MOTIVATING LARGE GROUPS OF LAW STUDENTS TO THINK CRITICALLY AND WRITE LIKE LAWYERS: PART 2[*]

Angela Diane Crocker
BSc LLB LLM
Lecturer, University of KwaZulu-Natal,
Attorney of the High Court of South Africa

SUMMARY

This two-part article explores two central themes – student motivation and critical thinking – as they relate to teaching law students how to write like lawyers. The article examines these two themes through the lens of a case study on a legal writing programme, the "Write it Like a Lawyer" (WiLL) programme implemented at the University of KwaZulu-Natal, Durban in 2019. The design of the programme draws upon three distinct teaching principles – constructive alignment, learner participation and conversations in feedback. This article argues that by applying these principles when teaching legal writing, law students are motivated to engage critically with legal materials, thereby enabling them to produce persuasive, logical, coherent legal writing, containing well-substantiated arguments.

The article is in two parts.

Part 1 began by focusing on the theoretical underpinnings of the main themes of the article as well as the teaching principles applied in the WiLL programme. It then went on to describe the significance of the central themes to a legal writing programme such as WiLL.

Part 2 of this article moves on to a discussion of the three teaching principles – constructive alignment, learner participation (including blended-learning techniques) and conversations in feedback – and the manner in which these principles were used to achieve the desired outcomes in the WiLL programme. Finally, the second part of the article evaluates the relative success of employing the three principles in order to further student motivation and critical thinking in the programme. The article concludes with recommendations for improvements that could be implemented in future such programmes.

1   INTRODUCTION

This is the second part of a two-part article exploring the theoretical underpinnings behind two central themes – student[1] motivation and critical

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[1]   Note that the terms "student" and "learner" are used interchangeably throughout this article.

thinking – as they relate to teaching law students how to write like lawyers. The article as a whole examines these two themes through the lens of a case study of a legal writing programme, the Write it Like a Lawyer (WiLL) programme, which was implemented on the Howard College Campus of the University of KwaZulu-Natal (UKZN) in 2019; in so doing, the article focuses on the three key teaching principles that were drawn upon when designing and implementing the programme. All three principles – constructive alignment, learner participation and conversations in feedback – link closely to the article's central themes. The main contention of this article is that applying these principles to teaching legal writing in a participatory learning environment has the potential intrinsically to motivate law students to engage critically with context-embedded legal materials, thereby enabling them to improve their legal writing skills.[2]

Part 1 of this article began by focusing on the theoretical underpinnings behind the main themes of the article, pointing out that if students are to learn to write persuasively – like lawyers do – then legal educators must design their legal writing modules with both student intrinsic motivation and critical thinking in mind. It is argued that these two themes are intimately linked. Without being intrinsically motivated to engage deeply with the module materials and to think critically about the issues raised in those materials, learners will not be sufficiently invested in the process nor will they have sufficient depth or critical understanding of the materials to produce excellent, persuasive legal writing.

Part 1 also discussed the theory behind the three key teaching principles that were used in the design of the WiLL programme. It is argued that when designing a legal writing programme that aims to motivate students intrinsically to think critically and ultimately produce writing that persuades, first, all elements of the programme must be constructively aligned – from the choice of contextually relevant materials to the teaching techniques employed to the methods of assessment selected. Secondly, learner participation using constructivist teaching methods must be maximised, taking advantage of both vertical and horizontal learning opportunities. Thirdly, conversations in feedback must be implemented in order to provide a personalised learning experience for students, aimed at encouraging critical debate and eliciting justification for the use of sources and arguments. Finally, part 1 of the article described the WiLL programme in some detail and the significance of the two central themes to this programme.[3]

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[2]   See Crocker "Facing the Challenge of Improving the Legal Writing Skills of Educationally Disadvantaged Law Students in a South African Law School" 2018 21 *PER/PELJ* DOI http://dx.do i.org/10.17159/1727-3781/2018/v21i0a1368, fn 13, which points out that Greenbaum summarises a number of authors' descriptions of the term "legal writing", all of which emphasise that the legal writer, in addition to displaying competent grammatical skills, should also demonstrate an awareness of legal discourse and how to communicate within this community (Greenbaum "Teaching Legal Writing at South African Law Faculties: A Review of the Current Position and Suggestions for the Incorporation of a Model Based on New Theoretical Perspectives" 2004 15 *Stellenbosch Law Review* 3 6).

[3]   The programme formed part of the 2019 Legal Research, Writing and Reasoning second-year LLB module (LRWR). Details of the LRWR module will be elaborated on below.

Part 2 of this article discusses the practical implications and challenges of employing the three main teaching principles – constructive alignment, learner participation and conversations in feedback – and how these principles were applied within a constructivist teaching paradigm in order to achieve the desired outcomes in the WiLL programme. The point is made that all three principles are at the same time both discrete and overlapping, and that giving equal attention to each of the principles when designing a legal writing programme provides learners with an interlinking web of sound pedagogical design that will support student motivation and critical thinking. Finally, part 2 concludes with recommendations for improvements that could be implemented in such future programmes.

2   OVERVIEW OF THE 2019 WRITE IT LIKE A LAWYER PROGRAMME (WiLL)

In 2019, the WiLL programme was incorporated as a pilot project in the latter half of a second-year LLB module – namely, the Legal Research, Writing and Reasoning module [LRWR]. Since part of the ethos of the WiLL programme was to encourage learner participation and peer-learning in small group lecture sessions, when the time came for learners to participate in this section of the LRWR module, the class of 300 was split into six groups of 50 students each. Learners were required to attend one weekly double-period contact session. Every week, learners had to complete lecture preparation tasks to enable them to participate in group work activities during lectures. The assessment of the legal writing programme (comprising two written assignments worth 20 per cent each) formed 40 per cent of the final assessment for the entire LRWR module. The first assignment required learners to draft a case summary; in the second assignment, they had to compose an article for a legal column in a newspaper.

Three key teaching principles were considered when designing the WiLL programme so as to encourage student motivation leading to a deep, critical engagement with the programme content. The first of the three principles – constructive alignment – is discussed below.

2 1   The constructive alignment teaching principle

It is argued in part 1 of this article that careful consideration of the constructive alignment of a legal writing programme can cultivate intrinsic learner motivation. Intrinsic motivation can be described as the will to engage without the need for external motivating factors, students being driven simply by the desire to learn. [4] If they are intrinsically motivated,

However, the focus of this article is on the 5-week legal writing intervention that formed part of the LRWR module. Note that some of the positive features of previous writing interventions implemented at the UKZN Law School were incorporated into the programme. See Crocker 2018 *PER/PELJ* 19–20.

[4]   Voke   "Motivating   Students   to   Learn"   2002   28   *Student   Engagement* http://www.ascd.org/publications/newsletters/policy-priorities/feb02/num28/toc.aspx. (accessed 2021-02-02).

learners will be inspired to engage deeply with context-relevant materials and will be in a position to take advantage of the learning opportunities provided to develop their critical thinking and writing skills.[5] Thus, the programme design must consciously align the intended learning outcomes (ILOs), the programme materials (and the framework within which learners are to engage with those materials) as well as the process by which learners are assessed, so as to maximise opportunities for students to connect in a meaningful way with the programme content and to develop a desire to produce excellent written work.

In designing the constructive alignment of the WiLL programme, certain knowledge, skills and values outcomes were identified as being of particular importance. The programme's ILOs were specifically chosen so that learners achieving those outcomes would leave the programme having not only improved their critical thinking, reading and legal writing skills, but also having acquired the intrinsic motivation to think, read and write critically.[6] The ILOs were activated by a set of source materials selected for their contextual relevance and interesting, transformative nature – features that would motivate learners to critically engage with their content.[7] These materials, which pertained to South African dignity jurisprudence, aimed to inspire students by exposing them to excellent, persuasive legal writing that enhanced their knowledge of issues relating to this concept within an important social context. These contextually relevant materials also provided ample opportunity for values-based class discussions around the topic to demonstrate the importance of critical thinking, reading and writing.

The three key ILOs for this aspect of the module were:

1. knowledge outcomes, which encompassed an understanding of:
    o various case law and academic writings underpinning dignity jurisprudence in South Africa today;

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[5] The theoretical underpinning to this concept of constructive alignment is discussed in more detail in part 1 of this article. See Biggs "Aligning Teaching for Constructing Learning" The Higher Education Academy https://www.researchgate.net/profile/John_Biggs3/publication/255583992_Aligning_Teaching_for_Constructing_Learning/links/5406ffe70cf2bba34c1e8153.pdf (accessed 2019-07-29).

[6] Collectively, the programme's ILOs link closely to the graduate attributes listed in the SAQA standards for the Bachelor of Laws degree. For example, one of the programme's values outcomes – "providing students with an opportunity to reflect on how to critically align one's own values with those embedded in South Africa's dignity jurisprudence, including the Constitution of South Africa" – links to the first graduate attribute listed in the SAQA standards – that is, "The learner will have acquired a coherent understanding of, and ability to analyse fundamental legal and related concepts, principles, theories and their relationship to values critically". See http://regqs.saqa.org.za/viewQualification.php?id=22993.

[7] It must be noted that, although not always possible to select interesting, well-written legal materials when teaching substantive law subjects based on complex legal materials that many students might find tedious and boring to read, the concept of intrinsic motivation must always be considered. Thus, to counteract the potential boredom, additional, interesting, values-based materials can be sourced to supplement learning and to contextualise and personalise those complex legal materials and, in so doing, inject enthusiasm into the learning environment.

    o what it is to write like a lawyer and the importance of persuasive writing and critical thinking, reading and writing in law; and

    o the difference in writing styles employed in legal journal articles, cases and newspaper articles covering legal issues;

2.   skills outcomes, which encompassed the ability to:
    o critically read statutes, cases and journal articles, having reference to the importance of dignity jurisprudence in South Africa today;

    o summarise case law;

    o think and write creatively, using a personal writing style within the parameters of a clear, concise, logically coherent legal argument; and

    o formulate an argument, accessible to the general public, for a legal newspaper column, justified by multiple sources, including cases, statutes and journal articles; and

3.   values outcomes, which included providing students with an opportunity to reflect on:
    o the importance of dignity jurisprudence in a transformative constitutional South Africa;

    o how critically to align one's own values with those embedded in South Africa's dignity jurisprudence, including the Constitution of South Africa; and

    o how to reflect these values when writing like a lawyer.

Once the ILOs of the module were determined, constructivist teaching techniques were then chosen to facilitate the implementation of these learning outcomes. [8] Finally, the ILOs were mirrored in the assessment methods employed. Details of these teaching methods and assessments are discussed in more detail below.

    The materials used in the WiLL programme comprised three sources of legal writing, showcasing three different writing styles. Each of these sources was eloquently and persuasively written, and each was specifically chosen because of its distinct link to the other so as to support the learners' comprehension of the subject matter as well as their comprehension of the arguments that each source put forward.

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[8]   Each level of Bloom's Taxonomy is addressed in the module's ILOs: knowledge (students are required to recall case information); comprehension (students are required to understand the argument and principles laid out in the journal article and case judgments, as well as understand the importance of persuasive legal writing, and summarise the cases); application (students are required to apply the knowledge gained from the case reading when discussing relevant current events); analysis (students are required to organise the ideas gained from the journal article and case judgments to create their own argument and analysis in the newspaper column assignment); synthesis (students are required to synthesise the information and ideas gleaned from the case notes and journal article to create a new argument in the newspaper column assignment, as well as during class and group discussions); evaluation (class discussions focus strongly on comparing ideas and values relating to current social issues and brainstorming ways to solve these issues and, in so doing, critically align their ideas to South Africa's dignity jurisprudence).

The first source that learners were required to engage with was an academic legal journal article written by Professor Stephen Peté [9] that critically discussed the importance of dignity jurisprudence in South Africa, with specific reference to the writings of eminent Constitutional Court Justice Albie Sachs in the *Fourie*[10] judgment. This article was chosen as the first source because it was written simply and concisely as well as the fact that it was closely linked to the second source that would be introduced to the learners in due course. Peté's article demonstrated to the learners what it means to discuss an issue critically (particularly since this was an opinion drafted by an experienced legal academic who had engaged deeply with the content of the *Fourie* judgment) as well as what specific writing skills and writing style are needed to produce a persuasive legal journal article. As an added bonus, learners could familiarise themselves with the arguments and assertions of the second source – the *Fourie* case – and identify on a logical as well as an emotional level with the more complex legal language, writing style and legal conventions of a judgment.[11]

The second source, the *Fourie* judgment, was introduced to learners next, in order to show them the more formal, complex style of case judgment writing and how to draft a case summary. Learners were taken through a critical reading of the judgment in some detail to illustrate how mini-summaries and sub-headings were used throughout the piece by Justice Sachs to break up chunks of text and to keep the reader engaged and up to speed with the arguments being presented. However, in addition to showing learners the necessity of a simple, structured writing style to aid in the comprehension of a lengthy legal text with complex, nuanced arguments, this judgment was selected as it showed Sachs's ability to engage in a creative, critical discussion of important social issues in such a way that readers are elegantly persuaded of his point of view. Learners were then taken, step-by-step, through the process of producing a case summary, after which they were given the opportunity to summarise the *Fourie* case in a small-group setting, using guiding worksheets.

The third source was a legal newspaper column article written by experienced legal journalist Carmel Rickard.[12] Although the subject matter of this source did not mirror the subject matter of the previous sources, it did link with them because of the skill applied in the article, which was case summarising. [13] Rickard's newspaper piece showed the learners a third and

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[9]   Peté "South Africa's Quixotic Hero and His Noble Quest: Constitutional Court Justice Albie Sachs and the Dream of a Rainbow Nation" 2010 31 *Obiter* 1.

[10]   *Minister of Home Affairs v Fourie (Doctors For Life International and Amici Curiae); Lesbian and Gay Equality Project v Minister of Home Affairs* 2006 (1) SA 524 (CC).

[11]   The sources used and their order of presentation could be changed in future legal writing programmes. For example: first, introduce the students to the Marriage Act, so that they become familiar with reading and analysing legislation; second, bring in the *Fourie* case to demonstrate how the Act was interpreted by the courts in light of the key issue of dignity; and, finally, allow students to read Peté's article, which critically discusses the important issue of dignity jurisprudence in South Africa today as it relates to the *Fourie* case.

[12]   Rickard "Lessons for Courts on Domestic Violence" (2015-09-25) *Mail & Guardian*.

[13]   It would be preferable for the general themes of all the source materials studied in the programme to link more closely. In this way, for example, students could learn the important skill of summarising a case with the general public as the target audience, as well as how to

final style of legal writing – the informal, factual abbreviated writing style of newspaper journalists with a completely different target audience to that of an academic journal article or case judgment. Just as importantly, this source illustrated in a deft, uncomplicated fashion, the creative development of an argument.

Learners were assessed twice in the programme. The assessments were essential to anchor the programme within the LRWR module, which formed part of the mainstream LLB syllabus; they lent credibility to the programme and motivated learners to participate to the best of their abilities. The assessments used in the WiLL programme were closely aligned with the module's ILOs and therefore were designed to promote critical thinking (around issues such as the importance of social transformation, its practical implications and the value of dignity jurisprudence in South Africa today) and to motivate students to engage deeply with the source material by showing them that good legal writing can indeed make a practical difference.

The first assessment used was a case summary. The judgment that learners were required to summarise was drafted by Justice Langa in the *Pillay* case. [14] This judgment was chosen for the assessment not only because of the elegant, persuasive way in which it was written, but also because of its seamless alignment with the programme's theme of dignity jurisprudence to fit in with the ILO of understanding the value of dignity in South Africa today and testing their functioning knowledge. In addition, the *Pillay* case contains arguments with which learners would immediately be familiar, since both the *Fourie* and *Pillay* cases discuss issues relating to the violation of human dignity.[15] In this way, learners would be able to focus on applying their case summary and critical reading skills learnt during their interaction with the *Fourie* case without being unduly distracted by unfamiliar complex arguments.

The second and final assessment was to write an article for a newspaper's legal column discussing any aspect of South Africa's dignity jurisprudence. The assignment instructions clearly defined the maximum word count and writing style. However, the topic of the assignment was kept vague by design, encouraging learners to think creatively while maintaining the need for them to justify their arguments.

Thus, the WiLL programme was constructively aligned from inception to assessment with the goal of increasing learner motivation to apply themselves to understanding the materials, thereby giving them the best possible chance of enhancing their critical reading and critical thinking skills, and, as a consequence, their legal writing skills.

2 2 The learner participation teaching principle

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structure a critical argument in such a newspaper article linking to the themes of the programme.

[14] *MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC).

[15] In the *Fourie* case, the discrimination was based on sexual orientation, and in the *Pillay* case, it was based on cultural and religious practices.

As discussed in part 1 of this article, the WiLL programme is based on a constructivist teaching paradigm. Therefore, when designing the teaching techniques to be employed in the programme, careful attention was paid to the active role that students would play in the construction of knowledge within the classroom. [16] Learner participation, which is the second key teaching principle, is crucial for two main reasons. First, the intrinsic motivation of the learners is triggered, raising the energy levels in the learning environment and inspiring learners to engage deeply with the materials. [17] Secondly, learners are empowered to think, read and write critically. Thus, when designing a legal writing module, careful attention must be paid to the teaching techniques to be applied in the module to ensure that they support active class participation. This also enables learners to hear the diversity of views and voices of their peers, allowing them to engage critically with a wide range of arguments and justifications, modelling the way in which lawyers are required to constantly evaluate various legal positions.[18]

Since the overarching goal when choosing the teaching activities in the WiLL programme was to encourage class participation, as many practical vertical and horizontal peer-learning opportunities as possible were incorporated into the teaching design. The task-orientated activities presented to learners during the programme included:[19]

- lecturer-led class discussions to facilitate vertical learning;
- guided small-group peer work, including group discussions and group writing tasks using worksheets, to encourage horizontal learning;[20]
- the presentation of contextually relevant problems for critique and analysis both as a class and in small groups; and
- various blended-learning tasks.

The first step taken to encourage peer interaction was to split the class of around 300 learners into groups of no more than 50 students per group. Lectures were held in the computer LAN and each lecture was repeated six times per week in order to accommodate all the groups. Prior to attending lectures, learners were required to complete formal preparation. The two reasons behind this requirement were, first, to encourage independent learning, and secondly, to ensure learners came to lectures armed with the relevant knowledge in order to participate meaningfully in active class discussions. During the lectures themselves, vertical and horizontal peer

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[16]   Quinot "Transformative Legal Education" 2012 129 *The South African Law Journal* 411 420.

[17]   Voke 2002 *Student Engagement.* Also see Crocker 2018 *PER/PELJ* 11–12.

[18]   Bean *Engaging Ideas: The Professor's Guide to Integrating Writing, Critical Thinking, and Active Learning in the Classroom* (1996) 5.

[19]   The theoretical underpinnings of this concept are discussed in detail in part 1 of this article. See discussion on scaffolded teaching in Crocker 2018 *PER/PELJ* 5, quoting Cheyne and Tarulli "Dialogue, Difference and Voice in the Zone of Proximal Development" in Daniels *An Introduction to Vygotsky* (2005) 135, quoting Wood, Bruner and Ross "The Role of Tutoring in Problem Solving" 1976 17 *Journal of Child Psychology and Psychiatry* 89–100.

[20]   It would be interesting to introduce a group work task that would require learners to reflect on their own challenges experienced with legal writing, followed by a group brainstorm on ways to overcome these challenges.

learning took place in the form of lecturer-led class discussions and in the form of formal, guided, practical class activities in groups of three or four students per group.

2 2 1   *Lecturer-led class discussions*

The lecturer-led class discussions facilitated the assimilation of both declarative and functioning knowledge.[21] Topics discussed included:

- an analysis of contextualised persuasive writing techniques and the motivation behind improving the skills needed to write like a lawyer as well as the need to encourage a critical learning environment of justification rather than authority;[22]
- an analysis of the writing skills and writing style necessary to write an academic journal article as compared to those skills necessary to write a case judgment or a legal newspaper column;
- the relevance of academic journal articles for law students and lawyers and how to write an introduction and abstract for such an article;
- how to read a case and write a case summary;
- how to formulate a persuasive argument; and
- using critical reading and thinking skills to understand and critically assess the value of dignity jurisprudence in contemporary South Africa.

2 2 2   *Guided small-group peer work*

The small-group tasks incorporated two distinct aspects: first, the groups were encouraged to continue the lecturer-led discussions in small groups among their peers, thereby encouraging horizontal peer learning and critical discussion on values-based topics; and secondly, learners were encouraged to practise legal writing and thinking like a lawyer by completing practical writing tasks in class.

Groups were asked to complete a number of practical tasks, which were designed with two goals in mind: first to pique the students' interest and encourage them to think critically about values-based issues affecting ordinary South Africans; and secondly, to get them to practise legal writing

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21 As discussed in part 1 of this article, Biggs maintains that learners must acquire two different kinds of knowledge – namely, declarative and functioning knowledge. In other words, in addition to knowledge that learners are able to declare or reproduce, whether orally or in writing, they must also acquire knowledge that serves a function (Biggs https://www.researchgate.net/profile/John_Biggs3/publication/255583992_Aligning_ Teaching_for_Constructing_Learning/links/5406ffe70cf2bba34c1e8153.pdf).

22 This concept of encouraging learners to focus on providing justification for their ideas rather than simply relying on authority is particularly important when teaching, learning and practising law in the transformative, constitutional democracy of South Africa and is discussed in part 1 of this article. Quinot explains this concept as: "a shift from a 'culture of authority' to a 'culture of justification' – that is, an understanding of the validity of a legal position not because of the force behind it (e.g., as contained in a statute or court judgment) but because of the sound normative considerations upon which it is explicitly based – our pedagogy needs to reflect justification and not authority."

as much as possible, using worksheets, short paragraphs, summaries and a series of drafts. Some of the small-group activities included:

- writing an abstract for an academic journal article;
- critically reading and summarising the *Fourie* case;
- comparing the majority and minority judgments in the *Fourie* case;
- completing a worksheet on the value of dignity jurisprudence in the *Fourie* case;
- completing a worksheet on creating and justifying an argument in a legal newspaper column; and
- writing a series of drafts of a legal newspaper column on the general topic of dignity jurisprudence in South Africa today.

While the groups were completing each task, there was a strong emphasis on scaffolded learning with the lecturer moving from group to group to take part in the group discussions by: playing devil's advocate where necessary to extend the learner's critical thinking opportunities; clarifying any points of confusion that learners might have had with respect to the source materials; and providing instantaneous feedback on the completed practical group writing. All of the tasks encouraged learners to think critically by having to debate the correct answer among themselves before committing their consensus to paper and then defending this in a plenary discussion at the end of the lecture.

2 2 3   *The presentation of contextually relevant problems*

Taking advice from Bean, who recommends piquing the curiosity of students in order to motivate them to engage deeply with a concept, when designing the class participation activities, every opportunity was used to present the learners with unique, contextualised problems to discuss as a class as well as in their small groupings.[23] These problems provided the perfect backdrop to motivate learners intrinsically to engage deeply and think critically. Table 1 below depicts how a number of Bean's suggestions for the unique presentation of problems were incorporated in the WiLL programme. [24]

Table 1: The presentation of problems in the WiLL Programme

Bean's Suggestion for Problem Presentation	WiLL Activity
"Problems presented as thought-provokers for exploratory writing" and "problems presented as tasks for small group problem solving"	Learners were required to complete in-class worksheets in groups. These worksheets required learners, after some group discussion, to provide critical opinions on questions on the text currently being studied.
"Problems presented as	The second assignment that learners were

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[23]   Bean *Engaging Ideas* 2–3.

[24]   Bean *Engaging Ideas* 6–7.

formal writing assignments"	required to complete was a persuasive legal writing assignment, which formed part of their formal evaluation. This assignment had learners formulating an argument as part of a legal newspaper column. Students were instructed to draw justification for their argument from three sources: Peté's journal article; the *Fourie* case judgment; and the *Pillay* case judgment. All of these had been extensively covered in class by this time.
"Problems presented as starters for inquiry-based class discussions"	Contextualising learning and how to write persuasively was a central focus through the WiLL programme lectures. Learners were expected to apply their minds to this concept each time when justifying their viewpoints in a class discussion.
"Problems presented as think-on-your-feet questions for in-class 'cold calling'"	General discussions on the value of dignity jurisprudence involved the lecturer posing off-the-cuff questions to individual members of the class, asking them their opinions, as well as to the class in general to brainstorm ideas on the topic.

2 2 4   Blended-learning tasks

Learner participation was also encouraged by introducing a blended-learning aspect into the programme. The WiLL programme classes were held in the university computer LAN, with each group of three learners being assigned one computer. This enabled them to access materials and to complete group work tasks while in class. Class notes, PowerPoint presentations and assignment instructions were all made available on the university e-learning platform Moodle. However, learners were required to access additional source materials (such as the academic journal article and case judgments) directly from the Internet or legal databases for perusal during class. In addition, learners were given access to a podcast of an interview with Justice Albie Sachs, which was valuable in further contextualising the subject matter of the programme.[25] In the words of Greenbaum and Quinot, "confronting students with the real-world story behind a particular case in multimedia format can be a powerful instrument in facilitating engagement with the contextual nature of law and harness(ing) the "cognitive power of storytelling".[26]

In addition to active class participation, made possible by the use of constructivist teaching techniques and blended-learning opportunities,

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[25] The Story of Judge Albie Sachs "I Was Born Into It – Judge Albie Sachs" What's Your Story? Heartlines https://www.youtube.com/watch?v=OkBialqGsis&feature=youtu.be&list=PLD46lzNE0l-ECl-4n5nTPGdFoDkS-aQmY (accessed 2021-02-02).

[26] Quinot and Greenbaum "The Contours of a Pedagogy of Law in South Africa" 2015 26 *Stell LR* 54*.*

learners were provided with unique, highly individualised conversations in feedback so as to promote motivation and enhance the critical learning process.

2 3   The conversations in feedback teaching principle

The final key teaching design principle (conversations in feedback) speaks to the idea of improving student motivation by providing more one-on-one, scaffolded learning opportunities for the learners, thus catering for different learning styles, while using a constructivist teaching methodology.[27] To facilitate these conversations, programme instructors are required to work with learners individually through guided group work as well as oral and written feedback on individual and group work student tasks and assessments. This principle makes use of expert-novice interaction in terms of which a relative expert in the field gives specific, directed instruction to the learners on an individual basis. Learners are encouraged to participate in conversations about the feedback received on their writing, both with their peers and with the person giving the feedback. Boughey likens these conversations in feedback to having a "critical friend" or a "sounding board", all of which aid in the writing process. He says:

> "[T]he process of having to justify, explain, rephrase or clarify arguments for a critical audience reinforces the writer's own understanding; knowing that one may subsequently be forced to justify what one has written makes writers more likely to anticipate some of that criticism as they write. The presence of a critical friend, or sounding board, can thus be instrumental in moving the writer towards the practice of 'expert writers' 'who treat the process of composing an essay as a complex task of shaping a communication that will appeal to and convince an intended audience rather than simply writing down everything they know on a topic."[28]

Thus, in implementing the principles mentioned above in the WiLL programme, care was taken to provide as much individual formative and summative feedback to the learners as possible. Cognisance was taken of previous writing interventions implemented at UKZN, which noted that providing in-depth, personalised, written feedback on a number of drafts of student written work was pedagogically sound.[29] However, in the current programme, the student feedback was enhanced by placing a greater focus on individual, instantaneous oral feedback.

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[27] The theoretical underpinnings of this concept are discussed in part 1 of this article. See Laurillard *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology* (1993) 105; and general discussion on Laurillard's "conversational framework" in Crocker *The Practical Considerations of Implementing Online Learning Technology at the Howard College School of Law, University of Natal, Durban, Using the Legal Method Module [DLA2LGM] as a Case Study, in Order to Develop an Appropriate Strategy for its Implementation* (LLM thesis, University of Natal, Durban) 2003 29–30.

[28] Boughey "Department-Specific Writing Centres Linked to Tutorial Programmes: The Quest for Quality" 2012 26 *SAJHE* 51 55, referencing Brumfit *Problems and Principles in English Teaching* (1980) and Resnick "*Instruction and the Cultivation of Thinking*" in Entwistle (ed) *A Handbook of Educational Ideas and Practices* (1990) 698.

[29] See Crocker 2018 *PER/PELJ* 20.

Learners were required to attend the penultimate lecture of the programme having completed a first draft of their newspaper legal column assignment. Then, after discussing the first stage of their progress in developing an argument for their assignment in a large-group setting, with learners also providing feedback on their peers' progress, the class was divided into small groups and instructed as follows:

1. Learners must interrogate the lecturer-led class discussion further with their peers in their small groups.
2. Learners must then each present their arguments to the other members of their group who must give oral feedback on these arguments. This feedback should not be limited to the nature of arguments, but should also interrogate the justification[30] for the argument.
3. Learners must also give feedback on grammar, punctuation, logical flow, structure and the presence of critical thinking in the presentation.

While the small groups were interacting, the module lecturer moved from group to group, providing instant oral feedback on students' arguments and taking part in the small-group discussions. After completing this exercise and receiving advice from the programme expert and peers in their groups, students were then required to write and rewrite subsequent drafts.

So, having had the opportunity to brainstorm arguments during class and the space to refine their thinking and writing in this regard in small groups and in their own time, learners were afforded the opportunity to receive focused, one-on-one oral feedback from the module lecturer during individual feedback consultations. Learners used these consultations to explain the thought process behind the development of their arguments, and then debated with the module lecturer their justification for these arguments. These sessions thus operated as an extension of the peer discussions that the learners had participated in during the class small-group sessions. Discussion in these individual consults also centred around the argument and flow of the article, as well as the target audience, effectiveness of writing style, grammar and punctuation, and overall persuasiveness of the writing. Learners were then given a chance to reflect on this discussion before making the necessary amendments to their writing and submitting a final draft for formal assessment, which received summative written feedback. It was encouraging to note that the process of having conversations in feedback and negotiating reasons for revisions on student writing worked effectively and a marked improvement was noticed by the lecturer in terms of learners' subsequent drafts.

In carrying out this series of writing tasks, which required numerous drafts and an in-depth, ongoing critical dialogue with an expert in the field around formative and summative feedback comments, learners were forced to engage fully in the process of writing. This process then, is best implemented using a scaffolded teaching methodology within the framework of the expert-novice theory, with a strong emphasis on repetition and

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[30] The idea of justifying an argument rather than merely quoting authority is developed by Quinot and discussed in more detail in part 1 of this article (Quinot 2012 *SALJ* 417).

individualised feedback. In this way, students are guided step-by-step by a relative expert in the field through multiple drafts of a piece of writing, gradually moulding their first draft attempts into polished final drafts.

The three principles of constructive alignment, learner participation and conversations in feedback discussed in part 1 and applied in part 2 of this article represent significant positive features of the WiLL programme. However, the programme also encountered a number of challenges that would need to be resolved in future legal writing programmes. These challenges are addressed below.

3   CHALLENGES ENCOUNTERED ON THE WiLL PROGRAMME AND RECOMMENDATIONS FOR IMPROVEMENT

Three main challenges were encountered during the implementation of the WiLL programme: insufficient staffing resources; limited use of digital tools to enhance constructivist teaching activities; and lack of learner preparation. In one way or another, all of these challenges diminished the intrinsic motivation of the learners and reduced their opportunities to engage and think critically.

3 1   Insufficient staffing resources

The first challenge encountered was that of insufficient staffing resources. Only one lecturer was appointed to run – that is, design, teach, consult and assess – the five-week legal writing programme with 300 students. The structure of the WiLL programme (featuring repeat-teaching as well as oral, formative feedback and written, summative feedback on assessments and group writing tasks) generated an extremely heavy teaching load for one lecturer, who, of course, also had other teaching and research responsibilities. In addition, it was an impossible task for one lecturer to engage critically in every small-group discussion and attend to every query generated during the double lecture period allocated to the module each week; thus some students missed out on this valuable learning experience. It was also impossible for one lecturer to consult individually with all 300 learners in order to hold a meaningful conversation in feedback; this would obviously affect student motivation for those learners who were not given the chance to engage in these sessions.

However, although the lecture load required by the programme was tiring and time-consuming, it was at the same time extremely gratifying for the lecturer to notice learners coming alive during class discussions on values-based topics. Learners who at first were shy to speak up during class began responding with energy and enthusiasm to questions posed as the participatory teaching techniques were rolled out in the programme. Spontaneous debate also broke out on numerous occasions among learners during the small-group activities, with students commenting time and again that they had received fresh insights into the importance of protecting dignity in South Africa today. On many occasions, a number of students continued debating issues for some time after the allotted lecture time was over,

showing intrinsic motivation to learn and to subject the issues at hand to critical analysis.

There are two potential solutions to the problem of insufficient staffing resources:

1. Written and oral feedback could be shared among all School of Law lecturers. Legal writing and the ability to think critically are skills that must permeate all aspects and levels of the LLB programme and, as such, this load should be shared across the curriculum, which would work to ease the teaching load. Synergy between skills-based modules and substantive law modules within the same academic year could also be explored. Assignments could be linked across two modules, with lecturers sharing the marking burden across the modules, taking advantage of the legal writing instruction given in the skills module and the legal content disseminated in the substantive law module. This recommendation would require some debate among School of Law staff members and, of course, authorisation from the School of Law executive staff since there is a strong chance that it would only be supported by other staff if the additional teaching was factored into their formal teaching loads.

2. Alternatively, final-year LLB students who have taken on the role of tutors as part of the final-year Public Law elective module "Teaching Legal Skills" at UKZN, Howard College, and who have received substantial peer tutor training as part of this module, could be used to provide immediate oral feedback on in-class, small-group written work and discussions.[31] In addition to the inherent legal writing skills that the Law School tutors possess by virtue of the fact that they are final-year law students, these students also receive weekly training on providing feedback on student work, as well as in the teaching methodologies relating to small group facilitation. The use of student tutors, rather than School of Law staff members, could be an important way of addressing the resource constraints of the programme.[32]

3 2   Lack of learner preparation

The second challenge encountered was the lack of learner preparation. Some learners did not complete the lecture preparation tasks, reducing the quality of class and small-group discussions. The classroom tasks were implemented to encourage learners to think critically by teaching them to justify their ideas and to communicate those justifications effectively. However, those students who were under-prepared were reluctant to speak out in class discussions, which adversely affected class motivation as well

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[31] See Greenbaum *Teaching Legal Writing in a South African Context: An Evaluation of the Work of Student Tutors in Assisting with the Development of Legal Writing Skills in First Year Law Students at One South African Law School* (Master of Education dissertation, University of Natal) 2001 79–83. Also see Boughey 2012 *SAJHE* 55.

[32] See detailed discussion in Crocker "Developing Factors to Underpin a Legal Writing Programme at the University of KwaZulu-Natal, Howard College, School of Law: An Analysis of Two Writing Interventions", submitted for publication.

as the depth of critical debate. For example, learners were required to come to class prepared to give informal presentations of the arguments contained in the first draft of their newspaper column assignments in small-group clusters. However, there were some groups where certain students were simply not prepared and thus could not give a meaningful presentation of their arguments; thus these individuals did not receive valuable peer critique and the group could not participate in an in-depth, critical discussion during this time. It must be noted, however, that although this lack of learner preparation did have some negative effect on student motivation and critical discussion, there were a number of learners who did prepare effectively and participate meaningfully in class discussions and critical debates. The participation from these learners was sufficient to demonstrate that the constructively aligned, participatory teaching techniques implemented were effective in increasing student motivation to think critically and to instigate vigorous debate on various values-based discussion topics. Learner motivation and participation could also possibly be improved if the materials studied and skills learnt in this legal writing skills module were more overtly linked to the students' other substantive law modules for which they were registered in the same year. If students' participation and success or failure in the Legal Writing module was closely linked to their success or failure in other second-year modules, this could be a strong motivating factor.

A potential remedy for the lack of learner preparation is suggested by Fink, who makes the point that learners can be intrinsically motivated to prepare and read ahead of lectures by making them aware that they will be held accountable for their preparation. Here are two examples of how students can be held accountable for their lecture preparation:

1. An assessment quiz on the relevant material can be administered before beginning the class activities. [33] These in-class assessment quizzes can be administered online. These quizzes are easy to set up online and, since the lectures all take place in the computer LAN, they will also be easy to administer. Learners will also be discouraged from skipping class since doing so will mean that they will miss the quiz and a chance to earn marks in the module.

2. Learners can be forewarned that they are expected to take part in an informal presentation or small-group discussion and that a mark – albeit a low percentage of the overall module mark – will be allocated for their effective participation. School of Law student tutors could be used to facilitate and evaluate these presentations. Alternatively, learners could be expected to hand in a single page, setting out their argument and justification, taking into account their individual learning styles, and receive a mark for this. So, for example, visual learners could submit a flow diagram or mind map of their argument, and linear learners could submit this information in point form. This lecture preparation could be marked by the School of Law tutors.

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[33]   Fink *Creating Significant Learning Experiences: An Integrated Approach to Designing College Courses* (2003) 115.

3 3   Limited use of digital tools

The third challenge encountered was that although some digital tools, such as the Albie Sachs Life Story podcast, were used during the WiLL programme in order to enhance the teaching and learning experience, more could have been done to exploit such resources. It is well documented that incorporating e-learning and digital tools into a constructivist teaching strategy will enhance student learning.[34] These digital resources can have a positive effect on intrinsic motivation and critical thinking in a number of ways, four of which are mentioned below.

First, learners can witness, via videos and podcasts posted on the Internet, actual court scenes, thought-provoking debates or inspirational speeches by prominent leaders. Secondly, learners can be given opportunities to connect with other learners and educators at institutions around the world, enabling them to tap into the wider digital community and allowing them to contextualise information in a very real way. Thirdly, exposing learners to digital tools can also improve their computer and digital research skills, which will serve them well on entering the legal profession. Fourthly, the 2019 Open University Innovation report makes the interesting observation that using digital tools as a pedagogical enhancement can allow learner thinking to become visible. For example, digital response systems can allow individual learner responses around a class discussion question to be represented visually as the discussion continues; visually comparing and contrasting responses, then and there, allows for inclusivity from a greater number of participants and adds depth and contextualisation to the discussion.[35] Finally, the Open University report also mentions that digital tools can be used to facilitate "just-in-time" teaching strategies. These are online activities that learners are required to complete as preparation for lectures. Educators can then integrate these learner responses into their upcoming teaching activities, essentially extending the constructivist teaching methods outside of the classroom, again adding depth to class participation. Most importantly, the report posits:

> "The assignments and the way in which they're used is not only about making student thinking visible for the teacher. This approach makes students more aware of their own thinking and prompts them to reflect on their learning process. They have opportunities to shed light on their misunderstandings. Students become aware of what they can do and what they understand, and can identify topics that are important to work on further."[36]

However, it is important to remember that, as exciting as the opportunity to make student thinking visible through new technology may seem, one must

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[34]   For example, see Crocker "Blended Learning: A New Approach to Legal Teaching in South African Law Schools" 2006 31 *Journal for Juridical Science* 1–25.

[35]   Ferguson, Coughlan, Egelandsdal, Gaved, Herodotou, Hillaire, Jones, Jowers, Kukulska-Hulme, McAndrew, Misiejuk, Ness, Rienties, Scanlon, Sharples, Wasson, Weller and Whitelock *Innovating Pedagogy 2019: Open University Innovation Report* 7 (2019) 36.

[36]   Ferguson *et al Innovating Pedagogy 2019* 37.

not lose sight of the fact that, first and foremost, sound pedagogical principles must always be followed.[37]

4   CONCLUSION

This article as a whole examines the two central themes of student motivation and critical thinking in the context of teaching the skill of persuasive legal writing to second-year law students at the University of KwaZulu-Natal, Howard College, in the WiLL legal writing programme. The teaching design of the WiLL programme fits within a constructivist teaching paradigm and employs three key teaching design principles: constructive alignment, learner participation and conversations in feedback – all of which are closely linked in educational theory.

Part 1 of this article examined the theoretical underpinnings of the two central themes as well as the three teaching design principles employed in WiLL. It was pointed out that in order for students to learn how to think and write like lawyers it was imperative that they were able to engage critically with the values-based knowledge being disseminated and with the persuasive legal writing skills being demonstrated in the programme. However, students would need to be intrinsically motivated to spend the time and energy required to hone these skills. Part 2 of this article has discussed the practical application of the three key teaching principles in the WiLL programme. All three of these teaching principles represent significant positive features of the programme and the student response to the use of these techniques was overwhelmingly positive.

The constructive alignment of the programme (beginning with a focus on the critical reading of a journal article setting the scene for the Constitutional Court case to follow) allowed students to come to grips with the complex wording and values-based arguments contained in the judgment. It is submitted that without this initial soft introduction to the themes contained in the judgment, students might have struggled to comprehend the subtle writing nuances that added to the persuasiveness of the judgment and might not have noticed the logical persuasive links contained in the writing. After receiving a critical introduction to the case and to the life and personality of the man who penned the judgment, students were eager to read further and motivated to take part in an in-depth critique of the ideas put forward in the case.

The constructive, participatory teaching activities incorporated in the programme further motivated the learners and resulted in lively, critical debate during class on current values-based issues affecting ordinary South Africans. Many students continued to participate in discussions on the contextually relevant materials even after the lecture was over, inspired by the valuable insights that they were getting into their peers' backgrounds and world views. The digital tool in the form of an inspiring podcast on the life of a Constitutional Court Justice also played a part in motivating students to engage deeply with the material being studied.

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[37]   Ferguson *et al Innovating Pedagogy 2019* 38.

The views formed during the class and peer-group discussions translated into a critical writing style as persuasive arguments were developed in the participatory writing tasks that students completed both in small groups and individually. This was complemented by the conversations in feedback initiated during peer-group discussions and in the oral feedback given by the lecturer. A marked improvement in writing style, logical linkages in arguments and overall persuasiveness of students' written class activities and assessments was noticed over the course of the semester, after students had received extensive oral feedback from both their peers and their lecturer.

However, in a resource-constrained environment such as that at UKZN, there are a number of challenges to overcome before it is feasible to implement a high quality resource-hungry programme such as this. The challenges identified during the implementation of the WiLL programme include: insufficient staffing resources; lack of learner preparation; and limited use of digital tools. A number of creative solutions to the challenges highlighted above were suggested, including: employing the services of student tutors to provide ongoing formative oral and written feedback in both group and individual settings to help alleviate the staffing resource deficits; incorporating online quiz assessments to encourage students to prepare for lectures; and making better use of digital tools to enhance the constructivist teaching methods already employed, such as student digital response tools to make student thinking visible.

In conclusion, from the insights gleaned in parts 1 and 2 of this article, it is submitted that, with creative thought, it is possible to motivate large groups of second-year law students at UKZN, Howard College to put in the time and effort necessary to improve their legal writing skills and to teach them how to think and write critically about values-based issues affecting ordinary South Africans today.