

Assessing legal professionalism in simulations: The case of SIMPLE

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Abstract

What do we do when we evaluate professionalism, and how can we do that effectively using digital simulations? This brief paper will examine the issue and take as a case study the digital simulations used on the SIMPLE platform (Simulated Professional Learning Environment). Professionalism and its evaluation are described and defined, and the implementation and implications of this approach is explored in the case study.

Introduction

Digital simulations can be used for many purposes and in many professions. They are used in the training of the military (Nieborg 2004), civil and military aircraft pilots, in the training of surgeons (Fry and Kneebone 2011), in social work (Moss 2000; 2002), business (Cox 1999) and psychotherapy (Riva 2005). Legal education has generally been reluctant to engage with simulation as a heuristic, though other forms of experiential learning such as clinic have found a place in the curriculum in most common law jurisdictions – albeit little more than a foothold in many institutions. The reasons for this are not hard to find. Simulation is perceived as a method of teaching that is expensive, resource-intensive and disruptive of conventional teaching learning and assessment. In a number of publications we have proved that all three perceptions are false: while poorly-designed simulations can indeed exhibit these qualities, well-designed and implemented simulations are feasible, cost-effective and can be integrated with more conventional approaches to legal education (Barton, McKellar, Maharg 2006; Barton, Garvie, Maharg 2012).

But if simulations are possible and practicable in legal education, are they effective teaching and learning tools, and can they be used for assessment? In particular, can they be used for the evaluation of professionalism? To answer these questions we need to define what we mean by ‘professionalism’ and by ‘evaluation’. We shall do that briefly, and then in the next section of the paper we shall give examples of digital simulations in practice, and summarise what we have learned about the process of evaluating legal professionalism.

Professionalism

The literature on professionalism and the professionalization of the legal cadre is extensive. Much of it, from sociolegal perspectives, analyzes how professionalism is constructed by the profession, and how it is shaped by the economics and culture of the profession, and how it is in recent decades fragmenting under pressure from regulation, consumerism,

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commoditization, globalization, the effects of new digital technologies and other economic forces. Larson (1977), for instance, noted how professions deliberately transmuted technical and cultural capital into an institutionalized system of social and financial rewards. In his magisterial studies of professionalism in the legal profession of England and Wales Abel analyzed the extent to which it was in thrall to marketplace economics and cultures and the extent to which the traditional cultures of professional cadres and their interests shaped the interpretation of the concept and its effect in society (1988; 2001). This has been analyzed in many further projects – see for example Nelson and Trubek (1992), Kritzer (1999), Nicolson and Webb (2005) and Boon (2010). For the purposes of this paper, I agree with Webb’s outline of the professionalism project as ‘a dynamic, contingent and contested *practice*, responsive to a range of ideological, economic and situational factors’ (Webb 2008, 22).

The literature on legal professionalism in education is also considerable. Lubet (1993), Powell (1994) and Wendel (2001) have analyzed how it plays out as a set of values in the USA. The influential Carnegie Report, following lines of development set out in philosophy and professionalism by William Sullivan (Sullivan and Rosin 2008), in education by Lee Shulman and others (Shulman 2005), and by many authors commenting on assessment of professionalism (Montgomery 2007; Sturm & Guinier 2007), also renewed the call for a greater focus on professionalism in US law schools, and mapped out how it may be achieved in the JD degree. In the UK there have been similar calls to embed professionalism in legal education (Webb 1998), and in other jurisdictions too (Arthurs 1998). The topic, therefore, has generated considerable attention; but it would be fair to say that there are still disappointingly few attempts in most jurisdictions to explore, define, and above all *enact* within legal education a coherent account of professionalism that can serve as a coherent pedagogy. In the next section we shall consider one jurisdictional attempt to do just that.

Professional Legal Education in Scotland

In Scotland there are a number of routes to qualification as a solicitor or advocate. It is possible to sit examinations held by the Law Society of Scotland in what are known as the ‘qualifying subjects’, a pass in which qualifies the candidate to proceed to a postgraduate course in professional subjects, called the Diploma in Legal Practice; but only a handful of candidates take this route. The commonest route to the legal profession is via university study. In their undergraduate years, most students study for their LLB degree (also known by the Law Society of Scotland as the ‘Foundation Programme’) in one of a variety of routes stretching from 2–4 years (six, if studied part-time), depending on their previous experience and pattern of study.²

The Law Society of Scotland recently completed a comprehensive consultation and review of legal education in Scotland (called the Future of Legal Education & Training), and this resulted in major changes to programmes in the professional legal educational sector. As a result, the LLB is now followed by the postgraduate stages, PEAT 1 & 2 (Professional Education and Training) PEAT 1 / Diploma in Professional Legal Practice lasts for around seven months – effectively a full academic year – and is currently offered at six centres throughout Scotland. The Society emphasizes that PEAT 1 is the stage where ‘knowledge, skills attitudes and values are learned in a simulated environment’ (Law Society 2012, 2).

² For information on the consultation, review and the new programmes, see the Society’s web pages at <http://www.lawscot.org.uk/becomingasolicitor>

Students must then complete PEAT 2 – a work-based training period of two years in a legal office where knowledge, skills, attitudes and values are developed in a workplace setting. During this period the Law Society of Scotland requires trainees to undertake specialist CPD, and to undertake quarterly performance reviews. The Society's strategy is to link the professional programmes more directly, and to build upon a re-designed undergraduate programme, as it points out on its website:

A major change is the introduction of outcomes which apply across both PEAT 1 and PEAT 2, in 'professionalism, professional ethics and standards', 'professional communication' and 'business, commercial, financial and practice awareness'. The two stages have never been linked in this way before and the link will provide real clarity across the two.³

This is also linked to re-designed CPD requirements for solicitors in Scotland.

The shift in emphasis from a skills-based curriculum based upon aims and objectives, to a professional curriculum based upon learning outcomes was a significant move for legal education in Scotland. It was based on multi-disciplinary and multi-jurisdictional research into the nature and critical importance of clarity around the concept of professionalism. Papadakis et al., for instance, set out to determine if medical students who demonstrated unprofessional conduct in medical school were more likely to be disciplined by their State Board. Their study set out possible correlative factors, including gender, grade point average, Medical College Admission scores, school grades, National Board of Medical Examiner Part 1 scores and negative excerpts from evaluation forms. The study subjects were alumni graduating between 1943 and 1989. They revealed correlations between unprofessional behaviour at medical school, and practitioners who had been disciplined by their profession. As they reported,

We found that UCSF [University of California at San Francisco] School of Medicine students who received comments regarding unprofessional behavior were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades and passing scores on national standardised tests, did not identify students who later had disciplinary problems as practicing physicians. (Papadakis et al., 2004a, 244; 2004b)

This is not the only study to produce such results. Other studies have focused on the part that professionals can play in being role models for students. Kenny et al. outline the practical consequences of a new emphasis on professionalism as character formation (Kenny, 2003, pp. 1203–10). Misch has argued for the appointment of what he calls 'humanism "connoisseurs"' to the medical curriculum, namely staff specially trained to give feedback on qualities such as empathy, compassion, integrity and respect, 'while evaluating physicians' behaviors as an integrated, cohesive whole' (Misch, 2002, pp. 489–95).⁴

As I point out (Maharg 2007; 2011), aspects of all this were already being implemented at the Glasgow Graduate School of Law (GGSL), a joint graduate school between the law schools of the universities of Glasgow and Strathclyde.⁵ Our simulation pedagogy was based on what we called Transactional Learning (TL). This is a specific form of problem-based learning, with at least seven distinguishing characteristics:

³ See <http://www.lawscot.org.uk/becomingasolicitor/education--training-policy>. Maharg was a member of the Society's Education & Training Committee, 2002-2010, and was employed as a consultant on the review. He drafted the learning outcomes for Professionalism, Professional Communication and Professional Relationships. For an example of a learning outcome for Professionalism, see Appendix 1.

⁴ Discussed in Maharg 2007, chapter 7.

⁵ For information on the GGSL, see Maharg 2011.

active learning
 through **performance in authentic transactions**
 involving **reflection in & on learning**,
 deep **collaborative learning**, and
 holistic or **process learning**,
 with **relevant professional assessment**
 that includes **ethical standards**

The pedagogy is constructivist and Deweyan in its origins (Barton, McKellar, Maharg 2007; Miller 1963), but we have developed it in specific ways to account for the nature of learning and assessment that can be accommodated with simulation.⁶ We have developed, for example, concepts such as the spectrum between open and closed sims (Figure 1):

		Bounded field <i>ie transaction tends to...</i>	Open field <i>ie transaction tends to...</i>
1.	Learning outcomes (LOs) & assessment	Precise learning outcomes, with simulation tasks based closely on outcomes – pre-defined LOs	Bodies of evidence required to be produced to benchmark standards, but less emphasis on pre-specified outcomes
2.	Alignment with traditional learning & teaching methods	Teaching is aligned with tasks and outcomes, often according to an academic structure, eg lecture–seminar; learning is heavily ‘pushed’ by curriculum structure	Teaching is provided where needed according to learners’ needs, often according to a professional, just-in-time learning structure; learning is ‘pulled’ by learners
3.	Operational model	Linear domain procedures, eg predictable document chain – more operationally predictable	More varied, open or diffuse domain procedures, eg transactional guidelines but no specific document chain – less operationally predictable
4.	Student outputs	Specific documents, drafted to specific standards, eg initial writ; fixed or correct versions expected as student output	Procedures that involve a variety of documentation, or documents that cannot be specified easily in advance, eg negotiated agreements; various versions acceptable
5.	Resources	Resources are tied closely to tasks and learning outcomes – highly model driven	Simulation resources are not linked to tasks; learner needs to structure transaction through interactive querying of resources – highly learner driven

Figure 1: Bounded and open field transactions (Barton & Maharg 2006)

This typology, arising from types of simulation practice, has significance for the larger debates regarding the nature of professionalism and professional learning. Simulation

⁶ The complex process of designing and implementing a simulation is summarised in the diagram in Appendix 2.

environments are powerful learning and testing grounds for the contested concepts at the heart of professionalism such as mentioned briefly above. Such concepts, deriving from research into the culture of professional activity, do not fit easily into conventional structures of academic assessment (Stern & Papadakis 2006). Bevis and Watson amongst many others have recognised this, and argued for a reorientation of what it means to be a professional, how we learn it, and how it is assessed. If professional education requires the development of judgement rather than the resumption of technical knowledge alone, then the enactment of judgement within highly articulated contexts such as bounded and open field simulations, becomes a valuable learning and assessment zone for professionalism. This has been well mapped by Bevis & Watson (1990), who compared a technical model of teaching against a professional model for clinical nurse education (see Figure 2):

Technical Model	Professional Model
The only learning worth evaluating can be seen as behavioural changes.	Worthwhile learning is often personal, obscure and private. Only some learning appears as behavioural changes.
Everything that exists, exists in some quantity, and therefore can be counted and measured.	Many things that exist are not externally verifiable.
The teacher-selected goals are the important ones, therefore the evaluated ones. Both teacher and student selected Important, therefore the evaluates ones	Both teacher- and student-selected goals are important, as is learning attained without goals.
Comparing behaviours to some objectively held criteria or comparing to the progress of other students determines how well something is learned.	Educative learning cannot be rated on a scale. Most learning cannot be compared either to some "objectively" conceived criteria or to the progress of other students.
The teacher-student relationship is hierarchical and the teachers assess students by how well they have met specific objectives.	The teacher-student relationship is egalitarian. Learning requires a process of trusting exploration among expert and novice learners and thrives on constructive criticism.
The quality of rigour of a course can be determined by how well it helps its students meet the discipline requirements as reflected by test scores, attainment of behavioural objectives, and accreditation requirements, since these reflect the agreed-upon discipline content.	The quality of rigour of a course can be determined by how well it helps students collect paradigm experiences, develop insights, see patterns, find meanings in ideas and experiences, explore creative modes of enquiry, examine assumptions, form values and ethics in keeping with the moral ideal of the caring scholar-clinician, respond to social needs, live fully and advance the profession.

Figure 2: Technical and professional models (Bevis & Watson, (1990), cited in Maharg & Owen (2007))

In total at the GGSL, the collaborative and transactional environment was used in seven transactions. The extent of these transactions and their placing in the chronology of the two semesters of the academic year are represented by the following diagram (Figure 3):

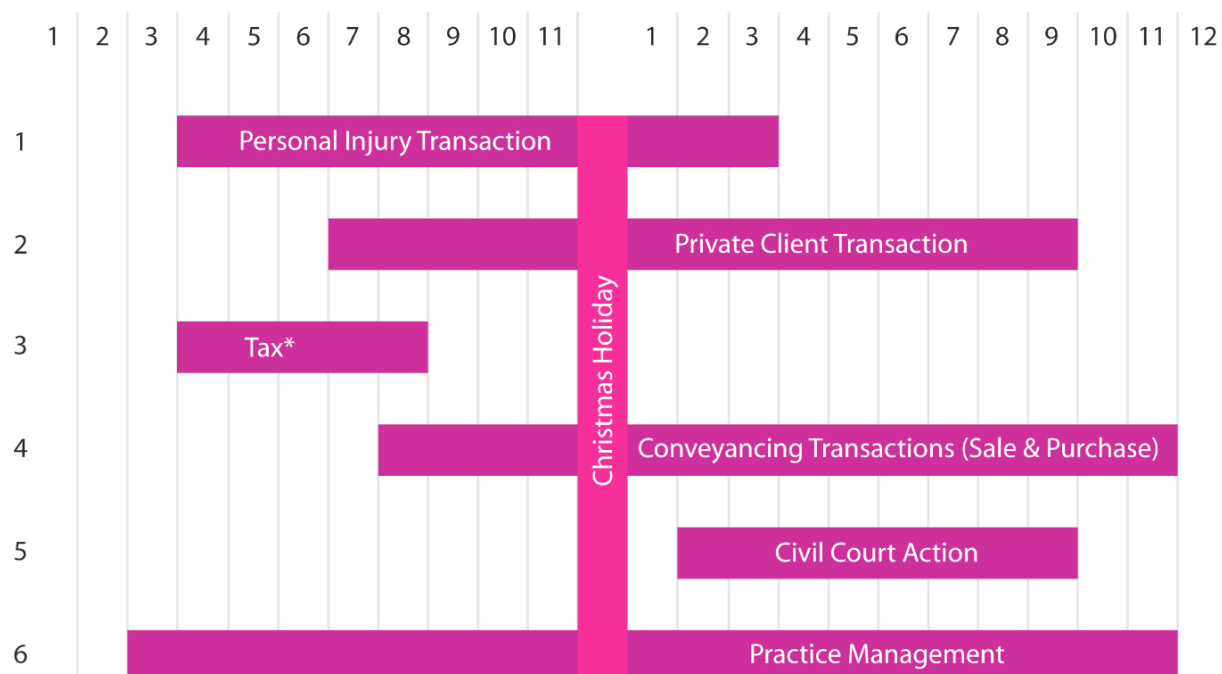


Figure 3: Simulated transactions on the Diploma in Legal Practice.

How was this pedagogy implemented in simulations? The following section briefly describes briefly the digital learning environment.

Ardcalloch and SIMPLE

Ardcalloch is the name given to the fictional town that we created on the web. Constructed as a typically west of Scotland provincial town in the early years of the millennium, it consists of a history (stretching back beyond Roman times – Figure 4), a directory of dozens of websites and the names and addresses of hundreds of citizens who are involved in transactions that take place in the town (Figure 5); and a map of the town (Figure 6). Within it are set legal transactions that students carry out in small groups, generally comprising four students, and called firms.

The sense of place was useful for a number of reasons. It provided:

- the backdrop for legal transactions – what might be termed the ‘realia’ of professional legal work. The term derives from archival work, and includes a vast array of objects in that domain, such as scrapbooks, newspaper clippings, advertisements, photographs, wills, bank books, account books, etc. We created many such objects in the virtual town;
- characters, institutions, within which students worked as they might work within a law firm;
- IT communicational systems embedded within the virtual community;

- as close as possible a simulation of actual legal transactions;
- a discipline-neutral environment for legal transactions that could welcome other disciplines and possibly law students working in other jurisdictions.⁷

The screenshot shows a website titled "Ardcalloch 1000 Years of History". The header includes a blue banner with the title and a descriptive text: "Nestling on the banks of the Clyde, Ardcalloch is one of Scotland's fastest growing high-tech communities. With almost every business in town on the web, and a wireless digital community exchange, Ardcalloch is leading the way in its use of the web to enhance its community." Below the banner is a navigation bar with links: "Directory | Map | Introduction | History: -- Origins". The main content area is titled "Origins" and contains three paragraphs of text about the town's history, including legends about St. Kentigerna and archaeological findings.

Ardcalloch
1000 Years of History

Nestling on the banks of the Clyde, Ardcalloch is one of Scotland's fastest growing high-tech communities. With almost every business in town on the web, and a wireless digital community exchange, Ardcalloch is leading the way in its use of the web to enhance its community.

[Directory](#) | [Map](#) | [Introduction](#) | [History: -- Origins](#)

Origins

The name of the town is Celtic in origin. 'Cailleach' means 'old women' or 'cowled women', possibly referring to nuns. There is a legend that the priory of St Cerulus was built on the site of an earlier Celtic foundation attributed to St Kentigerna, the daughter of Cellach, Prince of Leinster (early eighth century, d. 733). The island of Inchcailleach in Loch Lomond, where she died, is apparently derived from the same root. According to Nennius, a chapel, dedicated to her, and containing some of her bones, was erected some time in the eighth century. No trace of this has been found, though it is probable that the Premonstratensian foundation of St Michael in the fourteenth century was built upon the site of this early chapel. Nennius' account is corroborated by the *Orkneyinga Saga* which relates that Earl Rognvald, great-nephew of Saint Magnus and builder of the foundations of St Magnus cathedral, on his crusade to the Holy Land, visited her shrine around 1132 to pray for his safe deliverance. St Kentigerna must have listened to the Earl, for he returned to Orkney two years later, after a remarkable series of adventures.

There is also evidence that Ardcalloch was originally a settlement which grew up around the Clyde crossing at this point in the river, which is the lowest crossing point for the major settlement on Dunbarton Rock, on the other side of the river. It would appear that in early medieval times it was possible to walk across the river at this point at low tide. There were local stories that marker poles were driven into the mud for this purpose; and indeed there are records made by James Watt that bear this out. During the work he carried out in preparation for his report on the river in the later eighteenth century, he recorded that 'there are the remains of wooden stakes driven deep into the mud of the river, from one side to the other as if put there for the purpose of guiding travellers across the river, else for the siting of fishing nets'.

Watt's deduction was given corroboration in 1885 when workmen excavating a railway spur to the docks came upon a roadway of neatly laid stones, indicating a causeway that led down to the old ford. Local historians surmised that it was the Roman road to Dumbarton, and later archaeology has confirmed that this was indeed the direction of the road.

During the 1750s workmen repairing the roadway at the crossing point unearthed a hull composed of planks pegged to a wooden frame and set in a keel. From contemporary accounts it would appear that the vessel was constructed using viking techniques. The vessel was preserved in a house turned into a museum of the Clyde, which was later demolished by a bomb in World War II.

Figure 4: History of Ardcalloch, in seven drop-down pages

⁷ Clearly legal matters predominated in Ardcalloch, in spite of our efforts to mask this. The sheer number of law firms within the town was the subject of comment in the *Ardcalloch News*, an online newspaper (written by students), who noted in a weekly column that there were more lawyers than nurses in Ardcalloch, and wondered whether this development was good for society.

SIMPLE Hosted Server-Directory Listing

https://simple.strath.ac.uk/index.php?option=directory

Home | News | Simulations: 167 -- Personal Injury: Findlay, Granat & Kyle(Claimant Firm) | Logout

GO

Manage Simulations

DIRECTORY LISTING

Name	Address	Email	Link
Alison Edwards	2 Regent Street, Ardcalloch	aedwards.citizen.ardcalloch	
APG Architects	41 Shaw Road, Ardoch, Ardcalloch	apg.business.ardcalloch	
Ardcalloch Boatyard	The Waterfront, Alba Industrial Estate, Ardcalloch	ardcallochboats.business.ardcalloch	
Ardcalloch Digital Exchange (ADeX)	Darien St	ADeX.Directory.ardcalloch	
Ardcalloch Insurance Company	23 Steele Street, Rankellor Business Park, AR3 7SS	aic.businesses.ardcalloch	
Ardcalloch Legal Information and Advice Service	14 High Street, Ardcalloch	alias.business.ardcalloch	
Ardcalloch Medical Centre	50 Anthony Wayne Ave	amc.medical.ardcalloch	
Ardcalloch News	76 High St., Ardcalloch	ArdcallochNews.News.ardcalloch	
Ardcalloch Painters		ardcallochpainters.business.ardcalloch	
Ardcalloch Power Plant	12 Macadam Road, Alba Industrial Estate	PowerPlant.businesses.ardcalloch	
Ardcalloch Property Search	?? Glebe St	PropertySearch.Directory.ardcalloch	
Ardcalloch Riding School	12 Heather Lane, Ardcalloch, Scotland	ridingschool.business.ardcalloch	
Ardcalloch Royal Infirmary	14 MacDonald Rd.	ari.medical.ardcalloch	
Ardcalloch Savings Bank	15 Erskine St	SavingsBankbusinesses.ardcalloch	
Ardcalloch Solicitors Property Centre	70 Rankellor Rd	aspc.businesses.ardcalloch	
Ardcalloch University	Priory Gardens, Ardcalloch, Scotland, AR1 3RE	ardcallochUni.edu.ardcalloch	
Callum Donaldson	18 Skye Terrace, Ardcalloch	cdonaldson.citizen.ardcalloch	
Campbells Auctioneers	23 Ardoch Road	campbells.businesses.ardcalloch	
CDPH Architects	10 Arrol Ave. Alba Industrial Estate	cdph.business.ardcalloch	
Companies House	Companies House	CompaniesHouse.Gov.ardcalloch	
David Jones Engineering	16 Bell St	dje.businesses.ardcalloch	
Department for Work And Pensions	22 Oullen Crescent	dwp.gov.ardcalloch	
Education Authority	1 Paisley Rd	edu.gov.ardcalloch	
Erskines Stockbrokers	43 Ardoch Rd, AR1 8JH	Erskines.businesses.ardcalloch	
Findlay, Granat & Kyle	101 High St., Ardcalloch, AR1 1JR	FindlayGranatKyle.lawyer.ardcalloch	
Fiona Dawson	11 Cambridge Place, Ardcalloch	fiona.dawson.citizen.ardcalloch	
Global Inc.	Darien St	global.businesses.calif	
Gordon Watson	Priory Gardens, Ardcalloch, Scotland, AR1 3RE	gwatson.ardcallochUni.edu.ardcalloch	
Halifax	40 Rankellor Road	halifax.businesses.ardcalloch	
Health and Safety Executive	100 Erskine Rd.	hse.gov.ardcalloch	
Jackson Health & Safety	10 Arrol Ave. Alba Industrial Estate	jhs.businesses.ardcalloch	
James McGinlay	24 Rye Road	JamesMcGinlaycitizen.ardcalloch	
James Robertson	University of Ardcalloch	prob.ardcallochUni.edu.ardcalloch	
James Wallace		james.wallace.lawyer.ardcalloch	
Joseph Regan	Ardcalloch Fire Brigade	jregan.fire.ardcalloch	
Kevin Jones		kevin.jones.lawyer.ardcalloch	
Marriott Lane & McLagan Jones	56 Mckenzie St, Rankellor Business Park	mimj.businesses.ardcalloch	

ALERTS

No Alerts.

CREDITS

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Technologies Ltd. /SIMPLE Project,
The Law School University of Strathclyde
Credits
Page built in: 0.34097194671631
seconds by PHP V5.2.1.
SIMPLE Version 1.0.0_trunk

Figure 5: Ardcalloch directory

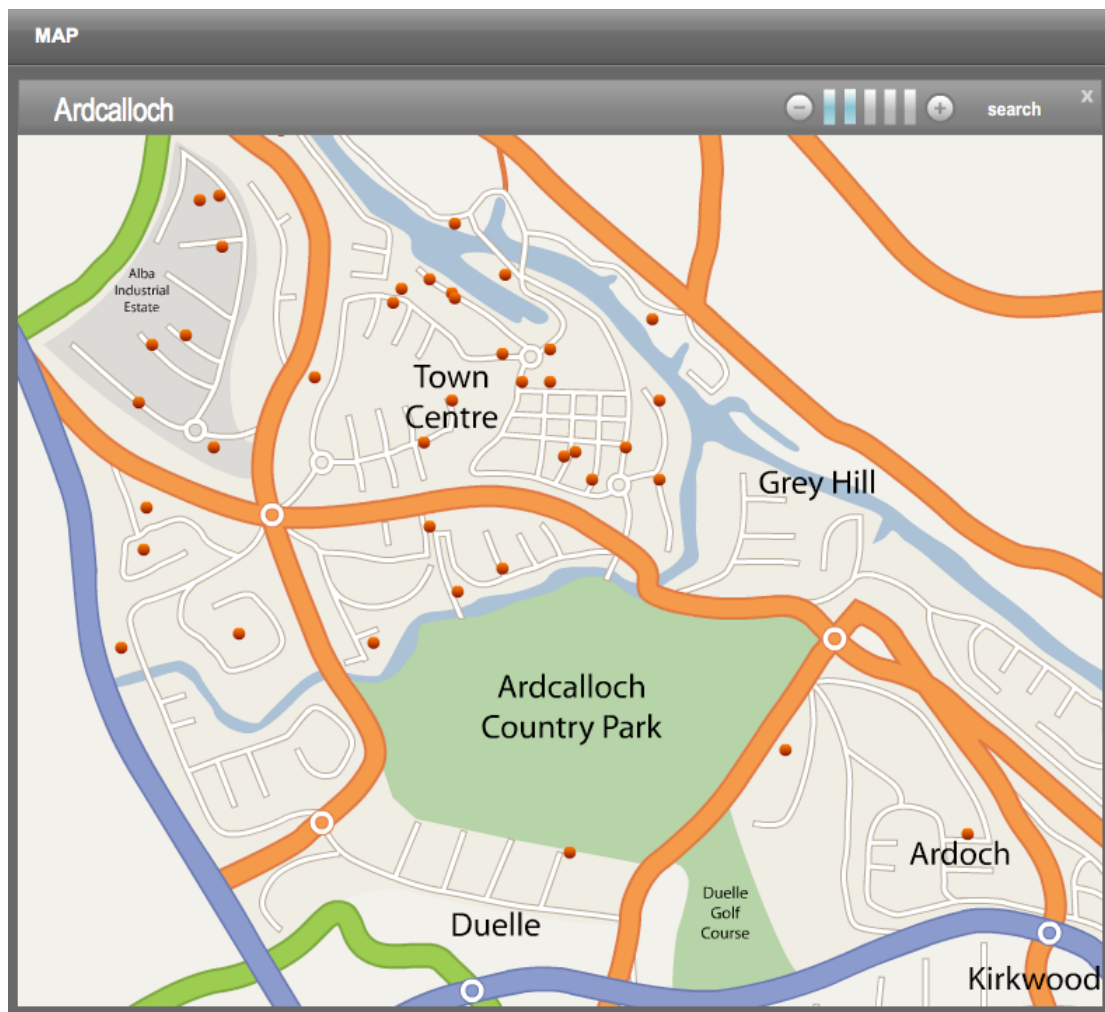


Figure 6: Map of Ardcalloch.

The map and directory have undergone several iterations, but the place is largely the same now as it was in the early years of the century. However what has changed is the software surrounding it.⁸ Originally we put together pieces of software that would mimic a crude case management system – really little more than a sophisticated email client, and which would allow for communication with both real and unreal or virtual people. We developed this further within MS Outlook using Folders, and customizing the look and feel of Outlook within a Sharepoint content management environment.

In 2006-08, and with over £200,000 funding from the Higher Education Academy, BILETA and JISC, and with additional funding from our Dutch partners in RechtenOnline with whom we formed mutual projects, we designed, constructed, tested and evaluated the use of the environment called SIMPLE – SIMulated Professional Learning Environment. Our report on this (90pp) details the construction and evaluation of the project. In the subsequent years staff from GGSL worked with UKCLE in a second project to develop an Open Education Resources (OER) web platform for the development of simulation resources, called Simshare (<http://www.simshare.org.uk>). All our simulations are hosted on this website now, as freely-available OER under Creative Commons licenses. SIMPLE, itself open-source software, is available free from the SIMPLE Community website, <http://simplecommunity.org>.

⁸ For a discussion of the contrast, in this context, between the cognitive models of user interface on the one hand, and simulation model on the other, see Maharg 2007, 183-86.

It may be helpful to give an instance of a transaction in some more detail, to give a sense of how a simulation can operate as a learning zone between students and staff. In the Personal Injury Transaction (PI), an electrician working for the University of Ardcalloch trips and falls down stairs while in the course of his employment. He wishes to claim compensation from his employer for loss of earnings and for *solatium* – pain and suffering caused by the injuries sustained in his fall. The virtual firms of students act for clients, either the injured claimant or the University's insurance company. Students are asked to negotiate a pre-litigation settlement. In order to negotiate the case students need to engage in fact-finding by contacting characters and institutions within the virtual community, and pooling and analysing the information they obtain. They need to carry out legal research on issues such as liability and quantum; and set out their negotiation strategy and perform the negotiation, either by email and/or through face-to-face meetings (recorded). Students practise skills they rarely have the opportunity to encounter in more conventional curricula: problem-identification and solving, the integration of different bodies of substantive legal knowledge (Tort, including liability and quantum in depth, Tax, Welfare Law, for example), the skills of negotiation formation within the transaction, specific forms of letter-writing, and time management of the transaction, negotiation performance, and client-centred lawyering.

The whole transaction lasted between nine to twelve weeks (we varied the length according to scenario and other factors), during which time discussion forums for both sides supported students in the complex process of carrying out this legal transaction – one of our Visiting Professors, Charles Hennessy, who is a PI solicitor and who drew up the factual details of the simulation 'blueprint', was on both forums to answer student queries and provide information. Postgraduate students, trainee lawyers or newly-qualified lawyers were trained to answer emails in the guise of any one of around 12 different fictional characters, and to give the appropriate information to students (we found that once recruited and trained, they enjoyed the multiple role-play and educational interventions through role play). They were supported by another online forum where both Charles and I were present to discuss issues of law, fact, legal procedure or educational mentoring that arose from their interventions with the virtual firms. If they wished, Diploma students could meet as a firm with either Charles or another negotiation tutor to discuss strategy and performance before they negotiate with the other side. This meeting was in effect a form of small-group, salon learning. It was voluntary; and there were no other face-to-face interventions in the simulation at all, apart from an introductory and general feedback lecture (students could also, if they wished, have obtained feedback on performance from file assessors at the end of the project). In this transaction we effectively abolished the usual furniture of academic learning. Apart from an introductory and a feedback lecture there was no lecture series; there were no seminars, no coursework, no examinations. The form of the heuristic broke conventional boundaries in curriculum design: the transaction was neither conventional face-to-face teaching, nor was it conventional distance-learning syllabus and interaction. The transaction was also both learning domain and, simultaneously, an assessment zone.

Evaluation of professionalism

The above descriptions and analysis give a sense of how the simulation ecology of SIMPLE can be used to facilitate learning of professionalism. Can it also be used to assess professionalism, and if so, how? More generally, how do we assess professional learning that comes from participation in games and simulations? Assessment can be at a micro-level – examining performance against some standards, eg of drafting or writing benchmarks

within specific types or instances of documents. Assessment can also be at a macro-level where we have a holistic view of the learner – not just the completion of a whole transactional file, but the process learning that goes along with the product. SIMPLE supports both modes; and it is essential that it does, because professional learning, at a profound level, is a process of self-re-contextualisation. This involves a change in identity to operate effectively in a changed context. It frequently involves *expansive learning* (Engeström 2001) and the enactment of logical levels of learning (eg Bateson 1979), and often the re-formation or even deliberate forgetting of earlier knowledge (Eraut 1998). There is a need for formative evaluation that gives students a sense of differentiation and progression, not only within a transaction but also across multiple transactions. Simulation players need to be given feedforward and feedback on how they are performing against standards, and how they can improve (Young, Schrader and Zheng).⁹

It is a feature of games and simulations that action can be repeated, and therefore assessment models should describe how repetition informs the structure of the assessment. Our model, as set out in de Freitas and Maharg (2011), involved splicing transactional learning with a form of diegetic learning. It aimed more at the holistic end of the spectrum, while allowing for more detailed, technical aspects of legal competence to be capable of evaluation.

More significantly, in Ardcalloch, firms were assessed largely though not entirely *as firms*. We did this in order to foster a sense of collectivity amongst the students: they needed to feel that they were responsible for each other and each other's learning within the firm, and there is no better way of signalling this than to award the firm a grade, rather than the individuals within it. We developed extensive tools to counter 'freeloading' by firms members.

We also tracked and evaluated the work of firms in collaboration. This research was documented and carried out by Barton and Westwood (2006; 2011) and their work revealed the vital relationship between learning and trust within the firms – aspects of professionalism that are rarely the subject of learning in conventional legal curricula, and almost never assessed. Student feedback on the PI simulation illustrates how varied student learning was within a transaction:

'I felt that one of the things we could have improved on was the checking of our correspondence before sending. On at least two occasions we had to send letters apologising for previous inaccuracies, or for mistakes to people we had sent letters to. In practice this would suggest a lack of professionalism, and would be unforgivable. It also led to inefficiency in the long run, wasting time on extra letters.'

'[...] if we had thought a little harder we could have minimized the number of letters we sent, by requesting all relevant information from a person in one go, rather than having to continually request further details. This was particularly true of our correspondence with [the client], and in real life I suspect that a client would get a bit impatient if he was constantly harassed for more evidence. I did feel that we all

⁹ Young, Schrader and Zheng use the concepts of ecological psychology to examine how massively multiplayer online games (MMOGs) promote specific learning processes in their players. In their analysis they identify and define nine principles of learning that allow such games to have valuable potential as tools for educators: the perception-action cycle, embodied cognition, social attributes of situated learning, boundary constraints on behavioral trajectories, affordance-effectivity duals or variables, goal-directed action, contextualized learning, repetition, and detection of the *raison d'être*.

lacked a little bit of experience in such matters; knowing what to ask for and from whom, and I am confident that this exercise has helped us in that regard.'

'I found the whole experience to be extremely worthwhile. I believe it was as close as students will get to experiencing the 'real thing' before we commence our traineeships. It certainly taught us the importance of fact-gathering before jumping in and trying to find a solution.'

'The negotiation project certainly helped focus attention on letter writing skills and general IT skills. [...] Furthermore, where most projects/essays in the undergraduate degree have concentrated on testing your legal research skills the negotiation project was probably the first assignment that I have done that has highlighted the importance of fact gathering. Finally the negotiation project gave you the opportunity to participate in the whole transaction from start to finish and take pride in the final settlement that you helped to achieve.'¹⁰

More important than this, however, was ethical dimension.¹¹ Students learned as they transacted what it meant in terms of values and attitudes, to be a solicitor in Scotland, by interacting with characters, modelling themselves on their practitioner-tutors and supervisors and putting that modelling into practice in transactions. Their actions became more habitual than they would otherwise have been in conventional modes of teaching and learning, precisely because they were practised and re-practised. In our design of this form of learning we were following John Dewey, who advocated that the force of habit is a powerful mode of long-term learning (Vanderstraeten 2002; Maharg 2007).

Conclusion

We know that multi-player videogames have the potential to enhance higher-learning skills and capacities such as 'motivation, problem-solving, communication, and creativity'. (Beedle and Wright 2008, 2; Gee 2003). What is described here is a method of engaging learners in complex simulations of professional practice that is in many ways akin to the experience of multiplayer online games, the experience of practitioners practising law, and the experience of legal critique. A way of summarising our approach as educators to professionalism described here is to say that what we were concerned to create was the sense of cohabitation in a 'moral economy' – not in the sense used by Sayer (2000), but in the sense used by the historian E.P. Thompson (1971). Thompson's use of the term is both 'an empirical construct and a framework for thinking about agency' (Little 2008), and our creation of simulations in SIMPLE as online educational environments, focusing as we do on professionalism, closely parallels the sense of a moral economy.

There are of course those students who resisted the environment and the processes of change. They tended to be very few, and it could be argued that such students formed at least part of the firms who could be classified as dysfunctional. Childs (2010, 226) has mapped the forms that such resistance takes in online environments. For him such students evince a need for realism, for them the virtual is inauthentic, they don't like games and sims, or they find the process of groupwork problematic for one reason or another.

¹⁰ For discussion of how simulation in SIMPLE enhances ethical learning in conflict situations, see Maharg (2007), chapter seven.

¹¹ For examples of deeper ethical learning, see Maharg (2007, chapter seven); de Freitas and Maharg (2011, 35-37).

For the great majority of students, however, transactional learning in simulated environments is a powerful learning tool. The heuristic is gaining ground. Currently, (and in addition to its continued use and development at Strathclyde University Law School) it is in development at the University of New Hampshire in the USA, where it is being used in conjunction with another simulation approach, namely that of Standardized Clients (Barton, Cunningham, Jones, Maharg 2008). It is also in development in the Law Faculty of the University of Hong Kong. The Australian National University at Canberra already runs four simulations using a modified version of SIMPLE on their wholly online Diploma in Legal Practice. The Department of Management Science at Strathclyde University continues to run one simulation and is planning a second. University of Glamorgan Law School runs SIMPLE on an online postgraduate Masters programme, and an undergraduate, face-to-face first year module in the School's LLB programme. In its first year of use in that module the positive student feedback was matched by a significant 10% gain in the closed book examination marks of students – an improved score that has been replicated over the last two years. What is significant about this is that it is proof that the learning achieved on the simulation is transferable to a conventional form of assessment. What is even more significant, though, is the extent to which it is clear that the approach engages students, can facilitate their learning in professionalism, and act as an effective evaluation zone for that developing professionalism.

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Appendix 1: PEAT 1 Professionalism Learning Outcome (Law Society of Scotland)

The full set of learning outcomes for PEAT 1 is available at http://www.lawscot.org.uk/media/39767/peat_1_guidelines_-_final.pdf.

Major domain			
1. Professionalism			
Minor domain	Throughout the programme a student should demonstrate a commitment to:	Positive indicators	Appropriate forms of assessment
1.	The interests of justice and democracy in society	Displays an interest in the workings of justice in society; has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics. Shows awareness of his or her responsibility to improve the capacity of legal institutions and process.	Best assessed longitudinally throughout the programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions. Providers should be under an obligation to inform the Society of students who obtain problematic scores in any of the minor domains. Forms of assessment could include: - Client-based long case - Case file review of simulated client file - Portfolio – self-assessment - Log book/activity log/confidential file - Critical incident review - Peer-review - Transactional assessment - Tutor reports
2.	Effective and competent legal services on behalf of a client	Updates and expands knowledge of the law, knowledge of legal practice, client-centred practice and management of client service. Pays careful attention to standard of detail in legal work; evaluates own client care; appraises new forms of client care and adopts improvements; acts quickly to protect clients and the public from risk.	
3.	Continuing professional education and personal development	Is aware of own strengths and weaknesses and forms plans to develop character, values, knowledge and skills throughout the course.	
4.	Diversity and public service	Shows an awareness of the importance of equality of access to and participation in legal services regardless of culture, race, religion, gender, disability; assists in the training of new lawyers through peer learning and training of undergraduate students or other groups in society.	
5.	Personal integrity and civility towards colleagues, clients and the courts	Is honest with all others on the course; relates to colleagues on the programme with civility; treats tutors, administrative staff and others with respect.	

Appendix 2: Transactional Planning Chart

