FACEBOOK: BRIDGING THE 'OTHERNESS' OF DISTANCE LEGAL EDUCATION

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ABSTRACT

In *The Merchant of Venice*, Shylock the Jew represents the quintessential 'other'. While he longs for acceptance, he is ultimately humiliated, and his alterity affirmed. Shylock's sense of otherness fuels his appeal to the Venetian court to allow him his bond — a pound of his tormentor's flesh. This paper adopts the concept of otherness as a lens to discuss distance education theory and student experience in online legal education. Fully online legal education is a relatively new form of pedagogy, and it presents a range of challenges. One of those challenges is how to reach out to undergraduate law students who — by virtue of the mode of education they engage in, their place of residence and other demographic factors — are positioned as 'other' according to traditional ideas about the legal profession and tertiary education in general. After discussing survey results from an online cohort, it considers the value of Facebook in bridging isolation and building student perceptions of inclusion and community.

I INTRODUCTION

The story of 'Shylock the Jew' in Shakespeare's *The Merchant of Venice* is one of a person longing for acceptance,[1] though unable to make his worldview understood or respected by the dominant majority. While Shylock craves acceptance and vindication, the story closes with him impoverished and deeply humiliated. Shylock is humiliated by his adversary Antonio, a Christian businessman, and the cunning of those familiar with the technicalities of the law. Shylock's visceral concept of justice — the excision of a pound of Antonio's flesh as the agreed penalty for a breach of contract — evaporates in the face of Portia's clever arguments as to the interpretation of Antonio and Shylock's contract. Though Shylock seethes '[i]f you deny me, fie upon your law',[2] his curse finds no resonance. Moreover, the justice meted out by the Duke's court extends to the ideological: Shylock suffers the additional humiliation of forced conversion to Christianity.

Shakespeare weaves a tale spun around the reification of alterity and the role of the law as an instrument of exclusion. Shylock's character is an emblematic representation of otherness. It opens to various interpretations and translates to other arenas of marginalisation.[3] This paper brings the notion of otherness into 21st-century legal education by exploring otherness and

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1   Gerda Tischler, *The Representation of 'Otherness' in Shakespeare's Othello and The Merchant of Venice* (PhD Thesis, Karl-Franzens-Universität Graz, 2013) 68.

2   William Shakespeare, 'The Comical History of the Merchant of Venice, or Otherwise Called the Jew of Venice' in Stanley Wells and Gary Taylor (eds), *The Complete Oxford Shakespeare* (Oxford University Press, 1987) ('*Merchant*') 4.1.100.

3   See, for example, Oldrieve's discussion focusing on otherness as it pertains to anti-Semitism (Shylock) and woman (Portia): Susan Oldrieve, 'Marginalized Voices in the Merchant of Venice' 5 *Cardozo Studies in Law & Literature* (1993) 87–105.

isolation as it manifests for online distance education students in an undergraduate Australian law program.

Fully online legal education is a relatively new form of pedagogy, and it presents a range of challenges. One of those challenges is how to reach out to undergraduate law students who — by virtue of the mode of education they engage in, their place of residence and other demographic factors — are positioned as 'other' according to traditional ideas about the legal profession and tertiary education in general.

Early distance education scholars, such as Moore, viewed distance learning primarily as an individual endeavour undertaken by students who are highly autonomous, emotionally independent and self-motivating.[4] However, more recent studies suggest that students engaged in online learning crave connection, and, like Shylock, experience the brunt of social isolation and exclusion.[5]

The idea that a sense of social belonging is a fundamental need for human beings has been recognised in the seminal work of Durkheim,[6] Maslow,[7] and Baumeister and Leary.[8] Yet, belonging implies 'otherness'; it assumes inclusion and exclusion and a dynamic of relating between 'those who feel like they belong and those who feel they do not'.[9] It is also the case that a sense of belonging arises within, and is constantly negotiated through, everyday social practice.[10] To 'belong' means to *be* somewhere, in relation to another person or a social group. We have to be present in some way. Social presence has long been recognised as key to success in distance education,[11] and there is increasing interest in pedagogical literature as to the value of social media in ameliorating student isolation and 'otherness'.[12]

This paper brings together the elements noted above to address some of the concerns raised by former High Court Justice the Hon Michael Kirby, at the inception of the Central Queensland University (CQU) online law degree program in 2011, regarding social isolation.[13] In particular, it identifies the potential of Facebook as an adjunct to institutional Learning Management

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4   Michael G Moore, 'On a Theory of Independent Study' (Ziff Paper No 16, FernUniversitat, 1977) 20; see also Michael G Moore, 'Theory of Transactional Distance' in Desmond Keegan (ed), *Theoretical Principles of Distance Education* (Routledge, 1997) 22–38; Cheryl Amundsen, 'The Evolution of Theory in Distance Education' in Desmond Keegan (ed), *Theoretical Principles of Distance Education* (Routledge, 1993) 61, 63–64.

5   Penny Rush, 'Isolation and Connection: The Experience of Distance Education' (2015) 30(2) *International Journal of e-Learning and Distance Education* <http://www.ijede.ca/index.php/jde/article/view/936/1597>.

6   Èmile Durkheim, *Suicide* (JA Spaulding and George Simpson trans, The Free Press, 1951) [trans of: *Le suicide* (first published 1897)].

7   Abraham H Maslow, *Motivation and Personality* (Harper and Row, 2nd ed, 1970).

8   Roy F Baumeister and Mark R Leary, 'The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation' (1995) 117(3) *Psychological Bulletin* 497–529.

9   Rachel Wilson, *The Importance of Belonging: A Higher Education Perspective* (PhD Thesis, RMIT University, 2016) 29; M Antonsich, 'Searching for Belonging — An Analytical Framework' (2010) 4(6) *Geography Compass* 644, 645.

10   Antonsich, cited in Wilson, above n 9, 29.

11   D Randy Garrison, Terry Anderson and Walter Archer, 'Critical Inquiry in a Text-Based Environment: Computer Conferencing in Higher Education' (2000) 2(3) *The Internet and Higher Education* 87–105.

12   S Manca and M Ranieri, 'Is Facebook Still a Suitable Technology-Enhanced Learning Environment? An Updated Critical Review of the Literature from 2012 to 2015' (2016) 32 *Journal of Computer Assisted Learning* 503–528.

13   Michael Kirby, 'Online Legal Education in Australia: The New CQU Law Degree' (2011) 34 *Australian Bar Review* 237.

Systems (LMS) (such as CQU's Moodle) as a strategy to combat learner social isolation, and engender a sense of belonging that supports student learning experience and well-being.

The paper begins by examining Shylock as the quintessential 'other' and the notion of otherness more generally. It then discusses the concept of otherness in the context of early distance education theory, before moving on to examine online study and Facebook as a platform for social presence. The results of a small survey of undergraduate students studying law online at CQU in 2017 will be discussed, including the strong endorsement students gave to Facebook as a means of social engagement and educational support. The paper concludes by outlining some of the challenges faced in adopting Facebook in presenting course content.

II SHAKESPEARE'S QUINTESSENTIAL 'OTHER'

There is little doubt that the 'other' is a powerful literary device because it captures the tragedy of the human condition: the pain of social isolation and the ignominy inherent in that state of being. Belonging is a basic social good that defines the human being as a full person; in general, its lack is felt keenly. There is evidence that feelings of connectedness are a protective factor against depression and suicide.[14]

Shylock[15] is an enduring exemplar of the 'other'. He is 'other' 'for his ultimate pride in who he is and what he does against the heavily anti-Semitic atmosphere'.[16] He is spurned and spat on. His debtor adversary Antonio is unrepentant.

Shylock laments:

> He hath disgraced me, and/hindered me half a million; laughed at my losses,/mocked at my gains, scorned my nation, thwarted my/bargains, cooled my friends, heated mine enemies, and/ what's his reason? — I am a Jew./ … If you prick us/do we not bleed?[17]

> Still have I borne it with a patient shrug,/For suff'rance is the badge of all our tribe,/You call me misbeliever, cut-throat, dog,/And spit upon my Jewish gaberdine,/And all for use of that which is mine own'.[18]

And Antonio?:

> I am as like to call thee [dog] again,/To spit on thee again, to spurn thee too.[19]

Shylock's 'suff'rance' turns to hate, and he seeks revenge when an opportunity presents. When Antonio defaults on their loan contract, Shylock seeks to enforce the stipulated penalty: that he carve out a pound of Antonio's flesh.[20] In 'lodged hate and … certain loathing',[21] he presses for a strict reading of the contract, which excludes the provision of medical attention to

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14 See, for example, Ian M Shochet, Mark R Dadds, David Ham and Roslyn Montague, 'School Connectedness Is an Underemphasized Parameter in Adolescent Mental Health: Results of a Community Prediction Study' (2006) 35(2) *Journal of Clinical Child & Adolescent Psychology* 170–179; Centers for Disease Control and Prevention (CDC), *Connectedness as a strategic direction for the prevention of suicidal behaviour* <https://www.cdc.gov/ViolencePrevention/pdf/ Suicide_Strategic_Direction_Full_Version-a.pdf>.

15 *Merchant*, above n 2.

16 Kuan-Yu Lin, 'Otherness as A Dramatic Device in "The Merchant of Venice" and "Othello"', 3 <https://www.academia.edu/13506577/Otherness_as_A_Dramatic_Device_in_The_Merchant_of_ Venice_and_Othello>.

17 *Merchant*, above n 2, 3.1.50–60.

18 Ibid 1.3.108–112.

19 Ibid 1.3.128–129.

20 Ibid 1.3.147–150.

21 Ibid 4.1.59.

prevent Antonio's death.[22] Yet, Portia's intervention as a member of the Venetian court stymies Shylock's claim for redress. Adopting a 'hypertechnical'[23] contractual interpretation against which Shylock cannot rail, Portia reveals that the contract does not allow Shylock to spill a drop of Antonio's blood. Shylock's call for his due is denied. In addition, Venetian law leaves him penniless and at Antonio's mercy. As part of his redress, Antonio compels Shylock to convert to Christianity. Shylock is mocked — told to beg leave to hang himself, though he does not even have 'the value of a cord'.[24]

Some argue that *Merchant* is about the need for law to align with and reflect community mores.[25] More recent renditions of the play have changed the ending, leaving the Christian protagonists weeping and guilt-ridden, reflecting on how they have treated Shylock.[26] The play is as controversial now as it ever was, with many coming to the same conclusion as Kornstein: 'The more I think about it, the more I find myself in the [Shylock] camp.'[27]

In *Merchant*, Shakespeare shines a light on the dramatic *consequences* of the other's desire for acceptance and how this craving can morph into revenge when acceptance is denied. Shylock's hurt, even his hatred, seems an understandable response to his humiliation.

For the purposes of this paper, we ask: what was Shylock's *hope*, which, when dashed, led to this terrible turn of events? We glimpse it only briefly in *Merchant*:

I would be friends with you, and have your love,/Forget the shames that you have stained me with,/ Supply your present wants, and take no doit/Of usance for my moneys*, and you'll not hear me*.[28]

The symbolism of otherness is a useful metaphor in which to explore student experience in fully online legal education. Our aim is to prevent this marginalisation, and to keep students connected by facilitating a sense of belonging between students and their peers, lecturers and the educational institution. Before we consider otherness in early distance learning theory, and its expansion to issues of social presence, we tease out the dimensions of suffering inherent in the notion of otherness.

III OTHERNESS: ISOLATION AND IGNOMINY

What and who is the other?

According to post-colonial literary theorist Homi Bhabha, amongst other things, '[t]he Other loses its power to signify, to negate, to initiate its historic desire, to establish its own institutional and oppositional discourse'.[29] In post-colonial discourse, the construction of the 'other' assumes geography and spatiality: it exists in the East and constitutes a European projection.

Geography and otherness go hand in hand. To be the other is also to be unable to assert self-sovereignty. Recall that Shylock had no real voice in court, nor could he practise the religion of his choosing. His defeat brings with it acute ignominy.

Two forms of otherness are relevant to this paper: social and geographical isolation, and ignominy. As noted above, the first represents a denial of a basic human need for belonging. Our understanding of the role of belonging in living a good life, or in preventing the type of

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22   Ibid 4.1.256–259.

23   Daniel J Kornstein, 'Fie upon your law!' (1993) 5(1) *Cardozo Law Review* 35, 38.

24   *Merchant*, above n 2, 4.1.361.

25   Kornstein, above n 23.

26   Clarissa Sebag-Montefiore, 'If a Shakespeare play is racist or anti-Semitic, is it OK to change the ending?', *The Guardian* (online), 3 November 2017 <https://www.theguardian.com/culture/2017/nov/03/if-a-shakespeare-play-is-racist-or-antisemitic-is-it-ok-to-change-the-ending>.

27   Kornstein, above n 23, 35.

28   *Merchant*, above n 2, 1.2.136–139.

29   Homi K Bhabha, *The Location of Culture* (Routledge, 1994) 31.

loneliness associated with suicide, has developed significantly over the last two centuries. It is useful to give the concept of 'belonging' some historical context.

In pointing to the implications of social disconnection in Western societies, 19th-century sociologist Durkheim conceptualised the other through his notion of anomie. Anomie refers to the state of being deprived within 'a society [in] which [s]he expresses or serves' — that is, in which a person enjoys meaningful social interaction.[30] Contemporary educational theorists such as Tinto have drawn on Durkheim's work to explain college drop-out rates. Tinto has argued that a lack of social integration with peers in college may lead to insufficient congruency with college values, low institutional commitment and increased attrition risk.[31]

In his hierarchy of human needs, Maslow[32] placed belonging and social relationships as the most important after physiological survival needs and safety. In Maslow's view, the isolated other lacks 'affectionate relations with people in general … for a place in [their] group' and, like Shylock, 'the thwarting of these needs is the most commonly found core in cases of [psychological] maladjustment'.[33] It is only after such needs are met that humans are able to satisfy what Maslow reasoned were 'higher' needs,[34] including self-esteem and self-actualisation, or making full use of one's talents and capabilities.[35] Self-actualisation has sometimes been described as the ultimate goal of learning.[36]

Maslow's theory was intuitive and has been influential in the way we think about ourselves a social agents and individuals on a personal though fundamentally social journey from life to death. However, as Baumeister and Leary note, Maslow's assertion of a belongingness need was not accompanied by original data, nor a review of previous findings.[37] It was only in the mid-1990s, and despite frequent, speculative assertions that people need to belong, that the 'belongingness hypothesis' was critically evaluated according to available evidence.[38] Baumeister and Leary's analysis confirmed that, on the basis of extant empirical evidence, the 'need to belong can be considered a fundamental human motivation'.[39]

Given that belonging is a fundamental human motivation or need, it is not difficult to translate the idea into the online learning environment and understand that student isolation[40] involves risks. The absence of physical co-location, and associated lack of access to the social and learning benefits of non-verbal body language, suggest that isolation and its experiential sibling, a sense of belonging, must be given particular attention in online learning environments.[41] This provides the motivation for our work and efforts to understand and respond to student needs in this dimension of tertiary education. Current statistics demonstrate that in Australia we need to improve in this area. Online student attrition rates exceed 30 per cent, more than double the

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30 Durkheim above n 6, 213. Indeed, loneliness may pose a greater health risk than smoking or obesity. See, for example, Mattie Quinn, *Loneliness may be a bigger public health risk than smoking or obesity* (May 2018) Governing: the States and Localities <http://www.governing.com/topics/health-human-services/gov-the-loneliness-epidemic.html>.

31 Vincent Tinto 'Drop-out from Higher Education: A Theoretical Synthesis of Recent Research' (1975) 45(1) *Review of Educational Research* 89, 92.

32 Abraham H Maslow, 'A Theory of Human Motivation' (1943) 50(4) *Psychological Review* 370–396.

33 Ibid 381 (emphasis added).

34 Ibid 375.

35 Ibid 382.

36 Malcolm Knowles, *The Adult Learner* (Routledge, 2005) 14–15.

37 Baumeister and Leary, above n 8, 497.

38 Ibid.

39 Ibid 521.

40 See, for example, Rush, above n 5.

41 Fatemeh Bambaeeroo and Nasrin Shokrpour, 'The Impact of Teachers' Non-verbal Communication on Success in Teaching' (2017) 5(2) *Journal of Advances in Medical Education and Professionalism* 51–59.

rates for traditional face-to-face or blended learning formats.[42] In the United States, large-scale studies have consistently confirmed worse outcomes for students studying online, as compared to the traditional face-to-face format.[43]

Like our protagonist Shylock, otherness, for online students, may manifest in an experience of ignominy. This may be at the hands of peers, or by self-judgement against traditional values about what tertiary education involves and its non-negotiable attributes — in short, what might be referred to as the 'Educational Establishment' (the Establishment). Surely, the Establishment reasons, face-to-face instruction is the best, blended learning is next best, and fully online study is what you get when you cannot attend on campus at all. Kirby has alluded to how important it is to avoid this mindset and how it can contribute to 'othering' for law students when he compared his traditional face-to-face legal education with the fully online law program offered by CQU in Australia:

> There is a natural tendency in human affairs to think that the familiar is good; that the well-established is better; and that the training that produced a person as estimable as oneself, is best of all. *It is important that practitioners of the law should resist such thinking.*[44]

Importantly, Kirby suggests that it is better not to rely on taken-for-granted views. Rather, practitioners of the law ought to be curious and open-minded.

While Kirby alerts us to ignominy as an issue that offers fertile ground for further research in online legal education pedagogy, this paper focuses on 'isolation' as a distinct form of 'othering'. In the next section, as background to our analysis, we discuss otherness as it was perceived in early distance learning theory, and the notion of social presence. We then discuss our experience using Facebook as an adjunct to CQU's official LMS platform, ie Moodle.

IV OTHERNESS IN DISTANCE LEARNING THEORY AND SOME HARD QUESTIONS ABOUT SOCIAL PRESENCE

In Maslow's theory of human needs, belonging is a precondition for self-actualisation. Self-actualisation is the product of an internal struggle that occurs when the desire for personal growth outweighs the (satiated) desires for safety and belonging. For the purposes of this paper, we accept the intuitive appeal and logic in these ideas.

Some educational theorists have argued that 'higher' learning processes require a focus on the *self*, and that learning is an individualistic (isolated?) pursuit: 'man always and only learns by himself [sic]'.[45] In an early work on andragogy, Knowles viewed adults as typically unprepared for *self*-directed learning, requiring educators to take them on a 'process of reorientation to learning as adults'.[46] This, according to Knowles, is a process of maturing and being motivated by internal incentives. The student is to become increasingly self-reliant, taking initiative for their own learning '*with or without the help of others ...* [although t]here is a lot of mutuality among a group of self-directed learners' (are they 'together alone'?).[47] Knowles has maintained

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42 See, for example, Rush, above n 5.

43 Peter Shea and Temi Bidjerano, 'Online Course Enrolment in Community College and Degree Completion: The Tipping Point' (2018) 19(2) *International Review of Research in Open and Distributed Learning* 282, 284.

44 Kirby, above n 13, 2 (emphasis added).

45 Sidney Jourard, 'Fascination. A Phenomenological Perspective on Independent Learning' in Melvin L Silberman, Jerome S Allender and Jay M Yanoff (eds), *The Psychology of Open Teaching and Learning: An Inquiry Approach* (Little, Brown, 1972) 66, cited in Knowles, above n 36, 15.

46 Malcolm S Knowles, *The Modern Practice of Adult Education* (Association Press, 1970) 39–40.

47 Malcolm S Knowles, *Self-Directed Learning: A Guide for Learners and Teachers* (Cambridge University Press, 1975) 18.

this position[48] and the notion of self-directed learning has made its way into mainstream pedagogical thought.

In the late 1970s, Moore drew on Knowles to assert 'the very nature of good adult education is the restoration and support of learners' autonomy'.[49] Moore puts a positive value on distance *because* it facilitates autonomy.[50] He hypothesises that since distance learning requires greater autonomy, successful students will be autonomous learners.[51] For Moore, the fully autonomous learner is emotionally independent (*no need* for reassurance or approval) and motivated only by the need for self-approval. They will define their needs independently, maintain their own direction and prefer self-evaluation. They will be task-oriented and less affected by social stimuli.[52] Moore's testing found that field independence was indeed a predictor in distance study,[53] although others testing similar hypotheses have had mixed results.[54] Holmberg, another early distance learning luminary, also viewed learning as an essentially individual activity.[55]

Hence, in the early days, when technology was limited and distance learning consisted mostly of pre-packaged one-way communication, 'othering' occurred by way of technology. The ability to bear these 'othering practices' or technologies was considered a learning strength, indeed, a goal.

As technology advanced, perspectives on distance education that grew in the absence of sustained, contiguous, two-way communication began to give way to a socio-constructivist view.[56] For example, in 1993, Garrison advocated a move away from the 'apparent excessive emphasis on independence in distance education'.[57] His work utilised a more 'inclusive' notion of shared control in the 'educational transaction'.[58] Shared control referred to a dynamic interaction between teacher, learner and curricula at the macro-level, and between proficiency, support and independence at the micro-level.[59] Garrison's later work with Anderson and Archer

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48 Knowles, above n 36.

49 Moore (1977), above n 4, 21.

50 Amundsen, above n 4, 64.

51 Moore (1977), above n 4, 26.

52 Ibid 20.

53 Ibid 27. Moore is better known for his later theory of transactional distance, which distance learners experience because of the physical separation from the instructor. Transactional distance is mediated by both structure (in terms of instructional design and supporting media) and dialogue (communication between stakeholders in the learning process): Moore (1997), above n 4. Moore's later theory recognised, 'to a limited extent, that the process of learning was situated socially': see David Starr-Glass, 'From connectivity to connected learners: transactional distance and social presence' in Charles Wankel and Patrick Blessinger (eds), *Increasing Student Engagement and Retention in e-Learning Environments: Web 2.0 and Blended Learning Technologies* (Emerald Group Publishing, 2013) 113, 120.

54 Amundsen, above n 4, 64.

55 B Holmberg, 'Guided didactic conversation in distance education' in D Sewart, D Keegan and B Holmberg (eds), *Distance Education: International perspectives* (Croom Helm, 1983) 114–122.

56 We say nothing here of the subsequent rise of connectivism and its emergent collective of human activity — a 'socially constituted entity that is, despite this, soulless' — nor of the future hybrid human/machine collective: Terry Anderson and Jon Dron, 'Three Generations of Distance Education Pedagogy' (2011) 12(3) *International Review of Research in Open and Distance Learning* 80, 88.

57 D Randy Garrison, 'Quality and access in distance education: theoretical considerations' in Desmond Keegan (ed), *Theoretical Principles in Distance Education* (Routledge, 1993) 9–21, 14.

58 Ibid 9.

59 Ibid 14.

gave rise to their self-proclaimed 'iconic'[60] Community of Inquiry (CoI) framework. In this model, human belonging in the form of *social presence* is introduced explicitly, as an element in distance education, which supports and 'indirectly facilitat[es]' cognitive presence.[61]

Garrison and colleagues define social presence as the ability of participants 'to project themselves socially and emotionally, as "real" people (ie their full personality), through the medium of communication'.[62] The indicators of social presence are open, two-way communication (mutual awareness and recognition of each other's contributions), group cohesion and emotional expression.

Emotional expression is of particular interest for present purposes. Among other things, it may be demonstrated by the use of humour and self-disclosure. Strategies like 'humorous banter, [friendly] teasing, and joking' assist in constructing group cohesion, and self-disclosure results in a virtuous cycle of reciprocation and establishment of trust.[63] While socio-emotional interaction is possible in text-based computer mediated communication (CMC), it is 'not automatic' given the lack of nonverbal cues. So, for text-based CMC, we see users doing things like 'adapt[ing] text behaviour to present socially revealing, relational behaviour', such as the use of 'unconventional symbolic displays' like :), :S, :/ (ie early emoji).[64] These can be understood as attempts to build a sense of belonging around the learning process.

While the CoI framework discussed above may have intuitive resonance for some, social presence is a contested and elusive concept, as is its value in the educational experience. Garrison and colleagues do not clearly define its function.[65] However, they do see it as supporting cognitive presence, the element they consider central to learning, and thus success, in higher education. In addition, Garrison et al identify social presence as having an important role where 'there are affective, as well as purely cognitive goals', such as increasing learner enjoyment and fulfilment so they remain within 'the cohort of learners for the duration of the program'.[66] On a macro-level, then, the implications of these arguments are that social presence may contribute to persistence-building[67] and lowering the risk of attrition. Garrison et al also talk of emotion being inseparable from 'task motivation and persistence' and, hence, essential to the skill of critical inquiry.[68] On a micro-level, social presence motivates and assists skills building.

The above notwithstanding, Garrison and colleagues' discussion of social presence becomes problematic in relation to its value as an indicator of group cohesion. Garrison et al position social presence within their notion of learning itself as a collaborative venture, stating that building a

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60 D Randy Garrison, Terry Anderson and Walter Archer, 'The First Decade of the Community of Inquiry Framework: A Retrospective' (2010) *Internet and Higher Education* 5, 5.

61 Garrison et al, above n 11, 89 (emphasis added). While Garrison and colleagues acknowledge earlier social presence theorists, they distinguish their view in that they do not believe that the effect of media per se is the most salient factor in determining the level of social presence; they argue the communication context created via familiarity, skills, motivation, organisational commitment, activities and length of time in using the media are more influential on the development of social presence: 94–95.

62 Ibid (emphasis added).

63 Ibid 100.

64 Ibid 95. Emoji have developed almost to the point of constituting their own language, and have been construed in judicial decision-making as such: see Elizabeth Kurley and Marilyn McMahon, 'How the law responds when emoji are the weapon of choice' on *The Conversation* (5 December 2017) <https://theconversation.com/how-the-law-responds-when-emoji-are-the-weapon-of-choice-88552>.

65 Starr-Glass, above n 53, 130, also notes they do not specify it as a separate variable or moderator/modified of teacher presence and cognitive presence.

66 Garrison et al, above n 11, 89.

67 Tinto, above n 31, 90.

68 Garrison et al, above n 11, 99.

CoI is a collaborative process during which critical reflection and discourse are encouraged. It is this collaboration that draws learners into a shared experience of *constructing and confirming meaning*.[69] Given their study involved a qualitative analysis of computer conference discussions involving graduate-level students where critical analysis was the learning goal, this perspective is perhaps unsurprising.

Reflecting on the CoI model 10 years on, Garrison et al observed that the notion of group cohesion was intended to 'reflect the collaborative nature of the community *and its activities*'.[70] Garrison's subsequent work attempted to prove 'a stronger link between social presence and the purposeful, academic nature of the inquiry process'.[71]

It is perhaps for these reasons that the social presence model has been criticised by a number of commentators including Annand, who argues that it is of 'questionable value' in online higher education because it is not demonstrated to have a direct bearing on the level of academic performance or cognitive presence.[72] Annand does not take issue with social presence as adjunct or support, but with the notion of social presence as the collaborative learning vehicle, and that knowledge is co-constructed and impossible without group-based interaction.[73] Firmly rooted in the cognitivist camp, Annand suggests that deep and meaningful learning may be achieved just as efficaciously with appropriately structured learning materials, timely non-contiguous instructor–learner communication, and a teaching focus that enhances learner attributes (this is especially so for 'hard disciplines').[74]

Although we take a general socio-constructivist perspective, the focus in this paper is not on social presence as collaborative co-construction of learning. There is already adequate emphasis on collaborative learning and teamwork in the Australian law degree, as required by the Assurances of Learning (AoL) framework. Instead, we examine social presence and social media in the manner perhaps originally intended by Garrison et al: as a support or adjunct to the formal learning processes (whatever those processes may involve). In any event, the educational literature discussing Facebook generally indicates more support for the use of social media in this capacity than as a replacement for formal learning platforms, such as the institutional LMS. A survey of the literature on this topic by Manca and Raineri in 2016 demonstrated that most studies found Facebook an '*informal*, dynamic, social, and flexible environment where more or less structured learning experiences can take place'.[75] What social media can do well, compared

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69 Ibid 95 (emphasis added).
70 Garrison et al, above n 60, 7 (emphasis added).
71 Ibid (emphasis added).
72 David Annand, 'Social Presence within the Community of Inquiry Framework' (2011) 12(5) *Research Articles* 40, 49.
73 Ibid 43, 49.
74 Ibid 49, 51.
75 Manca and Ranieri, above n 12, 520 (emphasis added).

to the LMS, is assist in providing a sense of belonging and community-building.[76] This was the basis for its implementation in the present study.

V Otherness in Fully Online Study and the Need for Community-Building

As noted above, early distance educators assumed online learning was a deliberate choice that suited autonomous learners. However, a 2013 Australian study of more than 1,000 online learners conducted by Rush debunked this orthodoxy, finding that for many students the choice to study online was the outcome of necessity. As Rush explains, lifestyle, location and economic constraints informed the decision to undertake online study:

While it remains generally true (since Moore's original work in the 1970s) that with increased distance comes increased autonomy … we cannot assume that students who are compelled by circumstance or who choose distance education for practical or economic reasons will be, or even likely be, the 'autonomous learners' characterised by Moore and Holmberg in the 1970s and 80s.[77]

Indeed, in response to the question 'what do you think is the worst aspect of being a distance student?', only 81 responses mentioned 'lack of autonomy' or 'flexibility', while 429 mentioned lack of responsiveness, information, support or *having to take responsibility* as *negative* features of distance education.[78] Hence, at least for these participants, autonomy was not perceived as a positive aspect of their online learning experience.

Apposite to the arguments being put forward here, Rush found that, for the majority of her respondents (68 per cent), the 'worst aspect' of online learning was isolation related: feeling alone, lack of connection or lack of real-time interaction. Interestingly, many of these respondents referred to lack of interaction with the university itself.[79] Rush concludes that her study validates Tinto's hypotheses on the value of both social integration and academic commitment.[80] In response to the question 'what would make distance learning better for you?', the most strongly emergent code (31.8 per cent) was 'contact', which included all appeals for more contact, synchronous and physical (although physical was a small code, n=12).[81] It seems that this cohort felt a lack of social presence in the online learning mode.

Rush's findings of significant levels of student feelings of isolation and the implied 'othering' that this mode of learning involves reflects Kirby's concerns regarding CQU's (then fledging) fully online law degree. Kirby's reference to emotion is reminiscent of Garrison and

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76 M Camus, N E Hurt, L R Larson and L Prevost, 'Facebook as an Online Teaching Tool: Effects on Student Participation, Learning, and Overall Course Performance' (2016) 64(2) *College Teaching* 84–94; V Benigno, O Epifania and C Fante, 'Facebook And Moodle Use Among University Students: A Descriptive Study Of Students Habits' (Paper presented at the International Technology, Education & Development Conference, Valencia, Spain, 7–9 March 2016); L M Gomes, H Guerra, A Mendes and I E Rego, 'Facebook vs Moodle: surveying University Students on the Use of Learning Management Systems to Support Learning Activities Outside the Classroom' (Paper presented at the Information Systems and Technologies (CISTI) 10th Iberian Conference, 17–20 June 2015); V Gulieva, 'Moodle vs Social Media Platforms: Competing for Space and Time' (Paper presented at Conferinta Bunele Practici de Instruire Online, 2014); N Petrovic, V Jeremic, M Cirovic, Z Radojicic and N Milenkovic, 'Facebook vs Moodle: What do students really think?' (Paper presented at the Information Communication Technologies in Education Conference, Crete, 4–6 July 2013).

77 Rush, above n 5.

78 Ibid.

79 Tinto, above n 31, 93.

80 Ibid.

81 Ibid.

colleagues' indicator of social presence, and Tinto's notion of social integration and institutional commitment. At that time, Kirby worried that it would be

… difficult online, and at long distance, to replace the vibrant, exciting and often emotional contacts provided by universities through participation in student societies. This is part of the 'entire university experience for undergraduates who physically attend for instruction at a university campus'.[82]

In addition, Kirby suggests:

To repair as far as possible, the lack of regular physical interaction with teachers and other students, CQU will need to give thought to providing supplementary opportunities for electronic and physical interaction and dialogue.[83]

This latter sentiment echoes distance education theorist Keegan's notion that distance educators need to 'artificially recreate' the intersubjectivity of teacher and learner to offset the adverse impact on interpersonal communication.[84] We suggest that learner–learner intersubjectivity must also be re-created and maintained. In other words, what we need to do for fully online law programs is replicate a three-way form of reciprocity as a community of legal scholarship.

While the CQU law program provides weekly face-to-face/synchronous videoconferencing per unit of study, there are difficulties with tapping into these sessions in any more than a limited social sense. Lecturers engage in the usual social pleasantries, though, given the time constraints, will focus on substantive content fairly quickly; discussion then turns to the formal learning task or problem for the week. Once tutorial work is complete, the videoconference is typically ended by the host lecturer. Many students hurry to the next videoconference for the evening. There is little opportunity to engage in the relaxed post-lecture banter that typically occurs on campus.

The social media trial that is the subject of this paper was borne out of a Kirby-inspired search for a vehicle to build in some social presence and facilitate community-building for these 'othered' online students. In line with previous studies, we found that CQU online learners did not really want to use the Moodle LMS as a social space to 'project' themselves as 'real people'.[85] Before settling on Facebook, we trialled Twitter, though it did not gain any traction (the 140-character limit and highly visible digital footprint being the likely reasons). Subsequently, a Facebook closed group was selected as a trial adjunct to a first-year contract law unit in the CQU online law degree program.

VI The Facebook Trial as an Adjunct to the Contract Law Moodle Site

The Facebook closed group membership fluctuated between 40–50 student members — ie approximately 66 per cent of the cohort of 62. This relatively small cohort proceeded to make 369 posts and 2,424 comments to the posts over the next three months. The number of comments is particularly interesting, as comments are the dialogue or banter that followed an

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82 Kirby, above n 13, 15.

83 Ibid.

84 Desmond Keegan, *The Foundations of Distance Education* (Croom Helm, 1986) 120. Keegan felt compensation was required for several 'differences' in distance education as compared to interpersonal communication, including the lack of heard language, absence of non-language communication, delayed reinforcement and change in the role of non-cognitive learning processes (peer contact, anxiety, peer support and criticism): at 117.

85 Garrison et al, above n 11.

originating post in a thread. Many students, sometimes pejoratively called 'lurkers',[86] simply read the posts but did not provide written comments in response, or merely pressed a reaction button in response (reactions being a simple click on an emoji: 👍❤️😆😮😢😡). There was a significant 4,100 reactions to posts and comments. The activity over this period is shown in Figures 1–3 below.
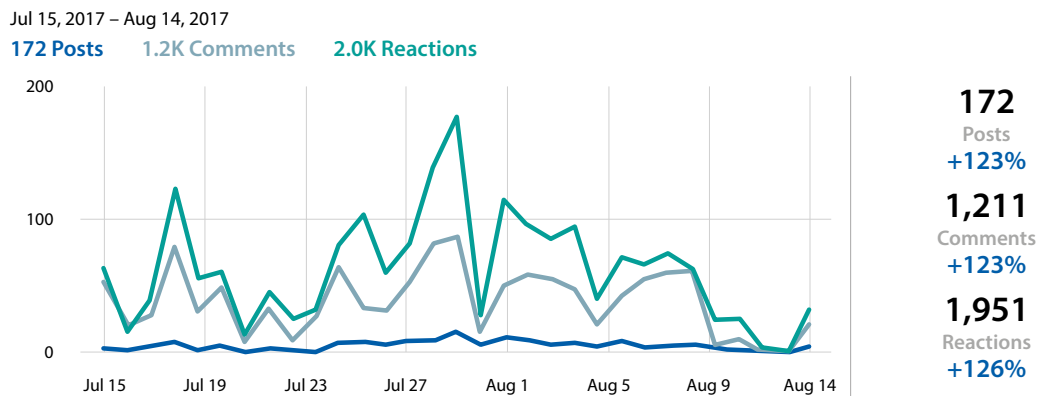
Jul 15, 2017 – Aug 14, 2017
172 Posts   **1.2K Comments**   **2.0K Reactions**

172
Posts
+123%

1,211
Comments
+123%

1,951
Reactions
+126%

Figure 1: Facebook activity in the first month

Aug 15, 2017 – Sep 14, 2017
85 Posts   **381 Comments**   **807 Reactions**

85
Posts
-51%

381
Comments
-69%

807
Reactions
-59%
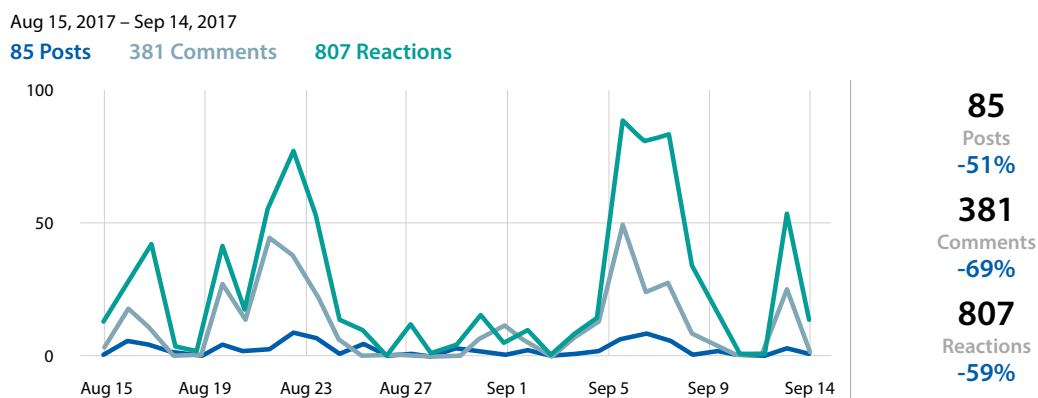
Figure 2: Facebook activity in the second month

Sep 15, 2017 – Oct 14, 2017
112 Posts   **832 Comments**   **1.3K Reactions**

112
Posts
+33%

332
Comments
+120%
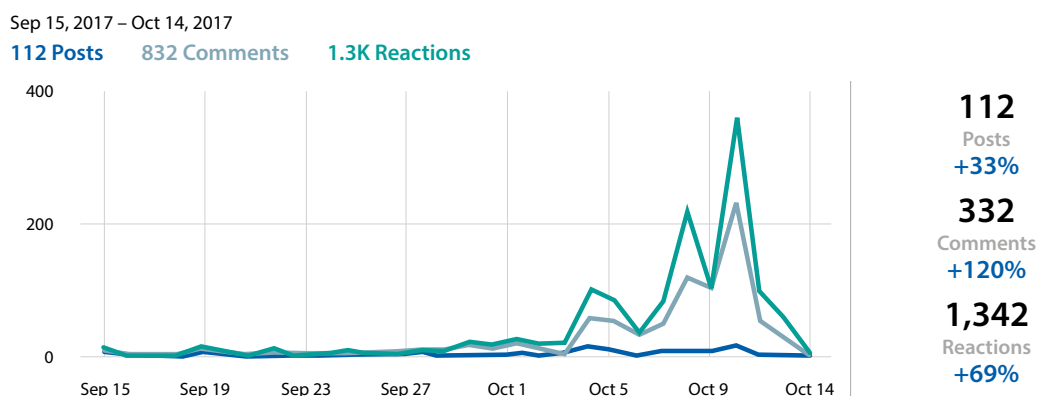
1,342
Reactions
+69%

Figure 3: Facebook activity in the third month

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86 V P Denen and K J Burner, 'Identity, Context Collapse, and Facebook Use in Higher Education: Putting Presence and Privacy at Odds' (2017) 38(2) *Distance Education* 173–192.

Posting in the group could be divided roughly into 'academic' (discussion of unit content, clarification of concepts, assessment) or 'non-academic' (messages of encouragement, observations, self-talk and, of course, good doses of humour). Non-academic posts or small talk constituted the vast bulk of posting activity.[87] The kind of small talk that peppered the Facebook posts is known as 'phatic communion' to linguists. That is, communication that serves a social function. Phatic communion is a wonderful term that was first used by anthropologist Malinowski in the 1920s in relation to his work on primitive language and relationship-building. The phrase brings to mind the notion of supping or communing together, highlighting the role of small talk as linguistic facilitator of connection and shared social experience. Particularly in CMC systems, phatic communion can be invaluable in sustaining 'social connection and human awareness' in the absence of verbal and visual/non-verbal cues present in face-to-face dialogue.[88]

In addition to increasing the level of what we will call phatic communion amongst student and participating lecturers, the Facebook group was used, after Garrison et al, to enhance task motivation and persistence. The task selected was a text-based problem with characters embroiled in contract litigation involving vitiating factors. After reading the problem, students signed up to represent one of the parties and had to submit a video of oral submissions for that party for a total of 30 per cent of their marks for the unit.[89] Following release of the problem, the lecturer brought the assessment characters to life in the Facebook world. A 'fake news' report and subsequent news updates were posted to the group. Students were encouraged to interact with this virtual world by creating and posting their own fake news video media releases featuring them as legal representative for their client.[90] No marks were awarded, but, surprisingly, eight student videos were posted.

This activity had three valuable pedagogical functions.[91] First, it increased student interest by bringing the assessment to virtual life. As Colbran notes, visually stimulating assessment items are increasingly being incorporated into tertiary education.[92] Second, it assisted skills development and gave the students a valuable opportunity for feedback. A number of students were apprehensive about talking to camera; the activity allowed them to try video-making without the pressure of summative grades, just for fun. Again, as Colbran notes, incorporating enjoyable formative activities into assessment practice is good learning and teaching pedagogy that raises performance.[93] Finally, the exercise served as a vehicle for some light-hearted banter. The posting of increasingly humorous 'sledging' videos was a highlight of the phatic communion that grew up on Facebook around the edges of the formal summative assessment.[94] Towards the end of the trial, the Facebook members were asked to participate in a survey to gather their views on the experience.

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87 A J George, 'Facebook Engagement and Learning' in Stephen Colbran, A J George and Scott Beattie, *Online Legal Education — Lessons for the Classroom* (Paper presented at the Institute for Law Teaching and Learning Summer 2018 Conference, Spokane, Washington, 18–20 June 2018).

88 F Vetere, J Smith and M Gibbs, 'Phatic Interactions: Being Aware and Feeling Connected' in P Markopoulos and W Mackay (eds), *Awareness Systems: Advances in Theory, Methodology and Design* (Springer, 2009) 177.

89 George, above n 87.

90 Ibid.

91 Ibid.

92 S Colbran and A Gilding, 'Exploring Legal Ethics using Student Generated Storyboards' (2014) *The Law Teacher: The International Journal of Legal Education* 1–25; Stephen Colbran, 'The ethics of delinquent and guilty clients — using animation as a formative assessment tool' (Paper presented at Association of Law Teachers 47th Annual Conference, Oxford, 1–3 April 2012); S Colbran, A Gilding and S Colbran 'Animation and multiple-choice questions as a formative feedback tool for legal education' (2017) 51(3) *The Law Teacher: The International Journal of Legal Education* 249–273.

93 Colban and Gilding, above n 92.

94 George, above n 87.

A detailed review of the survey results is beyond the scope of this paper.[95] In summary, while the survey sample size was relatively small,[96] the results indicated strong student support for Facebook closed groups as an adjunct to learning in a fully online law degree program.[97] Eighty per cent of students found that, overall, Facebook was excellent or good value. As to social presence, an impressive 81.5 per cent of students agreed or strongly agreed that Facebook was useful for engaging with the lecturer; 88.9 per cent found it useful for engaging with classmates; and 81.5 per cent found it created a connected sense of learning community. These findings were supported by qualitative comments, with 77.8 per cent finding a greater sense of connection. One comment in particular showed just how far the relatively simple expedient of Facebook connection can go toward ameliorating the feeling of otherness:

> Creating a real relationship with my lecturer has built up a sense of trust, I don't feel intimidated to put everything on the table and in turn learn where I am lacking or coming undone, I've been able to ask for help I might not otherwise have. It's also made me feel like I have someone I can talk to about any other issues, being isolated can be tough and sometimes you just need a professional ear. This has literally changed my entire learning experience and what I have gained I will be forever grateful for. On the basis of relationships with peers, I initiated a group chat with colleagues and we talk about everything from our families to university struggles. We are each other shoulders on the tough days and a sense of banter on the good ones. Some of these people will become lifelong friends and it is a pleasure to be a part of their journeys.

A pleasing byproduct of the trial was that over 80 per cent of students agreed the group helped them to engage with unit content, and some respondents called for an increase in academic posting by the lecturer.

VII CONCLUSION

In this paper, we examined Shakespeare's Shylock as the quintessential other, and identified some forms of otherness bound up in distance education. Further research is planned to investigate the notion of ignominy for online learners. We then used the notion of otherness as a lens to briefly examine the evolution of distance learning theory, drawing on Garrison and colleagues' work that integrated the element of social presence in online learning. As Rush's study shows, online learners in the 21st century do not appear to be the autonomous learners envisaged by early distance education theorists (if they ever were). We then examined a trial of Facebook as a social adjunct to a small cohort of fully online learners in the CQU law degree program, and a survey of the students' experience. Our survey results are limited given its relatively small number of participants. Nevertheless, the initial trial indicates potential for the use of Facebook as a means of building a social community to support formal learning that occurs in videoconferencing and on the Moodle LMS.

As a postscript, at the end of the trial the students did not want to close down the contract law Facebook group, given the social bonds that were formed. It was renamed the Law Via Distance (LVD) group, and membership has swelled to 248 members, or around one-third of the total CQU law cohort. The LVD dynamic is significantly different from the original trial group, and further research is planned to study how best to capture the benefits and minimise the drawbacks of a large group environment. However, one thing was clear from this study: Facebook facilitated connection between the learners in the CQU fully online law program, who were able to connect and find some belonging to combat the dynamics of othering that appear to be inherent to online learning tertiary education.

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95 See A J George, Alexandra McEwan and Stephen Colbran, 'Facebook, phatic communion and isolation in online learning' (forthcoming).

96 Approximately 27 participants for most questions.

97 George, above n 87.