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# **‘THAT’S ME IN THE PHOTO’ – PHOTOGRAPHY AS A CRITICAL PEDAGOGY TECHNIQUE IN LEGAL EDUCATION**

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## I INTRODUCTION

Photography is not an expected topic of discussion in an article on legal education. However, the connection between photography and legal education can be much closer than commonly conceived. In all its many modern forms, photography can form part of relevant, useful, and engaging learning activities in law. More importantly, it is an activity that has the capacity to draw students beyond just notional engagement with a fun class activity. It can be a technique for guiding students towards a deeper, richer, and more complex understanding of law and their position in relation to law.

The purpose of this article is to highlight the opportunities for incorporating photography into a law subject and to examine the implications of that teaching practice from a critical pedagogy perspective. Part II outlines the subject, ‘Law and Public Policy’, and how photography was incorporated into the subject. Part III reviews some critical perspectives on photography. Part IV provides an explanation of critical pedagogy. Part V is a close examination of the practices and implications of photography in the subject, with a particular focus on how these ideas resonate with the approaches of critical pedagogy in legal education.

As this article demonstrates, the camera-based learning activities had an immediate and profound impact on student learning in the law subject. The photos taken by students and shown in class enriched classroom discussion, significantly improved engagement and participation and provided an initially unexpected connection with the law subject’s philosophical core - critical pedagogy. The process of taking the photos changed students’ engagement with the law and with the broader justice issues examined in the subject.

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## II LAW AND PUBLIC POLICY (DEVELOPMENT & IMPLEMENTATION)

For context, the subject ‘Law and Public Policy (Development & Implementation)’ is an elective in the undergraduate law program at Western Sydney University. The subject examines the role of the lawyer or legally trained policy officer in the policy making process, with a specific focus on the ‘Australian Policy Cycle’ developed by Althaus, Bridgman and Davis.<sup>1</sup> It runs as a three-hour 60-person class taught in a tiered horseshoe-shaped seminar room. Students tend to be in their final or penultimate year of their law studies. The assessment regime is class participation (worth 10%), a minor case study from a list of set topics (2,000 words; worth 40%) and a major case study for which students choose their own topic (3,000 words; worth 50%). Public policies examined in the subject include diversionary sentencing for drug offences, negative gearing, compulsory income management and the deportation of citizens and permanent residents. Class activities include impromptu research tasks, statutory interpretation and analysis, presentations, weekly readings and homework, peer review of writing tasks and a skit. A significant aspect of the subject is that students can complete bonus homework activities outside of class for recognition in the class participation assessment and this is where most of the photographic aspects of the subject occur.<sup>2</sup> Photography is not set for every activity or task but a photography-based activity is used frequently throughout the semester as part of in-class and homework tasks. Four specific photography activities from the subject are examined in this article: the ‘icebreaker’ selfie, photos of ‘disability access issues’, the ‘priority needs’ task and the ‘Furoshiki fold’.

The motivation to overtly integrate photography into the subject’s learning activities arose from an institutional initiative to provide a free camera-enabled tablet to every student at the university. The challenge as a teacher was to conceive a way to incorporate the tablet into the teaching of a traditional small group, discussion-based law seminar. The solution was to use the camera function on the device to bring the outside into the classroom by encouraging students to engage with their own world through a law/photography lens and then to examine that world further through the use of their images in class discussion. The dual-process in which students generate images of their world and other students analyse those images in a classroom context is a significant aspect of what makes this photography-based learning activity different from a notionally similar process in which students merely record ‘observations’ in a written form then share that text with other students.

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<sup>1</sup> Catherine Althaus, Peter Bridgman and Glyn Davis, *The Australian Policy Handbook: A Practical Guide to the Policy Making Process* (Allen & Unwin, 6<sup>th</sup> edition, 2018).

<sup>2</sup> For a detailed examination of class participation as an assessment regime within a critical pedagogy context (which is beyond the scope of this work), see John Orwat et al, ‘Class Participation as a Pedagogical Tool in Social Work Education’ (2018) 37(3) *Social Work Education* 361.

### III PERSPECTIVES ON PHOTOGRAPHY

The aim of this article is not to present a detailed examination of 'photography' or 'visual theory' or 'material visual practices'.<sup>3</sup> However the debates about reality versus representation (or even the realism of that 'reality'),<sup>4</sup> the 'meaning' of images,<sup>5</sup> the political role of photography<sup>6</sup> and the impact of digital and now networked photographic images<sup>7</sup> provide relevant context to the discussion of photography in the classroom.<sup>8</sup> Theories about photography quickly followed the invention of the light-capturing chemical processes of Daguerre and Fox Talbot, although questions on the status and significance of the 'projected' image stretch back to the long-known techniques for a *camera obscura*.<sup>9</sup> Notions of photography evolved, or fundamentally changed, with the invention of digital photography; in some ways, it changed again with the invention of the phone-enabled camera, the networked distribution of images via social media and the rise of the selfie, which is discussed further below.

In the context of this article, photography is mostly engaged with as a form of representation. Its digital and networked qualities are most prominent but with awareness that there is political significance in the represented image, the process of 'noticing'<sup>10</sup> and constructing the image.

In order to ground the analysis of photography, this article examines and applies aspects of Susan Sontag's 1977 work, *On Photography*.<sup>11</sup> Parsons describes Sontag's work as an attempt to 'ask hard questions',

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<sup>3</sup> For further discussion on these labels, see generally Asko Lehmuskallio and Edgar Gomez Cruz, 'Why Material Visual Practices?' in Edgar Gómez Cruz and Asko Lehmuskallio (eds), *Digital Photography and Everyday Life: Empirical Studies on Material Visual Practices* (Routledge, 2016) 3.

<sup>4</sup> Susan Sontag, *On Photography* (Picador, 1990).

<sup>5</sup> In an area replete with possible references, two key works are Roland Barthes, *Mythologies* (Hill and Wang, 2012); *Camera Lucida: Reflections on Photography* (Vintage, 1993).

<sup>6</sup> For example, see Rune Saugmann Andersen, 'Visual Politics and Material Semiotics: The Digital Camera's Translation of Political Protest' in Edgar Gómez Cruz and Asko Lehmuskallio (eds), *Digital Photography and Everyday Life: Empirical Studies on Material Visual Practices* (Routledge, 2016) 141.

<sup>7</sup> For a detailed discussion on the significance of 'networked' images, see Nancy Van House, 'Outlook: Photographic Wayfaring, Now and to Come' in Edgar Gómez Cruz and Asko Lehmuskallio (eds), *Digital Photography and Everyday Life: Empirical Studies on Material Visual Practices* (Routledge, 2016) 274.

<sup>8</sup> For an interesting introduction to the relationship between law and visual images, see Richard K Sherwin, 'Visual Literacy for the Legal Profession' (2018) 68(1) *Journal of Legal Education* 55; see also the rest of that special edition (volume 68[1]) for papers from a symposium on the visual image and popular culture in legal education.

<sup>9</sup> For a detailed and critical examination of the history of theories of photography, see Derrick Price and Liz Wells, 'Thinking about Photography: Debates, Historically and Now' in Liz Wells (ed), *Photography: A Critical Introduction* (Routledge, Third edition, 2004) 9, 48–55.

<sup>10</sup> Lisa Forrest, 'Exploring Everyday Photography Routines through the Habit of Noticing' in Edgar Gómez Cruz and Asko Lehmuskallio (eds), *Digital Photography and Everyday Life: Empirical Studies on Material Visual Practices* (Routledge, 2016) 193.

<sup>11</sup> Sontag (n 4).

to ‘think through photography as an affective and effective medium’ and to link photography, emotion and ethics.<sup>12</sup> Although *On Photography* has strong critics and ardent supporters, and aspects have ‘dated’ over time,<sup>13</sup> the connection between ethics and photography and between the capturing or observing of the image and the impact on the viewer make the work relevant for law and legal education. It is this concern for a broader critical approach to realism in Sontag’s work that provides a bridge to law. What in some ways is Sontag’s implicit engagement with law through ethics can be made explicit and focused through the deliberate consideration of her work in a law class.

Sontag provides a compelling description of the possible impact of photography on the observer of the image when she writes:

‘In teaching us a new visual code, photography alters and enlarges our notion of what is worth looking at and what we have a right to observe.’<sup>14</sup>

Sontag’s view emphasises how the existence, process and artefacts of photography affect and even determine what we consider relevant - both in the world and in the law. In ways explored further below, there is an interplay between law and photography in which the legally trained mind brings attention to certain issues that are then part of the noticing and constructing of the photo. At the same time, photography and the process of constructing and engaging with the visual image influences the perception and understanding of what law and the legally trained professional should be ‘looking at and ... have a right to observe’.<sup>15</sup> Significantly, as a subject in a traditional undergraduate law course, this shift in noticing occurs at a time when the law seen by students is mostly cases, textbooks, statutes and tutorial exercises. In that sense, the potential of photography is not just to establish a ‘new visual code’ of what is worth noticing but also a ‘new legal code’ in understanding how and where law operates and how law is felt and made real.

Sontag also describes the relationship that arises between the photographer and the photograph. To photograph and then to present that image in a different context, to a different audience and for a particular or different purpose, is to exercise some form of connection – a connection that has wider significance. Sontag writes,

‘To photograph is to appropriate the thing photographed. It means putting oneself into a certain relation to the world that feels like knowledge - and therefore, like power.’<sup>16</sup>

Sontag’s language here highlights the impact of the act of photography. ‘To photograph’ is different from ‘to see’ - more is being done both by you as the subject and the other as the object. ‘To

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<sup>12</sup> Sarah Parsons, ‘Sontag’s Lament: Emotion, Ethics, and Photography’ (2009) 2(3) *Photography and Culture* 289, 290 (‘Sontag’s Lament’).

<sup>13</sup> See Parsons (n 12) for a detailed review of the positions for and against Sontag’s work.

<sup>14</sup> Sontag (n 4) 3.

<sup>15</sup> *Ibid* 3.

<sup>16</sup> *Ibid* 4.

photograph' is also different from 'to describe'. To ask someone to photograph a manifestation of law in the world around them is to involve them in a transformation of both themselves and that world. In this sense, this form of appropriation and power is one aspect of photography that makes it different from writing or narrative forms of representation, which is much more familiar in law and legal education. It is not that writing or narrative description lacks this capacity but that, especially for students or those who are not yet persuasive and compelling writers, photography allows and reinforces this capacity to know, appropriate and 'feel power' amongst a wider audience. The simplicity of the technology and the effectiveness of the visual/digital representations makes this a rich area of activity.

This notion of power and knowledge echoes significant aspects of critical pedagogy, especially the connection between oneself and the world. Although critical pedagogy is defined and examined in more depth below, it is salient to note that Sontag's perspective highlights photography as a mechanism or activity through which these concepts or feelings can become manifested, actual, and studied. The visual form of photography is providing an artefact that can both be generated by a teaching activity and discussed in a teaching activity.

However, Sontag is careful to emphasise that photography is not an end in itself, when she writes,

'Photography implies that we know about the world if we accept it as the camera records it. But this is the opposite of understanding, which starts from not accepting the world as it looks.'<sup>17</sup>

Here, Sontag reminds us why law is not a photography course. The photograph is not the end of the story; the photograph is nothing without the understanding of how law impacted on and constituted the 'reality' depicted in the image. Our role is then to discuss and examine and critique the image as individuals, lawyers and reflexive practitioners. To take the photograph is not to have understanding or to capture truth. However, the photograph as a process and a medium constructs ideas, translates power and emboldens action.

Sontag's work is not without internal contradictions, including the notion that the photographic image of a reality can anaesthetise the observer to the horror in that reality. Parsons, in 'Sontag's Lament' argues that Sontag deals with this concern in her last major work, *Regarding the Pain of Others*,<sup>18</sup> in what Parsons describes as a 'call to take the cultural meaning of photography seriously, to eschew cynicism and to pay close attention to what photographs do and what they obscure.'<sup>19</sup> Again, within the limits of this article, the wider point being made by Sontag remains relevant to an appraisal of the use of photography in a law class.

Thus, Sontag's exploration of the connections between the photograph, the photographer and the world gives rise to an opportunity

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<sup>17</sup> Ibid 23.

<sup>18</sup> Susan Sontag, *Regarding the Pain of Others* (Farrar, Straus and Giroux, 1<sup>st</sup> ed, 2003).

<sup>19</sup> Parsons (n 12) 291.

to examine the specific operation of law, society and authority in new ways. This capacity of the photograph – both the taking of the photograph and the observation of the photograph – to question and re-frame the subject of the photograph in ways that notice law in the world has an echo in the concerns and aims of critical pedagogy. This connection provides the possibility of a bridge between photography and critical pedagogy in an education context.

#### IV CRITICAL PEDAGOGY

Critical pedagogy is a theory about learning that emerged in the 1970s in the context of adult literacy education and was quickly adopted by school teachers, although application in higher education context is more limited. Paulo Freire's *The Pedagogy of the Oppressed* is often credited as a key contribution to its development.<sup>20</sup> The broader historical context in which the theory arose was the widening application of neo-liberal principles beyond markets, including to public education.<sup>21</sup> The underlying tension within critical pedagogy is a challenge between the opportunities provided by education to the individual on the one hand and, on the other hand, the complicated and hierarchical power relations through which that education occurs and the role of education in perpetuating exploitative social, economic and political structures.<sup>22</sup> In this context, the relevance of critical pedagogy to legal education and the training of non-lawyers into lawyers or legally-aware professionals is stark.<sup>23</sup>

The importance of critical pedagogy to legal education is that critical pedagogy provides some coherence to current critiques of the emphasis on graduate outcomes and vocationalism in higher education, especially law, a critique which is in some ways directed at the broader neo-liberal context of modern universities.<sup>24</sup> Examples of practical applications of critical pedagogy in non-school environments include adult literacy education classes on the Thai-Cambodian border<sup>25</sup> and

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<sup>20</sup> For the original, see PJ Freire, *Pedagogy of the Oppressed* (Penguin, 1972); for the most recent version see Paulo Freire, *Pedagogy of the Oppressed* (Bloomsbury Academic, 50th anniversary edition, 2018).

<sup>21</sup> See especially Henry Giroux, 'Critical Pedagogy and the Postmodern/Modern Divide: Towards a Pedagogy of Democratization' [2004] *Teacher Education Quarterly* 31.

<sup>22</sup> See, eg, bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge, 1994) 1–12 Introduction.

<sup>23</sup> For a broader introduction to this process of training, see work by Matthew Ball, especially Matthew Ball, 'Becoming a "Bastion Against Tyranny": Australian Legal Education and the Government of the Self' (2012) 23(2) *Law and Critique* 103 ('Becoming a "Bastion Against Tyranny"').

<sup>24</sup> See Margaret Thornton, 'Law as Business in the Corporatised University' (2000) 25(6) *Alternative Law Journal* 269; see also the collected works in Margaret Thornton (ed), *Through a Glass Darkly: The Neoliberal University and the Social Sciences* (ANU Press, 2014); and Nickolas J James, 'Power-Knowledge in Australian Legal Education: Corporatism's Reign' (2004) 26(4) *Sydney Law Review*, 587.

<sup>25</sup> Jen Couch, 'On the Borders of Pedagogy: Implementing a Critical Pedagogy for Students on the Thai Burma Border' (2017) 57(1) *Australian Journal Of Adult Learning* 126.

race-consciousness classes in a United States college,<sup>26</sup> amongst many examples.<sup>27</sup> There are few examples in Australia and almost none in law.<sup>28</sup> As Nickolas James explains, there are very few 'radical voices' in Australian law schools – some, but not many.<sup>29</sup> In the Australian context, the experience of the Pearce Report may colour appreciation of broader critiques of law and the role of law schools.<sup>30</sup>

Critical pedagogy is a theory that emphasises the agency of students, their capacity for reflexivity, the tension between their everyday life and their academic life, and the hierarchies that operate between teacher and student.<sup>31</sup> Critical pedagogy recognises the relationship between power and knowledge and education's role in that relationship. It also stresses the fundamentally democratic basis for individuals to act in the world to bring about change or to perpetuate existing structures, values and practices.<sup>32</sup> Critical pedagogy is more than just critical thinking – it is also a call to act.

Critical pedagogy often involves students determining for themselves the aims of a subject and there is a heavy emphasis on self- or peer- assessment.<sup>33</sup> However, there is an extensive body of work that questions the practicality of implementing critical pedagogy in real world classrooms.<sup>34</sup> These concerns are readily apparent in the context

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<sup>26</sup> Elizabeth Ellsworth, 'Why Doesn't This Feel Empowering? Working through the Repressive Myths of Critical Pedagogy' (1989) 59(3) *Harvard Educational Review* 297.

<sup>27</sup> For a detailed examination of many different practices, see Mary Breunig, 'Teaching For and About Critical Pedagogy in the Post-Secondary Classroom' (2009) 3(2) *Studies in Social Justice* 247. For an introduction to the combination of critical pedagogy and legal education, see Francisco Valdes, 'Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education' (2003) 10(1) *Asian Law Journal* 65.

<sup>28</sup> See Yirga Gelaw Woldeyes and Baden Offord, 'Decolonizing Human Rights Education: Critical Pedagogy Praxis in Higher Education' (2018) 17(1) *International Education Journal: Comparative Perspectives* 24; also Gregory Martin, 'Scaling Critical Pedagogy in Higher Education' (2017) 58(1) *Critical Studies in Education* 1; Cf Stirling and McGloin's application of critical pedagogy to some higher education policies in Australia: Jeannette Stirling and Colleen McGloin, 'Critical Pedagogy and Social Inclusion Policy in Australian Higher Education: Identifying the Disjunctions' (2015) 12(2) *Radical Pedagogy*.

<sup>29</sup> Nickolas John James, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16(1/2) *Legal Education Review* 55.

<sup>30</sup> Nickolas J James, 'Power-Knowledge in Australian Legal Education: Corporatism's Reign' (2004) 26(4) *Sydney Law Review*, 587. To be clear, critical pedagogy is not the same as the Critical Legal Studies movement, in that critical pedagogy is an educationalism theory and Critical Legal Studies is a jurisprudential approach. However, there are obvious parallels and shared values; for an example of the incorporation of the two separate ideas, see Valdes (n 27).

<sup>31</sup> Couch (n 25) 131–133.

<sup>32</sup> Giroux (n 21) 33–34.

<sup>33</sup> A perennial challenge with applying critical pedagogy in the classroom is the issue of assessment but this issue is beyond the scope of this work; for a good review of the issues see Linda Keesing-Styles, 'The Relationship between Critical Pedagogy and Assessment in Teacher Education' (2003) 5 *Radical Pedagogy*.

<sup>34</sup> Although a detailed examination of the critiques is beyond this work, see Jennifer Gore, *The Struggle for Pedagogies: Critical and Feminist Discourses as Regimes of Truth* (Routledge, 1993); Ellsworth (n 26); also, for a review and extension of Gore see Lyn Yates, 'Feminist Pedagogy Meets Critical Pedagogy Meets Poststructuralism' (1994) 15(3) *British Journal of Sociology of Education* 429.

of legal education, especially in an environment in which accreditation is required and assurance of a requisite level of professional knowledge is expected. Critical pedagogy cannot, at this stage, replace other common pedagogies in legal education but it does contribute to a broadening of the expectations of vocationalism or, more accurately, professionalism.<sup>35</sup>

Critical pedagogy raises questions about pedagogy as theory. Teaching is not only a consideration of the role of a teacher, their approach to their students and a view on specific teaching practices and learning activities. Pedagogy also has a political element - the educator's choices influenced by pedagogy are not natural and without consequence; they have significant impact on the learning and lives of their students and their communities.<sup>36</sup> So, even the adoption of standard or traditional pedagogies, whether they be concepts like student-centred learning or technology enabled learning or constructive alignment represent choices and bring with them implications.

In this context, critical pedagogy's concern about 'bridging the gap between learning and everyday life'<sup>37</sup> captures a key aspect of the challenge to traditional approaches to legal education. Much of the study of law at law schools is the socialisation and value-training of a professional class that is imbued with the values of law.<sup>38</sup> This adoption of values and skills by nascent lawyers is a powerful influence on the way individuals constitute and think of themselves. This process is particularly significant in the context of university students who are the first in their family to come to university.<sup>39</sup> One aspect of this socialisation is the dislocation between home and study - the notion that the law and its predilections are worthy areas of study and the lived experience the student had before or outside university is not of value. Critical pedagogy is about deliberately challenging that tendency and value-accretion. It does not deny the values and socialising (social aliasing perhaps) but rather critical pedagogy reinforces the importance of the connection between the old and the new - the students' lived experience and this new path. Law is their life, and their life is in law. The relationship is complex and intertwined.

Without trying to essentialise its multi-threaded scope,<sup>40</sup> critical pedagogy is a framework, perspective or program that invites students

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<sup>35</sup> Nickolas J James, 'More than Merely Work-Ready: Vocationalism versus Professionalism in Legal Education' (2017) 40(1) *University of New South Wales Law Journal* 186 ('More than Merely Work-Ready').

<sup>36</sup> See Roger Simon (1987) 'Empowerment as a Pedagogy of Possibility' 64(4) *Language Arts* 372 cited in Giroux (n 21) 33.

<sup>37</sup> *Ibid* 34.

<sup>38</sup> Nickolas John James, 'Expertise as Privilege: Australian Legal Education and the Persistent Emphasis upon Doctrine.' (2004) 8 *University of Western Sydney Law Review* 1.

<sup>39</sup> Kerri-Lee Krause et al, *The First Year Experience in Australian Universities: Findings from a Decade of National Studies* (Canberra: Australian Department of Education, Science and Training, 2005).

<sup>40</sup> For a deconstruction of critical pedagogy and an examination of its many cross-narratives, see Patti Lather, 'Critical Pedagogy and Its Complicities: A Praxis of Stuck Places' (1998) 48(4) *Educational Theory* 487.

and teachers to think critically about the world around them. It encourages them to not be comfortable with first impressions or surface understandings, which is what much time-limited, short-term, assessment-focused pedagogies implicitly reward. The aim of critical pedagogy in legal education is to be critical but not cynical about the operation of law, institutions and government. Critical pedagogy is a demand to be cognisant of what ideologies may be present in legal education and what the social context to the learning, operation and impact of law might be. It may be that the most that is achieved is that a student's (and teacher's) eyes are opened or re-opened to the world around them. However, the values underlying the pedagogy incorporate even more ideas: the valuing of the individual, the recognition of collective action and social responsibility, the connection between and across generations, the fundamental agency we all have to act and engage and change. All these values are present in the context of education and adopting a set of teaching practices that exhibit, encourage and respect these values results in learning that cannot but compel us to engage and act to address injustice.

## V PHOTOGRAPHY IN THE CLASSROOM

With an awareness of Sontag's views on photography and the values of critical pedagogy outlined above, this Part examines how photography was incorporated into classroom activities. 'Law and Public Policy' included four photographic activities – the icebreaker selfie, a study of mobility access issues in public spaces, a reflection on 'priority needs' under a compulsory income management regime and a 'Furoshiki fold' activity. Each is explained in more detail below.

### A *The Selfie*

The first engagement with photography in the subject is via a 'selfie'<sup>41</sup> or more accurately a 'group selfie'. The task is completed as part of a twist on the traditional ice breaker activity in the very first class of semester. Students are allocated to groups, they collectively answer several introductory questions and undertake a seemingly innocuous task, which is to 'post a selfie of your group - with names - to the unit's website'. Once completed, the images on the website are displayed in class.

The first observation is that the activity immediately undermines assumptions about the inherent capacity of digital natives to demonstrate digital skills. While many groups are able to place correctly and efficiently text on an image, several groups revert to a far older technology to complete the task – writing their names on a piece of paper and holding the paper up for the photo. They then discover the

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<sup>41</sup> *Oxford English Dictionary* (online at 30 November 2021) 'selfie'; A photograph that one has taken of oneself, esp. one taken with a smartphone or webcam and shared via social media.

photo was not 'mirrored' such that the writing appears backwards in the photo. The third attempt is usually successful. This seemingly simple task is surprisingly difficult to complete in a short period of time.

The unexpected challenges with the task are a reminder from the outset that photography is a technology and, in some ways, still mechanical (despite its digital manifestation). Technology needs to be learnt and adopted and played with. The relationship between the group and the photo is not automatic or natural - it is mediated and learned and is itself a product of the context of the activity and the past experiences of each student.

Second, as the task is students' first engagement with the unit, it establishes certain expectations, some explicit and some implicit, including the subversion of the known and familiar (the selfie) into a new context with a new purpose and significance (class, education, collaborative action). In this context, the activity introduces the relevance of photography to the mechanics of the unit. This is important partly because the unit operates in the context of legal education in which the typical tools of study are books and problem questions and written or oral argument.

Third, the activity establishes the connection between a student's real life ('me and my selfie') and their university life ('me in class'). The activity implicitly blurs the lines between two very different environments. It legitimises that real or other activity as valid in a university context and it validates the belief that what I do in my real life can have value in my university life. Students see themselves reflected (or, more accurately, projected) in the material of the unit; they are the unit - the unit is composed of them. This student centredness is always the case in any tutorial but is hidden behind the implicit 'us vs them' structure of most classroom designs. The selfie photograph, its creation and observation in class removes that divide - they see themselves and they are looking out at themselves. They are both the subject and the object of the unit.

In this way, the connection between critical pedagogy and photography starts to emerge. The concerns and priorities of critical pedagogy - critical reflexivity, bridging the gap between learning and everyday life, the undermining of traditional hierarchies in education, the interconnection among individuals - all begin to appear in the activity, albeit implicitly, indirectly and in small ways. The mechanism of taking, constructing, manipulating and observing the image is the means by which this is achieved.

This could seem a rich interpretation of a small task. However, the task is one of the first things the students do in the unit and it sets the expectations for the rest of the semester. It constitutes the initial understanding of the unit and starts to introduce a notion of questioning surface and authority and hierarchy, which is central to the features of critical pedagogy.

## B 'Mobility Access' Task

The most significant engagement with photography in the subject is an activity that requires students to identify 'access issues' in their daily commute to and from university. They need to photograph examples or instances of situations in which a person's disability (sight, touch, hearing, movement – a different focus is chosen each year) either impedes their access to and use of a public space or measures are in place to improve their access. Students then need to research and explain any relevant law that impacts on that issue and experience. Students post the photograph and related explanation of the applicable law on the subject's website and discuss the image in class. Students take photos of access ramps, ripple strips, tactile paving, steps with no alternate access, ramps closed due to maintenance, step ups to shops, fire exits, buses and taxis, hearing loops, braille way-finder signage, and traffic light pedestrian units. Their legal research usually introduces them to important legislation, standards and codes, such as the *Anti-Discrimination Act 1987* (NSW), the *Disability Discrimination Act 1992* (Cth), the National Construction Code, Australian Building Standards, and the *Disability Standards for Accessible Public Transport 2002* (Cth).

The task of taking photos from the student's daily commute breaks down the barriers between the academic and the real. It emphasises their own life, location, experience as a subject of analysis and reflection on the meaning and operation of law. It makes them look anew at the everyday things they see and walk past and accept unquestioningly. The task highlights how much of the world around them is constructed or mediated by law. Each of the access issues is a product of the legal definition of a problem to be solved and queries whether law is an adequate or necessary or appropriate method for solving that problem (as opposed to self-help, market incentives, reliance on collective action or empathy). The law, in these contexts, does not merely set broad standards but is far more prescriptive and specific in the precise requirements (or methods of avoiding liability) that the law mandates, outlines or encourages.

Of course, a similar learning activity could be imagined with written entries in a diary, students noting down observations and then posting their entries online or reading out those observations in class. However, this is where Sontag's observations are relevant. The visual stimulus of seeing that photo in class and the similarity in the photo to another student's own train station, place of work, local shops or home, 'enlarges our notion of what is worth looking at and what we have a right to observe'.<sup>42</sup> The process of seeing – not merely hearing or reading – the depiction of that place starts to make the connections in more concrete terms. The connection then leads other students to observe that same scene in their own world, to consider the access issues at their own mosque or church, to understand the awesome impact of law in constructing and mediating the social and built world

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<sup>42</sup> Sontag (n 4) 3.

around us. In a way more powerful than just reading the relevant legislation or hearing a description in class, the photographs of these everyday but legally relevant scenes reconstruct what we as lawyers or policy-minded professionals have a 'right to observe' and, in that way, expand our engagement with these issues.

This insight is then extended when the discussion of the legal framework occurs and the reality of the law becomes more obvious. The *Anti-Discrimination Act 1987* (NSW) is no longer just the dry words of s 49B(1)(b) on indirect discrimination but now becomes real in the form of the photograph of the ripple strips in front of where the student works. This discussion, through the photograph then the subsequent legal research, starts to achieve the critical pedagogy aim of identifying worthy areas of study that extend from the law in books to the law in the world through which the student travels every day. The *Anti-Discrimination Act* is not just a piece of positivist legislation mentioned in a textbook but also a source of rights and obligations that does – or should – have an impact in the students' own lives. The connection might then be to their own parent or sibling or friend who has their own access issue at their own bank or cinema or bus. That law is relevant to that place and experience and now, with an awareness of the real world significance of the relevant law, the student may act to bring about change.

Returning to Sontag, part of this activity is the process of constructing the photograph and the choice the student makes over what to notice. While many students photograph instances of law in operation (the braille signage, the hearing loop symbol, the folding access ramp deployed by a bus), many students construct photographs that highlight how much of the world is not perfected by law - that injustice, malfunction or simply the absence of law operates in many (perhaps most) places. The photograph captures the absence of justice in the step up to the bank that denies entry, the access ramp to the train station that is closed, or the lack of a working 'closed caption' display unit at a movie cinema. In that sense, the process of photographing and engaging with the world through this learning activity is achieving Sontag's notion of 'appropriating the thing photographed'.<sup>43</sup> It takes the world around them and re-frames it as a lack or inadequacy of law. The world around them now becomes the law in the world around them. The process of photography creates both an understanding of the law's impact in constructing their lived experience and also a realisation of the limits, absences and inadequacies of law in that 'project'.

This aspect of the activity then re-introduces and re-enforces the concerns in critical pedagogy about ideology in education and the accretion of values. The frequently universalising nature of traditional legal education and the tendency to make law appear omnipotent is undermined by the contradictions captured in the photograph. The photograph – and its construction, its noticing, its framing – shows the limits of the law's mandate and the law's failure to provide access, equality, opportunity, redress. As students then find law through this

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<sup>43</sup> Ibid 4.

process, their insights contextualise the limits and effectiveness of law in ways that permeate other aspects of the students' understandings of law. As a collective learning activity in a classroom in which the photographs are the subject of presentation and discussion, that same insight and awareness is shared with and by other students. Other students see the photographs, hear the discussion, reflect on what is said, then take those thoughts and construct – and notice – their own photographs for the next week's activities. It is these multiple capacities of the photograph that extends its potential beyond what might be achieved through a purely written text.

The photographic activity is also a motivation to action. The student who photographs the step up at the door of the law practice in which they are a paralegal and thus notices that the absence of a ramp denied access to potential clients who may be in a wheelchair, may then raise the issue with their partner and agitate for a ramp to be installed. The out of order lift at the train station is photographed and reported to speed up repairs. The recognition of the audio loop sign at a movie cinema leads to queries as to why it does not appear at other places. As Sontag argues, 'to photograph is to appropriate' and the knowledge/power associated with that 'relation to the world' can spur action. That sense of power, both through the photography and the awareness of the relevance of law to an unjust situation, can provide the capacity for change. As a source of action and change, the photographic activity then connects again with the values of critical pedagogy and the importance of responsibility, connection and agency.

One reason this photographic activity is important and why a critical pedagogy context is pertinent is that the insights cannot be unseen. Once the access ramp, closed circuit audio loop sign, or ringing-vibrating-directional button on the traffic light pole is photographed in a place that is visited every day, a student's perspective changes. Their lived reality is a reminder of that changed perspective every day. One year, when the activity focused on the little yellow raised bumps on steps and ramps – tactile paving – and students understood the legislation and design standards incorporated into those little things, one student's exasperated reply was, 'Argh! I see those things everywhere now!' The critical moment is the insight, the awareness and thus the stickiness of that change. In this sense, students are moving beyond merely knowing theory or law, they see it in their world.

### C 'Priority Needs' Task

A third activity that involves an element of photography, albeit more tangentially, is an exercise dealing with Australia's compulsory income management program, in which social welfare recipients are restricted to a list of 'priority needs' items on which a percentage of their income can be used and they are excluded from purchasing certain goods and services.<sup>44</sup> Students keep a diary of their expenditure for a week and

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<sup>44</sup> For the legislative basis for the program, see *Social Security Administration Act 1991* (Cth) s 123TH (priority needs), s 123TI (excluded goods and services); for an

identify whether their expenditure is on 'priority needs' under the legislation. They then photograph goods or services that are not 'priority needs' or are excluded goods and services and post these photographs to the subject's website, which are discussed in class. These photographs include many items and locations - gyms, mobile phones, presents for friends and family, birthday drinks at a pub, movie cinema tickets, new tennis balls, etc.

As opposed to other activities in which the photography is part of discovering something, in this activity the photography is the conclusion of the task - the expenditure occurs, the legal research and classification happens, then the photo is taken to record the outcome. The photography is the artefact of the activity rather than the catalyst for the initial analysis.

In this context, Sontag's observations about photography establishing 'a relation that feels like knowledge' seem apt to describe the impact of the task on a student's comprehension of the arbitrariness of the priority needs regime. There is the logical step of reading the legislation (and regulations<sup>45</sup>) and the analytical step of interpreting the legislation's application to a nominated item. However, it is the physical and photographic step of constructing the scene, taking and then observing the photograph that brings the underlying legal issues into clearer relief. The relation established by the photograph can lead to knowledge about the justice of the regime.

Sontag's subsequent point to the relation feeling like knowledge was that the feeling of knowledge also conveys a feeling of power. This power dovetails with the concerns of critical pedagogy to embolden action. The connection with the critique of the priority needs program is not just an intellectual one - the very items in the photograph are the student's own items. It is their own life that has been appropriated into a critique of the priority needs system. The bridge between learning and everyday life has been crossed and re-crossed. Now their learning re-constructs that everyday life and their representation of the everyday life re-constructs their experience of learning.

However, it is important to also keep in mind Sontag's statement that photography, in and of itself, may be 'the opposite of understanding'. The depiction of the 'non-priority items' by themselves is not understanding - the processes before and after the photo are vitally important from a critical pedagogy perspective. Before creating the photograph are the steps of reading, interpreting, researching and applying the legislation. After creating the photograph, there is the

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extensive overview of the history and context of the program, see especially Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35(2) *University of New South Wales Law Journal* 522; and for discussion of recent amendments to the program, see Shelley Bielefeld, 'Government Mythology on Income Management, Alcohol, Addiction and Indigenous Communities' (2018) 38(4) *Critical Social Policy* 749.

<sup>45</sup> The discovery, through a guided in-class research activity, that 'toys' needed to be added as a 'priority need' some years after the program commenced is always a grim yet strangely confidence-building moment in class; see *Social Security (Administration) (Toys Are a Priority Need) Specification 2010* (Cth).

examination of this issue in class - a critical discussion of the law, the items, the categorisation of those items and a consideration of alternatives through a drafting exercise on how to re-write the definition of 'food'. All of these actions lead to understanding and 'not accepting the world as it looks'.

#### D 'Furoshiki Fold' Task

There is one other photography-based activity in the subject and so, for completeness, it too is discussed. Although it is only peripherally related to the law, the activity is significant from a critical pedagogy perspective (and relevant to the student's experience of law school). As part of the multi-faceted 'bonus' homework activities available for the class participation assessment, students can undertake and photograph a successful Furoshiki fold, the traditional Japanese practice of wrapping gifts or other items in cloth through the use of sometimes-complex folds (technically, Furoshiki is a reference to the material rather than the folding).<sup>46</sup> Given the nature of the task, these photographs are usually taken at home with the wrapped object appearing in a bedroom, on a study table or on the kitchen floor. These photographs contain not just representations of the folds but also a hint of the student's real life - the life outside of the university and the classroom and the socialising conceits of how we all present ourselves in class.

These backgrounds are noteworthy because of the similarities in the images: a tiled floor, the doilies that every migrant child recognises from their home, the messy desk, the left-over chocolate bar wrapper, the yoga mat, the dumbbells, and the other miscellanea of everyday life. All of these snippets of another life, projected on a screen in the classroom when the activity is presented in class, provide a fascinating moment in class when we see something more of each other. In conveying a scene from the individual's existence outside of the classroom, there is a moment in which 'everyday life' is pictured and valued. That tension between home and study and between what they know and what they are starting to know is resolved and a connection develops between these proto-lawyers. The connection is forced by the demands of the hierarchical educational structure they are all sitting in but it also subverts that hierarchy because now they can see the value and commonality in their own lives. The backgrounds to the 'folds' conveys a message: 'I share this reality with others,' 'my life is valid,' 'what I experience is real and felt by others'. These aspects of life - only

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<sup>46</sup> For the source used in the subject, see Draught Associates (ed), *Visual Aid 2* (Black Dog, 2009) 45–46; for a broader outline of Furoshiki, see Terry Trucco, 'The Japanese Gift For Wrappings', *The New York Times* (New York, 6 May 1984) 645; for an application of Furoshiki in an academic context, see NS Sasanti and AH Milanguni, 'Furoshiki: An Art of Cloth Wrapping as an Alternative to Replace Bag (Goods)' (European Alliance for Innovation EAI, 2018); for a non-academic but practical and useful source on how to fold, see Etsuko Yamada and Kanji Okamoto, *Wrap It with Fabric: The Japanese Art of Wrapping*. (Tuttle Publishing Publishers Group UK, 2014).

really able to be captured and conveyed through the medium of photography - show and build commonality between students. They lead to further thoughts: 'I am not that different from those other, more impressive sounding, people in class.' 'Gee - that person seems so together but their desk at home is just as messy as mine.' Thus, the photographs, the backgrounds and the reactions capture something fundamental to the critical pedagogy approach, which is that democratic foundation, the recognition and affirmation of identity and the validation of personal dreams and lived experience.

Significantly, this mundaneness is an echo of Ball's work examining the 'production' of law students from 'idealist' to 'realist' through their time at law school.<sup>47</sup> Although in Ball's article the mundaneness describes his own work, the notion of mundaneness as the means by which important changes occur is significant - whether through the analysis of legal self-help books or through a viewing of the photographs of personal scenes from home. The relevance of these Furoshiki fold photographs and their mundane backgrounds is, in some sense, a countervailing force to the socialising/social aliasing that occurs through legal education. In that sense, these photographs, while in some ways ephemeral, support an important aspect of the overall critical pedagogy approach.

## VI CONCLUSIONS AND IMPLICATIONS

The purpose of this article was to reflexively consider the implications of a teaching activity that was chosen by happenstance - a pragmatic solution to an externally imposed problem. The use of photography in the ways discussed above was not a logical inference from a consideration of critical pedagogy. Instead, the activity was given new meaning by the consideration of critical pedagogy. Photography, especially in an area like law, can be an effective mechanism for achieving some of the objectives of critical pedagogy - student agency, challenges to hierarchy, links with lived experience - and perhaps engenders the beginnings of an understanding of the wider impact of the law and legal education.

For students, these activities mean their life and world is a valid subject of analysis. Their life is the object of law; law structures so much of their experience and yet, much of the time in classes, these effects are not made real. We are mostly unaware of the civilising, awful, liberating, violent, effect of law on our physical and social environments.

The challenge with critical pedagogy is to dig below the surface and identify relevant and useful implications for teaching from the trove of ideas and passions and influences to which works on critical pedagogy give rise. The slipperiness of the concept of critical pedagogy, its opaque definition, the radicalness of its implications all tend towards a

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<sup>47</sup> Matthew Ball, 'Becoming a "Bastion Against Tyranny": Australian Legal Education and the Government of the Self' (2012) 23(2) *Law and Critique* 103 ('Becoming a "Bastion Against Tyranny"') 105.

sometimes ghostly (or ghastly) diatribe that results in nothing substantive or meaningful or, dare one say it, practical.<sup>48</sup> Yet the call of critical pedagogy is to be focused always on the real and the reality of the lived experience of those around us.<sup>49</sup>

When taken into the context of law, critical pedagogy provides an outsider's voice, the sceptical aspect, the grounded criticism of both theory and practice that we bring to our engagement with law. Critical pedagogy's call for change and upheaval in our understanding of and complicity with law is compelling but requires some frame of reference, some object, some focus to stop the critique from flowing out of control. And so, it is the captured and projected light of photography that provides one such grounding for critical pedagogy and law. It is the capturing of the ephemeral with chemicals, light and bytes that provides a mechanism for putting law into critical pedagogy and critical pedagogy into law.

The implications of this arrangement are daring. To what extent does the breakdown of the isolation of the study of law from the reality of life as captured in a photograph highlight new understandings of knowledge and power? To what extent does the deliberate gaze of the law on the surfaces of the world around us operate to remind and change our understanding and engagement with the law? Is it in some respects a reminder of the empowering nature of and agency held by individuals in a system of law - to effect change and to achieve justice through a renewed awareness and understanding of the operation of the law on the world around us? It calls out our complicity in this regime when we walk by and do not object, not engage, not even notice the lived law that we are travelling through.

That power and insight and awareness is, however, not an end in itself. It is not self-actualising; it does not automatically result in change. It does not produce amendments to legislation. The effect is the establishment of a potentiality, the opportunity of change, a reconstruction of the positivist learnings and assumptions that may operate within the legal practitioner or agent. As noted in this article, the method's power is the change of perspective – that what is seen cannot be unseen. The limit to that power is contained in the same action: that it can be forgotten, that its impact is blunted, that the initial discomfort becomes normal and accepted and habitual. And yet, the opportunity for change can re-emerge with another photograph, another captured moment, another re-imagining of the structure and impact of law around us every day.

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<sup>48</sup> Ellsworth (n 26).

<sup>49</sup> Giroux (n 21).