

Time to Play: Integrating Play and Playfulness in Legal Philosophical Courses as Tools for Student Learning

Special Issue on Active Learning and Teaching in Legal Education
Bart van Klink, Hedwig van Rossum & Bald de Vries (eds.)

*Hedwig van Rossum**

1. Introduction

During my career as a lecturer of legal philosophy, I have seen students entering the course with very different attitudes and study approaches. Some students desperately search for control by asking many questions (e.g., about the exam). In other students' eyes I see mild panic, disinterest, or even dislike of the subject. The challenge for lecturers in legal philosophy is channeling these feelings toward attitudes that are helpful for academic learning and will prepare our students for their professional life. At this point, the value of 'play' and 'playfulness' for the practice of legal education comes to the fore. Although at first sight the use of play and playfulness in Academia might seem *contra* intuitive, I argue that they are not only useful, but even *belong* within the context of legal academic education. Play and playfulness offer possibilities to engage students and at the same time enable educators to cultivate uncertainty in legal academic education, which is an important endeavor in contemporary times.

This article seeks to provide an answer to the question how *play* and *playfulness* can be defined within the context of legal education and how these concepts could be used as tools for student learning in the practice of legal philosophical courses. Therefore, after describing the place, value, and challenges of legal philosophical courses in law schools (Section 2), this article offers the first outlines of a (hopefully) useful definition of play and playfulness for legal academic education by drawing upon the work of well-known play theorists and experts in learning theory such as Huizinga, Caillois, Lieberman, and Csikszentmihalyi (Section 3). Then, three practices will be shared of how I integrated play and playfulness into

* Hedwig van Rossum, LL.M., is a lecturer-researcher in the Department of Legal Theory at the Vrije Universiteit Amsterdam and has been teaching the freshman course 'Introduction to Legal Philosophy' since 2011.

Hedwig van Rossum

the course ‘Introduction to Legal Philosophy’ as offered to freshman law students at the Vrije Universiteit Amsterdam (Section 4).¹

With the specific definition of play and playfulness for legal education and the practical classroom designs based on this depiction, this article seeks to contribute to the innovation and optimization of the theory of legal academic education and its practice.

2. Legal Education and Legal Philosophy

In Dutch universities, all law schools offer courses in legal philosophy,² which testifies to the importance of jurisprudence within a law student’s education. Moreover, a more prominent call for a broad(er) education for lawyers can be heard in the Netherlands.³ Courses in jurisprudence, that is, legal philosophy, offer students such a broader education and simultaneously enable them to develop a more in-depth understanding of their own discipline (law). These courses add

- 1 In continuation of ‘Introduction to Legal Philosophy’ (*Encyclopedie der Rechtswetenschap I*), the Vrije Universiteit Amsterdam also offers a mandatory continuing course on legal philosophy (*Encyclopedie der Rechtswetenschap II*). Where the introductory course is focused on a historical overview and an overall understanding of key ideas on law, state, and justice, the third year course enables students to actively engage in discussions on these ideas and develop their own positions through, for instance, debates.
- 2 All Dutch law faculties offer courses in legal philosophy, but there is considerable variety between these courses, e.g. in the placement within the bachelor’s curriculum (first, second, or third year, or in multiple years), the obligatory character and the content of the course. See: Vrije Universiteit Amsterdam: <https://www.vu.nl/nl/studiegids/2017-2018/bachelor/q-z/rechtsgeleerdheid>; Universiteit van Amsterdam: <http://studiegids.uva.nl/xmlpages/page/2017-2018/zoek-opleiding/opleiding/3095/216285>; Universiteit Leiden <https://studiegids.leidenuniv.nl/studies/show/5879/rechtsgeleerdheid#tab3>; Rijksuniversiteit Groningen: <https://www.rug.nl/ocasy/rechten/vak/showpos?opleiding=5544>; Universiteit Utrecht: <https://www.uu.nl/bachelors/rechtsgeleerdheid/studieprogramma>; Erasmus University Rotterdam: <https://www.eur.nl/bachelor/rechtsgeleerdheid/inhoud>; Open Universiteit: https://www.ou.nl/web/open-universiteit/-/BNR_Bachelor-Rechtsgeleerdheid, Tilburg University: <https://mystudy.uvt.nl/it10.owp?taal=n&pfac=FRW&variantcode=6F220&ajaar=2015&minorcode=&taal=n>; Maastricht University: <https://www.maastrichtuniversity.nl/nl/onderwijs/bachelor/bachelor-rechtsgeleerdheid/vakken-curriculum>.
- 3 For example, *Bildung* and the idea of a ‘T-shaped’ lawyer have become well-discussed concepts in legal practice and legal education. To illustrate, the *Bildung Academy* (founded in 2015) offers additional education for students and focuses on a broad personal and professional development (<http://debildungacademie.nl/geschiedenis/>). Also, the T-shaped Lawyer (a lawyer who combines deep knowledge of the legal field – the vertical line – with a more general knowledge and skills in other fields – the horizontal line) has been intensely discussed by legal practitioners and legal educators in the Netherlands. For example, the Young Bar of Lawyers held a conference focused on the T-shaped Lawyer in 2015 (<http://jongebalieamsterdam.nl/events/sjbn-jonge-balie-congres-the-t-shaped-lawyer/>), the annually held National Legal Conference (Landelijk Juridisch Jaarcongres) did the same in 2016 (https://rechten.vu.nl/nl/Images/21st_century_skills_en_de_T-shaped_lawyer_tcm247-691382.pdf), and in 2017, Elaine Mak, Professor in Legal Theory at the Utrecht University, titled her inaugural speech ‘The T-Shaped Lawyer and beyond: Rethinking Legal Professionalism and Legal Education for Contemporary Societies’.

an understanding of legal philosophical concepts to the students' practical legal knowledge as taught in courses on black letter law and enable them to understand why and how the legal system and its provisions have evolved into the current body of legislation. Legal professionals need in-depth knowledge and understanding of law to accurately interpret the law (Wahlgren, 2005, p. 512). Here, the philosophy of law is helpful, as it unveils and elucidates the law's core foundations and values (Wahlgren, 2005, p. 514) – such as justice, equality, and legality – and places these principles in their societal and historical contexts.⁴ As such, legal philosophy offers (future) legal professionals in the contemporary global society subjected to constant change (Van Rossum, 2018) these values as a stable ground on which they can rely while practicing law.

While valuing the historical development of law, jurisprudence's complexity also has an openness to new theories and is capable of incorporating societal change and shifting insights and reflects the developments within society (Wahlgren, 2005, p. 508). Legal philosophy reveals the origins of the legal system and simultaneously shows that law is constantly subjected to change in harmony with the dynamics of dominant ideas in society. That knowledge helps students to develop critical reflection skills, as it creates awareness of the relativeness and contingency of (contemporary) law. This awareness facilitates open discussions where students voice different opinions and exchange ideas. In these debates, they learn to view problems from various angles and to (creatively) argue their viewpoints. Legal philosophical courses, therefore, offer students the opportunity to develop their critical thinking skills, which might be seen as crucial for the academic component of legal education (Van Klink, 2016, pp. 15, 20-22).

2.1 *The Challenge of Legal Philosophical Courses*

Initially, most law students seem uninterested in philosophy and they do not always immediately see the value and necessity of legal philosophy. They require convincing, which provides a challenge for lecturers. Since students cannot escape experiencing the ambiguity of various incompatible theories (Wahlgren, 2005, p. 507) and the absence of correct answers in jurisprudence courses, some experience a level of anxiety. Mostly, they are unsure of which learning strategy corresponds to a philosophical course and fear not understanding the subject and failing the exam. The ways in which they deal with this uncertainty of study success may have a negative influence on their learning and their study results. Consequently, they need better strategies to deal with that uncertainty, for example, through play and playfulness. These strategies are highly relevant life skills, since uncertainty is a defining feature of late modern society and as such part of the lawyer's professional life.

4 These are not just recent ideas. See, for example, the suggestion of W.J. Brown: Brown, 1909, p. 239.

3. Defining Play and Playfulness in the Context of Legal Education

3.1 *Play and Playfulness in the University*

We, lecturers of legal philosophical courses, wish for our students to understand our course's content, engage in class, and prepare for professional life. I suggest that integrating play and playfulness into our courses is a way of successfully accomplishing these objectives.

Play has earned its reputation as a useful tool for learning and well-being in pre-schools, primary schools, and secondary schools⁵ and has even entered some disciplines within higher education⁶ but it has not yet found its way into law schools. The reason might be the serious and somewhat traditional nature of law and law schools whereas *play* and *playfulness* are often attributed a frivolous meaning. Therefore, legal academics might be hesitant to welcome play into academia as they argue – and rightfully so – that their work as legal professionals, researchers, and lecturers is of a very serious nature. However, the one-dimensional ‘frivolous’ interpretation of play overlooks its inherent seriousness.⁷ Play is a useful tool for legal education since play always has purpose and function (Huizinga, 1980, pp. 1, 5-6). Any play habitually has clearly described goals and challenges players to engage and collaborate (Huizinga, 1980, p. 13; see also Thomas & Seely Brown, 2011, p. 76). During play, players often experience seriousness. Be it a game of chess or football or a theater play, to the player the game is all-encompassing, absorbing and is played fanatically (Huizinga, 1980, pp. 8, 10). Furthermore, research has found that play reduces stress and encourages problem-solving behavior (Tanis, 2012, p. 51). As stress-related problems are increasingly common in our students' lives,⁸ and many law students experience anxiety at the start of a legal philosophical course, these effects of play are valuable for legal education.

5 The importance of play for learning in schools might be seen in, for instance, Sheridan, 2011, p. 1. See also Tanis, 2012, pp. 2-3. In addition, interesting in this context is, www.academicplay.com, last accessed 15 June 2018. The importance of play has also been recognized in Article 31 of the United Nations Convention on the Rights of the Child: ‘1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.’

6 See Tanis, 2012. See for a practical example in a course on music theory Berry, 2015, pp. 45-68. See also: Nørgård et al., 2017, p. 273.

7 Huizinga stresses the serious aspect of play: ‘(...) all play, both of children and of grown-ups, can be performed in the most perfect seriousness’. See Huizinga, 1980, p. 18. Caillouis and Kerr and Apter agree on this point. According to them, human activity – and thus also play – can be performed in two distinct attitudes of mind: either serious (*telic*, *ludic*) or playful (*paratelic*, *paidia*). See Tanis, 2012, pp. 44-46.

8 For example, <https://www.nrc.nl/nieuws/2018/01/26/werkdruk-docent-en-student-enorm-a1590002> (2018) (last accessed 14 June 2018); <https://www.rtlnieuws.nl/editienl/driekwart-van-studenten-is-uitgeput-aan-alle-kanten-werd-aan-me-getrokken> (2017) (last accessed 13 June 2018); <http://www.hogeronderwijs.nu/2014/04/steeds-meer-studenten-in-de-stress/> (2014) (last accessed 13 June 2018) and <https://lsvb.nl/2013/03/29/psychische-klachten-bij-helft-studenten/> (2013) (last accessed 13 June 2018).

Furthermore, a playful attitude supports spontaneous learning, enables social interaction, and furthers imagination (Nørgård et al., 2017, pp. 273–274). Play and playfulness might, therefore, be useful tools in legal education. Nevertheless, some research suggests that even though play and playfulness have the ability to increase student motivation, engagement, and enjoyment, those *external* motivational drivers do not necessarily lead to deep learning and an excess of external motivation might even decrease intrinsic motivation (Nørgård et al., 2017, p. 273). Other research contradicts this perception and claims that deep learning occurs in the moment that students are carried away during play, when they experience *flow* (Rice, 2009, p. 96). In any case, playful learning supports creative thinking toward learning (Rice, 2009, pp. 96–97), and might be a starting point for students to deepen their interest and engage in deep learning during or after class. Teachers could help their students find ways to extend the play's effects to their intrinsic motivation by, for instance, engaging them in discussions on the play's (i.e., the course's) content.

In addition to the *usefulness* of play and playfulness in academic education as highlighted in the previous paragraph, the concepts are truly more compatible with legal education than one might think. Research, higher education, and law share intrinsic features that play theorists attribute to play.⁹ Moreover, many law schools already offer at least one form of play: role-play in moot court courses. Also, it might be argued that play is inherent to law since role-play occurs during lawsuits¹⁰ and legal reasoning and argumentation – fundamental parts of the legal profession – are in fact a game of skill and contest (Huizinga, 1980, pp. 76, 78).¹¹ Philosophy, too, might be seen as play or a game, just as aspects of play can be noted in some of university's traditions (see Huizinga, 1980, pp. 152–156).¹² Using play and playfulness as tools for learning could, therefore, be a natural way of teaching law.

If we are interested in using play and playfulness in our classrooms, we first need a definition of these two concepts. Sutton-Smith and Tanis have made it clear that a distinction has to be made between the concept of play and the concept of playfulness (see also Stenros, 2015, p. 54). Even though that difference is not black-or-white and the concepts are often used interchangeably, in general terms,

9 All three have specific boundaries in time and space (see Huizinga, 1980, pp. 10–11. Csikszentmihalyi & Bennett, 1971, p. 46), are to a certain extent played voluntarily (see, Huizinga, 1980, p. 7. See also Csikszentmihalyi & Bennett, 1971, pp. 45–46), are distinctly set apart from everyday life (see Huizinga, 1980, pp. 8–9, 19, 21), promote the formation of social groupings (Huizinga, 1980, pp. 12–13), and have the ability to captivate and engage the researcher, student, teacher, or lawyer (Huizinga calls this captivation 'absorption', see Huizinga, 1980, p. 13. See also Thomas & Seely Brown, 2011, p. 76, Csikszentmihalyi & Bennett, 1971, p. 47).

10 The players dress up in robes and play specific roles; see Huizinga, 1980, p. 77.

11 Wolthuis analyzed the play elements of (Dutch) parliamentary argumentation in Wolthuis, 2007, pp. 12, 32.

12 Academia harbors traditions that include dress-up by students (graduation) and professors (inaugural speeches) and studying in itself might fall within the definition of play as given by Huizinga. Research itself is a playful endeavor, where curiosity and inventiveness are of importance.

Hedwig van Rossum

play refers to the activity or content of play whereas *playfulness* refers to the mental state of being lighthearted, which is often the case *during* play (Sutton-Smith, 1997, p. 147; see also Tanis, 2012, p. 7). Providing a conceptualization of play and playfulness has proven difficult as scholars from many different disciplines have approached these concepts from various points of view (Sutton-Smith, 1997, p. 6; see also Tanis, 2012, pp. 6-7). To provide a starting point for the use of play and playfulness in jurisprudence courses, I will draw upon the insights of leading play theorists.

3.1.1 Play

Play can be understood as the activity or content of playing and manifests itself, for instance, in games (Tanis, 2012, p. 7).¹³ Huizinga characterizes play as a free activity, consciously outside everyday life, unconnected to material interest and unserious (although players may be completely absorbed in the play), with its own boundaries of time and space, its own rules, holding tension and promoting the formation of social groupings that surround themselves with secrecy (Huizinga, 1980, p. 13; Biesty, 2003, p. 43). Caillois agrees with Huizinga that play is voluntary, separate, unproductive (as play – for example, gambling – may have material interests, but it does not *create* wealth or goods) (Caillois, 1961, p. 5), uncertain, and centered around precise rules (Caillois, 1961, p. 9). However, Caillois contests the need for secrecy of social groups and adds a new feature, namely, play as being *make-believe* (see Caillois, 1961, p. 7).¹⁴ In addition to the uncertainty of play as described by both play theorists, Csikszentmihalyi and Bennett explain that play is grounded in possibility, as play offers the player possibilities of choice within a playground limited by rules. In the end, the choice of action is voluntary made by the individual player (Csikszentmihalyi & Bennett, 1971, pp. 45-46). During deliberation between choices of action, the player might experience anxiety, especially since there are too many opportunities for action that are often incompatible (Csikszentmihalyi & Bennett, 1971, pp. 45-46). However, play also offers the player the opportunity to be absorbed immensely and to enjoy *an optimal experience* and corresponding pleasure (Csikszentmihalyi, 2008, p. 71; see Tanis, 2012, p. 51).¹⁵ Play can improve an individual's problem-solving abilities

13 Apart from a critical redefinition of Huizinga's characteristics of play, Caillois offers a categorization of various games. Games are a only one way for play to manifest itself, and according to Caillois, there are four categories of games: games of competition and skill (*agon*), games of chance (*alea*), games of mimicry, and the experience of vertigo (*ilinx*). See: Caillois, 1961, pp. 12, 14-26; Tanis, 2012, pp. 43-44; Csikszentmihalyi, 2008, pp.72-74.

14 According to Caillois, *rules* and *make-believe* preclude one-another because rules and make-believe both create an alternate reality for the player and these two features therefore show the same function of play. See: Tanis (2012), p. 43. Following this argument, however, leads us to the assumption that make-believe might also be understood as a part of the characteristics 'outside ordinary life' (Huizinga) and 'separate' (Caillois), as *make-believe* entails that something not truly exists in ordinary life, but rather in a separated, fictional sphere, apart from ordinary life.

15 The features that describe *flow* or *an optimal experience* are very similar to those of play and playfulness.

and reduce stress (see Tanis, 2012 p. 51). According to some researches, play also facilitates learning in adult life (e.g., in the workplace) and creativity. Moreover, in correspondence with Huizinga's idea that play promotes social grouping, play is helpful in community building (Tanis, 2012, p. 54).

Based on Huizinga's characteristics of play in combination with the additions and changes made by Caillois, Csikszentmihalyi, and Bennett, play in law schools can be defined through six features that are chosen for their functionality for legal education.

The first feature of play in legal education is limited freedom. Play as a voluntary activity (Huizinga, 1980, p. 8; Csikszentmihalyi & Bennet, 1971, p. 45; Caillois, 1961, p. 9)¹⁶ means that the player enters the play voluntarily and chooses options during the play of his or her own volition. Although the voluntary *joining* of play might sometimes be in question in the context of legal education, as students will be confronted with a play constructed by their teacher and are expected to participate and will be assessed, they are still free to choose between options provided *within* the play. Therefore, the free aspect of play is not annihilated, but merely limited by the students' choice to enroll in the bachelor's or master's program and commitment to the corresponding learning process and accompanying rules of the playfield.¹⁷

Second, I emphasize that play in legal education always serves a purpose in achieving learning goals, in contrast to the conviction that play is an unproductive activity without material gain and is simply 'fun' (Huizinga, 1980, pp. 2-4).¹⁸ I state that, although play might be inherently enjoyable and fun, in the context of legal education play always has at least an immaterial gain since it supports learning and the achievement of learning goals such as collaboration skills; the development of presentation skills; remembering, understanding, and applying theoretical concepts; and the creation of solutions to contemporary problems.

Third, play in legal education is set consciously outside everyday life. In addition to the argument that studying at a university already is an activity consciously *outside* ordinary life, since the years in university constitute a transition period between high school and work, a classroom situation in itself stands apart from everyday life. There are additional rules of conduct to which the teacher and students abide. The play we use as a tool for learning in our classrooms, too, is separate from ordinary life, as the play has its own rules and instructions that only concern the players, but not individuals outside the classroom. Role-play in our classrooms, for example, in moot court games or debates, creates such an alternate reality for its players.

16 According to Huizinga, without this voluntary aspect, play will only be a task and will not be enjoyed.

17 The way in which a teacher enables her students to learn is the consequence of that free choice that has showed the students' consent. See Biesty, 2003, p. 45.

18 The idea that play is merely an end in itself has also been contested by Biesty, who finds that through play, players might potentially develop new skills. Biesty states that play – even as it might be fun – has other ends as well, for instance, learning to take the role of the other and learning new skills. See Biesty, 2003, pp. 43 and 45.

Hedwig van Rossum

The fourth feature is that play has its own boundaries in time and place, which create order. In law schools, the secluded, marked playground is the university, its campus, lecture halls, or classrooms. This playing field has specific rules, not only rules of order within the university and its campus, but also rules of conduct in classrooms. As such, the classroom and the university are temporary worlds within the student's ordinary world. Students can be absorbed in these temporary worlds (Huizinga, 1980, p. 10), although in my experience, absorption is becoming more difficult for students with the distractions of the everyday world through smartphones and laptops that disenchant the play world (Huizinga, 1980, p. 21). If play is used as a tool for learning in class, that play comes with its own rules that mark another playground. The demarcation of time is also rather specific; for example, the duration of a bachelor's program is three years, a semester six months, a course eight weeks, and a class three hours. Within a class too, a play form is limited through time, for example, half an hour or 45 minutes.

Fifth, play always entails possibility, tension, and uncertainty (Huizinga, 1980, pp. 10-11; Caillouis, 1961, p. 7). It provides the player with many options of choice (Csikszentmihalyi & Bennett, 1971, p. 45) in order to reach the play's goal. For instance, in the play of legal education, students are given many possibilities of choice, such as optional courses, various study strategies, and internships, during their bachelor's program. But even though a student aims for success from the start, it will remain uncertain until the end of the play if her choices will have the desired outcome. Studying for a law degree at the university is a game of chance and skill: The student is not certain of success, but has the expectation that she might succeed. The same rings true for enrolling in a course and participating in a class and a play form within that classroom. Because of this tension, play holds the middle between anxiety – when there are too many potentially dangerous choices of action – and boredom – if there are too few choices of action (Csikszentmihalyi & Bennett, 1971, pp. 45-46).¹⁹ The play is not interesting or exciting when it is failsafe and too easy to be perceived as a challenge. Also, according to Huizinga, this tension gives the play an ethical value, as it tests the students' skill, courage, and perseverance by demanding them to play the game of legal education in accordance with the corresponding rules (Huizinga, 1980, p. 11). However, I currently notice that many of my students attempt to avoid this risk of education and are afraid of failure. This is a counterproductive attitude in professional life, which is situated in a playfield where options of choice are complex and uncertain, just as the possible outcomes of choice. Through practice in low(er)-risk play during class, legal educators are able to familiarize and train students in decision making and prepare them for their future field of work.

Finally, play in law schools promotes formation of social grouping, because students share the withdrawing from everyday society and collectively accept the temporary order of the play (Huizinga, 1980, pp. 12-13). Play within a classroom

19 See also on the tension that play entails between stress and non-stress: Sutton-Smith, 2003, p. 4.

will often be a group activity that demands collaboration. That shared experience creates social bonds, which are helpful for creating a safe learning environment. To summarize, play within law schools can be described as a (1) partly voluntary activity that (2) enables achievement of learning goals, (3) is consciously separate from everyday life by rules and/or make-believe, (4) has its own boundaries in time and space, (5) entails possibility, tension, and uncertainty, and (6) promotes the formation of social grouping.

3.1.2 Playfulness

Playfulness is referred to as a state of mind, one that is associated with light-heartedness and fun (Tanis, 2012, p. 7). Huizinga's definition of the *play spirit* is very much related to play's connection to uncertainty and tension as he states that it means 'to dare', 'to bear uncertainty', 'to take risk', and 'to endure tension' (Huizinga, 1980, p. 132). Caillois describes two distinct mind-sets in which an individual can engage in play, for example, in various categories of games. The first is of a serious nature, *ludus*, to which discipline, effort, and patience are central. The second is the playful mind-set of *paidia*, associated with words such as childlike, carefree, joyful, and spontaneous (Tanis, 2012, p. 44). This differentiation of mind-sets in which play can be conducted is also recognizable in the reversal theory as described by Kerr and Apter. These authors theorize that all human activity is done either in a *telic* or a *paratelic* state of mind. A *telic*, serious, attitude is focused on purpose whereas the *paratelic*, playful, attitude is defined as spontaneous, free, experimenting, and fantasizing (Tanis, 2012, pp. 45-46). A more substantive research on the concept of playfulness is conducted by Lieberman. According to her, playfulness is a state of mind that can be characterized by five components. First, physical spontaneity, seen in, for example, exaggerated movement, gestures, and facial expressions. Second, social spontaneity, recognizable when individuals interact with others, and third, cognitive spontaneity. The latter is expressed in curiosity, inventiveness (creativity), and imagination. According to Lieberman, playfulness also manifests joy, for instance, through enjoyment and a positive disposition toward life. Finally, the fifth component entails a sense of humor.²⁰

Many of the characteristics associated with playfulness, such as creativity, imagination, experimenting, and enjoyment, are highly valued in contemporary life. Moreover, a playful attitude as in being curious, free, and open to experimenting without being afraid of failure is helpful for learning. Having a playful state of mind reduces stress and anxiety, since an individual with a *telic* state of mind perceives arousal or excitement as anxiety, whereas someone with a *paratelic* attitude feels these as pleasurable and enjoyable (Tanis, 2012, p. 46).

This conceptualization of *playfulness* can be applied in legal education without much alterations. In this context, playfulness is a (1) lighthearted, joyful state of mind that (2) enables students and lecturers to bear uncertainty and entails

20 See Tanis' description of Lieberman's interpretation of playfulness in combination with Guirdard, Ferland, and Dutil's in Tanis, 2012, pp. 8-9.

Hedwig van Rossum

(3) humor, joy, and/or carefreeness and (4) physical, social, and cognitive spontaneity. In practice, these forms of spontaneity are recognizable in physical movement and gestures, collaboration and group work, and curiosity, creativity, and imagination.

At the moment, it seems like seriousness and goal orientation are given center stage in legal education, but this solely *telic* attitude leads to anxiety when students meet yet unknown challenges. Seriousness needs to be complemented by playfulness: *ludus* and *paidia* are both much needed mind-sets. Adopting a playful attitude is valuable for students, be it during a play activity in class or overall while approaching their studying, learning, and development. Being playful in class involves that the teacher accepts and encourages mistakes as part of the learning process. This is helpful for creating a safe learning environment and can be encouraged by the teacher through humor, which helps reduce anxiety and stress, increase self-motivation, and strengthen the bond between teacher and students (Ardalan, 2015, p. 71).

It is necessary to alternate between playful and serious attitudes in class, although the play itself will always have a serious purpose, namely, to help students achieve learning goals. The inherent spontaneity of playfulness involves creativity, imagination, and collaboration, which are valuable and necessary skills and personality traits for legal professionals who face the challenges of contemporary society (Van Rossum, 2018).

4. Play and Playfulness in Legal Philosophical Courses

Incorporating play and playfulness in legal philosophical courses has at least two advantages: first, the ability of play and playfulness to engage students, and second, their capacity to train students in managing uncertainty resulting from possibilities of choice. In the next section I will briefly elucidate on these advantages before illustrating ways of integrating play and playfulness in a jurisprudence course through three examples.

4.1 Student Engagement and Managing Uncertainty

First, including play and playfulness in class engages our students. This is essential to legal education as student engagement has a positive influence on student outcomes and study success, since it might be a step in facilitating deep learning (Zepke, 2017, pp. 5-6; see also Rice, 2009, p. 96). Studies into engagement in higher education have shown that a student's feelings of emotional belonging are of importance for her or his engagement. Necessary for those feelings of belonging are, for instance, a sense of relevance in what is learned; a balance between choice, autonomy, risk, growth, and enjoyment; trust relationships with teachers; and strong social networks (Zepke, 2017, p. 5). Play and playfulness are able to offer most of these conditions. Through play, a course's content can be presented to a student as a meaningful learning experience that highlights the course's relevance and value. During meaningful learning, students relate prior knowledge

and skills to new content in a meaningful context (Zurita et al., 2015, p. 2). By doing so, they construct new understanding as the meaningful learning experiences enable deep learning. Also, play's inherent uncertainty offers students a sense of risk within a safe and shared learning environment structured by rules, where they are free to make autonomous choices toward reaching the play's end. Moreover, with a playful attitude students are able to enjoy making those choices and playing around with the course's content.

Second, incorporating play and playfulness in law schools is a tension-filled yet relatively pleasurable and safe route for students to learn to deal with perpetual uncertainty (Ambrose et al., 2010, p. 48). The contemporary, globalized society with its many technological developments and its simultaneous distrust in science has led to an increase of possibilities of choice (Beck, 2007, p. 156).²¹ Not all possibilities can be realized (Francot, 2018, p. 90; see also: Francot, 2014, p. 204) and a selection needs to be made, although any choice might have unwanted, far-reaching consequences. This turns decision making into a frightening endeavor, as uncertainty becomes a constant factor in everyday life. Francot describes moments in time in which uncertainty surfaces as moments in which it is difficult or even impossible to make a selection between options of choice. The reason for this difficulty or impossibility is often a lack of information, as the options of choice might be unclear or unknown and the consequences of the choice unforeseeable (Francot, 2018, p. 98). As future lawyers,²² our students need to learn how to deal with the uncertainty of unclear options of choice, not knowing which choices to make, unknown consequences of chosen action, and a feeling of a constant lack of critical information. By including play and playfulness, we initiate a *re-mystification* of legal education,²³ where students learn how to deal with choice and uncertainty as an inevitable part of life. Play inherently entails possibility, tension, and uncertainty (Huizinga, 1980, p. 11), but cultivates these by limiting the options of choice through the play's rules (Csikszentmihalyi & Bennett, 1971, p. 45). As such, play offers students a limited uncertainty within its boundaries, which gives students the opportunity to practice decision making within a learning environment that entails small-scale risks. It is the risk of playing that makes the play – makes learning, studying, and participating in

21 See also for further reading on this definition of late modernity, based on the social theories of Zygmunt Bauman and Ulrich Beck: Van Rossum, 2018.

22 Lawyers need to be able to deal with uncertainty and risk as they are confronted with social, economic and technological developments that need normative regulation through law and are actively involved in legislating and deciding issues of uncertainty, such as questions of liability and responsibility. See: Ambrus et al., 2017, p. 5.

23 The *re-mystification* of legal education entails the (re-)introduction of uncertainty, possibility, risk, and doubt within legal education. Instead of shielding students from uncertainty, it offers students a (relatively) safe place to practice dealing with these core elements of late modernity's society and encourages them to take and attribute responsibility within these circumstances. *Re-mystification* is an attempt to counter the current corporatized and marketized attitude toward legal education, in which legal education seems to be regarded as a clear-cut product purchased by the student-consumer. See Van Rossum, 2018, pp. 5-6, 11. See also: Van Klink & De Vries, 2016, p. 3.

Hedwig van Rossum

class – exciting, enjoyable and inspires creativity,²⁴ especially if the play is performed with a playful attitude (Tanis, 2012, p. 46). Furthermore, the creativity, imagination, and outside-the-box thinking associated with playfulness will enable students and legal professionals to think of *new* possibilities when others are deemed impossible.

4.2 *Three Cases of Play and Playfulness in Introduction to Legal Philosophy*

How can lecturers integrate play and playfulness into their jurisprudence classes to persuade their students to engage in legal philosophy and embrace relative uncertainty? In this section, I share three examples of incorporating play into the classroom that I used in the freshman course 'Introduction to Legal Philosophy' at the Vrije Universiteit Amsterdam. In this mandatory, introductory course, students are presented with a seven-week program that, after clarifying the difference between the main philosophical schools of legal positivism and natural law, introduces them every week to the thoughts of two legal thinkers. This is done in a mostly chronological order of history, starting with Plato and concluding with Kelsen. The central learning goals of 'Introduction to Legal Philosophy' are for the students to recognize, explain, and apply the concepts central to theories that are part of the course's content and to note and explain the differences or similarities between the theories by answering limited-size essay questions. An exam containing ten open-ended questions concludes the course. To engage students during classes that consist of twelve to thirty students, I developed and utilized various play activities such as games of dice, quizzes, poetry slams, visualization assignments, role-play, and assignments on music. I introduced these activities always as a challenge and with a playful attitude, in the hopes that the students would approach the assignments with the same mind-set.

Because of the limited scope of this article, I will focus solely on three examples of play/playful learning activities: one of visualization, a poetry slam, and an activity that contained physical movement through the classroom. For each example, I will clarify the learning goals, the activity itself, the way in which the activity fits into the concepts of play and playfulness, and the student and teacher experience.

1. *Visualization: Between Art and Kitsch*

Goals

In this playful activity, I wanted to challenge my students to visualize the theoretical content, with the goal of recapping the course's content and better enabling them to remember and explain it. I focused on imaging, imagination, and explanation. My subgoals were to acknowledge visually inclined students and to motivate students who were struggling with the conceptual nature of the course's content by introducing them to visualizing as a strategy of learning. I also wanted

24 Play enables creative thinking due to its ability to inspire fantasies and actions; see Biesty, 2003, p. 46.

to combine legal education and philosophy with the Arts. The duration of this activity was 20 minutes at the beginning of class, and it was meant as a *warming up* and as a review on the content of previous classes.

The Activity

Every student randomly received a small card with the name of a previously discussed philosopher. To engage students and to make them realize that they already had prior knowledge and understanding, they were given two minutes to write down as many keywords connected to that philosopher's theory as they could without checking their textbooks. Then, the students needed to find a (picture of a) work of art online that – according to them – portrayed (part of) that philosopher's ideas and write a short explanation on the theorist's ideas on the basis of that specific work of art. It could be a photo, building, painting, sculpture, or any other visual art form. The written explanation would later be presented to the colleague sitting next to them in approximately three minutes per person. Afterward, all written explanations and the corresponding pictures of artworks were combined in a document that all students received as a reference book for studying.

Play and Playfulness

This activity meets the requirements of play since it was (1) partly voluntary – there was no mandatory presence of students in class and they were free to roam the Internet searching for whatever image they found fitting for their small presentation to depict the philosopher. The students were also free to choose to portray whatever part of the theory that they found most important. Furthermore, the activity (2) was focused on achieving learning goals, namely, remembering and explaining the course's content. Also, the activity (3) was separate from everyday life since it had its own rules and instructions. I gave these instructions to the students on a handout, which included rules such as that they had to work with the philosopher they were given, were not allowed to open their books while searching for keywords, could only choose visual art forms to depict the theory, and had to follow the time frame for every step of the activity. The classroom gave the activity a (4) boundary of space while the instruction on how much time the students had to complete the assignment gave it its temporal boundary. Students perceived (5) a level of uncertainty, since the unlimited possibilities of online images provided them with many options. Finally, the activity led to a certain extent of (6) social grouping: Students occasionally helped each other find pictures and spoke to one another during the mini presentations.

Many students seemed able to perform the activity in a playful manner: They took on the uncertainties of the assignment as a challenge and expressed the joyful and spontaneous mind-set by laughing together with their peers. At the same time, most students appeared to be quite serious in their effort of finding the right image, and in that, some seemed to take on a more serious, *telic* attitude.

Student and Teacher Experiences

In this activity, thinking of images that could be relevant for the content of a philosopher's theory proved difficult for some students. Unsure of themselves,

Hedwig van Rossum

these students needed some encouragement and suggestions from their peers and teacher. In the future, I would like for those still anxious and in a (too) serious mind-set to also get into the playful modus. An option could be to let these students get inspired through working with a partner. In the end, many students were able to find pictures of artworks that they could effectively link to their philosopher and some were able to rely on prior knowledge of art history while choosing their image. A few students did not obey the rule that they could not just include an image or a portrait of the philosopher himself. In future uses of the activity, that will need some additional explaining in advance, since imagining how an image connects to a philosophical concept is central to this exercise. Nevertheless, all students were engaged while searching online for options and explaining their personal choice and presenting and discussing their work of art. Accessing sources proved to be a challenge, since not all students brought their laptops to class. To help them, I brought fifteen quite random pictures of artworks, from which these students could choose. I enjoyed the students' engagement: They clearly put effort in executing the task in earnest, but at the same time displayed enthusiasm and enjoyment.

2. *Poetry Slam – Philosopher Speed Date*

Goals

The second playful play activity was a poetry slam that I incorporated at the beginning of the final class of the course. It was meant as a review on the past seven weeks of legal philosophy. The learning goal was for students to remember and understand the content of the course in such a way that they could translate it into another context. My subgoals were creating an abstract of the course through collaboration; training students in public speaking; ensuring that the students enjoy the process; and enabling them to feel a personal connection to one or more theories.

The Activity

Every student – or in larger classes, every student couple – chose their own small card with the name of an earlier discussed philosopher. I instructed them to 'choose the philosopher that they wanted to have a ten-minute face-to-face with'. Then, I gave them written instructions and theatrically recited my own poem on Nietzsche (who was not included in the course) as an example. From there, the students had ten minutes to write down some keywords on the philosopher they had chosen, select the keywords that they found most important, and write a poem consisting of a minimum of eight and a maximum of 12 sentences. They could use any literature (including the Internet) or inspiration that they thought they needed to write the poem, and they were free to ask the teacher for help. Also, the poem could be in any form. After ten minutes of writing, the students worked with their neighbor for five minutes to critically reflect on both their poems' content and form. This step was not included in the classes where the students worked at the poem in couples from the start. Finally, the students presented their poems in chronological order (starting with the Sophists and Plato)

on the tunes of romantic music.²⁵ In the end, the poems were collected and distributed among the participating students as a creative abstract of the content of the course.

Play and Playfulness

This poetry slam was (1) partly voluntary, since the Vrije Universiteit Amsterdam does not have a mandatory presence of students in lectures, and they voluntarily attend classes. The students could also choose their own philosopher, use any literature, and decide what kind of poem they found fitting or manageable, and therefore, had an additional sense of freedom. The activity (2) was focused on achieving learning goals and (3) was separate from everyday life through its rules, namely, the written instructions. Similar to the visualization activity, the (4) boundaries of space and time were the classroom and the amount of time given to the students to finish their poems. The many possible ways of writing a poem offered the students (5) a level of uncertainty. At the same time that uncertainty was limited by the content of the course (only the ideas of the philosophers central to the course could be chosen as an inspiration for a poem). Finally, (6) social grouping was a positive effect of this exercise. Not only were the students helping each other while practicing the poem with a partner, but they also listened, laughed together, and applauded every student's performance of his or her poem. Most students approached this assignment in a playful manner – more so than during the visualizing activity. Students took the risk of reciting a self-written poem to their peers, which most engaged in with lighthearted humor, and many students became more open and expressed a spontaneity and creativity that I had not seen in previous lessons. During the recital I noticed a shared attention, appreciation, and enjoyment of all presented poems.

Student and Teacher Experience

The students' playful attitude resulted in a relaxed, carefree learning environment where they were experimenting with words and content and became creative. The reason for that playful state of mind was partly my own enthusiasm and the beautiful but somewhat clichéd (and therefore humorous) music that was the backdrop of the students' recital. The activity was successful because I used it in the final class. By that time the students had built up trust in themselves and each other and were familiar with my teaching methods. They understood that their efforts did not have to result in a perfect poem, and therefore, were more willing to take on the uncertainties related to the assignment. Nevertheless, a small number of students who were at first somewhat reluctant to write the poem remained. After some reassurance, they, too, began to work. Overall, most students seemed to enjoy creating their poems,²⁶ laughed during the recital,

25 J.S. Bach's 'Air': <https://www.youtube.com/watch?v=rrVDATvUitA> and 'Greensleeves', <https://www.youtube.com/watch?v=GS4xZYpjRas> (last accessed 22 June 2018).

26 A small number of students experienced some stage fright, but were still able to read their poem aloud.

Hedwig van Rossum

and became creative.²⁷ Moreover, their poems showed an understanding of the course's content. Especially in large groups, the length of the recital may be a challenge, with the risk of the listeners losing attention. To solve this problem, the assignment might be given to pairs or small groups.

3. *Physical Activity – Cross the Line*

Goals

This last example I used in the first class of the course, and it was therefore meant as an immediate encounter with the upcoming teaching methods. The learning goal was for the students to understand the difference between thin and thick morality and to actively think of examples and test these. My subgoal was for them to literally get active and get up from their chairs. I also wanted them to act as a group, but still make individual decisions.

The Activity

At the beginning of class I drew a line through the middle of the classroom with duct tape, which had the students wondering what would happen later in class. Halfway through the class, the subject of morality was broached. All students received two post-its. In five minutes, they had to think of and write down a practical example of one rule of thin morality and one of thick morality – for example, the fictional rule that dating between colleagues is prohibited or the rule that every citizen should register as an organ donor. They gave their post-its to the teacher, who selected the examples that the students would test together, on the basis of the examples' difficulty and diversity. Then, all students were asked to stand together in the middle of the room, right on the duct-taped line. The teacher read a post-it aloud. The students then had to judge the example and cross the line to the left if they thought the example gave voice to thick morality and to the right if they thought it represented a rule of thin morality. The students *had* to make decisions, as it was not allowed to remain standing on the duct tape and they needed to be able to explain their choices. The teacher asked some of the students to explain their decisions, which sometimes led to interesting discussions. This was repeated approximately five times.

Play and Playfulness

In practice, *Cross the Line* was (1) partly voluntary, since the students voluntarily joined class, but at the same time the exercise was more structured than the previous examples. Therefore, it was a little less free. The (2) learning goals as described earlier were central to the activity and the (3) rules that structured the task separated the activity from everyday life. I had deliberately chosen a more structured assignment for this very first activity in their first class. The (4) boundary of space consisted of the *play board* that was demarcated by the duct

27 One couple even decided to choose their own accompanying music and created a rap about Machiavelli that they performed with much enthusiasm.

tape on the ground. The temporal boundary was not as clearly indicated as in the other activities, since I did not give the students a time limit for their decision. However, I had planned a total duration of the activity for about fifteen minutes. In the assignment students (5) experienced some uncertainty since they had to publicly make their decisions without knowing if they were correct. The possibilities of action were limited to choosing either thick or thin morality. Since many students quickly understood the concepts of thick and thin morality, (6) social grouping arose where students helped or questioned each other. They also automatically tried to convince peers of their own convictions.

The physical movement of many students in a small amount of space resulted in a somewhat disorganized cluster every time the line needed to be crossed. That led to a playful attitude in which the students laughed and more spontaneously moved around one another.

Student and Teacher Experience

Although the students seemed surprised that they needed to actively *move* during this exercise and at first stood up somewhat hesitantly, during the exercise they gained in enthusiasm and all participated. The students were laughing and engaged and often helped one another, without the teacher's intervention. Therefore, this activity was a playful and active break for the otherwise immobile students. Difficult examples in which some students could not choose a side led to discussions between the students that were helpful for a further understanding of the content.

5. Concluding Remarks

Play and playfulness have value for legal education and especially for legal philosophical courses. In my experience, integrating play and playfulness in legal philosophical courses enables academic teachers to bring legal philosophy to life, encourages students to engage with legal philosophy, and provides an excellent method of confronting students with a level of uncertainty. Multiple students mentioned in their evaluation of 'Introduction to Legal Philosophy' that these activities made them engage, 'brought the content to life', and made them understand the content. They also cited that they had 'fun' during class.²⁸ These are the results that I had aimed for, although some of the activities might need to be further developed. For instance, I plan on being more explicit about the aspect of uncertainty (and its function) of the play forms next semester. In further research, I hope to substantiate a correlation between incorporating play and playfulness in legal philosophical courses and improved student results. I am keen to learn through additional research if play and playful activities could offer students, besides engagement and experience in dealing with uncertainty, an opportunity for deep learning and result in long-term interest in and under-

28 Student evaluation 'Encyclopedie der Rechtswetenschap I, 2017-2018'. On file with author.

Hedwig van Rossum

standing of legal theory. That would give play and playfulness further significance for legal education.

To be successful in integrating play and playfulness, I have experienced that the teacher's playful attitude and commitment *and* a level of trust that builds through the students' acclimatization to playful teaching methods are needed. After those are established and when the students feel more comfortable outside of their comfort zones, they start to be able to imagine, create, make decisions, and ultimately, engage with the content of legal philosophy.

References

- Ambrose, S.A., Bridges, M.W., Lovett, M.C., DiPietro, M. & Norman, M.K. (2010). *How learning works. 7 Research-based principles for smart teaching*. San Francisco, Jossey-Bass.
- Ambrus, M., Rayfuse, R. & Werner, W. (Eds.) (2017). *Risk and the regulation of uncertainty in international law*. Oxford University Press.
- Ardalan, K. (2015). Using entertaining metaphors in the introduction of the case method in a case-based course. In: M. Li & Y. Zhao (Eds.). *Exploring learning & teaching in higher education* (pp. 69-96). Berlin-Heidelberg, Springer. doi 10.1007/978-3-642-55352-3_3.
- Beck, U. (2007). *Risk Society. Towards a new modernity*. London, Sage Publications.
- Berry, W. (2015). Beyond survival: Using games to thrive in lecture. In: M. Li & Y. Zhao (Eds.). *Exploring learning & teaching in higher education* (pp. 45-68). New York, Springer.
- Biesty, P. (2003). Where is play?. In: D.E. Lytle (Ed.). *Play and educational theory and practice* (pp. 43-56). Westport, Connecticut, Praeger Publishers.
- Brown, W.J. (1909). Jurisprudence and legal education. *Columbia Law Review*, 9(3), 238-242.
- Caillois, R. (1961). *Man, play and games*. New York, The Free Press of Glencoe.
- Csikszentmihalyi, M. (2008). *Flow. The psychology of optimal experience*. New York, Harper-Collins Publishers.
- Csikszentmihalyi, M. & Bennett, S. (1971). An exploratory model of play. *American Anthropologist*, New Series, 73(1), 45-58.
- Francot, L.M.A. (2014). Dealing with complexity, facing uncertainty. Morality and ethics in a complex society. *Archiv für Rechts- und Sozialphilosophie*, 100(2), 210-218.
- Francot, L.M.A. (2018). Suspended in Gaffa: Legal slowness in the acceleration society. In: L. Corrias & L.M.A. Francot (Eds.). *Temporal boundaries of law and politics* (pp. 88-106). *Time out of joint*. New York, Routledge.
- Huizinga, J. (1980). *Homo ludens. A study of the play-element in culture*. London U.K., Routledge & Kegan Paul. (Edition first published in 1949).
- McDonough, S. (2013). Learning to think like a teacher-educator. In: R. Brandenburg & J.Z. Wilson (Eds.). *Pedagogies for the future: Leading quality. Learning and teaching in higher education* (pp. 61-72). Rotterdam, Sense Publishers.
- Nørgård, R., Toft-Nielsen, C. & Whitton, N. (2017). Playful learning in higher education: Developing a signature pedagogy. *International Journal of Play*, 6(3), 272-282.
- Rice, L. (2009). Playful Learning. *Journal for Education in the Built Environment*, 4(2), 94-108.
- Sheridan, M.D. (2011). (revised by Howard, J. and Alderson, D.) *Play in early childhood. From birth to six years* (3rd edn.). New York, Routledge.

- Stenros, J. (2015). *Play, playfulness and games. A constructionist ludology approach*. Tampere University Press.
- Sutton-Smith, B. (2003). Play as a parody of emotional vulnerability. In: D.E. Lytle (Ed.). *Play and educational theory and practice* (pp. 3-18). Westport, Connecticut, Praeger Publishers.
- Sutton-Smith, B. (1997). *The ambiguity of play*. Harvard University Press.
- Tanis, D.J. (2012). *Exploring play/playfulness and learning in the adult and higher education classroom* (diss. Pennsylvania State University).
- Thomas, D. & Seely Brown, J. (2011). *A new culture of learning. Cultivating the imagination for a world of constant change*.
- Van Klink B.M.J. (2016). Knowledge and aphasia: what is the use of skeptical legal education? In: B.M.J. van Klink & U.R.M.T. de Vries (Eds.). *Academic legal education. Theoretical positions, teaching experiments and learning experiences* (pp. 15-34). Cheltenham UK, Edward Elgar Publishing.
- Van Klink, B.M.J. & De Vries, U.R.M.T. (2016). Introduction: re-thinking academic legal education. In: B.M.J. van Klink & U.R.M.T. de Vries (Eds.). *Academic legal education. Theoretical positions, teaching experiments and learning experiences* (pp. 1-11). Cheltenham UK, Edward Elgar Publishing.
- Van Rossum, H.E. (2018). Lawyers, law schools and social change – defining the challenges of academic legal education in the late modernity. *International Journal of the Legal Profession*, 25(3), 245-260.
- Wahlgren, P. (2005). The purpose and usefulness of jurisprudence. Perspectives on jurisprudence: essays in honor of Jes Bjarup. *Scandinavian Studies in Law*, 48, 505-516.
- Wolthuis, A.J. (2007). Het spelkarakter van het parlementaire debat. *Rechtstheorie en Rechtsfilosofie*, 36(3), 12-33.
- Zepke, N. (2017). *Student engagement in neoliberal times. Theories and practices for learning and teaching in higher education*. Singapore, Springer.
- Zurita, G., Hasbun, B., Baloian N. & Jerez, O. (2015). A blended learning environment for enhancing meaningful learning using 21st century skills. In: G. Chen, V. Kumar, Kinshuk, R. Huang & S.C. Kong (Eds.). *Emerging issues in smart learning* (pp. 1-8). New York, Springer.