<sup>84</sup>

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<sup>80</sup> Garde-Hansen and Calvert 2007 *ALHE* 106.

<sup>81</sup> Smith and Bauling 2013 *Stell LR* 616.

<sup>82</sup> Smith and Bauling 2013 *Stell LR* 615.

<sup>83</sup> Quinot and Greenbaum 2015 *Stell LR* 36.

<sup>84</sup> Quinot 2012 *SALJ* 415; Quinot and Greenbaum 2015 *Stell LR* 38.

Substantive legal reasoning must thus be inspired by supervisors in order for students to practise this skill. A law teacher engaged in this endeavour understands that she must "guide a student's own efforts at construction".<sup>85</sup>

Examples of how a student can be guided to critically engage with the role of the *Constitution* in delict are provided by Zitzke.<sup>86</sup> He illustrates the teacher of delict's duty to align her tuition strategy (in content and methodology) with the transformative constitutional project. He provides *iniuria* as an example of a delict that can be used effectively in a classroom situation to teach students why it is crucial to critique judgments.<sup>87</sup> The Constitutional Court's judgment in *Le Roux v Dey*<sup>88</sup> awarded damages to a teacher who was depicted as being involved in a homosexual act in a picture distributed amongst learners in a high school. The Court *othered* homosexual sexual conduct by describing it as "immoral" and "promiscuous",<sup>89</sup> thereby entrenching a heteronormative construct, which is in direct contrast with constitutional principles.<sup>90</sup> He explains that facilitating a discussion on the case could guide students to develop their own understanding of the importance of aligning law with constitutional principles and of protecting marginalised groups.<sup>91</sup>

Zitzke also explains that the concept that in delict rights protect the oppressed may be challenged.<sup>92</sup> Society assumes that the good name of a rich and powerful person is worth more than that of her less affluent counterpart. When a wealthy person institutes a claim based on *iniuria* she automatically "has more to lose" and will be entitled to greater damages than a destitute person would. In this way the powerful and influential members of society, who own the most property, stay on top and are awarded better protection by the courts.<sup>93</sup> He also questions whether the compensation for defamation should always necessarily be monetary in nature.<sup>94</sup> All individuals do not equally regard money as being important, and the payment of a sum of money as damages does not allow for restorative justice and an apology.<sup>95</sup>

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<sup>85</sup> Quinot 2012 *SALJ* 420.

<sup>86</sup> Zitzke 2014 *Acta Academia* 53-73.

<sup>87</sup> Zitzke 2014 *Acta Academia* 69-70.

<sup>88</sup> *Le Roux v Dey* 2011 3 SA 274 (CC).

<sup>89</sup> *Le Roux v Dey* 2011 3 SA 274 (CC) para 98.

<sup>90</sup> Stark criticism of the judgment is provided by Barnard-Naudé and De Vos 2011 *SALJ* 407-419.

<sup>91</sup> Zitzke 2014 *Acta Academia* 70.

<sup>92</sup> Zitzke 2014 *Acta Academia* 62-63.

<sup>93</sup> Zitzke 2014 *Acta Academia* 63.

<sup>94</sup> Zitzke 2014 *Acta Academia* 65.

<sup>95</sup> Zitzke 2014 *Acta Academia* 65-66.

These examples explain to students that they should question whether every judicial decision is always just, that fundamental rights automatically protect all who live under them equally, or that the award of money as compensation is always appropriate. Each teacher of substantive law should find ways of teaching her module in a manner that forces students to question the validity of the law in question. If students do not find the practice of critiquing law foreign, they will not feel it impossible to attempt to do so in a dissertation.

Likewise, the constructivist learning environment necessitated by TLE can be created effectively in a dissertation module. Here a student is required to engage with the information she has gathered through research in order to make sense of it for herself before she organizes her thoughts on the page. This opportunity for self-expression also allows students to illustrate their understanding of the interconnectedness of South African law and that they have synthesised the knowledge constructed throughout the LLB degree programme.

The dissertation module cannot be presented in a manner that is of substantial value if the demands of the ICT environment are not embraced. The effective use of ICT in legal education provides the opportunity to develop higher order thinking skills.<sup>96</sup> The possibilities are endless, and when the dissertation module is designed these should be given careful consideration. The research required to complete the dissertation, as well as the physical process of producing the final product, inevitably demands that students interact with technology and online resources. Being able to effectively navigate and master the use of multiple online research platforms, search engines and databases must be seen as an attribute of gradueness in all LLB degrees across South Africa, since graduates' technological literacy enhances their employability.<sup>97</sup>

TLE demands a re-evaluation of what *and* how we teach. When deciding on the exact approach for presenting a dissertation module, both must be considered. The dissertation module I am advocating must involve more than just the writing up of a research report. Alternative assessment initiatives should be utilised to allow students the opportunity to develop a greater scope of skills. Students' learning in a dissertation module could be enhanced and encouraged by effectively utilising group tutorials (presented online or face-to-face), promoting peer mentoring, and creating virtual learning environments and e-resources that students could utilise to start research

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<sup>96</sup> Quinot and Greenbaum 2015 *Stell LR* 53.

<sup>97</sup> Quinot and Greenbaum 2015 *Stell LR* 47.

discussions.<sup>98</sup> In order to facilitate peer mentoring and collaborative learning, and to create a space for peer-assessment,<sup>99</sup> students who have completed a dissertation may be asked to do an oral presentation on their findings or to reflect on their experiences of the research process.<sup>100</sup> If a dissertation module is presented thoughtfully it will inevitably demand creativity from the student. A blended approach to learning involving face-to-face meetings, combined with e-learning and online learning content, such as podcasts, video tutorials, and electronic self-assessment opportunities, is advocated.<sup>101</sup>

Innovative ways to inspire students to perform well in their dissertations should be considered. Students could be encouraged to focus on the satisfactory completion of a dissertation by providing them with congratulatory letters for work of outstanding quality, introducing a faculty research prize for undergraduate dissertations, or publishing dissertations which have been awarded distinctions in a student law review or faculty journal.<sup>102</sup> Here law schools should design strategies aligned with their individual challenges and needs and those of their student bodies.

The performance of a dissertation module presented in line with TLE principles would have various undeniable benefits for the way in which students learn and think. It is critical, however, that students should also become aware of the fact *that* they are learning, and how their thinking and learning is evolving.

## **4.2 Metacognition**

When considering the value of a capstone course in a degree programme, the importance of the role of metacognition cannot be ignored. Metacognition<sup>103</sup> is defined as "the knowledge about and regulation of one's cognitive activities in learning processes"<sup>104</sup> and is viewed as one of the most powerful predictors of learning. The term denotes a student's knowledge and understanding of her own problem-solving abilities and the cognitive activities

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<sup>98</sup> Garde-Hansen and Calvert 2007 *ALHE* 115.

<sup>99</sup> Regarding the role of peer assessment, see Watson 1983 *Improv Coll Univ Teach* 185.

<sup>100</sup> Garde-Hansen and Calvert 2007 *ALHE* 114.

<sup>101</sup> Quinot and Greenbaum 2015 *Stell LR* 52.

<sup>102</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 525; Garde-Hansen and Calvert 2007 *ALHE* 115.

<sup>103</sup> This concept is also known as "metacognitive awareness, ... feeling of knowing, judgment of learning, theory of mind, metamemory, metacognitive skills, executive skills, higher-order skills, ... heuristic strategies and self-regulation" (Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 4).

<sup>104</sup> Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 3.



involved in learning: "thus 'higher order cognition about cognition'".<sup>105</sup> Metacognitive skills embolden students to accept and continuously practise deep learning, which ultimately results in independent learning and self-motivation.<sup>106</sup>

Metacognition can take place only once a student understands the fundamental concepts within a field.<sup>107</sup> Initial research will further the student's grasp of the fundamentals of the research topic, whereafter metacognition may take place once the student realises that the process of conducting research and writing is shaping her understanding of the selected topic even further. She also comes to understand *that* she is learning, and *how* she is learning, because she is both *learning to write* and *writing to learn*.<sup>108</sup> Practising writing teaches a student both how to write, and about the topic on which she is writing, therefore greatly enhancing both thinking and learning.<sup>109</sup> Legal writing advances intellectual independence<sup>110</sup> and advancing this competency should be regarded as a crucial goal of a writing-across-the-curriculum programme.

Metacognition has an even greater benefit in that it correlates to intelligence but, more accurately, "contribute[s] to learning performance *on top of* intellectual ability".<sup>111</sup> Therefore all students, regardless of their intellectual capacity, benefit from developing their metacognitive skills and learn better when they understand how they learn. Metacognition can become a subconscious activity which occurs automatically once a student has made a habit thereof.<sup>112</sup> This implies that the student may take the metacognitive skills learnt during dissertation writing forward when she becomes a life-long learner.

The process of reading for and writing a dissertation develops various existing skills. It also provides the student with the opportunity to master new skills not acquired before.

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<sup>105</sup> Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 4, 5.

<sup>106</sup> Quinot and Greenbaum 2015 *Stell LR* 44-45.

<sup>107</sup> Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 5-6.

<sup>108</sup> Kieft, Rijlaarsdam and Van den Bergh 2006 *EJPE* 18-20, 29-30; Broodryk 2014 *Obiter* 455-456; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 514, 527; Quinot and Greenbaum 2015 *Stell LR* 40.

<sup>109</sup> Kieft, Rijlaarsdam and Van den Bergh 2006 *EJPE* 19.

<sup>110</sup> Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 511.

<sup>111</sup> Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 6 (own emphasis).

<sup>112</sup> Veenman, Van Hout-Wolters and Afflerbach 2006 *Metacognition Learning* 6.

### 4.3 Skills acquisition and development

"Research does not come naturally"<sup>113</sup> and novice researchers may be disheartened by the demands thereof upon their first introduction to a substantial research project such as a dissertation. This is partially because writing is a complex activity that requires great effort on the part of the author.<sup>114</sup> Longer writing pieces call for analysis, application and synthesis, critique, deconstruction, and comparison. A student may be good at writing examinations because this process is familiar to her, but she might struggle initially with a research project.<sup>115</sup> This does not mean that she is incapable of acquiring and mastering the skills a dissertation necessitates.<sup>116</sup>

Completing an undergraduate dissertation in law is indicative of the refinement of a number of crucial skills demanded of a legal practitioner: critical reading, reflection, solution-orientated thinking, clear and concise writing, the ability to do legal research, the extrapolation of crucial information, and life-long learning.<sup>117</sup> However, the most important skills learnt upon the satisfactory completion of a dissertation are those pertaining to autonomous learning, critical thinking, creativity, and legal writing.<sup>118</sup> Writing is inextricably linked to reading and thinking; if this link is severed the end result is uncritical, unreflective and one-dimensional.<sup>119</sup> Students need to understand that they must be able think critically, argue, and analyse as part of the writing process.<sup>120</sup> It must be emphasised again that the dissertation module should not be the first module in which the student is required to learn or hone these skills.<sup>121</sup>

Various skills are learned only when doing extensive research and writing. A dissertation offers a distinctive opportunity for autonomous and liberated learning,<sup>122</sup> which is crucial, since "students are ultimately responsible for their own learning".<sup>123</sup> Students are indirectly assessed on their ability to

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<sup>113</sup> De Wit 2012 *Progressio* 48.

<sup>114</sup> Kieft, Rijlaarsdam and Van den Bergh 2006 *EJPE* 19.

<sup>115</sup> De Wit 2012 *Progressio* 49.

<sup>116</sup> De Wit 2012 *Progressio* 49.

<sup>117</sup> De Wit 2012 *Progressio* 50; Greenbank *et al* 2008 *IJQS* 15.

<sup>118</sup> Quinot 2012 *SALJ* 416, 418; Van Marle and Modiri 2012 *SALJ* 218.

<sup>119</sup> Van Marle 2010 *PSLR* 7; Swanepoel and Snyman-Van Deventer 2012 *Obiter* 129; Bangeni and Greenbaum 2013 *Per Linguam* 77.

<sup>120</sup> Broodryk 2014 *Obiter* 454.

<sup>121</sup> Rowley and Slack 2004 *Education and Training* 177; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 514.

<sup>122</sup> Rowley and Slack 2004 *Education and Training* 177; Garde-Hansen and Calvert 2007 *ALHE* 106.

<sup>123</sup> Wiersema and Licklider 2007 *HER* 45-46. In this regard see Garde-Hansen and Calvert 2007 *ALHE* 107, 114; Hauhart and Grahe 2010 *Teaching Sociology* 11.

adhere to deadlines with minimum supervision, and to develop initiative, self-control and time management skills.<sup>124</sup>

Legal practitioners are problem solvers and therefore the skills of critical thinking and analysis are of the utmost importance. Law graduates must become creative problem solvers who have learned the crucial skill of critiquing existing law within the framework of transformative constitutionalism, in order to imagine what the law could be or ought to be.<sup>125</sup> Law teachers should guide students to be active in their learning and be independent enough to form their own view on the law being taught, and its alignment (or not) to the transformative guidelines set by the *Constitution*.<sup>126</sup> A dissertation module that explicitly requires this type of analysis of law will inevitably develop this crucial skill. As a capstone course the dissertation module would create a cumulative learning experience that would grant the student the opportunity to synthesise and apply the course materials presented throughout the curriculum.<sup>127</sup> It could also guide a student's thinking away from her compartmentalised view of the South African legal system, which is often fostered by the pedagogies currently utilised in most lecture halls and strengthened by most traditional assessment strategies.

Another vital skill an LLB graduate should master is the ability to conduct relevant and comprehensive legal research. Some of the associated skills the student will have to acquire include identifying terms to use when doing a literature search, illustrating a practical ability to base findings on the most recent sources of law, locating and reading literature in order to determine the relevance and quality thereof, effectively organising the selected sources in the write-up of the research, and presenting the findings in a cohesive manner.<sup>128</sup> Focussing great attention on developing the student's ability to conduct research is paramount. "There is no law library on the Starship 'Enterprise'".<sup>129</sup> If a legal source is not accessible on the Internet it does not exist and is of no relevance in the eyes of the law student of today.<sup>130</sup> Apart from being taught how to access electronic legal sources, students should also learn how to gauge their value.<sup>131</sup> The volume of information available

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<sup>124</sup> Day and Bobeva 2007 *IJQS* 219; Garde-Hansen and Calvert 2007 *ALHE* 106; Watson 1983 *Improv Coll Univ Teach* 183.

<sup>125</sup> In this regard see Quinot 2012 *SALJ* 417-420.

<sup>126</sup> Quinot and Greenbaum 2015 *Stell LR* 37.

<sup>127</sup> Hauhart and Grahe 2010 *Teaching Sociology* 4.

<sup>128</sup> De Wit 2012 *Progressio* 60.

<sup>129</sup> Daly 2008 *J Legal Educ* 455.

<sup>130</sup> Daly 2008 *J Legal Educ* 455.

<sup>131</sup> Quinot and Greenbaum 2015 *Stell LR* 37; Rowley and Slack 2004 *Education and Training* 179; Daly 2008 *J Legal Educ* 459.

to the law student is astronomical, but the value thereof may be questionable.<sup>132</sup> As the wealth of information grows, the skills necessary to navigate it all become even more important.<sup>133</sup> The law librarian should be tasked with providing law students with the basic skills required to negotiate legal databases,<sup>134</sup> but supervisors are ultimately responsible for educating dissertation students on how to determine the value of a specific source, as well as its importance as a primary or secondary source of law. This is a skill that should be taught throughout the LLB curriculum but the supervisor, who ultimately assesses a student's understanding of this concept, is tasked with honing this vital skill.

A law student who has the ability to utilise various sources of law, synthesise the information found therein and present it effectively is illustrating elements of authentic learning.<sup>135</sup> This form of authentic learning in a dissertation module would be near impossible to achieve without the active guidance of a willing supervisor.

#### **4.4 The influence of the supervisor**

Students who attempt their first dissertation need intense guidance on how to produce a final product which allows them to demonstrate that they are in fact capable of analysis, synthesis, creativity and coherence.<sup>136</sup> The importance of the role of the supervisor in developing the skills a novice dissertation student requires is immeasurable. The interactions between the student and supervisor, which include posing questions; debating aspects of the topic; assisting in the sharpening and reigning in of arguments and ideas; guiding a student to conform to the research standards the discipline entails; and assisting a student with the conceptualisation, execution and completion of the research project, are central to the endeavour. Without the supervisor's direction the student will not be able to refine the complex skill of dissertation writing.<sup>137</sup>

Often it is required of a supervisor to step into the role of supporter and mentor.<sup>138</sup> The nature of the supervisor-student relationship is such that the supervisor is in an ideal position to hone the student's communication (both

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<sup>132</sup> Daly 2008 *J Legal Educ* 455; Quinot 2012 *SALJ* 426; Quinot and Greenbaum 2015 *Stell LR* 36.

<sup>133</sup> Daly 2008 *J Legal Educ* 461.

<sup>134</sup> In this regard also see Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 516.

<sup>135</sup> Quinot and Greenbaum 2015 *Stell LR* 47.

<sup>136</sup> Rowley and Slack 2004 *Education and Training* 177.

<sup>137</sup> De Wit 2012 *Progressio* 50.

<sup>138</sup> De Wit 2012 *Progressio* 50.

verbal and written), interpersonal, and listening skills, as well as to boost the student's self-confidence in her research and writing ability.<sup>139</sup> Compulsory individual supervision sessions should be used specifically to stimulate critical thinking on the selected research topic. When discussing what has already been mastered and how to improve upon a previous attempt, it is imperative that the supervisor guide the student by asking questions which may potentially broaden her perspective on the topic.

It is unrealistic to expect undergraduate students to produce new knowledge, but the evaluation of legal sources from a specific theoretical perspective is essential.<sup>140</sup> Supervisors may expect students to demonstrate a certain rudimentary understanding of legal theory, or at least of a specific school of thought. The student should be able to evaluate her specific topic from within the scope of this theoretical framework, and within the South African LLB degree this theory must be that of transformative constitutionalism. If a student is able to accomplish this, she will automatically illustrate her ability to critically engage with the subject matter of the dissertation, and the degree programme as a whole.

Such a capstone dissertation module in the LLB degree would require teaching and learning practices and policies in congruence with the framework of TLE. This demands that a supervisor become a role model and mentor to the student. Law teachers perpetuate legal culture<sup>141</sup> and the supervisor-student relationship should create the type of situation where the culture instilled can be sculpted to deliver the desired impact.

Undergraduate dissertation supervision is an arduous task that demands that supervisors support their students towards realising their potential.<sup>142</sup> It is of the utmost importance that the supervisor should act as the student's mentor. Due to the nature of the supervisor-student relationship, this is most likely the most intimate relationship the student will build with any academic during her studies. The continuous personal interactions will automatically shape the manner in which the student thinks a legal professional should act, communicate and conduct herself. The supervisor's conduct and demeanour could also have a lasting impact on the student's work ethic and view of law within a constitutional framework.

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<sup>139</sup> De Wit 2012 *Progressio* 50.

<sup>140</sup> Rowley and Slack 2004 *Education and Training* 178.

<sup>141</sup> Kennedy 1982 *J Legal Educ* 591-615; Klare 1998 *SAJHR* 168, 170; Quinot 2012 *SALJ* 416-417.

<sup>142</sup> Rowley and Slack 2004 *Education and Training* 180.

There is no denying that undergraduate supervision is a time-consuming endeavour. It is immensely rewarding, however. The LLB dissertation has the inherent capability to contribute to the process of shifting a student's perspective of law away from the conservative and in line with that demanded by the *Constitution*. The supervisor should assist the student in selecting a topic which can be evaluated from a constitutional vantage point and guide her to successfully accomplish this task. This embraces a pedagogically sound approach to teaching law in South Africa. Adopting this approach to presenting an LLB dissertation module will, however, not be without its challenges.

## 5 Constraints and challenges

The most fundamental form of innovation is the transformation of the values of teachers. All other forms of innovation—in materials, methods, pupil grouping and so forth—are often dependent for their success upon a shift in the values of teachers.<sup>143</sup>

Many supervisors dismiss the responsibility of undergraduate supervision as an inevitable burden imposed by faculty management. It is convenient to assume that undergraduate dissertations necessitate administrative intervention and effort disproportionate to the benefits experienced by students.<sup>144</sup> The potential value of the dissertation-writing process and the module's role in the development of various aspects of gradueness are unfortunately overlooked. It goes beyond the scope of this contribution to include detailed analyses of the constraints and challenges law teachers who adopt the TLE pedagogy, or those who attempt to present a pedagogically sound dissertation module, will inevitably encounter. Some should be mentioned, however.

Criticism of and resistance to existing and potential writing-across-the-curriculum programmes has been observed in several law schools across the country. It may be assumed that because a dissertation module is related to this project, and because both require additional effort from law teachers, the opposition may be similar. The reluctance to engage enthusiastically with a writing-intensive approach is attributed to the fact that law teachers feel underqualified, uninterested and insufficiently experienced to teach and assess these skills; to an already unmanageable workload worsened by ever-increasing student enrolment figures, poor student-staff ratios, seemingly

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<sup>143</sup> Hoyle "Strategies in Curriculum Change" 96.

<sup>144</sup> Watson 1983 *Improv Coll Univ Teach* 183.

endless administrative duties and continuous pressure to publish one's own research, and complete postgraduate qualifications; to the fact that semesters are deemed too short, and the syllabus appears already filled to capacity with crucial substantial law content; to the reality that teaching and assessing skills are labour-intensive and time consuming processes which demand continuous feedback and rigorous student contact; and to the refusal of established researchers and law teachers to learn new skills or teach in an innovative way.<sup>145</sup>

Undergraduate supervision is an abbreviated version of postgraduate supervision and presents more challenges due to the fact that the supervisor has less contact and time with the student in which to determine her individual learning needs.<sup>146</sup> The supervisor thus has a much shorter period in which to formulate and implement intensive individual interventions to assist the specific student to refine her dissertation-writing skills.<sup>147</sup> The supervisor needs to implement varied support and supervision with different students, based on their individual learning capabilities and pre-existent skillsets, and this can be challenging.<sup>148</sup> Students also display varying levels of motivation, which further hampers a supervisor's attempts to teach effectively.<sup>149</sup>

Students' propensity to commit plagiarism frustrates supervisors immensely.<sup>150</sup> The prevalence could be attributed to several causes. Students fail to understand what plagiarism is and thus commit it unintentionally, students do not grasp the severity of the consequences of being found guilty of plagiarism, or students disregard their knowledge and understanding of the concept in order to complete work quicker, or to their minds, to a higher standard than they would have been able to achieve through independent effort.

No clear-cut solutions or easy approaches are available with which to combat these challenges, but some suggestions have been made in this regard.<sup>151</sup>

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<sup>145</sup> Broodryk 2014 *Obiter* 464-465; Biggs and Hurter 2014 *JJS* 24-25; Swanepoel and Snyman-Van Deventer 2012 *Obiter* 133; Snyman-Van Deventer and Swanepoel 2013 *Stell LR* 513, 515; Quinot and Greenbaum 2015 *Stell LR* 45-46, 60; Heringa *Legal Education* 55-56. Many of these concerns are valid. In order to establish a consolidated teaching approach aimed at continuous skills development across the LLB curriculum of a law faculty, faculty management would have to support staff and come up with strategies to enforce such a tuition policy across all the modules in the curriculum.

<sup>146</sup> Rowley and Slack 2004 *Education and Training* 176-177.

<sup>147</sup> Rowley and Slack 2004 *Education and Training* 177.

<sup>148</sup> Rowley and Slack 2004 *Education and Training* 177.

<sup>149</sup> Rowley and Slack 2004 *Education and Training* 178.

<sup>150</sup> Broodryk 2014 *Obiter* 464-465.

<sup>151</sup> Swanepoel and Snyman-Van Deventer 2012 *Obiter* 121-134.

Co-operation between various law teachers in a faculty, which would require instilling a measure of excitement in colleagues, is essential. Assistance, guidance and enforcement from and by university or faculty management could provide substantial support and streamline an attempt to take on anticipated challenges.

Successful supervision requires that the supervisor be open to the idea of developing her supervision skills. Supervisors need to embrace the responsibility to develop their expertise in the use of digital information resources and then be eager to share this expertise with students.<sup>152</sup> Incentivising teaching skills development for law teachers and introducing them to pedagogical thinking and the importance of TLE could be a start.<sup>153</sup> Stakeholders, within the university and from legal practice, should assist law teachers in their duty to teach effectively and in line with the requirements of the *Constitution*.<sup>154</sup>

I understand that practising what I am suggesting would be no mean feat, as law schools have vastly varying resources at their disposal, students' academic preparedness for such a module will vary, and it will take years to successfully restructure the degree programme in order to ensure that skills training is incorporated into the syllabus and assessment of each module within the LLB curriculum. But it is imperative that the challenge be embraced, since it is the only way to effectively teach legal writing and research skills. Law teachers must be brought to realise that the benefits for the student outweigh the perceived challenges by far.

## 6 Conclusion

It is the law graduates themselves who pride themselves in being awarded a well-deserved degree from a respected institution after being subjected to a rigorous test of their learning outcomes, and who carry that "badge" (the degree certificate) with them throughout their careers.<sup>155</sup>

Where no sound pedagogical rationale for the presentation of a dissertation module exists, outdated values, methodologies and aims render the dissertation anachronistic.<sup>156</sup> In this contribution I argue that the inclusion of a compulsory dissertation module in the final year of the LLB degree, which

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<sup>152</sup> Rowley and Slack 2004 *Education and Training* 180.

<sup>153</sup> Quinot and Greenbaum 2015 *Stell LR* 61.

<sup>154</sup> Quinot and Greenbaum 2015 *Stell LR* 61.

<sup>155</sup> Campbell 2014 *Stell LR* 26.

<sup>156</sup> Greenbank *et al* 2008 *IJQS* 4.



demands that the student complete a research project in line with the theory of transformative constitutionalism, is a pedagogically sound approach to consider when reviewing the LLB degree programme. This dissertation module should demand of students that they complete a dissertation, at least 8,000 words in length, and should illustrate the achievement of other related competencies through a series of additional alternative assessments.<sup>157</sup>

Since the proposed dissertation module would be presented as a capstone course the completed dissertation should illustrate an in-depth understanding of the chosen topic, the ability to synthesise new knowledge with that constructed throughout the degree programme, and an ability to critique law as demanded by transformative constitutionalism. The learning facilitated by a dissertation module would create opportunities for cumulative learning and provide a coherent learning experience for the undergraduate student completing her degree.<sup>158</sup> A great number of skills would be acquired throughout the disserting process, the most important of which are those pertaining to autonomous learning, critical thinking, creativity, and legal writing. Metacognition would greatly aid the endeavour to master these skills and the ability to think about one's own thinking and learning would then be carried forward into the student's career as a legal practitioner.

The only way the student could effectively benefit from the dissertation module to the extent desired from a pedagogical vantage point would be if a willing and able supervisor were to facilitate the student's learning process. The supervisor should become an important mentor for the dissertation student and be in a position to teach her far more than just how to write and do research. The supervisor should entrench the principles of transformative constitutionalism in the student's perception of law.

TLE demands that the agenda of South African law, namely transformative constitutionalism, be advanced and incorporated into the content and methodology of legal education. This approach necessitates a focus on social responsibility,<sup>159</sup> social justice,<sup>160</sup> and the endeavour of "teaching *for* transformation".<sup>161</sup> The South African law teacher should align her teaching with a pedagogy which embodies justification instead of authority.<sup>162</sup> The three foundational aspects of TLE, namely a focus on the transformative

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<sup>157</sup> See para 4.1 above.

<sup>158</sup> Smith "Curricular Structures for Cumulative Learning" 85.

<sup>159</sup> Fourie 2016 *PELJ* 20.

<sup>160</sup> Campbell 2014 *Stell LR* 27-28; Fourie 2016 *PELJ* 4.

<sup>161</sup> Smith and Bauling 2013 *Stell LR* 616 (emphasis as in source).

<sup>162</sup> Quinot 2012 *SALJ* 417.

constitutional framework, adopting a constructivist approach to teaching and learning, and embracing the opportunities created by ICT and its relationship to law would all be incorporated in the dissertation module I propose in this contribution. The dissertation and the manner in which it is presented could have immense value for the student and instil an ethical approach to law in LLB graduates.

This approach to presenting a dissertation module would not be without its challenges, but the majority of these could be overcome by a faculty of law teachers who are excited about teaching law responsibly, and who are willing to work together to make that happen.

Developing the correct educational environment in which students are encouraged to undertake dissertation work, is as much the individual teacher's concern for innovation in teaching methods as that of the overall course structure.<sup>163</sup>

The dissertation writing process is an endeavour in independent study and tests the student's ability to educate herself.<sup>164</sup> Graduates are successful if they have confidence in their ability to perform, and a dissertation module can develop this confidence.<sup>165</sup> If law teachers see the opportunity to build meaningful relationships with the students they supervise as a privilege and not a burden, great strides will be made.

Will<sup>166</sup> argues that "continuity is mechanical and lifeless" and that it should not be the dissertation student's goal to adhere to the inherited status quo. A discipline's past, present and future, and the inevitable relationship between these may be effectively illustrated to a dissertation student if the module is presented creatively. The potential value of a dissertation module, presented as expounded in this contribution, could be of great value to the student in the final year of her LLB degree programme. This module could impart the gradueness attributes demanded by South African society, whilst developing a host of crucial skills. The vital first step in the process of developing and implementing such a module would be to convince law teachers of their constitutional duty in this regard.

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<sup>163</sup> Watson 1983 *Improv Coll Univ Teach* 185.

<sup>164</sup> Greenbank *et al* 2008 *IJQS* 14-15.

<sup>165</sup> Dunlap 2005 *Educ Technol Res Dev* 77.

<sup>166</sup> Will 1978 *Antioch Rev* 361.

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### **List of Abbreviations**

ALHE	Active Learning in Higher Education
ALT-J	Association for Learning Technology Journal
Antioch Rev	The Antioch Review
Assess Eval High Educ	Assessment and Evaluation in Higher Education
CHE	Council on Higher Education

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EJPE	European Journal of Psychology of Education
Educ Technol Res Dev	Educational Technology Research and Development
HER	Higher Education in Review
ICT	Information and communications technology
IJQS	The International Journal for Quality and Standards
Improv Coll Univ Teach	Improving College and University Teaching
JGE	Journal of General Education
JJS	Journal for Juridical Science
J Legal Educ	Journal of Legal Education
LLB	Bachelor of Laws ( <i>Legum Baccalaureus</i> )
PELJ	Potchefstroom Electronic Law Journal
PSLR	Pretoria Student Law Review
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal
SAPL	SA Public Law
Stell LR	Stellenbosch Law Review
TLE	Transformative Legal Education
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UFS	University of the Free State
UK	United Kingdom
WITS	University of the Witwatersrand