Teaching Law of the Sea from a Critical Perspective

Philipp Kastner | ORCID: 0000-0002-7149-6862
Law School, University of Western Australia,
Crawley/Perth, Australia
philipp.kastner@uwa.edu.au

Abstract

Scholarship on law of the sea has become increasingly critical in recent years, but such a critical perspective is not easily implemented in the teaching of the subject. Given that little to no scholarship has engaged with the teaching practice of law of the sea, it seems timely to consider more carefully the research-teaching nexus in this field of law, which I seek to do through this essay. Drawing on critical pedagogy, I explain how I seek to encourage dialogic learning, to de-emphasise presumably authoritative voices, and to decentralise the law in my teaching of law of the sea. I also consider some of the challenges that I have encountered in my efforts to decentralise the teacher and the law, which mainly relate to arguably inherent tensions within critical pedagogy and to the contemporary higher education environment.

Keywords

law of the sea – teaching practice – critical pedagogy

Introduction

Scholarship on law of the sea seems to have become increasingly critical in recent years, but such a critical perspective is not easily or readily implemented in the teaching of the subject. It should be noted at the outset that

---

1 See, e.g., I Papanicolopulu (ed), Gender and the Law of the Sea – Oceans Apart? (Brill, Leiden, 2019); V de Lucia, A Oude Elferink and LN Nguyen (eds), International Law and Areas Beyond National Jurisdiction: Reflections on Justice, Space, Knowledge and Power (Brill, Leiden, 2022).
there are of course many critical approaches; what they have in common is that they challenge, or stand in contrast to, the traditional doctrinal and presumably objective approach that has tended to inform the teaching of law of the sea and that also underpins the leading textbooks. As I argue, it is crucial to expose students as early as possible to such critical approaches and to find ways so that students, as Antony Anghie has put it with respect to teaching international law more generally, ‘become aware of how the positivist version of international law is but one way of understanding it’. In other words, I endeavour to resist the impulse that consists in trying to make sure that students understand ‘the law’ first, before (possibly) encouraging them to critically reflect on what they have learned.

In this essay, I discuss my attempts to teach law of the sea from a critical perspective. As I will explain, there are important links between the substance and the substantive critique of a particular field, on the one hand, and the ways in which it is studied and taught, on the other hand. Practitioners, scholars and students arguably influence and reinforce each other in considering certain fields of law, like law of the sea, as more technical than others; compared to this, international human rights law and international criminal law, for instance, are often considered to be more political in nature and also to be more amenable to a critical discussion. Yet, as Martti Koskenniemi has argued, ‘[i]t is impossible to make substantive decisions within the law which would imply no political choice’. Indeed, and notwithstanding common perceptions, including among students, every field of law has political, social and cultural dimensions. The mere awareness of such dimensions can influence the way law is practiced, and of course also the way it is taught. My efforts


4 On some of the political dimensions of international criminal law, see for instance H Cullen, P Kastner and S Richmond (eds), The Politics of International Criminal Law (Brill, Leiden, 2021).


6 On common preconceptions about international law, see H Jones and A O’Donoghue, ‘History and self-reflection in the teaching of international law’ (2022) 10(1) London Review of International Law 71–103, at pp. 72–73.

are, moreover, rooted in the claim that trying to be a critical scholar, which is clearly encouraged in the academic community, should also imply striving to be a critical teacher and encouraging genuine critical thinking among students, whatever the field of law taught. In fact, the classroom, in the words of bell hooks, ‘remains the most radical space of possibility in the academy’.8

While the teaching practice of international law more generally has received some attention, with Georg Schwarzenberger seeking already in 1951 to ‘initiate a debate’ in this regard,9 there is little to no scholarship that has engaged specifically with the teaching of law of the sea so far. It therefore seems timely to consider more carefully the research-teaching nexus in this field of law, which I seek to do through this essay. I focus on two related aspects, namely, on my attempts to decentre both the teacher and the law. These attempts are informed by critiques to hierarchical approaches to knowledge and by critical legal pluralism.10 As seems to be increasingly accepted in the scholarship on learning and teaching,11 I draw on my personal experiences, in this instance of teaching law of the sea at the University of Western Australia since 2015. I have taught this course in the form of graduate seminars, normally with 20 to 40 students participating. In addition to an intensive face-to-face component, which runs on four days spread out over two weeks, the course has an important online component both before and after the intensive period. I believe that this blended/hybrid format facilitates the learning process and also the decentring of the teacher.12 While the relatively small size of the group assists

---

8  b hooks, Teaching to Transgress: Education as the Practice of Freedom (Routledge, Abingdon, 1994) 12. Or, as Jones and O’Donoghue put it, ‘[i]f our teaching is not empowering our students, then it does not matter how many denunciations of racism and misogyny we publish in leading journals’. Jones and O’Donoghue (n 6), at p. 74.
11  For autoethnography as a research methodology in the context of higher education see, e.g., K Pithouse-Morgan, D Pillay and I Naicker, ‘Autoethnography as/in higher education’ in TE Adams, S Holman Jones and C Ellis (eds), Handbook of Autoethnography (Routledge, New York, 2021).
12  It may be worth noting that I took the recent challenge of teaching this course completely online because of the COVID-19 pandemic as an invitation to further ‘flip’ the classroom by prerecording mini-lectures and by asking the students to also prerecord their presentations. This had the effect that the students came to class better prepared and that the quality of their presentations and their interventions was even higher than before.
in this process, the group is still large enough to bring together students with different origins and educational backgrounds, with some of them having a law degree and others an undergraduate degree in political science, international relations, science, etc. The relative lack of a common ‘language’ or methodological toolkit can certainly be testing at times, but the diversity provides wonderful opportunities for dialogic learning and represents an invitation to put into practice the idea that we best learn with and from each other, and that there is value in challenging hierarchical approaches to knowledge and its transmission. Different epistemological beliefs are, in other words, not suppressed in my teaching, but acknowledged and supported.13

Throughout this essay, I draw on critical pedagogy as theorised by well-known critical scholars and educators, like Paolo Freire.14 It is important to keep in mind that the meaning of critical pedagogy is not determined, that critical pedagogy is not a fixed approach,15 and that there are no straightforward teaching tools to be implemented in this regard. Therefore, I reflect on what I take from these authors and highlight how I try to put into practice some of their insights in my teaching of law of the sea. After further explaining the nexus between research and teaching of law of the sea in the following section, I consider how I seek to encourage dialogic learning and to de-emphasise, at least to some extent, presumably authoritative voices. Decentring the law in my teaching of law of the sea is a related strategy that I have also found to be useful, as I explore in the subsequent section. Finally, I consider some of the challenges that I have encountered in my efforts to decentre the teacher and the law, which mainly relate to arguably inherent tensions within critical pedagogy and to such factors as well-entrenched patriarchal assumptions and neoliberal tendencies in the contemporary higher education environment.

**Taking Seriously the Teaching-Research Nexus**

There are important links between the substance and the substantive critique of a particular field, on the one hand, and the ways in which it is studied and taught, on the other hand. Approaching the law of the sea through an analysis of the different provisions of the key treaty, the United Nations Convention on

---

the Law of the Sea (LOSC), or through relevant decisions of international courts and tribunals, is very different from approaching it through critical scholarship. This observation does not amount to a claim that all law of the sea teaching should draw on or prioritise certain critical approaches, but rather that such approaches can help reveal some of the law’s inherent biases, hegemonic tendencies and power relations. An important factor is the relative dearth of critical scholarship in the field, which makes it more challenging – but certainly not impossible – to teach this subject effectively from a critical perspective than other areas of international law, such as international human rights and international criminal law. However, it should be noted that more authors have started to engage critically with law of the sea in recent years. Examples include a critique of some of the fundamental principles of law of the sea, notably that of freedom, characterised as ‘out-dated’ and ‘counter-productive’ by Rosemary Rayfuse;16 a book edited by Irini Papanicolopulu that highlights some of the numerous gendered aspects of this field of law;17 and the impact of colonialism and decolonisation on contemporary political-economic influences in the context of the law of the sea, and notably the codification in the LOSC of an ‘extractive imagery of the ocean’, as discussed by Surabhi Ranganathan.18 Yet it remains rare to ask, as Rayfuse does, ‘What’s wrong with the law of the sea’?19 In other words, while specific law of the sea issues are certainly debated and examined critically in the literature, scholars, as Richard Barnes has recently noted, ‘battle less for grand ideas’ in this field.20

My approach to teaching law of the sea is also inspired by the general critique that it is solely specific technical expertise that will lead to effective governance, in this case of the ocean.21 This is not to say that technical knowledge

16 R Rayfuse, ‘Some reflections on what’s wrong with the law of the sea’ in C Ryngaert, EJ Molenaar and SMH Nouwen (eds), What’s Wrong with International Law? Liber Amicorum A.H.A. Soons (Brill, Leiden, 2015) 16.
17 Papanicolopulu (n 1).
19 Rayfuse (n 16).
21 This draws on Michel Foucault’s arguments about biopolitics and the observation that in the modern Western world, power has been increasingly exercised by experts and administrators in the form of governmentality. See, e.g., M Foucault, Naissance de la biopolitique. Cours au Collège de France 1978–1979 (Gallimard, Paris, 2004). For the argument that critical pedagogy could ‘greatly benefit from the Foucauldian realization that all knowledge is political’, see L Bartlett, ‘Dialogue, knowledge, and teacher-student relations: Freirean
is not needed, and that students do not need to understand relevant scientific factors and past and current legal frameworks and approaches. Yet deferring to ‘the politics of expertise’\(^\text{22}\) does not seem helpful; rather, students must be prepared to think critically and, in Henry Giroux’s words, to ‘act in a socially responsible way’ and to make ‘moral judgments’.\(^\text{23}\) De-emphasising, at least to some extent, the development of legal skills in a narrower sense to the benefit of encouraging this kind of responsibility and also creativity is as I believe, important for the future of the field. As Koskenniemi has argued with respect to international law more generally, ‘[t]he fate of international law is not a matter of re-employing a limited number of professionals for more cost-effective tasks, but of re-establishing hope for the human species’.\(^\text{24}\)

These are some of reasons why, in addition to suggesting readings that rely on critical theories, such as feminist approaches to international law,\(^\text{25}\) I try to translate such theories and their insights into my own teaching practice. In other words, my goal is that my students do not simply (if this could ever be simple) read about critical theory but learn in ways that are reflective of critical theory. Throughout the course, the students are, therefore, invited to take the lead in exploring, individually and in groups, the materials. In addition to presumably authoritative voices, like decisions of international courts and tribunals or the authors of textbooks, I seek to expose the students to a variety of voices, and especially to those that are usually marginal(ised), including their own. This means, among others, that every student becomes the expert and facilitator of the seminar discussions on a particular topic, and that the students are always encouraged to learn with and from each other. My primary motivation here is hence not to improve students’ oral presentation skills – a more commonly stated and certainly important learning objective – but rather to challenge the dominant forms of (re)producing hierarchy in higher education. I should mention that although I do suggest topics for our discussions and provide guidance on the readings, with critical pedagogy obviously not being non-directive, the students can always focus on issues that are of particular interest to them, notably by choosing the topics of their presentations and papers.

---

22 Koskenniemi (n 5), at p. 340.
23 H Giroux, *On Critical Pedagogy* (Bloomsbury, London, 2011) 3. Pedagogy, as Giroux has also argued, is not just a ‘skill, technique, or a disinterested method’, although it is often seen as such. *Ibid*.
24 Koskenniemi (n 5), at p. 361.
25 Examples include several chapters in Papaniclopulu (n 1).
Decentring the Teacher

My efforts to decentre the teacher are inspired by Freire’s dialogic approach and more generally by the fundamental idea that learning is relational. Knowledge can only emerge through dialogue.\textsuperscript{26} ‘Dialogue’, it should be noted, is a complex notion. As Freire said,

I am convinced that when we speak of dialogue and education, we are speaking, above all, about practices that enable us to approach the object of knowledge. In order to begin to understand the meaning of a dialogical practice, we have to put aside the simplistic understanding of dialogue as a mere technique.\textsuperscript{26} [D]ialogue characterizes an epistemological relationship.\textsuperscript{26} [D]ialogue is a way of knowing and should never be viewed as a mere tactic to involve students in a particular task.\textsuperscript{26} I engage in dialogue not necessarily because I like the other person. I engage in dialogue because I recognize the social and not merely the individualistic character of the process of knowing.\textsuperscript{27}

In my teaching, I therefore try to foster horizontal relationships that are based on mutual trust, support, solidarity, and an ethics of care, with respect and caring being the foundation of critical pedagogy.\textsuperscript{28} I seek to create a safe and supportive learning space that is not competitive but collaborative and that facilitates open-minded encounters.\textsuperscript{29} While critical pedagogy is not merely a technique, certain teaching tools and techniques are related to and can further the goals of critical pedagogy. A fairly simple but effective example from my teaching is an online quiz, to be completed before the intensive period, where everyone, including myself, introduces themselves and shares some initial reflections about the historical development and main objectives of law of the sea as well as about a relevant recent event. This helps create a group feeling and contributes to building a community, where everyone can be confident that their voices are heard. As bell hooks has argued, ‘we must build “community” in order to create a climate of openness and intellectual rigor’.\textsuperscript{30}

\begin{thebibliography}{9}
\bibitem{26} Freire (n 15), at p. 80.
\bibitem{27} Freire and Macedo (n 14), at p. 379.
\bibitem{28} Bartlett (n 21), at p. 362.
\bibitem{29} For further examples of pedagogical practices that try to honour education ‘as a practice of freedom and becoming’, see S Amsler, ‘Criticality, pedagogy and the promise of radical democratic education’ in S Cowden and G Singh (eds), \textit{Acts of Knowing: Critical Pedagogy in, Against and Beyond the University} (Bloomsbury, New York, 2013) 61–84, at pp. 77–78.
\bibitem{30} hooks (n 8), at p. 40.
\end{thebibliography}
introductory quiz also sets off a conversation about issues that the students are particularly interested in, including recent legal and political developments that may not yet have found themselves into the suggested readings, and contributes to the development of respectful and intellectually rigorous exchanges, even before the start of the actual classroom experience during the intensive period.

Examples of other ways in which I encourage the students to learn with and from each other are group discussions and exercises in small groups during the intensive period as well as a peer review activity, where the students provide feedback on a colleague’s proposal for their final research paper (regarding the latter, I provide feedback on the proposal too, and feedback on the peer feedback). Dialogue and discussion help de-emphasise presumably authoritative voices, including the one of the teacher, and arguably have an inherent democratic dimension; in this sense, they are not simply a teaching technique but are essential in the operation of a democracy and hence politically significant. Stephen D Brookfield and Stephen Preskill have argued that ‘[t]aking discussion seriously moves the center of power away from the teacher and displaces it in continuously shifting ways among group members. It parallels how we think a democratic system should work in wider society’.31 Not engaging in dialogue, refusing to listen to those who may hold other views can actually be an act of oppression.32 Rather than privileging a presumably authoritative – perhaps even authoritarian – voice in straight lectures,33 group discussions and peer feedback hence enable a variety of voices to be heard and an engagement with the ideas and arguments of others. In this context, fostering the students’ capacities to evaluate the quality and persuasiveness of different contributions in the debate is particularly important, as contributions can be less convincing than others, be based on weak evidence, or simply be wrong. Indeed, deprioritising presumably authoritative voices does not mean that teachers do not have authority, which stems from their own knowledge about a particular subject and from their responsibility to coordinate and facilitate the learning process.34 In fact, as Freire noted, freedom and authority are closely related to each other:

33 As Freire wrote, ‘[i]f authority is merely transferred from one group to another, or is imposed upon the majority, it degenerates into authoritarianism’. Freire (n 15), at p. 178.
34 Roberts (n 32), at p. 61.
There is no freedom without authority, but there is also no authority without freedom. All freedom contains the possibility that under special circumstances (and at different existential levels) it may become authority. Freedom and authority cannot be isolated, but must be considered in relationship to each other.\textsuperscript{35}

It is crucial to recognise this authority of teachers, and not to hide or deny our power.\textsuperscript{36} An important insight that I take from Freire in this regard is that disclosing my opinions and beliefs and being clear about what I consider ethically desirable or morally justified are not problematic but can actually be valuable.\textsuperscript{37} To be clear, in my teaching, my focus lies on asking questions and not on delivering answers or solutions. However, to take an example from my teaching of law of the sea, when prompted, I am quite frank about my conviction that the current, heavily anthropocentric approach to protecting, or rather ‘managing’ and exploiting, the marine environment and marine living resources is not necessarily the best avenue.\textsuperscript{38} When highlighting and discussing the important biases built into this body of law, it would seem equally strange to hide the political and ethical dimensions, for instance in relation to safety at sea. As Henry Jones, has argued persuasively, ‘[t]hese seas that are free and open for trade and the transport of goods are closed, chaotic, lethal places for refugees’.\textsuperscript{39} Yet I always emphasise that these are arguments that are part of ongoing conversations, that are not shared by everyone and that can be refuted.

**Decentring the Law**

Related to my efforts to decentre the teacher, I try to decentre the law in my teaching of law of the sea through a contextual perspective.\textsuperscript{40} While covering

\begin{itemize}
\item \textsuperscript{35} Freire (n 15), at p. 178.
\item \textsuperscript{36} Freire and Macedo (n 14), at p. 378.
\item \textsuperscript{37} Roberts (n 32), at p. 60.
\item \textsuperscript{39} H Jones, ‘Lines in the ocean: Thinking with the sea about territory and international law’ (2016) 4(2) London Review of International Law 337–343.
\item \textsuperscript{40} For further discussion of this approach in the context of international criminal law, see P Kastner, ‘Teaching international criminal law from a contextual perspective’ (2019) 19(3) International Criminal Law Review 532–549.
\end{itemize}
standard topics, like the historical development of this body of law, baselines, the different marine spaces, maritime delimitation, environmental protection, etc., I endeavour to foreground what would often be considered mere background and largely beyond the scope of what is included in a typical law course. This approach is also reflected in some of the substantive topics that are included and in the reading materials that allow exploring the topics through different critical lenses and that help reveal inherent biases of the law of the sea as well as hegemonic tendencies and power relations.

By way of example, we examine the intersection of law of the sea with international human rights and refugee law, as well as discourses of sovereignty and of ‘othering’, and related tendencies of securitisation, militarisation and criminalisation, as part of a topic entitled ‘movement, migration and protection at sea’. We consider the arguably gendered nature of the law of the sea by drawing on feminist arguments, which I find particularly fruitful when studying the rights of coastal states and the legal regime governing the high seas. Maritime security, and in particular piracy, is analysed, *inter alia*, through criminological perspectives, which furthers an appreciation of the complexity of this issue and the need to thoroughly understand a problem before being able to possibly think about and suggest solutions. Another example consists of an engagement with Indigenous approaches and such notions as ‘sea country’, which facilitates a reflection on the way in which the sea is conceived in dominant Western legal discourses. In my experience, certain topics, such as the topics on the history of the law of the sea, on Indigenous approaches and on ‘movement, migration and protection at sea’, lend themselves especially well to a critical discussion. However, I include at least one reading for each topic that challenges the orthodox approach in some way, or that allows at least contextualising the topic in question.

Having taught this course for several years now, I can safely conclude that exposing my students to such different critical approaches is useful and, moreover, does not compromise a sound understanding of the law in a doctrinal sense.

---


sense. The relatively brief encounters with the respective approaches certainly have their limitations though: reading one or two texts that draw on feminist theory, for instance, may not allow the students to grasp the full depth and all the potential implications of the argument in question. Yet it does make them reflect immediately – and differently than when exposed to purely doctrinal texts – on a range of issues, including on the creation and application of relevant legal rules.

Reflecting on the Challenges to Teaching from a Critical Perspective

I have encountered some challenges when teaching law of the sea from a critical perspective. Some of these challenges relate to critical pedagogy as an approach, whereas others concern the general context of higher education. But first, I would like to observe that trying to teach and understand the numerous and multifaceted aspects of a subject like law of the sea is inherently challenging. As noted above, while I suggest considering this body of law in its context, my students should also understand the more technical legal aspects and be able to carry out a proper legal analysis. I deem it important that, to give a few examples, they are familiar with the intricacies of the different marine spaces; with the difference between innocent passage and transit passage; with the legal definition of piracy; and with the institutional avenues available to peacefully settle international disputes relating to law of the sea. Focusing on the teaching and learning of such legal issues, in a doctrinal sense, would already be a good challenge; but I believe that addressing the socio-political, historical and cultural dimensions underlying such issues – and this body of law more generally – is at least equally important. And it is possible. My conviction is that students should always be provoked intellectually and that their learning does not have to be reduced to what is doable without too much trouble or to what is relevant from a rather narrow practitioner’s perspective.45

In addition to this, there are inherent challenges to and tensions within critical pedagogy that are well known and that I have also encountered. For instance, I attempt to do justice to the idea that dialogue, as Freire has written, is not just a ‘technique’ or ‘tactic’ of education but ‘a way of knowing’.46 While I always try to respect the students’ autonomy, to value their backgrounds,

45 For a similar argument, see S Cowden and G Singh, ‘Sat-Nav education: A means to an end or an end to meaning?’ in Cowden and Singh (eds) (n 14), 41–59, at p. 43.
46 Freire and Macedo (n 14), at p. 379.
experiences and knowledge, and to remain curious about the object of knowledge, I often still feel the need to ‘direct’ the dialogical learning experience, in particular to correct factual errors – it would seem counter-intuitive not to do so – and to focus on issues that I deem important. I have also realised that, quite obviously, I try to empower students according to my own convictions. This is arguably an inherent contradiction in critical pedagogy that is already present in Freire’s thought and that cannot be ignored. In other words, it should be acknowledged that teaching, even when inspired by critical pedagogy, is always directive to some extent, never neutral or equivalent to laissez-faire. The balance can be difficult to find.

It can also be challenging to honour and respect students and their experiences, on the one hand, and to contextualise and potentially critique such experiences, on the other hand. Keeping in mind that it matters who we are, where we come from and what our backgrounds are, I try to situate myself and to be aware of my own beliefs and potential biases, and I encourage my students to do the same. Understanding one’s own ways of thinking and at least some of one’s biases and assumptions is, as I believe, an important step in any learning process. In my law of the sea seminar, the students’ different origins and backgrounds, and potentially related sensibilities, can become quite obvious in the context of certain discussions. For instance, when exploring Western imperialism and colonialism and the rise of concepts like State sovereignty and the freedom of the seas in the context of the history of law of the sea and of maritime security and movement, migration and protection at sea, it often becomes quite obvious that the respective background and political convictions of the students influence their engagement with and thinking about such questions. To give another example, the historical factors underpinning the

\[47\] Ibid., at p. 382.

\[48\] For a critical discussion of the construction of ‘empowerment’ in critical and feminist pedagogy, see J Gore, ‘What we can do for you! What can “we” do for “you”?: Struggling over empowerment in critical and feminist pedagogy’ in C Luke and J Gore (eds), Feminism and Critical Pedagogy (Routledge, New York, 1992) 54–73.

\[49\] On the complex and contradictory idea in Freirean thought that teachers are ‘engaged in trying to achieve an essentially predetermined outcome for dialogical knowledge construction’, see Bartlett (n 21), at p. 357. See also D Schugurensky, ‘The legacy of Paulo Freire: A critical review of his contributions’ (1998) 31(1/2) Convergence 17–29.

\[50\] As Freire said, ‘I do not think that there is real education without direction.’ Freire and Macedo (n 14), at p. 378. See also Giroux (n 23), at p. 6; Bartlett (n 21), at p. 348; SC Motta, ‘Pedagogies of possibility: In, against and beyond the imperial patriarchal subjectivities of higher education’ in Cowden and Singh (eds) (n 14), 85–124, at p. 103; Jim Crowther, ‘Jim Crowther on popular education and higher education’ in Cowden and Singh (eds), Ibid., 179–192, at p. 182; Robert (n 18), at p. 61.
disputes in the South China Sea can be analysed very differently by students from Australia, China, the Philippines or Vietnam.\textsuperscript{51}

It should be noted here that it is also important to be aware of the risk that encouraging discussion and dialogue in the classroom can perpetuate and entrench already existing inequalities and power dynamics. The critical thinking skills that are typically part of the learning objectives of a university course are often modelled on the liberal, enlightened, rational and autonomously thinking subject that, in turn, is based on binary thinking and on the separation of the mind and the body and of theory and practice, on discourses of ‘othering’ in the spirit of colonial capitalism and neo-colonial and neoliberal thinking nowadays.\textsuperscript{52} This also means that the assumption that a space where everyone is welcome to participate has been created – the notion of a Habermasian ‘ideal speech situation’ comes to mind – does not necessarily mean that everyone can or will actually participate.\textsuperscript{53} Indeed, students who already feel confident to speak before others and who do not hesitate to communicate their views and understandings of the materials will benefit most from relatively unstructured class discussions.

Yet dialogue and discussion do not become impossible. As Carmen Luke has noted,

\begin{quote}
[t]he ethic of individualism – historically envisioned by and a vision of the constitutive male subject – that is inscribed in the egalitarian ideals of participatory democracy, translates in the critical pedagogy agenda into critical selfhood enabled by equal and non-coercive participation in classroom dialogue.\textsuperscript{54}
\end{quote}

In other words, and while attempting to do justice to the nuances of post-structural feminist thought would go beyond the scope of this essay, the insight that equality among students must not be presupposed is key. This is why trying to create a ‘community’, and structuring and directing the

\begin{flushleft}
\textsuperscript{51} The now widespread adoption in European languages of the name ‘South China Sea’ could be considered a diplomatic-linguistic victory for China. There are, of course, other names: in Vietnam, it is called the ‘East Sea’; in the Philippines, parts of it are referred to as the ‘West Philippines Sea’. See VL Forbes, ‘The South China Sea: Geographical overview’ in K Zou (ed), Routledge Handbook of the South China Sea (Routledge, New York, 2021) 9–30, at p. 27.

\textsuperscript{52} Motta (n 50), at pp. 87, 90.

\textsuperscript{53} Ibid., at p. 105.

\end{flushleft}
class discussions, can help create more genuine opportunities for everyone to participate.

How does this transpire in my teaching practice? For example, I often invite my students, especially at the beginning of the face-to-face period, to commence discussions in pairs or in groups of three or four, before moving on to a debate in the plenary. This helps the students get to know each other and also allows – and to some extent forces – less confident students to speak and trial their participation in a safer space, before taking the floor in front of the whole group. To be clear, the level of confidence is not automatically evened out in smaller groups, which are not necessarily devoid of power inequalities either, but such inequalities are, in my experience, reduced more easily than with larger groups. It is usually sufficient to remind the students to be respectful and to make it clear that everyone should be able to participate. Another avenue that I make available is the class website, where students, especially those who have a less assertive personality or who may want to think through their interventions more carefully beforehand, can always post their comments and questions.

Further challenges to creating the pedagogical conditions that seek to decen- tre the teacher and the law and that I would like to mention briefly relate to the general socio-political environment in which the learning and teaching take place. While universities are sometimes perceived as sheltered places, they are of course far from immune to influences from the outside world; in fact, in Peter Roberts’ words, ‘learning never takes place in a vacuum’.55 There are, in particular, well-entrenched patriarchal assumptions in mainstream higher education, including among students, and there is a well-described tendency to commodify learning and knowing in a context where at least some tuition-paying student-consumers expect to ‘receive’ education. This also means that many students, whether consciously or unconsciously, are not necessarily interested in contributing to addressing existing inequalities and to transforming the current socio-political and legal frameworks,56 which obviously renders genuinely critical teaching and learning more difficult. While significant, such challenges should not be overemphasised though. The fact that the contemporary higher education market is market-driven in many places does not mean that there is no space for critical pedagogy. My university, for instance, is arguably part of the dominant environment and its neoliberal tendencies and is hence clearly not an institution that is prone to promote popular education in the Freirean sense; this environment, including the kinds of students who enrol in and can

55 Roberts (n 32), at p. 57.
56 Motta (n 50), at p. 86.
afford to pay for one of our programmes,57 and the need for certain types of assessment and grading,58 clearly influences and delineates what is feasible in terms of pedagogical approaches. At the same time, as I should emphasise, I have experienced an important degree of academic and pedagogical freedom – I have never been directed to teach in particular ways or asked to adjust or change my approach.

Moreover, with respect to communicating with my students, I have found it useful to be very straightforward about my approach in the teaching outlines and when introducing the seminar to the students. It must be clear for the students what is expected from them, and also what they can and should expect themselves when deciding to participate in the seminar. This does not mean that all the students are necessarily well prepared to engage in this kind of teaching and learning endeavour. Some appear, at least initially, intimidated by my approach and notably by the fairly extensive preparation and independent learning required. In line with what is familiar for many of them, it seems that they continue to expect to ‘receive’ knowledge from their teacher. But most of them adjust quickly and clearly appreciate their learning experience in the end.

I would like to conclude by saying that trying to think critically and to question dominant approaches, as I constantly attempt to do in my teaching, is challenging, even unsettling, and not always necessarily enjoyable. Many students enrol in law of the sea, as they write in the introductory quiz or explain in the first classes, because they are interested in the ocean generally speaking, or in the ways in which certain maritime issues are regulated. It may then be surprising for them to be encouraged to reflect on some of the inherent biases, shortcomings and blind spots of this field of law. Yet it must probably be accepted, as bell hooks has noted, that ‘there can be, and usually is, some degree of pain involved in giving up old ways of thinking and knowing and learning new approaches’.59 I try to acknowledge this discomfort, to adjust my own expectations, and to be patient, as I teach and continue to learn myself.60

---

57 As bell hooks (n 8), at p. 83, notes, ‘racism, sexism, and class elitism shape the structure of classrooms, creating a lived reality of insider versus outsider that is predetermined, often in place before any class discussion begins’.

58 For the critique that ‘[g]rading as practiced teaches the inevitability and also the justice of hierarchy’, see D Kennedy, ‘Legal education and the reproduction of hierarchy’ (1982) 32(4) Journal of Legal Education 591–615, at p. 600.

59 bell hooks (n 8), at p. 43.

60 I would like to thank Richard Barnes for numerous helpful comments on this article. Thanks also to the members of the Oceans and International Environmental Law Discussion Group of the Australian and New Zealand Society of International Law for the fruitful conversation after my presentation of a first draft of this paper in May 2021.