

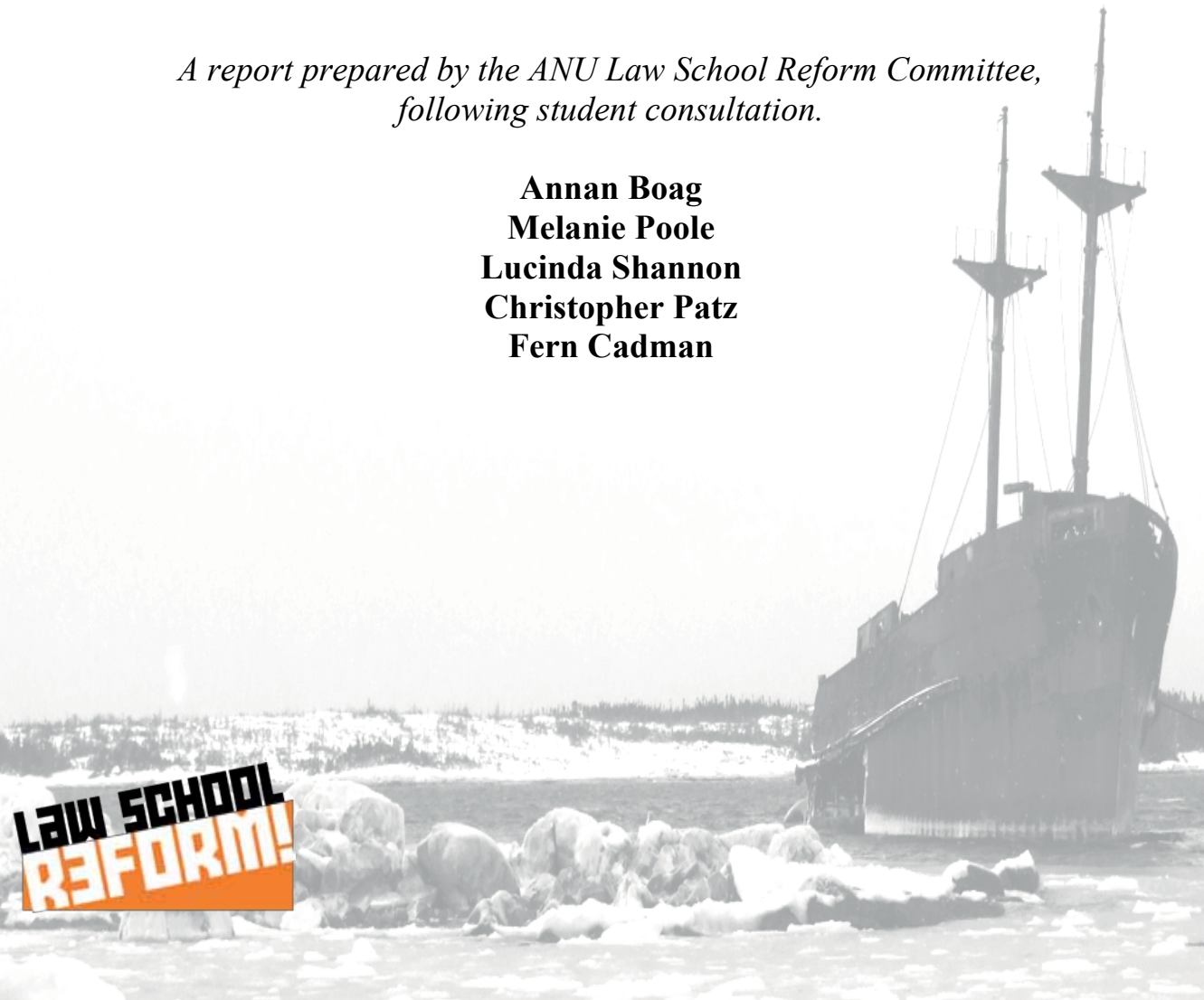
BREAKING THE FROZEN SEA

The case for reforming legal education at the Australian National University

*A report prepared by the ANU Law School Reform Committee,
following student consultation.*

**Annan Boag
Melanie Poole
Lucinda Shannon
Christopher Patz
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REFORM!**



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Report derived from consultation with students and staff of the Australian National University's College of Law.

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Foreword

I took my first, nervous steps into a law classroom six years ago. Three hundred anxious faces greeted me. Most of us were in our late teens, barely out of school, still finishing puberty. We had scored within the top five per cent of our nation and entered an elite institution. The world had told us that we were special, successful, capable of great things. Like all people, we were driven by a desire to be important. Most of us believed that this importance would be accomplished by changing the world for the better.

For the next five years or more, this institution would give structure and purpose to our lives. It would be the backdrop against which we would navigate our early adult years. For most, these years would mark the beginning of independence from our parents, a time of discovering adult relationships, identifying our values, shaping our goals and deciding who we want to be.

I was surrounded by some of the most passionate, thoughtful people I have ever met. Our conversations would frequently centre on the world's great challenges. It's not hard to see why; we were preparing to enter an infinitely unjust world, a world where preventable diseases kill thousands every day, a world where the richest 10% own 85% of the wealth, where corporate greed slows down our response to climate change, where attending the ANU law school is an opportunity far beyond the reach of most of the population.

But, with the exception of the odd, infrequently offered elective, these conversations and issues would remain firmly outside of the classroom. We discovered that the 'law' was a series of rules, handed down by old men on the bench to lawyers who 'neutrally' applied it. Law school was a process of learning and memorising what 'is' - not dreaming of what could be, not arguing for what should be. Our lived experiences were irrelevant to our learning. Law hovered in a strange vacuum, outside of society, culture, politics, and even history.

At the end of the semester, we would take exams, worth up to 100%, in which we would copy out these rules. A bell curve system¹ mandated that more than half of us could receive no higher than a credit. I learned that my success depended upon other students receiving poor grades.

Even though I had wanted to use my law training to change the world, most days I would have preferred to stay in bed. I could not engage with the two-hour lectures on

¹ I use the term 'bell curve' because this is colloquially used to refer to the mandated distribution of grades. Technically, a 'bell curve' requires a symmetrical 'tapering off' of the curve – i.e. it would require some people to fail. At the ANU College of Law it is not *mandatory* for some students to fail (although failure rates for many courses are high) and thus the technical term is the 'banded grading system'. Given that this term is unfamiliar to most audiences, however, the term 'bell curve' is used in its colloquial sense.

dry, doctrinal subject areas, in which I passively copied down pages of legal rules. With this disengagement came feelings of guilt and self-doubt. There was also the sense that my participation made no difference anyway. Sometimes I put in extra effort and got credits, other times I crammed an entire course at the end and got distinctions. By third year, I took a full time job. I did not attend many of my courses and I stopped buying the textbooks. Using the condensed summaries that did the rounds each semester, I taught myself several courses from beginning to end three days before the exam. None of this changed my marks.

I spent several years away from law school, during which I lived and worked in Kenya, Pakistan and at the United Nations Headquarters in New York. Returning to complete the degree, I again observed the sharp disjunct between what I was learning and the world I had experienced. I observed too, the complete transformation that occurred in the aspirations of my peers, most of whom had now graduated. The students who had once marched for Indigenous land rights, who had spent their summers volunteering at clinics in Africa, had, somewhere during their legal education, decided that the only 'viable' career involved working 12 miserable hours a day to enhance the profits of wealthy clients. They referred to their work not as a conscious choice they had made, but as result of there being 'no other options', because everyone had to 'do their time' in corporate practice.

Law schools are places where many of the world's smartest, most privileged, most powerful (or about-to-be-powerful) people accumulate. But instead of focusing on the things that really matter, instead of developing our capacities as problem solvers, peacemakers, activists or great leaders, we are taught a narrow set of technical, commercially oriented skills. Instead of learning to collaborate with others - that it is amazing what can get done when it doesn't matter who gets the credit - we learn that we should compete, fiercely self-promote and reproduce hierarchy. And instead of opening the door to the wide world of opportunities that awaits us, law schools foster the misleading conception that the 'real world' of law is found only in corporate practice.

What a lost opportunity this represents. What an enormous waste of human capacity. What better place is there to start a conversation about the meaning of what we're doing?

I began Law School Reform because I wanted to get people talking about these issues. Beginning a simple Facebook group revealed that my own experiences of law school were far from isolated. Over the last year, 'Law School Reform' has grown beyond my wildest imaginings. The passionate dedication of the many students, staff and legal professionals – not least of which the team which devoted literally hundreds of hours to putting this report together – is testament to the importance and urgency of the issues we are confronting. It is testament also to the impact that students can have when we make ourselves heard. We need not doubt that changing the world is possible. We can begin in our own community.

Kafka wrote that 'a book must be an axe to break the frozen sea of our soul.' I hope that this report can remind us, as a law school community, of how powerful and

transformative the law can be. Even the firm hand of *stare decisis* cannot enclose the human minds and human souls that create, defend, contest and interpret the law. As we study the rules, we should also reflect on our own role in shaping them. As we learn how to ‘think like lawyers’, let’s also cultivate our capacity to think like human beings. As we confront the frozen sea of legal education, let’s raise our axes high.

Melanie Poole, November 2010

Background and methodology

Law School Reform is comprised of past and present students of the ANU College of Law, drawn together by a common interest in the why and how of legal education.

Law School Reform is seeking new and engaging ways to get students and staff talking, thinking and collaborating to deepen their understanding of what law school is and should be. The overarching aim of Law School Reform is to improve the delivery of legal education.

To this end, Law School Reform has undertaken a 12 month staff and student consultation process at the ANU College of Law. This process involved:

- A voluntary student survey completed by 350 students in late 2009;
- A day long deliberative staff-student forum attended by around 60 students and faculty members on 21 May 2010;
- Approximately 30 written submissions made by students in response to an Issues Paper drawn from topics of discussion at the forum;
- Approximately 80 separate posts on Law School Reform's Facebook discussion group.

The following report represents a culmination of staff and student opinion obtained during this consultation process. We have endeavoured to achieve broad consultation in line with our belief in reform through deliberation and collaboration.

Preparation of this report has been a collaborative effort undertaken by the student members of Law School Reform.

In preparing this report, Law School Reform hopes to achieve several objectives:

- To provide a voice for students in influencing the curriculum renewal process being undertaken at the ANU College of Law;
- To engage staff and students in more active consideration of the purpose and practice of legal education at the ANU College of Law;
- To initiate broader discussions around the how and why of legal education in Australia.

For any enquiries relating to Law School Reform or this report, please contact us on lsreform@gmail.com or visit our website at www.lawschoolreform.com.

Executive summary

The ANU College of Law has ambitious goals for itself. It aims to offer progressive and effective teaching that promotes social justice and encourages students to reflect critically on the law. The ANU College of Law's support of Law School Reform and this project is evidence that it takes these goals seriously.

Law School Reform has had many conversations with ANU law students in the development of this report. 350 ANU law students completed Australia's first student-run survey on the law school experience. In May 2010, 60 staff and students attended an all-day forum on the why, what, and how of legal education. We received 30 formal student submissions via email, and over 80 separate posts and replies to the Law School Reform discussion group on Facebook.

What these conversations have revealed is that many law students do not feel that their day-to-day studies meet the ambitious goals that the College of Law has set for itself. This is not an isolated problem in Australian legal education.

Internet publications such as SurviveLaw, RollOnFriday and FirmSpy, and books including Lisa Pryor's *The Pinstriped Prison* document a remarkable level of dissatisfaction and cynicism amongst law students and young lawyers across Australia and the English speaking world.

This report seeks to identify some of the factors causing this discontent and to provide suggestions on how to reform the legal education system.

Chapter 1: The purpose of legal education

Chapter 1 considers the purpose of a legal education from four perspectives: in its historical context, as viewed by the legal profession, as outlined by ANU College of Law policy, and according to ANU law students.

Part 1.2.1 is a history of Australian legal education. In Australia, training in the law has moved from an apprenticeship program to university qualifications. However, an enduring rationale for legal learning is that the method and the content of a legal education must equip students for careers as lawyers.

Part 1.2.2 considers the legal profession's influence on legal education through profession admission regulations, particularly the Priestly requirements. Students expressed a range of opinions on the ongoing utility of these requirements. Regardless of their support for these requirements, students and staff alike emphasised that there is some flexibility in how the Priestly content is taught. Students expressed the view that the ANU College of Law's methods of teaching and assessment do not take advantage of this flexibility. In addition, many students expressed the view that merely fulfilling the Priestly requirements is not in itself sufficient for an effective legal education.

Part 1.2.3 attempts to identify the purpose of legal education by looking at the values articulated in the education policies of the ANU College of Law. These are contained in the ANU College of Law's Graduate Attributes document, that lays out the qualities and skills that graduates are expected to gain from their legal education. However, both student comments, and an analysis of courses, show that current course structures and assessment practices poorly realise these Graduate Attributes.

Part 1.2.4 considers why students undertake a law degree. This part found that the career aspirations of ANU law students extend well beyond just corporate or private practice. While only 15-20% of students aspire to a career in commercial law, 20-30% aspire to work in an international institution, and around 15-20% state that they would like to work in 'public law' or 'community legal work'. Further, personal motivations for taking up a law degree are diverse. While some students cite the prestige and earning capacity of a law degree, other students voiced a desire to use their knowledge and skills to change society. Importantly, students acknowledged that their motivations for pursuing a law degree were not clearly defined. Many students took up the degree to test it out, or because they understood law to be a versatile degree, or – in a remarkable number of cases – 'because they got the grade for it'.

Part 1.2.5 identifies the range of student views on the purpose of legal education. Many students felt that law school should provide a challenge that leads to transformational personal growth. However, this aim of law school is frustrated when difficult, dry subject matter is equated with the only mark of serious intellectual challenge. Many students argued that real intellectual challenge should be exciting, not merely something to be 'endured'. While students emphasised the importance of learning legal material, they also expressed the view that legal education is impoverished when doctrine comes at the expense of critical perspectives, self-reflection and broad skill development.

Chapter 1 concludes that it is not possible to identify one single purpose for legal education.

Given the findings of Chapter 1, Law School Reform recommends several measures to address divergent understandings of the role and purpose of legal education.

Chapter 2: Pedagogy, curricula and assessment

Chapter 2 considers issues raised by students about pedagogy, curricula, and assessment practices at the ANU College of law. In particular, it addresses teaching methods, staff accessibility and accountability, the relevance of curricula content, the correlation between curricula and assessment, the relevance, feedback and transparency of assessment, and grading policies, particularly the 'bell curve'.

Part 2.2.1 argues that many students object to current teaching methods. Students reported that they felt disengaged by their education, particularly large group lectures, required readings, and problem question tutorials. In contrast, many students identified more interactive, team-based opportunities as valuable learning experiences, including extra-curricular competitions, non-traditional electives and clinical programs.

Part 2.2.2 addresses the accessibility and accountability of teachers at the ANU College of Law. Students expressed a range of views on teaching staff, from highly positive to negative. Overall, many students felt there is a lack of consistency in teaching quality. In addition, some students suggested a greater use of student evaluations in staffing decisions. The greatest student concern was a perceived lack of interaction between staff and students in mainstream courses. Students were also troubled by a lack of academic support programs.

Part 2.2.3 considers student views on the adequacy of ANU College of law curriculum in terms of its relevance, content and correlation with assessment. Students expressed concern that the current curriculum fails to provide the knowledge, skills and experience they will require to pursue their personal and professional goals. Students were particularly concerned by the absence of practical learning experiences, though it must be noted that there was a wide diversity in opinion as to what ‘practical experiences’ entailed. Many students were also concerned that the curriculum places a disproportionate emphasis on doctrine while failing to place the law in a social, political, historical and cultural context. Finally, students felt that there was a harmful disconnect between curriculum and assessment.

Part 2.2.4 explores students’ issues about assessment, including the relevance of assessment items, feedback provided on assessment and the transparency of assessment processes. Students felt that highly weighted exams are inadequate in assessing both the qualities outlined in the ANU College of Law’s list of Graduate Attributes and students’ own learning goals. Students felt that a broader range of assessment items and more continuous assessment would better evaluate these qualities. Many students felt that law school assessment lacks transparency and fails to provide adequate feedback.

Part 2.2.5 addresses grading policy at the ANU College of Law. Students were highly concerned about the use of the ‘bell curve’. Student opinion on the use of the bell curve ranged from confusion and frustration to anger. Some even suggested that the bell curve made them question the legitimacy of legal education itself. This part argues for reform of the ANU College of Law’s grading policy.

Given the findings of Chapter 2, Law School Reform recommends a number of measures to address concerns about pedagogy, curricula and assessment practices at the ANU College of Law.

Chapter 3: Law school culture and student wellbeing

Chapter 3 identifies three key aspects of student experience at the ANU College of Law that undermine mental health and wellbeing: pressure to study, student culture, and teaching focus and curriculum.

Part 3.2.1 explores how the pressure to study affects student mental health. Students felt that a lack of meaningful assessment feedback reduced their ability to learn and to improve themselves. Students said they sacrificed their personal lives to study harder, and that when this failed to produce results, they felt inadequate, insecure and frustrated.

Part 3.2.2 explores how student culture affects student mental health and wellbeing. Students found problems with the highly individualist and often adversarial nature of law school assessment practices. While it should be acknowledged that some students ‘thrive’ on healthy competition, many students stated that student isolation was bolstered by a focus on individual assessment instead of collaborative forms of assessment. Students stated that the banded grading system reinforces this unhealthy competition by ensuring that a few people are ‘winners’ and most others are ‘losers.’

Part 3.2.3 explores how teaching focus and curriculum affects student mental health and wellbeing. Many students felt that law school is elitist and has a narrow vocational focus, transmitted through dry doctrinal content. Students stated that the perception of legal study as more rigorous and difficult than other academic pursuits leads to under-appreciating of achievements in other disciplines. Many students felt disillusioned by a lack of intellectual and emotional engagement. They thought that legal education should make space for people with different experiences, talents and forms of intelligence. In addition, students felt that the primary focus on doctrine and rote learning was inadequate in satisfying the broad career aspirations of law graduates.

Given the findings of Chapter 3, students and Law School Reform recommend a number of measures to improve student mental health and wellbeing at the ANU College of Law.

Chapter 4: Reform suggestions from ANU students

Chapter 4 consists of nine student proposals recommending ways for improving legal education. These perspectives are included to stimulate consideration of legal education reform at the ANU College of Law.

Part 4.2, by Melanie Poole, proposes the use of ‘democratic learning’. Democratic learning is student-centred and student-contextualised education in which staff and students work together to create the learning environment. Staff and students would be equal members in a community of shared educational purpose.

Part 4.3, by Melanie Poole and Lucinda Shannon, introduces student-facilitated learning. In this method, later-year students facilitate newer students' education, encouraging peer-to-peer learning.

Part 4.4, by Melanie Poole, suggests the use of a structured, equitable mentoring program. This supplementary program would provide a range of skills and support otherwise lacking in the current education model.

Part 4.5, by Kate Leonard, makes a broad range of recommendations for improved legal education at the ANU College of Law. In particular, it emphasises options to better recognise the diversity of law students, their commitments and their needs.

Part 4.6, by Roman Dzioba, advocates a medical school approach with a pass / fail marking scheme and compulsory group work. Legal education under this model is a learning and skill-orientated education system, which reduces unnecessary negative competition and improves graduate competencies and student wellbeing.

Part 4.7, by Roman Dzioba, advocates for the complete separation of undergraduate and postgraduate teaching at the ANU College of Law.

Part 4.8, written anonymously, advocates for a new legal qualification at the ANU College of Law: a 'Diploma of Legal Awareness'. This qualification would provide the many students who do not complete their law degree with some recognition for their learning.

Part 4.9, by Emma Lee, recommends that legal education at the ANU College of Law follow the model operating at the University of New South Wales. This model would see smaller learning groups, more Socratic learning and increased student engagement and satisfaction.

Recommendation summary

Law School Reform recommends that the ANU College of Law:

1. Recognise that the purpose of legal education is as multifaceted and diverse as its stakeholders.
2. Foster this diversity within legal education by:
 - 2.1 Embedding critical perspectives into the curriculum;
 - 2.2 Providing students with meaningful opportunities to reflect on their reasons for attending law school;
 - 2.3 Ensuring that staff and student deliberation on the purpose of legal education is systematically fostered.
3. Provide diverse learning opportunities by:

- 3.1 Increasing opportunities for clinical placements;
 - 3.2 Encouraging opportunities for civic and workplace involvement (i.e. volunteer work and work experience);
 - 3.3 Moving extra-curricular activities such as mootings, negotiations and client interviews into the core curriculum;
 - 3.4 Including activities such as submission writing, negotiation and advocacy in assessment.
4. Foster more engaging tutorials by:
 - 4.1 Rearranging tutorial rooms so that students are facing each other;
 - 4.2 Providing tutors with guidance on facilitation techniques and methods to engage students in discussion;
 - 4.3 Appointing tutors based on their teaching ability in addition to their expertise in substantive law;
 - 4.4 Allocating marks for tutorial participation where it is clearly tied to learning outcomes and provides an opportunity for genuine, interactive and intellectually engaging participation.
 5. Reduce lecture sizes by any means (i.e. through lecture streams in large compulsory courses).
 6. Ensure consistent and high quality teaching through a teaching evaluation process that places increased emphasis on student feedback.
 7. Enable students to assess how they have met their own learning goals rather than simply assessing the quality of 'service delivery'.
 8. Restructure the curriculum to achieve a greater balance between doctrinal material, diverse learning environments and activities and the study of law in a social, political, historical and cultural context.
 9. Adopt a holistic, whole of degree, approach to assessment to provide students with the full range of competencies and skills identified in the ANU College of Law's Graduate Attributes document.
 10. Increase the variety of assessment that students are required to complete (i.e. to include group work, oral assessment and clinical placements).
 11. Increase the variety of written assessment that students are required to complete (i.e. to include case notes, written submissions, policy documents, reports and reflections).
 12. Ensure standardised and transparent assessment processes by:

- 12.1 Providing clear and thorough information on assessment requirements, including the criteria on which an assignment will be assessed;
 - 12.2 Providing constructive feedback, with reference to the assessment criteria, which indicates to students how they can improve their performance.
13. Abolish banded grading and replace it with an alternative grading system (i.e. a pass/fail system). The ANU College of Law should conduct an additional thorough review of its grading policy.
14. Create a dedicated course to develop legal reading, writing and reasoning skills.
15. Improve student access to teaching staff and encourage increased mentoring by staff.
16. Instigate a mentor program with professionals outside the spheres of academic and corporate law.
17. Enable students to learn and improve through assessment by:
 - 17.1 Ensuring routine and standardised transparency and feedback on assessment;
 - 17.2 Providing model answers to assessment tasks;
 - 17.3 Reducing emphasis on highly weighted individual exams;
 - 17.4 Increasing use of smaller, continuous and collaborative assessment tasks.
18. Augment teaching of critical thinking, from the beginning of the law degree by:
 - 18.1 Making critical perspectives part of assessment;
 - 18.2 Making some critical courses mandatory;
 - 18.3 Communicating the value of trans-disciplinary perspectives to students.

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Chapter 1

The purpose of legal education

“Lawyers need a different kind of training if we’re going to have a different kind of legal system.”²

1.1 Introduction

What is a legal education for?

Law School Reform asked this question to staff and students and heard many different answers. The members of the law school community have different career aspirations, personal motivations and normative understandings of what law means. This chapter will consider what students expect from their legal education, the role the legal profession plays in determining the purpose of law school, and what law schools endeavour to provide.

First, this chapter will touch on the historical institutionalisation of legal education, and some of the dominant approaches to teaching law. This suggests that law school’s main goal has been to prepare students for future jobs in the legal profession.

Second, it will also explore conceptions of the legal profession, and what students need to know to enter it, and how these shape the law school curriculum.

Third, this chapter will investigate how the ANU College of Law understands the purpose of legal education.

Finally, this chapter will present law student responses on why they entered law school, and will explore the overall meaning of legal education. From this, it will emerge that student opinion is diverse and there is no single understanding of the purpose of legal education. The chapter concludes that the ANU College of Law should not only recognise this diversity, but harness it to the advantage of students and the institution itself.

1.2 The purpose of law: No right answer?

1.2.1 The purpose and practice of law in a historical context

Legal education has changed significantly over time. What was once accomplished through an apprenticeship is now undertaken through a

² Professor David Weisbrot, Law School Reform Forum, 31 May 2010 (video of lecture available on www.lawschoolreform.com).

university based academic course,³ usually followed by practical training in a professional or institutional setting.⁴ Accompanying this shift was an attitude to legal education that privileged the case method developed over a century ago by United States law professor Dean Langdell. Broadly speaking, Langdell's conception of the law, and the need for its study to take place within the confines of an academic institution, sprung from the notion that law and legal meaning was a science.⁵ Accordingly, the case method, in which the law was learnt through an examination of appellate judgements, encouraged students to 'find the common law,' a skill that was conceptualised as the foundational aspect in the work of the lawyer.⁶

More recent approaches have emphasised problem solving as a means of linking education with the eventual practice of law on the basis that 'knowledge used is better remembered' and that learning how to solve problems is a skill in itself.⁷ Although there have been changes in the way in which legal education is delivered,⁸ the common feature of both problem solving and the case method is that, although subject to critiques,⁹ they are rationalised as being useful for students because they feed into the work of lawyers.

However, the use of this rationale is problematic for several reasons which will be explored below. First, how well do historical conceptions of the legal profession accord with the requirements of legal practice today? Second, how appropriate is it for conceptions of the legal profession to dominate students' educational experience?¹⁰

1.2.2 The purpose of law school and the legal profession

A dominant way of understanding the goals of Australian law school educational frameworks is in terms of the professional accreditation standards law schools must meet. This particular understanding of the purpose of law school, to accredit students for practice, has been the subject of much debate in

³ Ainslie Lamb and John Littrich, *Lawyers in Australia* (2007) 13.

⁴ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System, Report No 89* (1999) [2.6].

⁵ Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1995) 170-4.

⁶ James R Maxeiner, 'Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method' (2007) 35 *International Journal of Legal Information* 1, 16-7.

⁷ Myron Moskowitz, 'Beyond the Case Method: It's Time to Teach with Problems' (1992) 42 *Journal of Legal Education* 241, 248.

⁸ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System Report No 89* (1999) [2.13].

⁹ David W Slawson, 'Changing How We Teach: A Critique of the Case Method' (2000-1) 74 *California Law Review* 343.

¹⁰ Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Realty, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 545.

both academic literature and at the ANU College of Law. Importantly, this understanding of the purpose of law school makes problematic assumptions about the career interests of law students (see Tables 1.1 and 1.2 below).

Admission regulations are set out under the Legal Profession Acts of each state and territory.¹¹ The admission regulations are governed by state and territory authorities, either the Supreme Court or another body with delegated authority (e.g. the Legal Practitioners Admission Board in NSW). The requirements that these authorities mandate were provided by a ‘consultative committee’ established to recommend a uniform set of educational requirements for law degrees (the Priestley 11) and practical legal training (the Priestley 13).

The Priestley 11 focus on designated substantive areas of law.¹² They allow flexibility in the delivery of doctrine, but do not prescribe delivery requirements nor encourage innovation. When discussing the appropriateness of the Priestley 11 at the deliberative forum, some students (and staff) found the Priestley 11 problematic in themselves, arguing that they focus excessively on commercial subjects and offer a neo-liberal conception of the law’s utility. Many, however, felt that broadly speaking they remained important areas of law for students to have an awareness of.

Despite these differing views, there was consensus that, if they are going to be taught, the Priestly 11 should be taught differently. For example, students were critical of a dominant teaching method centred on rote learning (see Chapter 2 on pedagogy, curricula and assessment) and an emphatically hierarchical student-teacher relationship (see Chapter 3 on student wellbeing). Law schools could update their curriculums considerably while satisfying Priestley requirements, yet in practice the Priestley 11 are taught almost exactly as they are set out in regulations. There is a degree of flexibility in the way in which the Priestley 11 can be implemented which does not appear to have been taken advantage of by many law schools.

The notion that law school is designed to prepare students for legal practice certainly holds weight, however it cannot be said that the current framework accomplishes this in a holistic manner. The practice of law, alongside the society in which such practice takes place, continues to change and evolve in a dynamic way.¹³ Accordingly, the curriculum frameworks imposed by the Priestley requirements have been critiqued on the ground that they focus on ‘outmoded notions of what lawyers need to know’ and not on what lawyers ‘need to be able to do.’¹⁴

¹¹ See *Legal Profession Act* 2004 (NSW), 2006 (ACT), 2006 (NT), 2007 (Tas), 2007 (QLD), 2008 (WA), and *Legal Practitioners Act 1981*(SA).

¹² See for e.g. Schedule 5 of the *Legal Profession Admission Rules 2005* (NSW) (essentially replicated in all jurisdictions).

¹³ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System Report No 89* (1999) [2.13].

¹⁴ *Ibid* [2.21].

The Priestley 11, when delivered in the absence of alternative approaches to understanding and interrogating the law, present the profession as one peopled by suited automatons who are not engaged in a fundamentally social act or faced with ethical dilemmas. The pedagogical emphasis on black letter transmission of doctrine, without skills development, clinical training or deep ethical inquiry, also means that students miss out on developing many of the practical skills and vital attributes that legal professionals should possess.

Although it is clear that certain aspects of the profession and ideas about what professional practice involves have to a large extent dictated what law schools teach, many law schools conceptualise their role in education in a different way. The next section will explore this, with particular reference to the ANU.

1.2.3 The purpose of legal education at the ANU College of Law

... the most distinctive thing about law at the ANU is that we think about law not just as a set of rules, to be applied mechanically by technocrats to support the status quo, but as a body of rules in constant need ...of improvement ...We celebrate idealism, abhor cynicism, and strive to produce lawyers who will make a difference.¹⁵

But how do we move [on] ... from ... rhetoric and pious hope ...?¹⁶

What do law schools perceive their purpose to be? In Australia, there have often been disputes around this question between those who believe that law schools exist to train students for the vocation of law, and those who see law as an intellectual discipline. Many academics have pointed out that such answers create a false dichotomy between the intellectual and practical content of law. As ANU Law Dean Professor Michael Coper has put it, ‘the best practitioners ... are those who are the most intellectually curious and most sensitive to the role they play in society.’¹⁷ It has also been widely recognised that the vocational argument is outdated in a world in which law students will go into a wide variety of careers, only a minority of which involve traditional legal practice.

There is a vast literature discussing the conceptual purpose of legal education, however, this section will look more closely at the purpose of legal education as hinted at by the policies and rhetoric of the ANU College of Law. Importantly, a realistic assessment of these policies can only be made against

¹⁵ The words of Professor Michael Coper, ANU Law Dean: Michael Coper, *A Guide to Australian Law Schools: Message from the Dean*, Council of Australian Law Deans, <<http://www.cald.asn.au/slia/LawSchoolDeansMessage.asp?ID=1>>, accessed 01/09/10.

¹⁶ Michael Coper, *The Role of Law Schools and Law School Leadership in a Changing World*, Presented at the International Association of Law Schools (IALS) Conference at the ANU College of Law, Canberra, 25-27 May 2009 (<http://www.ialsnet.org/meetings/role/index.html>).

¹⁷ Ibid.

the backdrop of external mandates, such as professional entrance requirements and the uncertain utility of external quality monitoring

In their promotional materials law schools define the purpose of legal education by citing noble ideals, such as the pursuit of social justice. Yet these ideals rarely, if ever, move beyond the level of rhetoric.

In an effort to ascertain further detail beyond rhetorical statements, Law School Reform has sought information about the ANU's internal educational policies. When questioned on this topic, members of the ANU College of Law Executive pointed to the list of 'Graduate Attributes' developed within the College in 2006 (these graduate attributes are set out in Appendix 1 to this report). The ANU graduate attributes present a range of impressive qualities that it is hoped ANU law students will possess at the end of their studies. Areas of competency are generic skills, legal content, engagement and commitment to learning, personal attributes and professional and ethical values.

The attributes paint a picture of a competent, critical and well rounded graduate and the transmission of these attributes may be read as part of the ANU College of Law's understanding of their educational mandate. Interestingly, knowledge of legal content is just one of five areas considered to be of central importance for graduates. This infers awareness on the part of the ANU College of Law that graduates enter a dynamic and complex society that demands a breadth of skills and qualities.

Further, it shows that the College of Law does not see its role as facilitating an objective, mechanistic transmission of knowledge from one vessel to another, but rather as a normative exercise that is inescapably value laden. Students are expected to become not only good professionals, but also ethical, independently minded and personally aware.

Student comments on their experiences at the ANU College of Law suggest that the 'Graduate Attributes' do not form the hinge on which pedagogy, curricula and assessment swing. As this report will outline further, the Attributes are missing from the mainstream curriculum in a fundamental way. Thus, while the ANU College of Law's educational aims are very different from those inferred by the accreditation frameworks of the Preistley 11, they must be understood as frustrated aims.

1.2.4 Why students choose to study law

What made ANU students want to study law? This question is a complex one, not least because motivations tend to be invented with hindsight, rather than consciously experienced at the time of decision-making. Thus it is unlikely that students can answer the question 'what made you study law?' without their current knowledge, values and aspirations partly entering the equation.

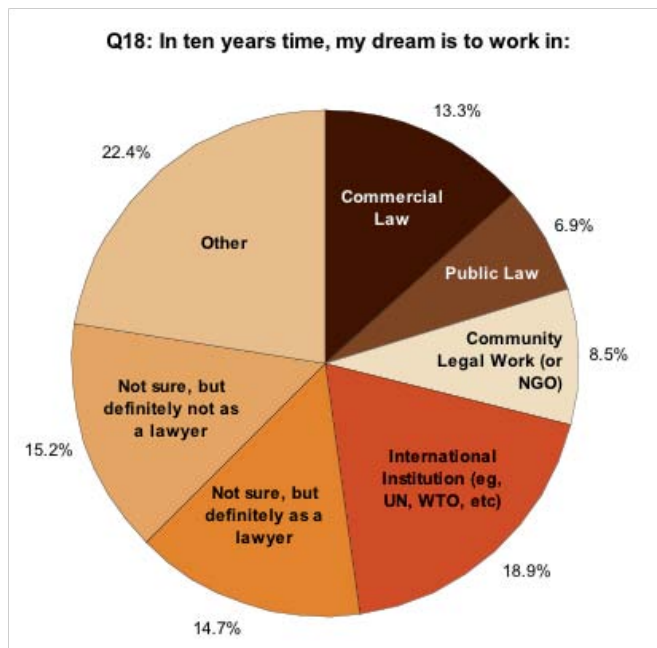
Notwithstanding these considerations, from the answers¹⁸ to questions regarding career aspirations and personal motivators, several key themes emerged.

Career aspirations

When students were asked where they would most like to be working in 10 years time, it was clear that while undertaking work as a lawyer in commercial law was a goal for many students (around 15%), a significantly greater number of students were interested in other, less ‘traditional’, areas of work.

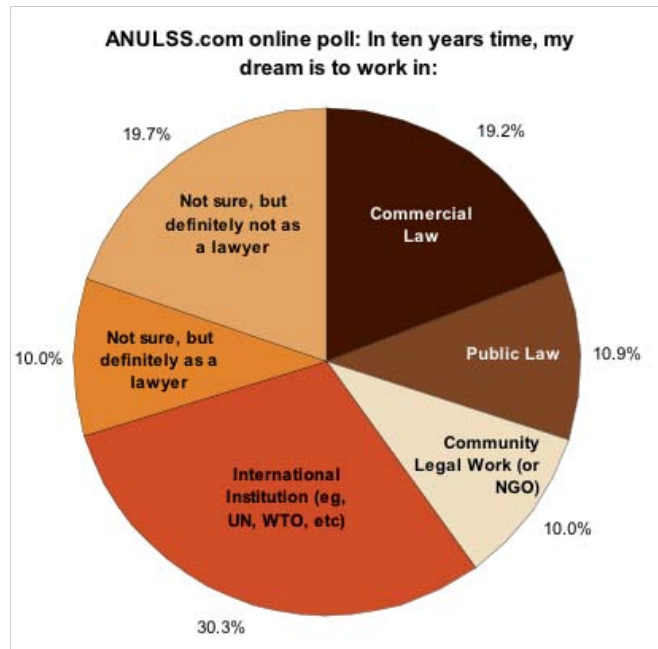
For example, in surveys conducted separately by both Law School Reform and the Law Students’ Society (LSS), the number of students indicating a desire to work in commercial law was significantly lower than the number who wish to work in either an international institution or a non-specified non-legal role (Figure 1.1 & 1.2). In other words, students enter law school with a range of career objectives in mind, a point which somewhat negates the dominant paradigm of law student as aspiring corporate or private practice lawyer.

Figure 1.1: Law School Reform survey: student career aspirations



¹⁸ Contained in the Law School Reform’s survey, deliberative forum and call for submissions.

Figure 1.2: Law Students' Society survey: student career aspirations



Personal motivators

In submissions to this report, and from comments made by students completing the survey, it was clear that there are a range of reasons why students desire legal qualifications and knowledge of law that do not relate to specific career goals.

Motivators such as the desire to help people and to give back to the community were prominent. For example, one student wrote:

I came to law school because I wanted to make a difference . . . For me, it's all about earning a living honourably and being able to look back and feel comfortable that I gave something back.¹⁹

There was also a belief (albeit one expressed only in a minority of responses) that the desire to give back to society did not exclude personal gain and that legal education was a worthwhile pursuit because it carries considerable prestige. One student said:

I was attracted to the notion of achieving social justice through the law . . . however the more influential reasons were that my parents wanted me to do law (because of the prestige and the pay)

¹⁹ 1st year LLB student, submission in response to *Issues Paper*.

*and because I was attracted to the prestige associated with a law degree.*²⁰

In some cases, students do not have a strong desire to study or practice law specifically, but rather ‘get in’ and decide to test it out. As one student wrote:

*[T]here was definitely an aspect of, well if I can get in then why not, but I was more driven by the want to study humanity based subjects. Luckily it turns out law does interest me but before I came I had no idea what it would be like.*²¹

Others echoed the uncertainty regarding future career choices, and emphasised that study of law had value because it ‘kept options open’:

*I wasn't sure if I wanted to be a lawyer when I first came to university - I now know that I do not want to be a lawyer . . . even though I do not want to be a lawyer, I still really enjoy STUDYING law and think it is a really good degree to have for any job.*²²

The fact that many students remain undecided or change their long term career aspirations during the course of their study was highlighted as an issue that received insufficient attention from the College of Law:

Too many people go to ANU law school for confused reasons! Before questioning content and assessment, can we measure changes in career perception through the 5 year cycle. My suspicion would be it moves a few times for 90% of the cohort. Did we get it wrong?

Of course we did! We marched in with our flakey UAI's to sit in the safe bet degree of professional development and future security. Sadly, we quickly realised that at level best we had bought the rudimentary study of rules, precedent, and factoids.

My suggestion would be to scrap the foundation class – and just have sessions dedicated to exploring careers early on with no assessments. Drive people to have some awareness of where they're heading; what values they want to share; and ultimately what difference they want to make . . . It would allow students to identify the skills base and experience needed to reach their goal- (possibly well outside the remit of the law faculty).

*The proposal would also build a culture of collegiality in the school as like-minded students can interpret their experiences in a proactive and focused setting, separate from the ‘fear of the pass’.*²³

²⁰ 1st year LLB student, submission in response to *Issues Paper*.

²¹ 1st year LLB student, submission in response to *Issues Paper*.

²² Survey respondent No. 371, 2nd year LLB.

²³ Comment on Law School Reform Facebook group.

Thus a considerable number of students begin their law degree without a firm understanding of what they hope to achieve or where they hope their legal training to take them. Further, even those who enter law school with a clear idea of what they hope to achieve after study will probably redefine their goals over the course of their study.

1.2.5 Student understandings of the purpose of legal education

Given the differences above, it is hardly surprising that student opinion and deliberation points to significant tensions in the way law students understand the purpose of law school. Importantly, these tensions reflect the diverse personal and professional motivations for undertaking the LLB program. At the forum, it was acknowledged by students and staff that these different threads of understanding (discussed below) are not mutually exclusive, and that the purpose of legal education can be informed by many voices.

Personal change and challenge

Many students expected law school to be a transformative and challenging experience and found that these expectations were being met. For example, one first year stated that their experiences at law school matched their expectations:

*I came into law knowing that there would be a large amount of readings required, and some difficult terminology, though overcoming these challenges will be highly rewarding.*²⁴

Personal change and achievement was also a common theme. One fifth year stated:

*I expected to be changed and I have been.*²⁵

This was stated without indication as to whether the change was understood as positive, so the intended meaning is somewhat ambiguous, though importantly it does reveal the enormous capacity that the law school has to influence its students.

Another student compared law school to a very long but enjoyable hike:

*You spend your time when your only half way up a hill with a sore ankle, wet to the bone, covered in mud, haven't showered in days, hating yourself but when you get to the end you've challenged yourself and you've achieved a great thing.*²⁶

Such statements suggest that the challenge provided by law school and the feeling of personal achievement that results from this is seen as an important part of studying law that is highly valued by students. This attitude has made

²⁴ Survey respondent No. 372, 5th year LLB.

²⁵ Survey respondent No. 364, 4th year LLB.

²⁶ Survey respondent No. 332, 2nd year LLB.

many commentators uneasy, because it suggests that students are valuing activities merely because they are difficult, rather than because they contain intrinsic meaning. A perception that difficult equates with valuable can also deter students from reflecting critically upon the nature of their activities.

For example, applying cognitive dissonance theory,²⁷ Kath Hall, College of Law Director of Student Wellbeing, writes:

...if a course of study is perceived as hard, uncomfortable or difficult to achieve, students are more likely to value that study, and are less likely to critically analyse the process or the content involved. ... if students acknowledge that what they have worked hard to learn is not important or useful, there is an increased risk that they will feel foolish in having taken their study so seriously.²⁸

The transmission of legal knowledge

Other comments indicate that some students thought that legal education was primarily for the transfer of specific legal thinking and knowledge. For example, one third year LLB student argued that ‘the value in having a law degree is in having legal skills’ and thought that these were sacrificed at the expense of critical ‘social justice’ electives.²⁹

At the forum, the focus group charged with discussing their views on the purpose of legal education emphasised the importance of ‘legal thinking’ and the development of an understanding of the law. Thus, students do see ‘learning to think like a lawyer’ as a purpose of law school – with emphasis on the specific skill of legal reasoning as well as attaining knowledge of the law.

More than doctrine?

However, while learning legal knowledge was considered vital, students emphasised that law school should be about more than the transmission of legal doctrine. Many students were concerned that basic ‘practical skills’ associated with the role of lawyer and other non-legal roles were neglected.

We note here that, when discussing ‘practical skills’, a clear distinction must be made between *professional* skills, which offer a significant intellectual challenge and can be highly effective pedagogical tools and *vocational* skills.

Professional skills could include developing oral communication techniques, or learning the art of negotiation. *Vocational* skills may include activities such as drafting a confidentiality clause, or a basic sales contract. It is our view that

²⁷ An idea drawn from psychology, that, in summary, a person cannot hold two contradictory views at the same time and thus must reject one or the other.

²⁸ Kath Hall, “Do We Really Want to Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools”, (2009) 9 *QUT Journal of Law and Justice* 1.

²⁹ Survey respondent No. 284, 3rd year LLB.

vocational training is not appropriate at a university level and has the effect of significantly ‘dumbing down’ legal education.

Students referred to a wide range of activities when they described a desire for ‘practical’ learning. For example:

I thought we might learn more about how to BE lawyers, rather than just learning the law.³⁰

Another 5th year survey respondent argued that:

[The] very limited opportunities to hone practical legal skills means that law school is not contextualised within the actual practicing of law.³¹

One student was concerned that:

In 6 years, I have done one oral presentation and a handful of essays. I don't feel my ability to communicate has been developed by my law school experience at all.³²

Generally, students used this term as a way of describing experiences that are interactive and correspond to the ‘real world’ in a stimulating way (for example drafting parliamentary submissions or undertaking clinical placements.) Some students expressed a desire for more vocational training, generally perceiving that this is what the market demands.

In this report, where ‘practical skills’ are advocated the term refers to *professional* skills. While we advocate the inclusion of diverse learning opportunities and ‘real world’ engagements in the curriculum, these must be implemented with caution. As Margaret Thornton reveals:

The evidence shows that once the curriculum is filled with the teaching of skills and practice-oriented knowledge, vocationalism displaces critical knowledge...

The reality is that a law degree cannot do everything that is expected of it. I believe that the law degree should concentrate on scholarly academic aims and leave practical skills to dedicated others—either a practical legal training course, such as Legal Workshop, or induction in a law firm. It is not realistic to expect a law graduate to emerge from a law school fully trained for whatever area of specialisation they might be employed in.

While I recognise that law students feel pressured by the legal labour market to do more and more PLT, learning how to think creatively and critically is the very best skill to be acquired and it should not be compromised. ...All other legal practice skills are incidental and can be learned on the job. As long as law schools

³⁰ Survey respondent No. 364, 4th year LLB.

³¹ Survey respondent No. 253, 4th year LLB.

³² Survey respondent No. 261, 5th year, LLB.

are located in universities, vocationalism is necessarily secondary; law schools are not (yet) mere technical or trade schools.

The dilemma is how to accommodate diversity in legal education .. If an excessive degree of PLT is permitted to swamp the LLB, it can displace the critical space and produce mediocrity or incoherence in the curriculum. This must not be permitted to happen.³³

Other students asserted that exploring critical perspectives on the law was an important purpose of law school. At the forum, opinion was somewhat divided on whether this was sufficiently addressed at the ANU College of Law. Some attendees expressed the view that the law school has a strong focus on providing ‘social justice’ courses and perspectives, sometimes in a manner that was not expected. For instance, one first year LLB student claimed that:

[Law school] has met my expectations. I expected it to be difficult, lots of reading and fairly dry. This has been the case, although there has been a social justice side [to] the course which I didn't expect.³⁴

Still other students did not have particularly specific expectations and thus were neither surprised nor disappointed in course offerings. As one second year JD student commented:

[Law school has compared] very closely [to my expectations]. I'm here for a vocational degree and an 'educational experience'.³⁵

Conversely, a range of other opinions illustrate the extent to which students felt critical perspectives were marginalised, both in terms of a culture of responsibility for students and lawyers and also as an academic element of course work. For example, one student described the ‘insufficient engagement with critical perspectives in black letter courses’³⁶ as a weakness of the College of Law. Another said that law school fell short of their expectations because:

There is much more rote learning than I expected and much less critical engagement with the law and how it could be improved.³⁷

Another student argued that the law school did not meet their educational or social expectations:

For an academic institution, it doesn't provoke much individual thought or assumption of responsibility. In fact, it seems to have

³³ Margaret Thornton, Professor of Law, ANU College of Law, *Submission To ANU Law School Reform Committee*, March 2011.

³⁴ Survey respondent No. 312, 1st year LLB.

³⁵ Survey respondent No. 370, 2nd year JD.

³⁶ Survey respondent No. 310, 4th year LLB.

³⁷ Survey respondent No. 349, 2nd year LLB.

*fostered a boring type of complacency that will be the hallmark of Australia's future lawyers - how unfortunate.*³⁸

Other students felt that the lack of critical perspectives was symptomatic of a broader culture that favoured the 'status quo' over innovation and originality. As one student commented:

*I had very high expectations of law school. I had hoped for a challenging environment which fostered debate, critical thinking and which encouraged new ideas. This year we have generally been told not to deviate from the accepted practices and status quo thinking. I was disappointed to receive feedback on assessments discouraging me from making new conclusions or presenting a new interpretation of the material. I feel that the law school promotes, defends and exemplifies mediocrity.*³⁹

Students emphasised that critical perspectives should be incorporated alongside a sufficient education in the doctrinal aspects of the law. At the forum, the student group asked to consider the purpose of legal education found that the purpose of a law degree was multi-faceted. It was summarised that a legal education involved:

- Flexibility and interaction with other areas of study [and] perspectives – multi-disciplinarily;
- Critical analysis;
- Sufficient skills and content to ensure employment;
- Study choices and options enabling student to pursue their interests.

Thus, students see the purpose of law school as involving the facilitation of student choice in terms of their interests, values and objectives. Students do not think that the purpose of law school need be an all or nothing debate and understand that integration of different perspectives can be achieved in individual courses. Importantly, the need for a critical approach, even in mainstream courses was seen as valuable.

Recommendations

At the legal education forum, students devised several recommendations regarding how the law school could enact both their purpose and the objectives of students in the curriculum and in the delivery of teaching. They include:

- **Introduction of a later year cap stone course**, in the style of Lawyers, Justice and Ethics (currently taken in first year), that could revisit professional legal ethics, explore

³⁸ Survey respondent No. 68, 4th year LLB.

³⁹ Survey respondent No. 298, 1st year LLB.

the ideas of justice and enhance more practical legal skills (noting the difference flagged above between *professional* skills and *vocational* skills, and the caution that must be exercised to ensure that critical thinking is not displaced. We do *not* advocate vocationalism.)

- **Establishment of clearer linkages between assessment and skills (as described in the College of Law Graduate Attributes) as part of the Curriculum Renewal Process** (refer to Chapter 2);
- **Implementation of broader ethical, reform and critical perspectives in each course, particularly core courses.**

In addition to these recommendations, on the basis of the submissions and survey results, we recommend that the ANU College of Law:

- Recognise that students have diverse reasons and motivations for undertaking a degree and that the College of Law should take genuine steps to better facilitate and encourage student choice;
- Take steps to ensure all students are encouraged to reflect on why they came to law school and what this privileged experience may entail for them and society more broadly. These opportunities could be provided through earlier year courses and an expanded first-year mentoring program (built on the existing CHAT program);
- Provide ongoing opportunities for staff/student deliberation on the purpose and mission of law school. The Law School Reform Forum held on 21 May 2010 provides an example of one way to do this.

1.3 Conclusion

There is no single answer to the question ‘What is the purpose of legal education?’ The ANU College of Law should find ways to engage its staff and students in meaningful discussion of this question with a view to displacing the notion that legal study is a ‘one size fits all’ pursuit and that the law itself can be studied as objective reality that exists outside of the people that use it and create it. In this way, the law school can begin to encourage students to reflect on their own practice of law, whatever form it may take.

Chapter 2

Pedagogy, curricula and assessment

“There is a great danger in the present day lest ... teaching should degenerate into the accumulation of disconnected facts and unexplained formulae, which burden the memory without cultivating the understanding.”⁴⁰

2.1 Introduction

How should law students learn? What should they learn? And how should their learning be measured?

This chapter explores the ‘means’ of learning at the ANU College of Law. It will canvass student experiences in an effort to understand how students are being educated, what they are learning and the effect of dominant teaching methods.

Any university education is formed upon three key bases: pedagogy, curricula and assessment.

Pedagogy can be broadly understood as methods of teaching, or how learning is achieved. Current methods of teaching in the ANU College of Law include lectures, tutorials, seminars, and limited opportunities for clinical placements and internships.

In contrast, curricula refers to the content to be learned, as provided through courses. At the ANU College of Law, students are required to complete 15 compulsory courses and a number of elective courses. Compulsory courses consist of the Priestly 11, and an additional 4 subjects set by ANU.

Assessment describes the mechanism by which learning is measured. This includes, exams, research assignments, class participation and presentations for example.

The following discussion addresses particular issues identified by ANU College of Law students through Law School Reform’s student consultation process. These issues are addressed below under the following five headings:

- *Pedagogy*: Quality of teaching methods
- *Pedagogy*: Accessibility and accountability of teaching staff
- *Curriculum*: Relevance, content and correlation to assessment

⁴⁰ J. D. Everett (In the preface to his 1873 English translation of *Elementary Treatise on Natural Philosophy* by A Privat Deschanel, D. Appleton and Co).

- *Assessment:* Relevance, feedback and transparency
- *Assessment:* Effect of banded grading

2.2 Key issues and recommendations

2.2.1 Pedagogy: Quality of teaching methods

*More important than the curriculum is the question of the methods of teaching and the spirit in which the teaching is given.*⁴¹

Students have repeatedly identified teaching method as a key issue at the ANU College of Law. They were particularly concerned about the dominance of large group lectures and the underutilisation of modern pedagogical approaches.

Lectures and tutorials

Most compulsory law courses at ANU involve 3 hours of lectures and 1 hour of small group tutorial learning, for a total of 4 contact hours per week. Lectures are typically whole-of-course, with around 200-300 students enrolled and approximately 50-100 in attendance on any given day. Tutorials each have around 25 students with a much higher rate of attendance. Students identified numerous problems with this format.

Students did not perceive large group learning as an effective form of pedagogy. They identified the tendency to disengage, the lack of personal interaction and the passivity of large group learning as highly problematic.

For example, one survey respondent commented that ‘large lectures make for a passive classroom experience’,⁴² whilst another stated that ‘teaching is far too focused on large group rote learning, discouraging engagement with subject matter and legal reasoning’.⁴³ A third respondent stated that that there were ‘less practical activities in classes than expected’, and that ‘important practical skills are largely attained from extra-circular activities’.⁴⁴ Many students made comments to the effect that ‘huge lectures make it difficult to participate or concentrate’.⁴⁵

Another student commented that:

I found the large class sizes and limited lecturer contact to be detrimental to my experience of studying law compared to my arts subjects. This is not, I believe, a reflection of lecturer ability or

⁴¹ Bertrand Russell (1926) *Education and the Good Life*, Kessinger Publishing Co.

⁴² Survey respondent No. 72, 1st year LLB.

⁴³ Survey respondent No. 85, 1st year LLB.

⁴⁴ Survey respondent No. 115, 4th year LLB.

⁴⁵ Survey respondent No. 124, 3rd year LLB.

*even really on class design, but the fact that for so many courses there is so much material that is mandated to be taught and it is almost impossible therefore for an organic class structure to evolve where students interact meaningfully with their fellow students and teachers. Lectures are an exercise in transcription, not learning.*⁴⁶

While students recognised resourcing constraints, they did not believe that these provided sufficient justification for the use of inadequate methods. For example, one student said:

*The general style of teaching is lecture delivery of core content (doctrinal law), and smaller interactive tutorials to encourage engagement and practical debate. Lack of resources in middle years and electives prevent this model working as tutorials are too large.*⁴⁷

One forum participant praised compulsory courses that split classes into separate lecture streams run by different lecturers (the examples given were administrative law and international law). The student said that this was an effective means of improving lectures for three reasons. First, smaller classes meant more opportunities for individual student engagement. Second, different streams allowed students to choose between different lecturing styles and select the style that best suited the way that they learnt. Finally, having multiple lecture times made it easier for students to fit lectures around their other commitments.

Early year students were positive about tutorials. For example, one first-year student said that although tutorials are ‘quite competitive [...], at the same time they often offer a genuine rapport between students’.⁴⁸

At the forum, however, most later year student participants critiqued tutorials. There was concern about the tendency of tutorials in later year compulsory courses to become ‘mini-lectures’ in which the tutor stands at the front of the room and completes the tutorial problem on the whiteboard with minimal student participation. Law School Reform suggests that there are a number of reasons for this:

- **The physical layout of tutorial rooms:** In most tutorial rooms, seats face forward to the front where the tutor stands. This makes it difficult for a sustained discussion between students to occur.
- **The large quantity of material included in most tutorials:** Many tutorials are delivered in the style of simulated exam question, to provide students with practice in answering exam questions. Often the tutorial question is

⁴⁶ Survey respondent No. 320, 5th year LLB.

⁴⁷ Survey respondent No. 176, 5th year LLB.

⁴⁸ Survey respondent No. 117, 1st year LLB.

as long as a full exam question – which would typically take an hour to complete in exam conditions. This means that to complete the question in a one hour class, there is only time for a basic doctrinal analysis, that is, issues are identified and the question of ‘what does the law say about this situation’ is asked.

- **The limited link between participation and assessment:** Some students reported that the absence of any assessment outcome from many tutorials creates a tendency to be unprepared and disengaged. In contrast, better discussions occurred in courses with a high tutorial participation mark allocated (10% or more).

Practical activities

In contrast to these reflections, many students commented that they had gained both practical skills and lasting legal knowledge through extracurricular competitions and clinical legal work. Students felt that these activities encouraged them to personally engage with legal material. When asked to list the law school’s strengths, many survey respondents listed LSS activities they had participated in, and one survey respondent stated:

*The Law Students’ Society currently provides (for free) the richest learning environment for College of Law students in the form of negotiation, witness examination and moot competitions - these activities should be taken on by College staff and integrated appropriately into courses and assessment.*⁴⁹

Others praised the College’s small clinical program:

*The best course I have done at ANU has by far and away been the Youth Law Clinical Program because it was so hands-on. I got more skills & knowledge out of that course than any other.*⁵⁰

At the forum, students discussed the learning methods that had most engaged them and provided enduring knowledge. Students nominated:

- **Extracurricular mooting competitions** (including the Australian Law Students Association national mooting competition, Jessup moot)
- **Extracurricular and assessed negotiation** and other legal skills competitions;

⁴⁹ Survey respondent No. 198, 5th year LLB.

⁵⁰ Anonymous Submission to Law School Reform Report

- **Non-traditional elective law subjects** (the specific example provided was Law Reform as taught by Simon Rice in 2009);
- **Honours thesis and other deep research opportunities;**
- **After-hours tutorials** in compulsory courses where group sizes are smaller and students are better prepared and engaged;
- **Clinical programs;**
- **Opportunities to volunteer in the community** (though a number of students reported that they were unaware of such opportunities).

Interestingly, these learning experiences share several common characteristics, including a high degree of personal commitment and personal autonomy, self directed and small group learning and (in most cases) an oral component. They reveal an eagerness on the part of students to engage in activities that promote deep, critical and participatory learning.

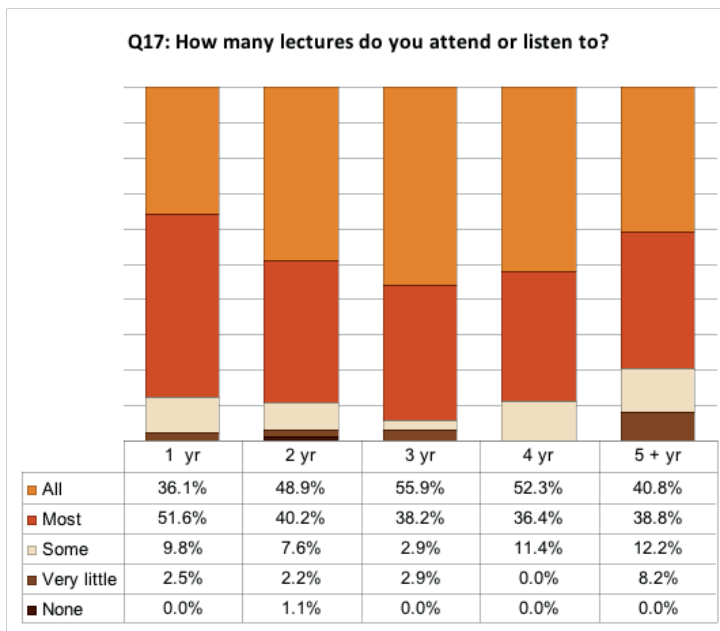
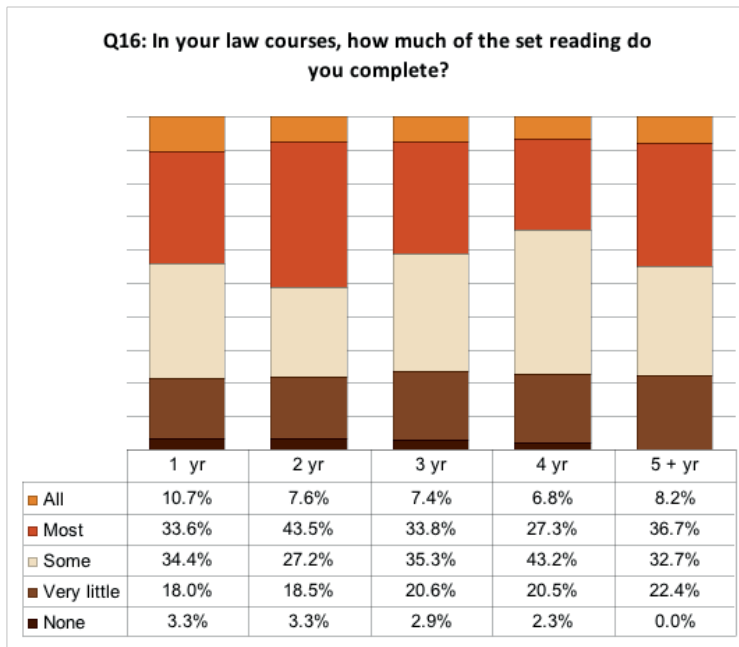
Notably, the learning experiences that students nominated as most beneficial are marginalised and optional in the curriculum, while those described as least effective are dominant and compulsory.

Readings

At the forum, many students indicated that in most compulsory courses they only do a small part of the required reading, do not attend all lectures, and instead rely on other students' (generally those who completed the course in previous years) summaries to cram for exams. Anecdotally, one student observed that amongst law students they know, a large majority approach their studies this way.

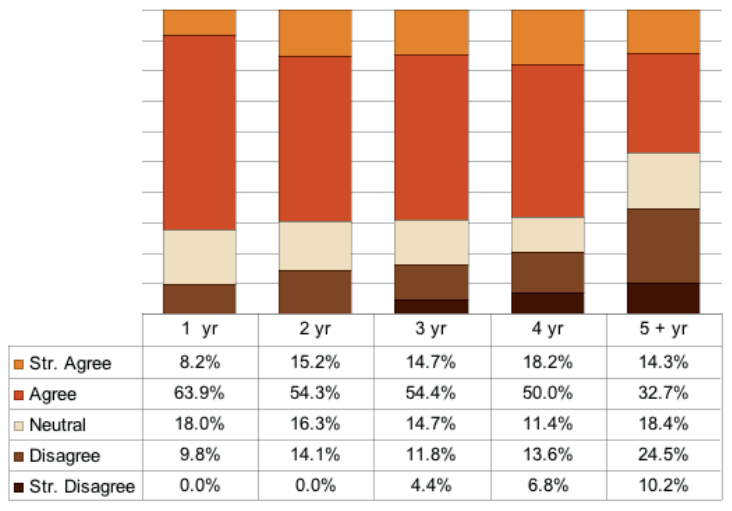
This observation is reinforced by the results of the survey conducted by Law School Reform in late 2009. Less than half of students surveyed said that they completed 'all' or 'most' of the set readings.⁵¹ By contrast, the majority of students (over 80%) said that they attended either 'all' or 'most' of the lectures (though this figure will be inflated as the bulk of the surveys were conducted in lectures).

⁵¹ See diagram overleaf.



Of the first year students who completed the survey, 67% agreed (or strongly agreed) that ‘completing course reading as well as attending/listening to lectures has helped me achieve higher grades in the courses I have completed’. By contrast, of the 5th or later year students who completed the survey, only 35% agreed with the same statement. This striking result suggests increasing cynicism as students move in to later years. Indeed, it reveals that a majority of later year students see little to no correlation between their participation in the formal teaching activities of a course and their final grade.

Q13: Completing course reading as well as attending/listening to lectures has helped me achieve higher grades in courses I have completed.



Recommendations

The following recommendations are aimed at addressing the problems identified by students in relation to methods of teaching at the ANU College of Law.

First, we recommend that there be additional opportunities to develop professional skills relevant to a wide range of careers, including law. This should include increased opportunities for clinical placements and the shifting of some extracurricular activities into the mainstream curriculum.

It is interesting to note that many of the activities that students described as most beneficial fall outside of the curriculum. The exclusion of activities such as mooting, negotiation, and paper presentations is problematic because it results in the undervaluing of these pursuits.

The exclusion of these activities from the core curriculum raises an equitable barrier to the attainment of vital skills. Because these activities are extracurricular, students with more time and financial resources are better able to capitalise on these opportunities. A small group of law students are likely to end up taking up these opportunities. It seems that this is the case at the College of Law, as is evidenced for example by the fact that the majority of students attending the Australian Law Students Association national law competitions are repeat attendees.

Many law schools make practical legal activities a compulsory part of the law degree. We recommend that the ANU College of Law consider adopting this model.

Second, Law School Reform recommends that the ANU College of Law take steps to make tutorials more engaging. Tutorial rooms should be rearranged so that students are facing each other rather than the front of the room and tutors should be given guidance on facilitation techniques and methods to engage students in discussion. In the selection of tutors, equal or greater emphasis should be placed on their teaching abilities as should be placed on their expertise in the substantive area of law.

In addition, the ANU College of Law may consider increased allocation of marks for tutorial participation. However, this step should only be taken where attendance and participation is clearly tied to learning outcomes and provides an opportunity for genuine, interactive and intellectually engaging participation. Law School Reform recommends a model of tutorial assessment where each student leads discussion at one point (e.g., one tutorial) during the semester. This prevents the situation where the loudest and most confident voices, raised in the search for marks, drown out quieter voices who may wish to contribute.

Third, we recommend any measures that are able to reduce lecture sizes. This may include the use of lecture streams in large compulsory courses, however should not be limited to this option (see Chapter 4 for innovative ideas on this topic).

2.2.2 Pedagogy: Accessibility and accountability of teaching staff

“No one can be a good teacher unless they have feelings of warm affection toward their pupils and a genuine desire to impart to them what they believe to be of value.”⁵²

Throughout the Law School Reform consultation process, students reflected a range of views on teaching at the ANU College of Law. Students recognised the importance of good teaching and many students praised the quality of teaching staff.

For example, one first year student said that the best thing about the College was the ‘really good teachers ... they seem to love the law ...and they seem keen to instil that passion for law in us.’⁵³ Other students described the positive or inspiring effect that an individual teacher had had on them.

However, students felt that the methods of teaching at the ANU College of Law (discussed above) do not create an interactive and engaging learning environment. Excellent teaching, when it occurs, seems to happen *in spite of* course structure, rather than because of it.

A significant weakness that students identified was a lack of staff-student interaction. For example:

⁵² Russell, above n 40.

⁵³ Survey respondent No. 306, 1st year LLB.

[There is] no real interaction between struggling students and teachers.⁵⁴

There is a lack of academic support at an individual level.⁵⁵

Accessibility is not so great.⁵⁶

I felt like most of the lecturers I've had were too busy to meet up with students.⁵⁷

I guess I hoped for encouragement, inspiration, mentorship, confidence-building ... I've definitely not received those things.⁵⁸

The lecturers can be a little impersonal, aloof and in some cases harsh.⁵⁹

[There is] no room for friendly interaction with lecturers.⁶⁰

... a number of tutors, especially in the contracts course this year, have been unhelpful and disinterested in our studies. The tutors are distant and guarded ... evading answering questions and leaving many new students disenchanted, as most new students have never engaged in the material or assessments of the kind presented at law school. In essence, academic assistance is poor, especially when it comes to help with assessment.⁶¹

... the accessibility of lecturers and the willingness of lecturers to talk to students out of class has been disappointing. While I have tried to do so, contacting lecturers has not always been a positive experience particularly when some of the comments on assessment pieces have been as cold and harsh as they have been unhelpful.⁶²

Help is sometimes hard to find.⁶³

[Law school] is impersonal and lacks the engagement between lecturer/tutor to student. This is NOT to do with contact hours, it is to do with lack of support many teachers have for an enriching student teaching relationship (see for example teacher/student relationship in Fenner School).⁶⁴

⁵⁴ Survey respondent No. 41, 1st year LLB.

⁵⁵ Survey respondent No. 273, 3rd year LLB.

⁵⁶ Survey respondent No. 317, 4th year LLB.

⁵⁷ 1st year JD student, written submission made in response to *Issues Paper*.

⁵⁸ Survey respondent No. 261, 5th year LLB.

⁵⁹ Survey respondent No. 372, 5th year LLB.

⁶⁰ Survey respondent No. 325, 1st year LLB.

⁶¹ Survey respondent No. 298, 1st year LLB.

⁶² Survey respondent No. 372, 5th year LLB.

⁶³ Survey respondent No. 355, 1st year LLB.

⁶⁴ Survey Respondent No. 187, 5th year LLB.

Another issue raised was the limited capacity for students to provide feedback.

*Student evaluation forms need to be taken seriously. I remember a few occasions when lecturers received negative feedback on particular courses but still taught the course in the same way the next year. Do the lecturers even read the comments? What about the lecturers' supervisors? Are they a factor in performance reviews?*⁶⁵

*There needs to be a better method of providing feedback on classes and lecturers. You never knew if that 5 minutes you spent filling out those forms at the end of semester actually helped or not.*⁶⁶

While we acknowledge the ANU College of Law's resources constraints, particularly associated with teaching staff, student consultation has clearly identified a greater need for academic support of students. Students consider the chance to interact with their lecturers to be vital to learning. It is also clear that students are looking for a level of assistance, support, mentoring and role modelling that they do not believe that the ANU College of Law offers.

Recommendations

There are many possible ways of addressing these issues and we believe that the most creative and effective solutions will be arrived at through a process of joint staff and student deliberation. The many thoughtful, intelligent suggestions made in student submissions are evidence of this. Based on student opinion, the Law School Reform makes the following recommendations:

- **The ANU College of Law should find innovative ways of increasing staff/student interactions and mentoring opportunities.** Student input should be sought in finding ways to work within current resource constraints. It is the view of Law School Reform, that the most creative and effective solutions will be arrived at through a process of joint staff and student deliberation.
- **The ANU College of Law must ensure the quality of its teaching through a thorough teaching evaluation process.** This should require that student feedback is used constructively to improve the quality of teaching for future students. Specifically, course feedback survey results should be published or otherwise used to assess the performance of teaching staff.

⁶⁵ Comment posted by a student to the Law School Reform Facebook group.

⁶⁶ Comment posted by a student to the Law School Reform Facebook group.

2.2.3 Curriculum: Relevance, content and correlation with assessment

In a changing environment, the best preparation that a law school can give its graduates is one which promotes intellectual breadth, agility and curiosity; strong analytical and communication skills; and a moral/ethical sense of the role and purpose of lawyers in society.⁶⁷

The young do not accept teaching which is dry as dust, out of date and remote from life, which the university tries to instill into you. ...[They] should have a go at discussing with you the real and terrible human problems of our time.⁶⁸

Imagination is more important than knowledge [...] Imagination encircles the world.⁶⁹

Curriculum: Relevance of content

What do law students need to know?

A good way to begin assessing the legal curriculum at the ANU College of Law is by considering what students may actually go on to do (acknowledging that their decisions will often be influenced by both the explicit and implicit messages contained in their legal education.)

Chapter 1 revealed that only a minority of students intend to ‘definitely be a lawyer.’ Nonetheless, even when considered within the confines of lawyering, it is clear that there is a gulf between what law schools teach and what lawyers actually do. In the 21st Century, lawyers juggle a complex, rapidly changing, multidisciplinary workload. For example, they:

- **Do not just advise on legal matters:** Whether working for Mallesons or Legal Aid, lawyers engage in political lobbying, media campaigns and other law reform efforts on behalf of their clients.
- **Mediate, negotiate and problem solve:** The vast majority of cases are settled via alternative dispute resolution (ADR) channels, not the adversarial court system. Good lawyers understand human relationships and emotions, and are experts at resolving conflicts.

⁶⁷ David Weisbrot, (1994) ‘From the Dean's desk’ (1994) 3(1) *Sydney Law School Reports* 1.

⁶⁸ Dom Helder Camara (1971), ‘The Spiral of Violence’, *Continuum Publishers*.

⁶⁹ Albert Einstein, in Viereck, George Sylvester (1929) ‘What life means to Einstein: an interview’, *The Saturday Evening Post*, October 26 1929.

- **Are mobile:** Legal qualifications are in high demand internationally. From prosecuting war criminals, to helping design emissions trading schemes, lawyers are everywhere.

With this reality in mind, staff and students were highly critical of the disconnect between legal education and the ‘real world’ that legal professionals will encounter. Particular attention was paid to the curriculum’s over-emphasis on the adversarial court system.

*For the things we have to learn before we can do them, we learn by doing them.*⁷⁰

As mentioned in Chapter 1, to conceive of skills and knowledge as separate learning goals is to construct a false dichotomy. Learning through memorisation of ‘black letter’ rules alone, creates knowledge that is fragmented and superficial. The parochial content of the particular jurisdictional rules learned is also increasingly irrelevant in a world where careers are frequently international. Practical skills training therefore can foster deeper learning, and also help to ensure the relevance of learning to a global environment.

The introduction of ‘problem question’ exams into law schools provides one way to apply doctrine to ‘real world’ situations. This may be a useful skill to some degree, but its narrow, technical and parochial focus means that it probably belongs more to the ‘vocational’ category of practical skills than the more intellectually rigorous category of professional skills, such as mooting, negotiation and oral communication, that Law School Reform advocates.

Students expressed overwhelming disappointment at the lack of opportunities to learn effective communication techniques. There was also disappointment regarding the limited opportunities for clinical legal practice. A sample of student responses follows:

*Notably, there are few clinical programs on offer, and few places available within these programs. A wider range of clinical programs covering more diverse aspects of legal practice would undoubtedly enhance the education of those students eager to improve their practical skills and knowledge.*⁷¹

*I didn't expect to be so disengaged with the majority of courses - especially black letter compulsory courses. I have not been taught any skills. I have only been tested on what I brought with me from high school.*⁷²

My main concern is the lack of a practical aspect of studying law... I feel that token effort to let us have a go at negotiation in

⁷⁰ Aristotle, in Bynum and Porter (eds), (2005) *Oxford Dictionary of Scientific Quotations*, 21:9.

⁷¹ Student submission in response to the *Issues Paper*.

⁷² Survey respondent No. 363, 5th year LLB.

*[Foundations of Australian Law] in first year is pretty much the only thing that I've ever done as a part of a course that would help me in practice.*⁷³

*I didn't have expectations but I thought it might help more with everyday life, and I'm pretty sure I'm wrong.*⁷⁴

*There should be some compulsory pro bono component of law school. Seeing the law in practice and being able to use what you've been taught makes its so much easier to relate and learn, as well empowering law students to help others. . . . Definitely agree there should be more focus on practical legal skills. Negotiation, mediation, mooting and interviewing skills are extremely important post-uni and I think could be more encouraged.*⁷⁵

*I would love there to be more integration... with the legal work force, no I don't mean that we must have it so every student is guaranteed an internship but the program at ANU I feel comes too late in our degrees.*⁷⁶

*Not enough industry and international linkages and opportunities for ANU law students.*⁷⁷

*It seems a little odd that the practical teaching we do get is in first year and crammed into the same semester as legal ethics (i.e. LJE). You'd think those two things, both being pretty important, deserved their own courses.*⁷⁸

*Missing from law school: Assessed mooting, negotiation, submission and interviewing.*⁷⁹

Students also raised concerns about the limited opportunities for exploring non-adversarial lawyering practices during their legal education at the ANU College of Law. For example:

*Given that, in practice, around 95% of legal matters are settled out of court and that the sum total of teaching on ADR and settlement options at ANU is ...about 2 weeks during [Litigation and Dispute Management], I think the Law School could really use a specialist ADR elective.*⁸⁰

ANU lecturer Molly Townes O'Brien points out that the popular misconception of legal practice as predominantly adversarial is augmented by

⁷³ Comment posted by a student to the Law School Reform Facebook group.

⁷⁴ Survey respondent No. 171, 1st year LLB

⁷⁵ Comment posted by a student to the Law School Reform Facebook group.

⁷⁶ Comment posted by a student to the Law School Reform Facebook group.

⁷⁷ Comment posted by a student to the Law School Reform Facebook group.

⁷⁸ Comment posted by a student to the Law School Reform Facebook group.

⁷⁹ Comment posted by a student to the Law School Reform Facebook group.

⁸⁰ Comment posted by a student to the Law School Reform Facebook group.

the legal curriculum, noting that the influence this can have on the way that students imagine their futures:

Students arrive ... already indoctrinated in the popular culture myth that the dominant role of the lawyer is as an advocate in an adversarial system. These students, if they become practicing lawyers, will be more likely to fill their days with negotiation than with litigation, to represent a client in mediation than at trial. In reality, they are more likely to become deal-makers than gladiators. Nevertheless, their preconception or misconception of the dominance of lawyers' adversarial role will be reinforced in their legal training.

...This ethos may constrain the way that students conceptualise their future roles and limit the 'possibility space' available to them for 'legal creativity,' 'constructive lawyering' and peacemaking.⁸¹

Curriculum content: dominance of commercial and doctrinal law

There is a core ... legal vision of the world and of human conflict [which] tends to focus on form, authority, and legal-linguistic contexts rather than on content, morality and social contexts.⁸²

And what is it to acknowledge the laws but to stoop down and trace their shadows upon the earth?⁸³

The curriculum's failure to engage with law's complex political, social and cultural role, including the historical evolution of the common law system, emerged as a deep concern among many staff and students. Students described how compulsory law courses are taught in a mechanical fashion, void of context, with the law presented as a series of abstract, pseudo-scientific rules.

As several forum participants noted, this is problematic not only because it disengages students, but also because of the powerful cultural message it sends. When study of the political, social, cultural and emotional content of the law, and the reality of its impact on the lives of citizens, occurs outside of the mandated curriculum, a dualism is constructed in which non-commercial, non-doctrinal, legal knowledge is regarded as inferior.

This influences the development of students' normative understandings of what the law 'is'. Such a curriculum narrows students' horizons, because it implies that to 'be a lawyer' necessarily involves, at the very least, 'doing time' in

⁸¹ Molly Townes O'Brien, ANU College of Law, "Facing Down the Gladiators: Addressing the Law School's Hidden Adversarial Curriculum", draft conference paper, on file with author. (Can only be cited with permission of the author – contact OBrienM@law.anu.edu.au.)

⁸² Elizabeth Mertz (2007) *The Language of Law School: Learning to "Think Like a Lawyer"* 4.

⁸³ Khalil Gibran, *The Prophet*.

commercial practice – and that, as a commercial lawyer, their work will be ‘neutral’, ‘technical’ and ‘outside’ of themselves. This message obfuscates the lawyer’s active role in shaping the law, and their responsibility for the human impact of their decisions. The dominance of the commercial paradigm is reinforced by the ‘pedestaling’ of clerkships and graduate opportunities in corporate practice when compared with alternative careers.

The following comment powerfully illustrates the impact of the curriculum’s inferiorising of non-commercial/doctrinal legal study. The author (who differed from the majority view in that s/he desired more commercial courses), distinguishes international, environmental and social justice courses from ‘legal’ courses, referring to them instead as ‘public policy’:

[There is a] lack of practical electives, particularly commercial and black letter law electives . . . Sadly there are far too many international / environmental / social justice courses and not enough legal courses. I can take 4 Human Rights Courses, 3 Environmental courses... but not restitution, private international law, advanced contract, advanced corporate, banking and finance ... and commercial transactions, trade marks and passing off ... If I wanted to graduate with a degree in critical feminist international environmental public policy I would be in heaven.⁸⁴

In contrast to these comments, many students expressed their dismay at the lack of intellectual inquiry into the historical, social, political and cultural content of the law:

I expected more of a profession than a vocation/business pursuit.⁸⁵

For people who don't want to be lawyers the black letter law is painful. Law is a DIY part of our society [and] not just for people practicing as lawyers.⁸⁶

One of the features I noticed at the law school is the focus on working in a firm. Certainly that seems to be the end result that most instructors talk about in lectures and tutorial. ... I feel that there is not enough focus on alternative employment ... I'm sure there are students like me for whom work in a firm is not a desirable position.⁸⁷

By far the best classes I had involved assessment that gave students the opportunity to engage critically with legal issues in a way that went outside problem questions.⁸⁸

⁸⁴ Survey respondent No. 284, 3rd year LLB.

⁸⁵ Survey respondent No. 325, 1st year LLB.

⁸⁶ Survey respondent No. 1, 4th year LLB.

⁸⁷ Roman Dzioba (JD Student), submission in response to *Issues Paper*.

⁸⁸ Comment posted by a student to the Law School Reform Facebook group.

*I am afraid that those who enter law with any idealism and desire to do good or any interest in the historical and social context of our legal system will find little for them at the ANU.*⁸⁹

*[There is] insufficient engagement with critical perspectives in black letter courses.*⁹⁰

*I feel that everything I study for is very exam based/focused. Much of all this is theory rather than reflect[ion] on the law itself. I feel that I am expected to accept, learn, memorise for exams.*⁹¹

*It didn't engage me as much as I thought it would. I do fine academically, I just wish it made me want to learn more, that the college fostered the pursuit of excellence and of deep thought, rather than just scraping through with credits.*⁹²

Finally, students noted the absence of opportunities to develop the kinds of personal skills that are crucial for legal professionals, good citizens – and indeed every human – to possess. They found there was little attention given to the development of empathy, personal morality and values (distinguished from an overview of the rules of legal ethics, as offered in the first year course “Lawyers Justice and Ethics”), and the capacity for creativity and imagination (both legal and empathetic):

*[Law school] ticked the boxes but is not personally fulfilling. Certain classes with international/rights focus have impassioned me, but core courses just have to be done to get my degree.*⁹³

*...the experience was rather disheartening and disappointing.*⁹⁴

*Law seemed cruel.*⁹⁵

Connected to these issues, students noted the absence of opportunities for civic engagement. The fact that civic participation in the community is outside of the curriculum, or contained in clinical programs that only offer placements to a small fraction of students, means that there is little chance for students to connect with the human impact of legal practice. Liz Coleman, the president of Bennington College in the US, explains how this trend has surfaced in a range of social science disciplines, including law. She notes the dualistic thinking that such an approach engenders:

This stopping short of engaging policy issues would be less likely were these experiences deeply connected to what is going on

⁸⁹ Survey respondent No. 360, 4th year LLB.

⁹⁰ Survey respondent No. 310, 4th year LLB.

⁹¹ Survey respondent No. 67, 2nd year LLB.

⁹² Survey respondent No. 38, 2nd year LLB.

⁹³ Survey respondent No. 1, 4th year LLB.

⁹⁴ Survey respondent No. 90, 5th year LLB.

⁹⁵ Survey respondent No. 367, 2nd year LLB.

inside the classroom, but they are pointedly not. Community service programs remain emphatically extracurricular and, despite all the fuss made about them, they have had no impact on what goes on within the curriculum. The reason given is that the arena of civic activism is not intellectually rigorous enough to enter the curriculum. Moreover, one is told, even if it were, there is no space; as it is, there is barely enough time to cover the fundamentals of one's field. In effect, the refusal or failure to integrate service into the curriculum locates civic mindedness outside the realm of what purports to be serious thinking and the real business of an education.

... Meanwhile the messy world of politics remains inadequately explored—with its inevitable clashes of interests and perspectives, its need for values that can prevail in a world where goods compete and compromise is an achievement, a world where trade-offs replace the world of yes or no, up or down, good or bad.⁹⁶

Curriculum: correlation with assessment

A key concern (raised in many submissions and at the forum) was the lack of correlation between what students are taught and how they are assessed. As mentioned above in the discussion on teaching methods, only 35% of later year students answering the survey felt that there was a correlation between their course participation and their final mark.

While students opposed the dominant approach of rote-learning black letter law, many requested that, while this system remains, then they would like to at least be taught the skills necessary to succeed in it. For example:

For students studying Arts courses, the Academic Skills and Learning Centre offers a wide range of comprehensive courses on essay writing, reading management, and note taking techniques. However, in Law, where the skills required are different, very little guidance is offered to first year students. Why is there not ... the opportunity to be taken through the process of writing problem question responses, studying for law exams, writing summaries?⁹⁷

Refer to Chapter 2.2.4 to 2.2.5 for a more detailed discussion of assessment. See also Chapter 3 for a discussion of the effect of assessment on student wellbeing.

⁹⁶ “The Bennington Curriculum: A New Liberal Arts”: Speech by Elizabeth Coleman, President of Bennington College. Delivered at the Celebration of Bennington College’s 75th Anniversary on 6 October 2007.

⁹⁷ Comment posted by a student to the Law School Reform Facebook group.

Recommendations

The above discussion demonstrates the urgent need for curriculum reform at the ANU College of Law. Law School Reform recommends that the College:

- **Increase practical learning experiences within the curriculum.** We recommend greater specific practical opportunities (i.e. clinical programs and other opportunities for civic engagement) but also, as outlined in the earlier discussion on pedagogy, greater integration of practical learning across the curriculum (i.e. submissions, negotiation and advocacy as assessment, particularly in compulsory courses).
- **Restructure the curriculum to achieve a greater balance between doctrinal material and the study of law in a social, political, historical and cultural context.** We acknowledge that commercial knowledge and doctrinal knowledge are part of a comprehensive legal education. However, the dualistic construction, whereby commercial courses dominate and other vital areas of legal understanding are marginalised, has a profoundly damaging impact on students' legal understanding and needs to be corrected.
- **Better integrate learning and assessment.** A much stronger connection is needed between what is taught and what is assessed.

While many students reject the dominance of current exam-based assessment, if this is to continue, we recommend that exam preparation be integrated into first and second year courses.

In particular, we recommend that the College conduct a comprehensive review of its assessment policies (see below).

2.2.4 Assessment: Relevance, feedback and transparency

...institutional assessment efforts should not be concerned about valuing what can be measured but, instead, about measuring that which is valued.⁹⁸

⁹⁸ Banta, T. W., Lund, J. P., Black, K. E., & Oblander, F. W. (1996) *Assessment In Practice: Putting Principles To Work On College Campuses*, 5.

Assessment relevance and correlation to graduate attributes

How should law schools measure learning?

Student frustration with the main modes of assessment at the ANU College of Law was a major theme throughout the Law School Reform consultation process. A key concern was that assessment, the area to which students naturally devote the most time and energy, often bears little relationship to their learning and the characteristics they wish to develop as law graduates.

The ANU College of Law has documented a comprehensive list of graduate attributes that, if achieved, would produce well-rounded, high quality and highly employable graduates. Students, however, question the extent to which these attributes can be achieved using currently dominant assessment methods.

One key concern was large, heavily weighted pieces of assessment (particularly exams) which discourage engagement with course material:

[In] classes which have 'optional' assessment and potentially 100% exams, uni becomes about just learning to pass exams which is completely different from actually learning the law (i.e. not engaged).⁹⁹

Students actively ignore any course content which moves beyond what they know they will need for their exam summaries, and what they know they can regurgitate in those three hours at the end of semester.¹⁰⁰

As an alternative, students suggested that more continuous assessment would be preferable:

Continuous assessment might also aid in this regard, changing the fairly common phenomenon of even high achieving students not engaging with the course until late in the semester as exams approach.¹⁰¹

I do not like the 'two assessment items per semester' model that seems to be the status quo in most courses. A more continuous mode of assessment would be more engaging.¹⁰²

In addition, many students also question whether the assessment tasks they undertake will really assist them in achieving the skills they will need, whether as a lawyer or in any other profession. Comments concerned the lack of practical, team-work and oral communication activities engaged in and assessed at the ANU College of Law.

⁹⁹ Comment posted by a student to the Law School Reform Facebook group.

¹⁰⁰ Comment posted by a student to the Law School Reform Facebook group.

¹⁰¹ Comment posted by a student to the Law School Reform Facebook group.

¹⁰² Comment posted by a student to the Law School Reform Facebook group.

*In 6 years, I have done one oral presentation and a handful of essays. I don't feel my ability to communicate has been developed by my law school experience at all.*¹⁰³

*...students who complete an ANU law degree lack certain skills essential to success in the legal profession. Most importantly is the need for students to develop the confidence and skills necessary to deliver spoken material: whether it be court submissions, power-point presentations etc. Even the ability to articulate oneself is essential in the workplace. Development of these skills is neglected in the current ANU program.*¹⁰⁴

These concerns reflect the limited variety in assessment offered at the ANU College of Law. Where the dominant forms of assessment are individualistic exams and essays, it is impossible for students to gain the skills they will need in communicating within a workplace, with clients or in broader public settings.

Recommendations

In creating greater correlation between the ANU College of Law's graduate attributes and the qualities students actually possess at the completion of their degree, Law School Reform recommends:

- **Courses at the ANU College of Law offer greater variety in assessment.** Assessment should develop the full range of competencies and skills identified in the ANU College of Law's graduate attributes document. In particular, students desire **greater use of group work, oral assessment and practical assessment.**
- **A greater variety in the forms of written assessment is required.** Assessment needs to move beyond take home exams and essays, and include case notes, written submissions, policy documents, reports and reflections.

In addition, Law School Reform suggests that:

- **Achieving the development of graduate attributes requires a holistic LLB approach to assessment,** rather than an approach where assessment is determined course by course with no reference to the broader goals of the degree program as a whole.

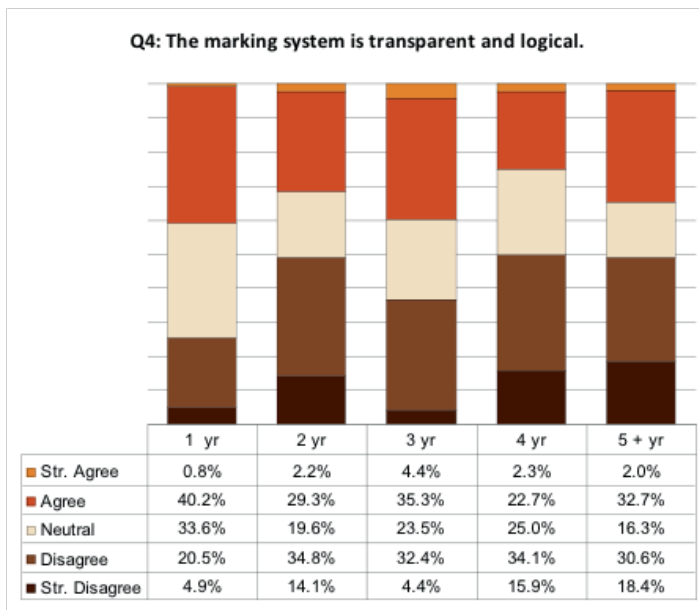
¹⁰³ Survey respondent No. 261, 5th year LLB.

¹⁰⁴ Emma Lee, submission to Law School Reform report.

Assessment feedback and transparency

I think there is a perception that marking in [law school] is arbitrary. Many students have said to me that their best marks have come from assignments they have worked the least on, and there is a real feeling that genuine hard work is often not rewarded.¹⁰⁵

Law School Reform's student survey revealed that students do not have faith in the assessment system used at the ANU College of Law. One respondent put it simply: 'Marking is pretty mysterious'.¹⁰⁶ It is a telling criticism that of 375 survey respondents, a majority did not agree that the College of Law's marking system was transparent and logical:



As well as questioning the transparency and logic of the College's assessment system, students pointed out that what they were told would help them excel at law school (attending lectures, completing set reading and completing your own summary) was not what really helped them do so (at least, if excelling at law school is equated with achieving strong grades).

At the forum, a number of students expressed the opinion that having access to a good summary, past exam papers, and a good study group in the weeks leading up to the exam was more important than attending lectures or doing the reading. One survey respondent wrote:

¹⁰⁵ Comment posted by a student to the Law School Reform Facebook group.

¹⁰⁶ Survey respondent No. 335, 3rd year LLB.

*Grades sometimes seem inconsistent with comments and marks often seem inconsistent with what was emphasised as being important to do well.*¹⁰⁷

Comments such as these highlight two key areas of student concern relating to assessment:

- A lack of transparency **prior** to marking – unclear assessment criteria
- A lack of feedback **after** marking – non-existent or limited guidance on how improvements could be made.

Several students commented that they had decided at some point in law school that they were (in some intrinsic sense) a ‘pass student’, a ‘credit student’, or a ‘distinction student’. Once they came to this conclusion they accepted the particular grade that they thought they ‘deserved’, and did exactly enough work to achieve that grade from there on. One first year student criticised the lack of feedback she received for assessment tasks. She received poor grades in her first year with no clear indication of why. She went on to say:

*Even if you're willing to work hard and want to continue with law school after one semester, you'll feel discouraged or disheartened because you think that it's not for you. The law school method of teaching makes it seem like either you have the natural ability to do law or you don't.*¹⁰⁸

Another student highlighted the frustration caused by lack of transparency in undertaking assessment:

*[I] have no idea what lecturers are actually looking for in assessments . . . much guesswork is required.*¹⁰⁹

In relation to feedback, the ANU College of Law’s Policy on Assessment in Undergraduate Courses¹¹⁰ provides that ‘[s]tudents are to receive timely feedback on assessment tasks to enable them to gauge their progress and improve their performance.’ The policy recognises feedback as a crucial part of learning. However, as discussed above, students do not see the marking practices of the College of Law as transparent or legitimate. For example:

One of the greatest weaknesses of law school is that students don't know what expectations are in assessment. [Another is] arbitrary marking in assessments and exams, and not knowing how exams

¹⁰⁷ Survey respondent No. 329, 1st year LLB.

¹⁰⁸ Anonymous submission to Law School Reform report.

¹⁰⁹ Survey respondent No. 117, 2nd year LLB.

¹¹⁰ ANU College of Law (2010) *Policy on Assessment in Undergraduate Courses*, available online at

<http://law.anu.edu.au/undergraduate/PDFs%20for%20Undergrad%20Policy/Assessment_Form_and_Procedures_2010.pdf>.

*and assessments are marked. Such details are mostly kept private.*¹¹¹

[The ANU College of Law requires] a more open marking system, so that students can see why their hard work is not being rewarded, and what they could have done better.

In their submissions for this report and responses to the Law School Reform survey, students acknowledged the time pressure that teachers face. In an ideal world, fewer assessment pieces to mark or more marking resources would facilitate more feedback.¹¹² Overall, however, students have identified a clear need for greater transparency and feedback in relation to assessment.

Recommendations

We suggest that if assessors did not need to precisely rank students as they do now,¹¹³ then time that is currently spent ranking and scaling students, dealing with complaints and appeals, and constructing assessment tasks that can stand up to appeal would become available to allow more substantive feedback to be given.

Some students suggested that the risk of appeals against poor grades creates an incentive for markers to provide minimal feedback:

*Lectures and tutors seem to be hesitant to give comprehensive feedback in returned assessment pieces for fear of getting it wrong.*¹¹⁴

However, even within the constraints of current policy and resourcing, we have identified a number of ‘best practice’ feedback practices used in the ANU College of Law that could be implemented to improve feedback and transparency across the board.

Policies should encourage assessment to be linked to each course’s objectives in a way that is specific to the course. A copy of a draft course outline template provided by the Curriculum Renewal Taskforce requires a link between each item of assessment’s marking criteria and the course’s objectives. It also requires explicitly stated criteria for assessment. We fully support this initiative.

To provide better feedback following marking, a simple measure would be to provide a ‘**marking rubric**’ to students with their assessment following marking. This rubric would indicate how students performed in relation to each

¹¹¹ Survey respondent No. 14, 3rd year LLB.

¹¹² It is also worth noting that other law schools provide longer periods for lecturers to mark exams – for example, the University of Sydney provide eight days more than the ANU.

¹¹³ For example, by adopting a pass/fail grading policy such as those applied in many top US law schools including Yale, Harvard, and Columbia.

¹¹⁴ Survey respondent No. 280, 3rd year LLB.

assessment criterion. For example, students could be ranked on a scale between 'poor' and 'excellent' for each criterion, which might be broad measures such as 'clarity of expression', 'strength of argument', 'use of appropriate sources', and specific substantive criteria, such as 'addressed contributory negligence issue', 'discussion of rule in *Jones v Dunkel*'.

Best practice case study: Litigation final exam, Semester 1 2010.

Feedback provided in the Litigation and Dispute Management end of semester exam provides an example of how feedback could be improved without requiring additional marking resources.

Each exam paper was returned with written comments in the margin, together with a formal marking rubric for each piece of assessment. The rubrics returned each had different criteria. The assessment rubric for the essay listed general skills. The problem question rubric focused instead on substantive law.

While there was no clear numerical relationship between the mark students got for each individual assessment criteria, the provision of this feedback made it clear where students had done well and where they could work to improve. It also provided insight in to exactly what examiners were looking for.

2.2.5 Assessment: Grading policies and the 'bell curve'

Probably the most pervasive issue of student concern throughout Law School Reform's consultation was the College of Law's system of grading. Student opinion on this issue ranged from confusion and frustration to anger and questions about the system's legitimacy. For example:

*Are we being marked on a bell curve? What is the median for a given piece of assessment? What do we need to get a certain mark?*¹¹⁵

*It seems to me that a typical student that gets into the ANU Law School is pretty exceptional and has achieved a significantly high mark either in their Year 12 or previous university studies. You just don't get in otherwise. However, broadly speaking, once students get to the ANU the system [is represented by] inflexible assessment, poor teaching and course work frameworks that are not conducive to supporting, recognising, nurturing and developing these talents. Further, any knowledge or experience these students may bring to the law school is unrecognised or is devalued. Systems and processes should be designed to provide an environment in which all students are able to excel and be recognised for what they bring to the law school as well as their diversity.*¹¹⁶

¹¹⁵ Survey respondent No. 198, 1st year LLB.

¹¹⁶ Kate Leonard (JD Student), submission in response to the *Issues Paper*.

The ANU's policy with respect to the distribution of grades within undergraduate courses is set out in the college's LLB/JD Handbook. Individuals are given numerical marks for assessment tasks they complete throughout the semester. The sum of these marks can range from 0 to 100. On the basis of the total mark achieved, grades are assigned to according to the scale shown in Table 2.1.

However, a degree of complexity is added to this otherwise simple process by the ANU College of Law's grade distribution policy, which states that assessment results should conform to the guidelines also shown in Table 2.1.

The requirement for marks to be allocated in this pattern is referred to as 'banded grading'. Despite attempts to brand this policy as such, it is known to students as '**the bell curve**' (amongst 375 survey responses, no student used the term 'banded grading').

Table 2.1: Grading system at the ANU College of Law

Grade	Mark	Allowable distribution of grades
High Distinction (HD)	80-100	2-5% of candidates
Distinction (D)	70-79	10-20% of candidates
Credit (C)	60-69	30-50% of candidates
Pass (P)	50-59	No allocated target
Fail (N)	0-49	No allocated target

While there is 'no allocated target' for Pass or Fail marks, since 25% of students are excluded from the other categories, at least 1 in 4 students must score between 0-59.

It should first be pointed out that the **ANU is in the minority of Australian law schools in applying a rigid banded grading policy**. Indeed Table 2.2 (overleaf) summarises the diversity of grading policies found in a selection of Australian law schools.

Table 2.2: Grading systems (and use of 'banded grading') at other law schools

	ANU ¹¹⁷	University of Sydney	UNSW	University of Technology, Sydney	The University of Newcastle	Macquarie University
Numerical grades	HD – 80%+ D – 70-79% C – 60-69% P – 50- 59%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%
Distribution of Grades (grading 'bands')	HD – 2-5% D – 10-20% C – 30-50%	<i>1st year</i> HD – 3% D – 14% C – 42% <i>Senior Years</i> HD – 4% D – 18% C – 50%	No scaling	No scaling	No information available	No scaling
Notes		'Proportions should not be interpreted too literally, particularly with small numbers of students or in units that traditionally set exceptionally high academic standards. The proportions should apply at highly aggregated levels.' ¹¹⁸	'The proportion of marks lying in each grading range is determined not by any formula or quota system, but by the way that students respond to assessment tasks and how well they meet the objectives of the course.' ¹¹⁹	'Grades are based on a student's level of performance in achieving learning objectives (criterion-referenced assessment, not on the number of other students who achieve a particular grade (norm-referenced assessment).' ¹²⁰		'Grades will not be awarded by reference to achievement of other students nor allocated to fit a predetermined distribution.' ¹²¹

¹¹⁷ ANU College of Law, *LLB/JD Handbook 2010*.

¹¹⁸ The University of Sydney, *Academic Board Resolutions: Assessment and Examination of Coursework*, <<http://www.usyd.edu.au/ab/policies/Assess Exam Coursework.pdf>> at 22 August 2010, Part 3.2. Distribution of Grades.

¹¹⁹ The University of New South Wales, *Results: Guide to UNSW Grades*, <<https://my.unsw.edu.au/student/academiclife/assessment/GuideToUNSWGrades.html>> at 22 August 2010.

¹²⁰ University of Technology Sydney, *Policy for the Assessment of Coursework Subjects*, <<http://www.gsu.uts.edu.au/policies/documents/assessment-coursework-policy.pdf>> at 22 August 2010, Part 4.1 - Assessment is learning-focused and criterion-referenced.

¹²¹ Macquarie University, *Grading Policy*, <http://www.mq.edu.au/lc/pdfs/053_Grading_Policy.pdf> at 22 August 2010.

	The University of Melbourne	Monash University	The University of Queensland	The University of Adelaide	The University of Western Australia	University of Tasmania
Numerical grades	H1 – 80%+ H2A – 75-79% H2B – 70-74% H3 – 65-74% P – 50-64%	HD – 80%+ D – 70-79% C – 60-69% P – 50- 59%	HD – Grade 7 D – Grade 6 C – Grade 5 P – Grade 4 F – Grade 1-3	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%	HD – 80%+ D – 70-79% C – 60-69% P – 50- 59%	HD – 85%+ D – 75-84% C – 65-74% P – 50-64%
Distribution of Grades	No requirement to distribute grades.	Varies	No scaling	No scaling	HD – 4-10% HD + D – 25-40%	No scaling
Notes	‘This policy does not require all subjects to conform to a specific distribution of grades, however to ensure consistency and equality of outcomes, and noting that, over time, assessment must allow discrimination of performance based upon results.’ ¹²²	‘When a Chief Examiner determines that scaling of marks is required ..., he/she must provide to the Board of Examiners ..., a justification for the scaling and the method used to adjust the marks.’ ¹²³	‘The university uses criterion-referenced assessment as the method to explicitly define the relationships between summative assessment and the (i) learning objectives, (ii) standards to be met (iii) performance expectations held of students, and (iv) award of grades.’ ¹²⁴	‘Ensure an individual student’s marks are determined by reference to their performance against pre-determined criteria and standards linked to the specified course learning objectives and not by ranking against the performance of the student cohort.’ ¹²⁵	‘The Law School applies a mandatory graded percentile scale for final grades in all LLB units of 30 students or more.’ ¹²⁶	‘... implementing this policy and practice (criteria-referenced assessment) across the University will achieve fundamental benefits for all students and staff alike.’ ¹²⁷

¹²² The University of Melbourne, *Assessment Policy*, <<http://www.services.unimelb.edu.au/policy/downloads/AssessmentPolicy.pdf>> at 22 August 2010, ch 24 - Distribution of Grades.

¹²³ Monash University, *Assessment in Coursework Programs Policy - Unit Assessment Procedures*, <<http://policy.monash.edu.au/policy-bank/academic/education/assessment/unit-assessment-procedures.html#marking>> at 22 August 2010, Part G4 - Marking, Grading and Results: Distribution of Grades.

¹²⁴ The University of Queensland, *Handbook of University Policies and Procedures*, <<http://www.uq.edu.au/hupp/index.html?page=25109&pid=0>> at 22 August 2010, Policy No. 3.30.1 – Assessment.

¹²⁵ The University of Adelaide, *Assessment for Coursework Programs Policy*, <http://www.adelaide.edu.au/policies/700/#_Marking_assessments> at 22 August 2010, Procedure No.5b.

¹²⁶ The University of Western Australia, *Faculty of Law - Assessment Policy*, <<http://www.law.uwa.edu.au/students/policies/assessment#awards>> at 22 August 2010, Part 1 - Award of Grades and Marks.

¹²⁷ University of Tasmania, *Guide to Good Assessment*, <<http://www.assessment.utas.edu.au/docs/guide-for-good-assessment.pdf>> at 22 August 2010, ch 2 - Adopting a Criterion-Referenced Approach: University of Tasmania, *Assessment - Teaching & Learning*, <<http://www.teaching-learning.utas.edu.au/assessment/>> at 22 August 2010.

Of the twelve law schools that Law School Reform investigated, only three have a banded grading policy (ANU, the University of Sydney, and the University of Western Australia).

The procedure by which grades are moulded to fit the targets set out in Table 2.1 is sketched out in the LLB/JD Handbook.¹²⁸ The Handbook states that it is ‘the responsibility of the examiners in a course to ensure that the final assessment of students in that course conforms as nearly as possible to these guidelines.’ Moderation of marks ‘should be undertaken by the examiners before submitting the examination returns for consideration by the Examiners’ Meeting and approval by the Dean.’

A peculiar characteristic of the ANU policy is that scaling occurs at the course level through methods that are at the discretion of the individual course convenor. It is for the course convenor to apply the policy, and then argue that his or her overall results are consistent with the policy in the College’s examiners meeting. Because scaling is done at the course level through methodologies not described in college policy, there is no guarantee of consistent scaling methods across courses or years. Some students reported remarkable outcomes because of the application of this policy; for example, one 5th year student reported that they received the following feedback on an exam paper:

*If there had been a different cohort I would have given this a D, but I am already over my quota so you got a 69.*¹²⁹

While this anecdote cannot be verified, this sort of scaling practice is remarkable. In reality, the lack of transparency and consistent policy around marking means that there are no guarantees that scaling occurs in an equitable manner.

Some students welcome the banded grading policy. To these students, banded grading can be beneficial; if the whole cohort performs poorly on an objective measure, those students who perform the *least* poorly will still achieve distinctions and high distinctions. When asked in the survey to nominate the greatest strength of the law school, one respondent suggested:

*The bell curve, when it works to your benefit.*¹³⁰

Consider two hypothetical courses. In the first, as a result of excellent teaching and course construction, the majority of students became engaged and interested in the courses’ subject matter, completed all required reading, and participated in class discussion. Through a process of peer and lecturer-led review, students refined their thinking and their work. At the end of semester, the majority of students handed in exceptional assessment pieces. In another

¹²⁸ (2010) p 55.

¹²⁹ Survey respondent No. 132, 5th year LLB.

¹³⁰ Survey respondent No. 138, 4th year LLB.

course, only a handful of students attended lectures, few completed the reading, and most produced mediocre final papers.

Applying the banded grading policy, the grade profile of these two courses would be identical, or at least similar.

In contrast, if grades were allocated based on how well students achieved set assessment criteria, the quality of teaching would also be reflected in grades achieved. Not only would grades better reflect how much students have learnt (in an objective sense, as opposed to in comparison to their cohort), better teaching would be encouraged and could be recognised.

One student summed up their concerns as follows:

In a previous degree my uni had criteria-based marking, which was much better than the ANU's bell curve. Marking to strict criteria forced the markers to justify their marks: something noticeably absent from ANU. If the ANU is concerned that criterion-based marking would undermine the reputation of an ANU law degree, remember that the bell curve works both ways: if the class is stupid or lazy then average students will get undeservedly high marks.¹³¹

Many students called for greater transparency and explanation of the College's grading policy. While improving transparency would be a good start (for example, by explaining the grading policy to first years student and publishing the grade results of courses), transparency is not enough if the policy itself is flawed.

Another important point made by several survey respondents concerns the effect of banded grading on ANU graduates compared to graduates at other universities. For example, an HD at the ANU is an 80 compared to an 85 at the University of Sydney, the University of NSW and Macquarie. The result is that ANU students have a lower numerical average at the completion of their degree. In a large and competitive workforce, and particularly outside traditional areas of legal practice, the reason for this difference is unclear to employers and serves to disadvantage ANU graduates. One attendee at the forum made the following claim:

Freehills cut off clerkship applications at a 78 average last year. [...] The ANU's problem is that the bell curve means our marks don't compare with those at other unis. No ANU students got Freehills interviews as a result.

Recommendations

Throughout this process grading policy has been a key point of discussion and critique – both amongst staff and student attendees at the forum, and in student survey responses and written submissions. **The weight of student opinion is**

¹³¹ Survey respondent No. 342, 3rd year JD student.

that banded grading is undesirable. Staff opinion is divided, but a number of staff at the forum put strong arguments against this policy; those who defended it seemed to do so out of a desire to maintain stability, the status quo, and to provide better information to graduate employers.

Some staff at the forum went further than calling for the removal of banded grading, and argued for a move away from numerical grading altogether, towards a pass/fail system of grades, where the emphasis is on *teaching* rather than *ranking*.

Given the importance of this question, and the fact that it is outside the scope of the curriculum renewal, it should be examined through a separate process conducted by the ANU College of Law in 2011.

This process should be conducted by the College with broad student engagement; not tokenistic student representation. It should be conducted through a working group (such as the curriculum renewal working group) constituted of legal academic staff and educational experts, with the objective of making a recommendation to the Dean for assessment reform.

As well as engaging and consulting with students throughout the process, consultation should be conducted with key stakeholders including ANU law graduates, graduate employers, and members of the profession. This process should consider:

- The impact of existing and alternative grading policies on educational outcomes, law school culture, and student wellbeing;
- Whether the benefits of ranking students outweigh the costs (in lecturer time, impact on culture and wellbeing,¹³² and impact on educational outcomes);
- Best practice assessment policy, within Australia and internationally.

First, this task force would develop a specific policy paper on the holistic purpose of assessment (for example, is assessment to achieve the objective of the course, to reinforce learning, to encourage critical thinking, or simply to rank students?). Many other law schools have policies of this nature,¹³³ yet it

¹³² ‘The marking system encourages an unhealthy level of competitiveness. While some competition is good, students get very hung up on how they fit within the bell curve and this can be psychologically destructive.’ – Survey respondent no. 2, 5th year LLB student.

¹³³ See links in university comparison table above. The University of Sydney, one of the few universities with a banded grading policy, provides a policy outlining its reasons for retaining banded grading. Many other universities (for example, the University of Tasmania) justify their preference for criterion referenced grading in

appears that neither ANU nor the College of Law do. It is only by having a specific plan that the law school can avoid being, as one student at the forum described it, ‘a headless snake’, blindly changing its policy without specific aims.

Second, it would develop a new grading policy for the ANU, which reflects its strengths, weaknesses, and its strategic focus and direction.

A number of possibilities could be considered:

- Adoption of a pass/fail grading system¹³⁴ – possibly including an ‘honours pass’ and a ‘low pass’ grade to represent truly exceptional or borderline performance;
- A move, within the current grading system, from banded grading to a criterion-referenced marking scheme;
- A review of the numerical grades awarded to ANU law graduates compared to other universities, and the impact that these grades have on employment prospects for ANU graduates.

Our view is that policies should be adopted which have education as the primary objective of assessment. Ranking, where it is necessary, should always be of secondary importance. We believe that moving the focus of assessment away from ranking students would, in the words of Elena Kagan, ‘promote pedagogical excellence and innovation and strengthen the intellectual community’ of the ANU College of Law.¹³⁵

The emphasis of undergraduate education should be on learning, not on competition. As one ANU lecturer commented:

This is not a journey where we arm students with a map and a compass, drop them in the wilderness, and give a prize for the first one home. This is a journey we travel with them, clearing the path ahead, holding back to let them go ahead, offering them a steadying hand, coaxing them on narrow bridges over deep ravines, exhorting them to climb steep hillsides.¹³⁶

In addition, it should surely be the goal of a great teacher to ensure that all or at least most of their students achieve to a high standard; particularly when those students had to demonstrate strong intellectual capacity to be at law school in the first place. As Benjamin Bloom put it:

depth. The ANU, by contrast, seems to have banded grading ‘just because’ with no clearly articulated reason.

¹³⁴ As in top US law schools including Harvard, Yale, Colombia, Brown, etc.

¹³⁵ Elena Kagan (2008), email to all Harvard staff and students announcing Harvard’s move to a pass/fail grading system.

¹³⁶ Simon Rice (2007), *Assessing – But Not Grading – Clinical Legal Education*, Macquarie Law Working Paper 2007-16.

*There is nothing sacred about the normal curve. Education is a purposeful activity and we seek to have the students learn what we have to teach. If we are effective in our instruction, the distribution of achievement should be very different from the normal curve. In fact, we may even insist that our educational efforts have been unsuccessful to the extent to which our distribution of achievement approximates the normal distribution.*¹³⁷

With its position as a leading Australian law school, its stated focus on social justice and law reform, and the fact that many students at the ANU have ‘non-traditional’ career objectives, ANU is in a strong position to take the lead in this area.

2.3 Conclusion

An analysis of staff and student opinion reveals serious concerns about key aspects of the pedagogy, curricula and assessment at the ANU College of Law.

Teaching methods, characterised by large group learning and didactic, lecture style tutorials, encourage passive learning and disengagement. Students feel that their teachers are unapproachable and that the help they need is inaccessible. They also report a lack of accountability in teaching, perceiving the current evaluation forms as lacking legitimacy. More positively, students praised the personal qualities of their teachers and were deeply appreciative of those who had made time for them.

The **curriculum** was critiqued for its focus on doctrinal learning at the expense of other areas. Students called for more practical activities – which were distinguished from narrow, vocational skills training – so that they could develop skills such as oral communication, negotiation, interview skills and specific techniques required for alternative dispute resolution.

The **lack of connection between what students learn and how they are assessed** was a cause of wide frustration. While students call for an end to the dominance of rote learning black letter law, they make the point that, if this system is to remain, then they should at least be taught how to succeed in it.

The **dominance of commercial, doctrinal law** was a cause of deep disappointment to many students and staff. Of particular concern was the implicit message that commercial/doctrinal legal knowledge is ‘more legal’ than knowledge of law’s social, political, cultural and historical role.

Provision of feedback was considered poor, and there was perceived to be very little clarity in assessment criteria. An immediate step to improve this

¹³⁷Benjamin Bloom (1968) UCLA CSEIP Evaluation Comment, Volume 1, Number 2, available at <http://www.cse.ucla.edu/products/evaluation/cresst_ec1968_m.pdf>.

would be by the use of marking rubrics for all assessments, and by making an explicit link between course objectives and assessment in the course outline.

At present, **assessment policies** do not appear to be structured with learning as their key objective. Accurate ranking of students appears to be a higher priority than effective teaching – and this must change. Law School Reform strongly recommends that the College conduct a **formal review of its assessment policies** and practices in 2011. This review should focus particularly on grading policies, and look to leading law schools around the world for inspiration.

Chapter 3

Law school culture and student wellbeing

*My first year was honestly one of the most depressing years of my life. I had to get counselling. Law seemed cruel.*¹³⁸

3.1 Introduction

Law students suffer from high levels of psychological distress compared with their counterparts in other disciplines. A recent study by the Brain and Mind Institute found that up to 40% of law students suffer psychological distress serious enough to need clinical treatment - and that 80 percent of students who suffered depression described study pressure as a substantial contributor to their depression.¹³⁹ Law School Reform's quantitative and qualitative findings support these findings.

This chapter will canvass our findings regarding how students feel about their legal education. Interestingly, our findings revealed a disparity between how students rate their law school experience (with a majority saying it was positive overall) and how it has made them feel about themselves (with a majority disagreeing or strongly disagreeing that law has improved their self esteem). This chapter will look at areas previously explored in this report from the perspective of student welfare. An analysis of these findings will follow, exploring the causes of depression suggested in qualitative student submissions.

This section of the report represents a considerable section of the College's student population. It particularly concentrates on the areas of concern for students, and will provide recommendations aimed at improving student wellbeing at the ANU College of Law.

3.2 Problems and issues in law school culture

3.2.1 *The method: Wanting to learn, not knowing how*

I didn't have clear expectations at the outset as I was ignorant of the experience, but as the years went on, law school became more and more about just passing and getting through, rather than

¹³⁸ Survey respondent no. 367, 2nd year, LLB.

¹³⁹ Norm Kelk et al (2009) *Courting the Blues: Attitudes towards depression in Australian law students and lawyers*.

*actually engaging with the courses. This meant the experience was rather disheartening and disappointing.*¹⁴⁰

Considerable distress and anxiety is suffered by law students due to insufficient guidance, assistance and feedback during their legal education. Students, particularly first, second and third years, identified the absence of feedback on assessment as a key problem at the law school. Comments most frequently related to the lack of advice and guidance on how to answer problem questions, as well as on developing legal writing skills when beginning their degrees.

These students were disheartened that, despite their continuous commitment and increasing effort, improvement often seemed impossible in the face of insufficient feedback.

*How law is taught at the ANU makes me feel like it's either you get it or you don't, meaning that even if you are willing to work hard and want to continue with law after year one, you'll feel discouraged or disheartened because you'll think that it's not for you.*¹⁴¹

Students identified the absence of a dedicated legal writing course, inaccessibility of lecturers and tutors for guidance, lack of examples of high quality answers/assignments for some courses, lack of meaningful feedback on assignments and unclear marking systems as causes for their dilemma. One student identified the 'greatest weakness' of the College of Law as:

*Little introduction and explanation on how to actually study law.*¹⁴²

Some students indicated that they were accustomed to achieving high marks, and as such, achieving less than they expected of themselves at law school was a personal cause of distress which needed to be dealt with.

*Failing every paper I've turned in and receiving passing marks for my final grades was a really big blow because I've always gotten HDs.*¹⁴³

Such students often reported that the desire and drive to improve academically was particularly strong on account of wanting to satisfy their high expectations of themselves. Often such extra effort and work came at the expense of other life commitments and balances but without the desired positive results in academic achievement.

*It's not a pleasant experience having to work so hard and have no life because you're too busy studying and to still fail. It's like working overtime, all the time, and being underpaid.*¹⁴⁴

¹⁴⁰ Survey respondent No. 90, 5th year LLB.

¹⁴¹ Written submission in response to the *Issues Paper*.

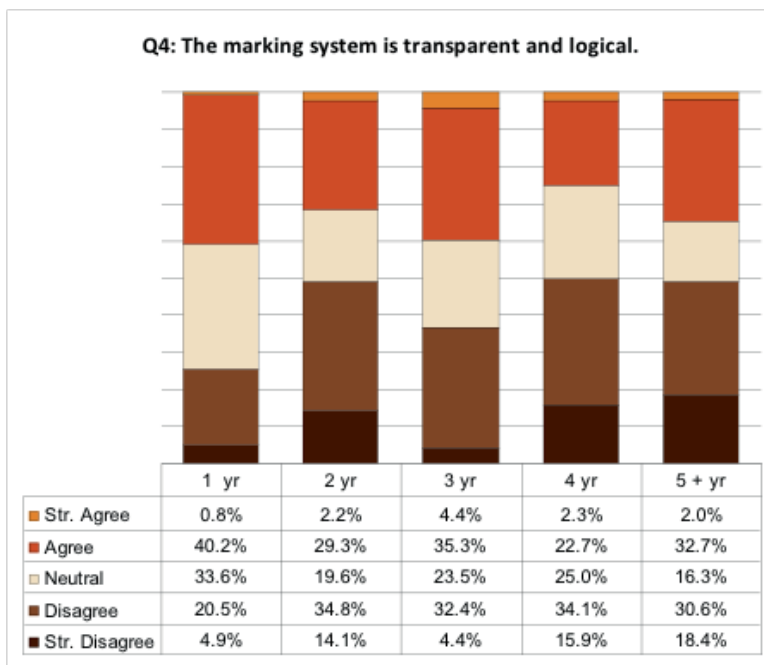
¹⁴² Survey respondent No. 364, 4th year LLB.

¹⁴³ Written submission in response to the *Issues Paper*.

These students seemed very willing to dedicate extra time and effort to their studies, however the lack of varied problem-solving assistance, legal-writing guidance and content explanation lead them to feel as if they ‘were banging their head against a wall’. The stresses of continuous effort and work (often more than they had attempted before in their lives) were effectively compounded by the continuous lack of improvement, and most importantly, ‘not knowing why’.

*The law school method of teaching makes it seem like either you have the natural ability to do law or you don't. Marking is inconsistent, nebulous and self-esteem destroying.*¹⁴⁵

One may assume that things would get better once students have ‘learnt the ropes’, however, this was found not to be the case. Later year students showed an even higher level of dissatisfaction with guidance and learning assistance as measured in their perception of the marking system. While 25% of first year students disagreed that the marking system was transparent and logical, the percentage of students disagreeing was much higher, 50% and 49% in fourth and fifth year students respectively (see figure below).



High reliance on final exams and adherence to bell curve marking in combination with factors already mentioned were identified as a further cause of insecurity and a sense of disengagement for students.

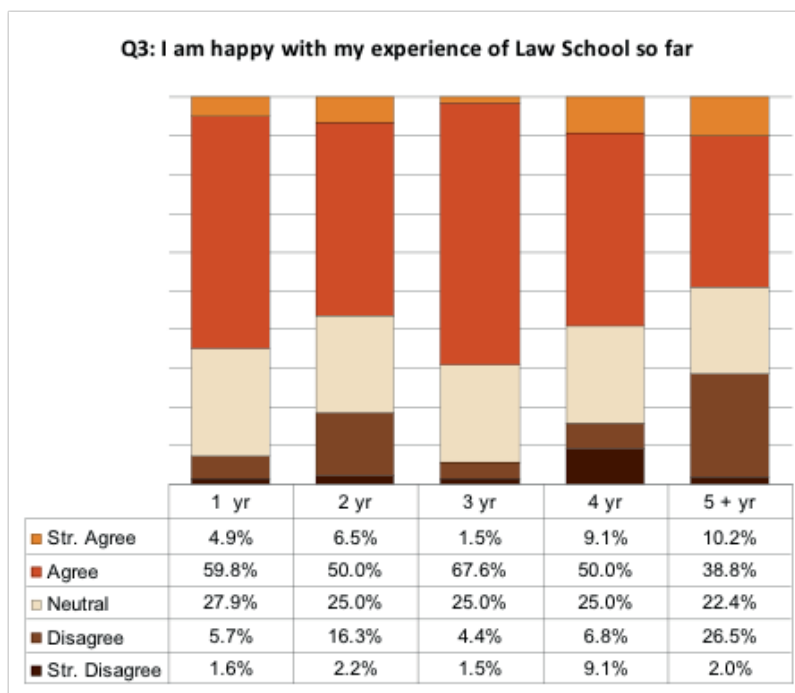
¹⁴⁴ Written submission in response to the *Issues Paper*.

¹⁴⁵ Survey respondent No. 305, 3rd year LLB.

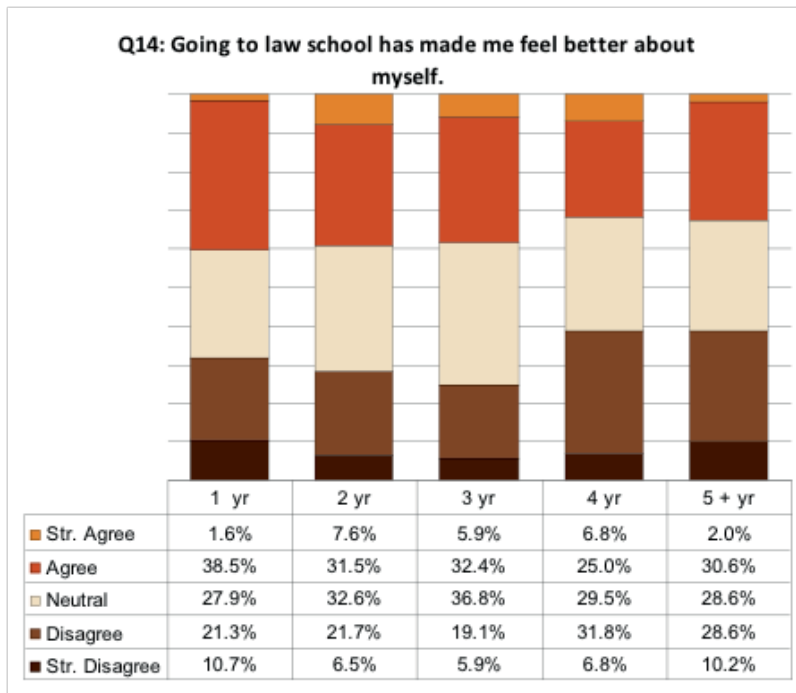
*The sense amongst law students is that law is not about engaging with course content, working hard, and taking a real interest in what is being learnt. It rewards not hard work, but a particular blend of street-smarts, academic dishonesty and corner cutting. Students know they will eventually only have 3 hours in an exam to prove their knowledge of the entire course.*¹⁴⁶

There is a sense of apathy amongst law students, who feel it is not worth trying, as only a certain percentage of the class can achieve top grades (only 2% - 5% of students may be awarded a High Distinction, regardless of overall class performance).

A significant finding from the survey was that, amongst 1st and 2nd year students, there appears to be an inverse relationship between the way they describe the law school and the way they describe its impact on their self esteem. While a majority rated their overall law school experience as positive, a clear minority disagreed with the statement ‘law school has made me feel better about myself’ (see figure below). This suggests that in the earlier years students are internalising their perceived failures, rather than critiquing the curriculum.



¹⁴⁶ Comment posted by a student to the Law School Reform Facebook group.



Uncertainty of expectations, unclear marking systems and lack of helpful feedback lead to feelings of insecurity which, in turn, foster self-doubt. Many students respond to this feeling of ‘it must be me who doesn’t get it’ with longer and harder study. For others it can lead to strategic disengagement with their legal study. Yet, in the absence of clear directives this does not necessarily increase their chance of success, leading to a vicious circle of more work and more frustration. Furthermore, if even a good grade cannot be readily understood in what it actually rewards, it does little to boost self confidence through a sense of achievement.

In an atmosphere where rewards are based on set but unexplained criteria in the framework of doctrinal teaching rather than on effort and improvement, students may either give up law study altogether, or switch to mechanical learning and ‘hope for the best’ mode. They may also keep ratcheting up study efforts with some chance of success, but also the chance of further frustration, the deterioration of physical or mental health and burnout.

Recommendations

To properly address the issues outlined above, there needs to be a complete renewal of the legal curriculum and review of the use of a ‘banding system’ for grades (see recommendations in Chapter 2, above). While advocates stress this is not technically a bell curve, it is submitted that its operation has a similar effect on student well being, and the terms are therefore used interchangeable throughout this report. Banded grading should be abolished, and the College should consider a range of possible grading systems – including a pass/fail

system. In adopting such a system, the ANU would be following the lead of many of the world's most prestigious law schools.

In the shorter term, there are measures which could improve the situation.

To improve guidance to students in the learning process, assistance and feedback, it is recommended that:

- Legal writing skills be taught explicitly. This could be achieved through a dedicated introductory course or, probably better, dedicated tutorial time in each (first year) course for assignment preparation
- A transparent marking system be adopted with performance indicators related to course learning outcomes as well as graduate attributes, and marking rubrics used for all assessment pieces.
- 'Model answers' be made available for each course.
- Specified consultation time commitments be stipulated for each teaching staff member.

3.2.2 The student: Isolation and competition

The student comments on pedagogy and assessment detailed above point towards general reliance on individual student effort and implicit competition among students rather than a supportive and cooperative environment.

This is compounded by an adversarial curriculum that contributes to a law school climate that is hostile and stressful for many students.

It needs to be recognised that some students thrive on such an approach:

I do like law, in the way one likes a very long and difficult hike. You spend your time when you're only half way up a hill with a sore ankle, wet to the bone, covered in mud, haven't showered in days, hating yourself but when you get to the end you've challenged yourself and you've achieved a great thing.¹⁴⁷

It also needs to be recognised that a sense of competition stimulates effort. Healthy competition was generally appreciated by students and few reported this to be a direct source of anxiety or distress. Most students accepted it as part and parcel of the law school experience, indicating that perhaps the culture at the ANU does not seem overly or aggressively competitive compared to other universities.

¹⁴⁷ Survey respondent No. 332, 3rd year LLB.

*Competitive, but that derives from the fact that students are bright and keen. For the most part the vibe is usually friendly.*¹⁴⁸

*I don't think [competition] is necessarily the fault of the law school, merely the natural result of putting lots of very intelligent, motivated people together who generally put a lot of pressure on themselves to do well.*¹⁴⁹

Some students even saw competition as a catalyst for bonding to counter isolation:

*There is a strong competitive climate, though the intense pressure tends to bring friends together despite this.*¹⁵⁰

Some students also accepted responsibility for their role as contributors to the nature of the study climate:

*Friendly or competitive it depends on what you want it to be.*¹⁵¹

On the other hand, many students identified 'unhealthy competition' as a source of anxiety and loneliness. One cause for this was seen in the bell curve marking structure:

*I feel the marking system encourages an unhealthy level of competitiveness. While some competition is good, students get very hung up on how they fit within the bell curve and this can be psychologically destructive.*¹⁵²

Another cause for over-reliance on the individual at the expense of cooperation was seen to lie in the nature of assessment with its high emphasis on exams, the ultimate 'lonely' effort, and very little group work throughout the course of study. This was also seen to be artificial and not reflective of real life practice in society and the workforce.

*I think law school should be more like med school. People work in groups and marks are pass/fail, with some distinction for true outstanding achievement. This would more accurately reflect the real world and reduce unhealthy competitiveness.*¹⁵³

A third cause for unhealthy competition was seen to be an inherent elitism in the law school that appeared to perpetuate the perception that studying law was by definition harder than any other study.

¹⁴⁸ Survey respondent No. 195, 5th year LLB.

¹⁴⁹ Survey respondent No. 316, 5th year LLB.

¹⁵⁰ Survey respondent No. 198, 5th year LLB.

¹⁵¹ Survey respondent No. 122, 3rd year LLB.

¹⁵² Survey respondent No. 2, 5th year LLB.

¹⁵³ Survey respondent No. 373, 2nd year JD.

*Too competitive. We are too snobby and try to appear elite. We need to refocus on learning rather than the image of our law school.*¹⁵⁴

Isolation was seen by some students to be related to teaching methods and an overfull syllabus.

*I found the large class sizes and limited lecturer contact to be detrimental to my experience of studying law compared to my Arts subjects. This is not, I believe, a reflection of lecturer ability or even really on class design, but the fact that for so many courses there is so much material that is mandated to be taught and it is almost impossible therefore for an organic class structure to evolve where students interact meaningfully with their fellow students and teachers.*¹⁵⁵

Part time students with other commitments generally suffer from lack of contact with mainstream academic culture. This cannot be seen as specific to the law school, but some poignant comments from students serve to put this aspect into the context of the law school. One commented that law school is 'Definitely not accommodating for students who work full time and have other commitments outside law school.'¹⁵⁶ Another stated:

*Many events and support structures are often inaccessible for students not studying in the traditional manner (full-time with limited or no other commitments) or not always applicable to mature aged students. This leaves a significant proportion of the student population alienated by the whole structure of law school... consequently there is a clear disconnect between the law school and many of its students, this impacts on student welfare and such long term matters as a healthy and thriving law school alumni network.*¹⁵⁷

Implications for student wellbeing

There was widespread recognition that the biggest determinant of our experience is our actions, that study is meant to be a challenge, and that we learn by rising to such a challenge. But while many students can meet this challenge much of the time, not all students can do so all of the time.

In a systemic environment that focuses on the individual and insists on ranking participants relative to each other, one person's 'success' depends on another's downfall. The nature of assignments, marking to bell curve and elitist thinking invite perceptions of student performance as 'winners and losers'. This

¹⁵⁴ Survey respondent No. 60, 2nd year LLB.

¹⁵⁵ Survey respondent No. 320, 5th year LLB.

¹⁵⁶ Survey respondent No. 60, 2nd year LLB.

¹⁵⁷ Kate Leonard (JD Student), submission in response to the *Issues Paper*.

competitive thinking leads to arrogance and superiority on the side of the ‘winners’ and low self esteem, hopelessness and envy on the side of the ‘losers’. None of these sentiments are productive or helpful to anyone. Moreover, in the law school environment the feeling of low self esteem among ‘losers’ tends to be compounded by a sense of lack of control vis-à-vis the marking system and inaccessibility of assistance as explained in the previous section.

A cultural change towards more opportunities for student cooperation in the assessment structure and rewards according to objective performance criteria is needed to prevent unhealthy and negative competition and further enhance, rather than stifle, the considerable abilities and enthusiasm of law students.

Recommendations

To counteract student isolation and unhealthy competition, the previously made point about the need to institute a pass/fail system is repeated. In addition, it is recommended that:

- Student assessment change to more reliance on continuous assessment than on final exams;
- More group work be incorporated in tutorials to foster cooperation and interpersonal communication;
- A judicious amount of group assessment be used where appropriate to foster teamwork;
- Rewards (grades) be based on objective performance criteria rather than adhere to bell curve grading.

3.2.3 The focus: Vocation and doctrine with an elitist slant

The legal profession traditionally enjoys high prestige in that it is highly socially relevant and powerful. The law permeates and affects everyone in society; it has a regulating influence on society.

In relation to tertiary education, and in practical terms, the prestige of the law discipline is reflected in very high entrance scores – suggesting that only the brightest do law – and very high fees which do not relate to the cost of teaching, but instead to the expected earning capacity of graduates. Because of this, a superficial yet influential impression associates law study with intelligence and wealth.

Motivation to study law is varied (see Chapter 1 on the Purpose of Legal Education, above) ranging from the desire to pursue a career in commercial legal practice, to do ‘social justice’ legal work, or to simply have legal qualifications to enhance a non-legal career. Other motivations cut across these aims, namely the desire to make a contribution to social justice and a better world on the one hand and the expectation of a lucrative career on the other.

As a result, the student population is perhaps more than normally varied in what they want to ‘get out’ of the degree, but an expectation of intellectual challenge appears to be a common factor.

Problems that arise at the interface of law teaching practice and student expectations relate to the sense that law studies, because they are so prestigious, should override all other interests, and frustration with a fairly rigid and doctrinal paradigm.

Elitism

Many students commented on law student perceptions of their law degree; that it is commonly viewed as simultaneously “broad” and “elite”, “so important”, “prestigious” and “more difficult than other degrees”. One student suggested that such perceptions of the importance and difficulty of the law degree led students to place more value on achievement in law:

*Other courses are chosen on the basis of light workloads and low expectations to allow ... more time to achieve in law courses.*¹⁵⁸

Students reported feelings of low-esteem from being ‘left out’ and under-valued because their law results compared so poorly to their achievements in other areas. As one student explained:

*It might seem like I’m overreacting, but it’s a sentiment I’ve uncovered time and time again amongst other students, whose passions are not law [directly or per se], but environment, policy, language, and so on. Intelligent, hard-working, dedicated people are forced into an environment where their achievements in other fields slowly come to be seen as meaning very little.*¹⁵⁹

In keeping with the prestige of law practice, students perceived law studies to be more prestigious because they are directly vocationally oriented, causing disappointment and disorientation for many:

*I think a great deal of students, particularly those who are not initially ‘good’ at studying law, or who have other talents, become depressed by the culture of the College. The culture of law school is such that ... it seems primarily a vocational degree.*¹⁶⁰

Vocational focus and doctrinal approach

The importance or higher value of the law degree is seen to derive from it being ‘harder’, ‘more difficult’, ‘better’, ‘more applicable’ and ‘more practical’ than other studies. In essence, a law degree prepares students for legal practice

¹⁵⁸ Student comment on Law School Reform Facebook group.

¹⁵⁹ Student comment on Law School Reform Facebook group.

¹⁶⁰ Student comment on Law School Reform Facebook group.

and as such ‘application’ and ‘practicality’ of subject matter are certainly important. However, this vocational focus, particularly when coupled with a doctrinal approach that does not leave much room for exploration, intellectual challenge and ‘thinking outside the square’, sorely disappointed the large proportion of students who had expected to be intellectually stimulated and inspired.

[In choosing law] I was motivated mainly by an interest in ‘social justice’ causes. I guess I hoped for encouragement, inspiration, mentorship and confidence-building and a chance to learn how to think deeply and critically. I’ve definitely not received those things.¹⁶¹

Not well, as far as anticipated levels of inspiration are concerned. For an academic institution it doesn’t provoke much individual thought or assumption of responsibility. In fact, it seems to have fostered a boring type of complacency.¹⁶²

One student summed up a feeling of disappointment in not being able to grow and improve as a person within a narrow doctrinal teaching approach:

students are challenged in class but not challenged in a way that it would encourage them to improve themselves.¹⁶³

The quantitative survey results showed that only 38% of students identified as “feeling better about themselves” as a result of their law studies.

In the final year of study, the heavy vocational focus of the curricula (with many black letter Priestley 11 courses featuring) means that those who do not aspire to legal practice are left feeling anxious about their future – with little guidance provided.

Implications for student wellbeing

The law school culture with its vocational focus, doctrinal approach and elitist slant reinforces a ‘them and us’ division between those students with aims and interests other than purely law practice and those students with legal practice aspirations. This unhealthy division coupled with an overemphasis on the importance of law studies was reported to evoke feelings of shame, disempowerment, and depression as a result of poor grades in a discipline that students are made to feel is the only one that matters.

The narrow vocational focus and doctrinal approach leaves many of the ‘best and brightest’ disappointed, unfulfilled and with a feeling of being hemmed in at a time in life when they expected to question and challenge existing paradigms and be encouraged to ‘think outside the square’. In extreme cases

¹⁶¹ Survey respondent No. 261, 5th year LLB.

¹⁶² Survey respondent No. 68, 4th year LLB.

¹⁶³ Survey respondent No. 154, 4th year LLB.

this leads to a sense of anxiety at having ‘wasted’ formative years and a perception of having no future.

Recommendations

To change the vocationally focused, doctrinal and elitist culture of the law school it is again re-iterated that the ANU College of Law must urgently review its marking system. It is further recommended that:

- Students be encouraged to critique subject matter from first year on – either in tutorial discussion or in brief assignments – without ‘fear or favour’, the main criteria being ‘understanding of subject matter’ and ‘thinking deeply and critically’ about it;
- Subjects which are not ‘black letter’ or doctrinally focused are included as part of the core curriculum, not siphoned off as electives which preach to the converted;
- Academic instructors are encouraged to comment on the value of other disciplines that students may be pursuing. It was especially reported by Arts/Law and Science/Law students that they felt their ‘second’ degree and achievements within it were perceived as worthless and unimportant in comparison to law;
- Mentoring, both among later year and junior students, and between staff and students should be strongly encouraged, with appropriate structures in place;
- Mentors from a range of fields outside the academy and mainstream corporate law firms should play a much more active role in the law school, with a particular focus on raising the aspirations of later year students and showcasing the opportunities available to them.

3.3 Conclusion

One submission received in response to the *Issues Paper* was particularly moving. The author (an ANU law student) asked to remain anonymous, so certain details specific to them have been removed from their submission. However, the bulk of it is reproduced below:

Law school has been my dream ever since I was young. Every degree I've taken was in preparation for law school. I've taken an [undergraduate degree] and a [masters degree]. I applied to [a number of law schools] and was rejected. I still didn't give up because this is all I've ever wanted to do in my life.

After 3 years of persistently trying to get into law school, 3 out of 4 law schools that I've applied in Australia finally accepted me. I chose ANU because it's the highest ranking university in Australia [...].

The first day of law school, I was really hesitant because I wasn't sure about how Australian teachers grade students. What are their standards & expectations? [...]

I felt like most of the lecturers I've had were too busy to meet up with students while the tutors didn't really make me feel like I can answer legal problems the way the lecturers expect them to be answered. I expected the lectures to be stimulating and interactive but they weren't. I felt like they were just telling us information from the book. I thought concepts and cases would be clearly broken down and we would be taught how to think like a lawyer.

I was disappointed that there was no legal writing class considering that every class requires you to turn in a paper that's 30% of your mark. [...] I've failed every paper I've turned in because I don't know how to convey my ideas in a legal sense and in some classes, they won't post HD answers. How would I know how to improve my writing if I can't see what a HD answer looks like? And how else can I improve my writing if there's no legal writing class available, any legal writing workshop or legal writing tutors around at the academic centre? Legal writing is something that people don't just get right away. [...]

Failing every paper I've turned in and receiving passing marks for my finals grade was a really big blow because I've always gotten HD's ever since I was 5. I felt like I have no one to turn to and that I don't know how else I can improve. I became depressed after receiving the 2nd paper I've turned in, which I failed. [...]

I've applied to another university to take another masters degree because that's how much I don't believe in my capability to continue on with law school. I feel disheartened and each passing day I detest being in law school even more to the point that I resent my decision to have ever chosen this career field. It's not a pleasant experience having to work so hard & have no life because your too busy studying & to still fail, it's like working over time, all the time & being underpaid.

Thanks to law school for making me cry so much and doubt myself all the time.¹⁶⁴

This submission is evidence of a failure on the part of the ANU College of Law, and more broadly, of the law school (including student) community, to

¹⁶⁴ Anonymous submission received in response to the *Issues Paper*.

provide appropriate support and guidance to this law student. Something must be done to address the issue of student wellbeing at law school.

Summary of findings

Student submissions and survey responses identified three main factors that are detrimental to student wellbeing at the ANU College of Law.

Insufficient guidance, assistance and feedback in the learning process result in insecurity, bewilderment and a vicious circle of additional study without results leading to even more frustration. A non-transparent marking system is a major factor, with grading appearing to be arbitrary and provided in a way that does not help students to improve their performance.

While some elements of competition are generally regarded as positive, a high focus on individual performance rather than fostering cooperation, teamwork and communication skills evokes feelings of isolation and unhealthy competition and promotes a system of ‘winners and losers’. The College’s ‘banded grading’/‘bell curve’ policy was identified by many students as a contributor to this factor.

The vocationally focused and doctrinal approach of the law school frustrates students’ expectations of intellectual expansion and inspiration, leaving them with feelings of disappointment and having ‘wasted time’. The elitist culture encourages a ‘them and us’ attitude between students whose sole focus is not law and those who aspire to legal careers. Elitism elevates traditional law studies, especially those with a ‘black letter’ focus, in importance over any other kinds of studies (for example studies into law and society, or interdisciplinary approaches to studying the law) and makes some students feel undervalued when it comes to their other talents and interests.

*The truth is, that we students will soon forget those sleepy beige lectures. We will forget the Ritalin haze of study binges, the sweat-curdled air hung thick across exam halls, the names and titles of our highly distinguished teachers. But we will never, never forget the way that law school made us feel.*¹⁶⁵

¹⁶⁵ Comment on Law School Reform Facebook group.

Chapter 4

Possibilities for Reform: Suggestions from ANU Students

4.1 Introduction

As indicated earlier, the recommendations made in this report are intentionally broad, as Law School Reform seeks to promote discussion rather than to prescribe answers.

Nonetheless, both Law School Reform members and the wider student body have put forward innovative, exciting ideas. This chapter thus provides a selection of excerpts from student submissions, intended to provoke discussion.

This chapter does not form part of the core report, but rather is an effort to draw attention to particular observations made by members of the student body.

It is emphasised that Law School Reform believes that the process of decision-making is integral to the success of any ideas that are adopted.

The topics explored appear in the following order:

- Approaches to democratic learning
- Integrating student facilitators in the classroom
- Mentoring for College of Law students
- The JD Perspective
- Marking and group work: A Medical School approach?
- The interaction of the JD and the LLB and information for international students
- Diploma of legal awareness?
- The UNSW Approach?

4.2 Approaches to democratic learning

By Melanie Poole

The ANU specialises in public law. Students ‘learn’ (or at least can ‘issue spot’) the rules of government, the operation of the Constitution and the principles of administrative law. We learn this while sitting silently in groups of up to three hundred, transcribing the words of an authority figure (the

teacher) who repeats the rules concocted by other (white, male) authority figures (appellate court judges.) At the end of the semester, we regurgitate these rules onto exams.

Presuming that students will then graduate as active, conscientious citizens is like expecting that someone who has read the Qantas manual can fly a plane. If law schools are serious about the educational missions they profess, they need to start doing democracy.

What does this mean?

Law schools presently operate within traditional notions of hierarchy and external control, both inside and outside the classroom. By contrast, democratic models involve students in developing the rules and expectations that will govern their learning.

Democracy in the classroom – a brief overview

Within the classroom, democratic learning involves learning centred on regular dialogue, both between students and between students and their teacher. Students' role in shaping their own knowledge, in the context of their lived experience, is recognised. Students engage in continuous, self-directed reflection outside of the classroom, which is developed when they meet to discuss their knowledge and ideas in class.

The teacher's role is transformed from one of transmitting information to facilitating self-directed or 'active' learning. They are someone from whom students can seek guidance and support during their autonomous learning journey.¹⁶⁶ Teachers thus do not have all the answers – instead they realise that "good teaching is more a giving of right questions than a giving of right answers."¹⁶⁷

There is a wealth of literature detailing effective techniques for creating democratic learning, and a broad survey will not be attempted here. One approach worth noting is the use of 'reflective practice' techniques,¹⁶⁸ whereby students and teachers "recapture their experience, think about it, mull it over and evaluate it"¹⁶⁹ as a key part of their learning. Reflective practice techniques can include self and peer assessment, reflective journals, personal development planning and group work, among many others.

¹⁶⁶ Leanne J. Crosswell (2008) "Student relationships: democratic classrooms." In Millwater, Jan and Beutel, Denise A. (Eds.) *Transitioning to the Real World of Education*, Pearson Education Australia, pp. 69-96.

¹⁶⁷ Frederick A. Horowitz and Brenda Danilowitz, (1996) *Josef Albers: To Open Eyes*, Phaidon Press.

¹⁶⁸ For a detailed manual on reflective practice see Schön, (1987), 'Educating the reflective practitioner' Jossey-Bass Publishers, London. Also see the comprehensive materials online at the UK Centre for Legal Education, www.ukcle.ac.uk.

¹⁶⁹ D. Boud, R. Keogh, & D. Walker, D. (Eds.). (1985), *Reflection: Turning experience into learning*, Kogan Page, London. (p19)

Learning in such a democratic environment is vital if students are to approach their social and professional lives as engaged citizens, actively and reflectively participating in their societies. When participation in learning is reduced to being a member of a passive audience, when knowledge is something provided to – rather than discovered and shaped by – the student, then it is little wonder that we end up with a society in which ‘citizenship’ is reduced to paying taxes and voting. And yet “there is no such thing as a viable democracy made up of experts, zealots, politicians and spectators.”¹⁷⁰

Democracy in the College of Law community

Outside of the classroom, a good way of developing a democratic learning community would be through regular opportunities for staff and students to collaboratively develop the College of Law’s goals, priorities and expectations. This kind of interaction moves beyond the aggregation of private preferences via student evaluation forms, or the tokenistic representation of students by one or two representatives, and instead casts staff and students as equal members of a community with a shared educational purpose.

At the ANU, there has been much talk about how we can move beyond a rhetorical ‘ethos’ of ‘social justice’ and law reform to actually implementing these values. Considering that an ‘ethos’ represents “the distinctive character, spirit, and attitudes of a people”¹⁷¹, it seems clear that developing tangible opportunities for ongoing conversation between the members of the College of Law community would be a good first step.

Law School Reform’s highly successful deliberative staff/student forum in May 2010 was the first time that students and staff began to form an ethos at the ANU College of Law. **Law School Reform, in collaboration with the ANU Students’ Association, has recently released a step-by-step guide** to putting on such a forum, meaning that the future time and costs involved with be significantly minimised. The Law School Reform forum can be treated as a successful pilot for a model that should continue.

4.3 Integrating student facilitators in the classroom

By Melanie Poole and Lucinda Shannon

In 1935, Columbia Law Professor Karl Llewellyn asked his colleagues to consider the following:

¹⁷⁰ ‘Transcript for Liz Coleman's call to reinvent liberal arts education’, available at <http://dotsub.com/view/42e0b175-3412-45fa-9277-32e286b10906/viewTranscript/eng> (Video available on ted.com.)

¹⁷¹ Collins English Dictionary 2009.

How do we teach? We rise and juggle balls before the class. [...] The class is supposed to learn by watching. [...] we ...squander their time and our own. [...] Experience shows that personal attention helps. Experience shows that three-quarters of those who need personal attention will not take the initiative in getting it. Experience shows that an awakened third year class is more valuable than a corps of instructors, in giving personal attention to first years who have not managed to get the knack.

*Is all of this possibility to run off into the sewer, for mere lack of organization? Where is the best legal training in a law school? We all know: in the Law Review, and under students. Well?*¹⁷²

The effectiveness of peer-to-peer learning has been recognised in top law schools across the US, the UK and increasingly in Australia. It was reflected in the Law School Reform survey results, with students indicating that participating in ‘extracurricular’ activities run by the Law Students’ Society had been their most ‘enriching’ and ‘intellectually challenging’ experience at law school.

One peer-to-peer tutoring approach that has been used with great success in other universities is the involvement of later year students as facilitators in large group courses. The benefits include:

- Engaging students and staff in collaborative partnerships and thus breaking down staff/student barriers;
- Providing later year students with training and practice in communication skills (which are particularly relevant to legal practice, for eg the bulk of lawyering involves alternative dispute resolution which relies on good ‘people management’ skills);
- Providing later year students with a diverse, confidence-building and rewarding way to earn academic credit;
- Addressing the resource constraints which leave teaching staff unable to support students individually, and also lead to enormous class sizes, by enabling the use of ‘break-out groups’ and ‘plenaries’, facilitated interactively with ongoing in and out-of-class contact;
- Adding an element of mentoring within the classroom;
- Creating the time and space for critical discussion beyond ‘black letter’ content.

¹⁷² Karl N Llewellyn, (1999). “On What is Wrong with So-Called Legal Education”, in Sheppard, Steve, Editor. *The History of Legal Education in the United States: Commentaries and Primary Sources*. Pasadena, California: Salem Press, Inc. (p709)

One potential problem could be the creation of a hierarchy within the student body. A student facilitator program would need to be carefully designed to minimise this risk, with the facilitator role explained as one of partnership in learning, not didactic instruction.

The success of such a move would depend on its clear relationships to course assessment and learning objectives. Students will, particularly within the dominant system of failure-or-reward that we are used to, quite rationally reject progressive moves that are not (1) fully explained and (2) collaboratively designed. Peer-to-peer learning would, therefore, be unlikely to fully succeed in courses assessed via 100% exams, or if imposed without student consultation.

4.4 A structured, equitable mentoring program

By Melanie Poole

“The need is...[for] an integration of the human with the legal.”¹⁷³

One need only look at the great philosophers – from Socrates’ mentorship of Plato, to Plato’s of Aristotle, to see how important mentoring is in the development of human capacity. Mastery of subject matter and technical proficiency alone will never produce great lawyers. Anxiety, insecurity and the fear of failure can stunt even the greatest minds. Often, the thing that drives us to realise our goals is the fact that somebody else believed in us.

The atomised law school environment which prevails at present is, however, anathema to this kind of inspiration. A strict hierarchical approach to staff-student interactions, coupled with a marking system that, as one survey respondent put it, ‘promotes mediocrity’¹⁷⁴, instead serves to strangle student aspirations and undermine democratic community-building. An antidote to the feelings of isolation among students could be the establishment of a student mentoring program.

Such a program provides:

- A cost effective way of delivering key educational outcomes;
- A counterbalance to limited career modelling;
- An opportunity to combine education and outreach.

¹⁷³ Ibid., p702

¹⁷⁴ Survey respondent No. 298, 1st year LLB.

Before discussing these outcomes, is important to note the need to address structural and equitable issues in designing the program.

It is emphasised at the outset that simply creating optional, small scale programs for a handful of students is insufficient. As Llewellyn rightly pointed out, “experience shows that three-quarters of those who need personal attention will not take the initiative in getting it.”¹⁷⁵

At present, ‘extracurricular’ opportunities are monopolised by an elite few.¹⁷⁶ A mentorship program will not succeed if it simply creates yet more resume-building opportunities for the over-privileged. It must instead be focused on engaging those who fall by the wayside, or who have been demoralised by the law school experience, and raising their aspirations and self esteem.

To ensure equitable access to mentoring opportunities, the program must be accessible and well advertised and must not rely *only* on student initiative. Mentorship program convenors (who could be later year students) could liaise with the Wellbeing and CHAT coordinators in order to identify students who may especially benefit.

Additionally, if participation in a mentorship program and/or related volunteering in the community is to be not-for-credit, then the College of Law should endeavour to financially support students who can demonstrate that the time they would need to take off from paid work/additional food and transport costs are prohibitive.

Outcomes

A mentoring program provides a **cost effective** way in which to combat the lack of staff availability when it comes to individualised student support.

¹⁷⁵ Ibid.

¹⁷⁶ Substantial research has shown that students from wealthy, privately-schooled backgrounds are more likely to seize such opportunities because of their advantage in having developed ‘soft skills’ – for eg in networking and communication skills. They are also likely to have received superior careers advice, to have greater aspirations for themselves, and to have the leisure time available to pursue unpaid work. As a report by UK MP Alan Milburn found, there is “a growing culture of unpaid, unadvertised internships now increasingly required to get into competitive fields which is excluding even relatively well-off children if their parents lack the social connections to secure them.” See Hinsliff, Gaby, “Revealed: the hidden benefits of a private-school education”, The Guardian, 19 July 2009.

<http://www.guardian.co.uk/education/2009/jul/19/private-schools-share-facilities> Also see “How private schools ensure a life of privilege for their pupils”, <http://www.guardian.co.uk/education/2009/jul/19/private-schools-life-privilege-pupils>]

Mentors would freely give their time, and the program could be largely administered by students employed part time at the research assistant level.

Secondly, a focus on mentors from outside the academy and mainstream firms would serve to address the **limited role modelling** in law schools.

The Law School Reform survey revealed that only a small minority of students want to pursue either ‘traditional’ or corporate legal practice. Even fewer have an interest in academia. Yet upon graduation, almost half of these students pursue either corporate practice or further study. Anecdotal evidence tells us that this is in large part due to a perception of ‘limited options’.

Given that law students are among the most privileged and choice-rich people on the planet, this mentality should be a significant cause for concern. The interests and desired pathways of students should thus be given primacy when considering the kinds of mentors to include in such a program.

A mentoring program would also provide a way to integrate two of the College of Law’s three aims (research, education and outreach). **Education and outreach** could be combined through a mentoring program that encourages mentors from organisations which offer volunteering opportunities. Many organisations already participate in the College of Law’s “Law Reform and Social Justice” program, thus existing infrastructure can support the development of a mentoring program.

Within the constraints of scarce resources, a well-structured mentoring program available to all students is one practical and effective way to humanise legal education. If done well, it may be one of the most effective steps that the College of Law can take in improving the law school experience.

4.5 The JD perspective

By Kate Leonard¹⁷⁷

Background

I am a part-time Juris Doctor student (recently transferred from the Graduate Law program) and I have been enrolled at the ANU College of Law since Semester 2, 2007. I originally commenced my law studies at the University of New England (UNE) where I was working at the time. In terms of age demographics I am a mature age student having completed an undergraduate Honours degree at the University of Sydney and two Masters (Masters of Labour Law and Relations (University of Sydney) and Masters of Management (ANU)). While studying at the University of Sydney I also worked as a tutor in Employment Relations and Economic History. I moved to Canberra in June

¹⁷⁷ Received as a written submission to the Law School Reform *Issues Paper*

2007 to take up a staff position at the ANU having no family or social support networks.

I currently hold a senior position as Human Resources Manager for a non-government not-for-profit organisation in a full-time capacity. My career background has been in industrial/employee relations and labour law. In addition to formal university studies, I have completed advocacy training and participated in conciliation hearings within the jurisdiction of the Australian Industrial Relations Commission. I have also assisted legal practitioners in matters before the Chief Industrial Magistrates Court of NSW.

In relation to this review I believe that at the core of decision making and planning there needs to be a student centred and student contextualised law school. There needs to be a balancing of the need to be a quality law school in terms of teaching, learning outcomes delivered and lawyer, advocates and researchers produced with a student focused flexibility and accessibility. In terms of flexibility and accessibility this relates to such areas as having flexible and accessible:

- Subject content;
- Means of assessment;
- Course delivery and teaching pedagogies used;
- Rules and frameworks applied to course structures and assessment;
- Approach to students and the study of law by lecturers and administration staff.

Assumptions

There are a range of assumptions that appear either within the College of Law or ANU wide that limit and restrict students and the learning experience. These assumptions include:

- *Because a teacher/lecture has a degree and/or has worked as a lawyer they are able to educate effectively.*

Comment: This is not the case, in fact the skills and abilities, and educational tools that you need to be aware of and understand to teach/lecture are quite different to what is required to be a lawyer or a career academic. Consequently, current teaching and assessment practices and processes are not effective or developed from a perspective of the best teaching methods to ensure quality-learning outcomes. Further they tend not to be student focused or pedagogically sound. It should be a requirement that all teaching staff have or undertake some sort of Graduate Diploma or

qualifications in teaching prior to being responsible for the development and teaching of courses.

- *All students are full-time and have no other commitments or responsibilities other than the ANU College of Law and are likely to live in one of the ANU residential colleges. Assumption that the typical student is the “ressie” student.*

Comment: This is a false assumption the consequence of which is most planning, opportunities and decisions are based on this perspective. It appears that there is a refusal to consider students that do not fit within this assumption. If it was ever the case, it is now a misnomer. Just as law school staff have work (teaching / research / community commitments), family and social commitments and need to find a balance between these so to do most students. For the majority of students they are undertaking a combination of full-time / part-time studies and full-time / part-time and also have family and community/social commitments. If you want to have a law school with students who are both competent lawyers as well as engaged / focus on the community, law reform and social justice then you need to acknowledge that your typical student is not the full-time financially supported college student. In the case of some mature age students they are supporting themselves without the assistance of family or partner. Any and all planning should be undertaken based on the needs of all students especially the majority who have a significant range of competing demands. From my experience it feels like the underlying presumption is that every student is one whose only priority is studying law and the expectation is that every student should get HD's. If not, then they are considered lesser students or not committed enough. This is not conducive to creating an environment at the law school that has passionate, socially minded and committed law students.

- *Assessment is driven from a negative perspective, i.e. start at 100% and then mark students down rather than assessing and recognising what students know. Assessment structures appear to follow one format, which relies on the majority of a student's final mark being derived from an end of year exam and applies across all law subjects without considerations as to the best means to assess student learning and capability and matching assessment to course goals.*

Comment: It seems to me that a typical student that gets into the ANU College of Law is pretty exceptional and has achieved a significantly high mark either in their Year 12 or previous university studies. You just don't get in otherwise. However, broadly speaking, once students get to the ANU the system places inflexible assessment and poor teaching and course work frameworks that are not conducive to supporting, recognising, nurturing and developing these talents. Further any knowledge or experience these students may bring to the law school is unrecognised or is devalued. Systems and processes should be designed to provide an environment in which all students are able to excel and be recognised for what they bring to the law school as well as their diversity.

- *Unless the knowledge is gained through studies at the ANU College of Law it is not valuable or is insignificant and not recognised.*
- Comment: Again this assumption builds on the previous two points, this assumption impacts on students in three ways. Firstly, it treats students in a condescending manner, i.e. the perception that because you have not studied at the ANU your skills and experience are insignificant. Secondly, by not recognising the diverse range of skills and experience that students bring with them the College of Law is failing to tap into a wealth of knowledge that would enhance and support all students learning experience. For example opportunities for students to engage in conversations about how they handled matters in other roles provide tangible learning experience. Finally, by not recognising prior learning many students, especially those in the LLGB or JD programs, are doing subjects that they could actually teach themselves and are bored and unengaged or other students free ride off their knowledge.

Issues and recommendations

Below are some issues and considerations regarding my experience as a mature age post-graduate student having studied at a number of universities and as a student with full-time work and part-time study commitments. General observations of my experience as a student at the ANU College of Law include:

- Planning and logistics are either not being student focused or generally being focused/driven by students needs;

- Decision making and planning assumes a traditional “ressie” student who studies full-time and has no other commitments, and is financially supported by parents/family which is seldom the case;
- Disconnect between the industry/industry requirements and models of teaching;
- Some staff, especially some academic staff, are not at all student focused and use their positional power and sense of elitism at being at the ANU College of Law over students and they lack empathy and understanding of student needs;
- Lack of focus on innovative teaching practices and/or course content;
- Absence and lack of consideration of part-time students needs/issues in any planning or support mechanisms.

Issue: Invisibility/alienation of part-time students or students balancing work and study (sometimes both in a full-time capacity)

Structural aspects are focused around every student being a full time, fully committed, freewheeling agent and this is incorrect. For many students, other commitments, especially financial ones, and the inflexibility of the law school, make it difficult to attend the majority of classes, get involved in events and attend law school activities. There is limited focus or recognition on other types of students and their needs.

Generally all aspects of the College of Law do not consider those with competing demands, be they paid employment, family or health issues. Many events and support structures are often inaccessible for students not studying in the traditional manner (i.e. full-time with limited or no other commitments) or not always applicable to mature age students. This leaves a significant proportion of the student population alienated by the whole structure of the law school and of the university system as it stands. Consequently there is a clear disconnect between the College of Law and many of its students this impacts on student welfare and such long term matters as a healthy and thriving law school alumni network.

These factors and the general lack of focus on student needs in decision and planning also have an impact on the health and well being of students as many students are disconnected from support structures and contact with academic staff.

Recommendations

- Decision-making and planning needs to be focused/driven by flexibility and accessibility student focused/student centred.

- Recognition and accommodation of the fact that students have multiple and competing demands on their time.
- Establishment of a representative body that includes law school staff, industry representatives and a cross-section of full & part-time students drawn from the various degree programs to function as an advisory/consultative body to ensure
 - flexibility and adaptability of law programs and assessment and
 - student focused/student centre decision making.
- Given the desire to develop an alumni network, addressing the issues around alienation and disconnect between the College of Law and students could potentially lead to increases in alumni interest and activity.

Issue: Inability to fit

For students who work full-time and study part-time (or vice-versa) there are limited or no access to study groups, social networks or opportunities to meet other law students. Further, as a mature age student, there is also a general sense of ostracism from the group and rarely considered in planning. Granted this could be seen as a two-way thing but there aren't often events that include or are accessible to those working between 9am to 5pm Monday to Friday (if mature aged or part-time students are even considered). Another consideration is that the interests of undergraduate students (1st / 2nd / 3rd year students pretty much attending university straight from high school or a gap year) are vastly different to those students in there late 20's, 30's and beyond. Some students, those who attend college, are able to form networks with other students but for the remainder there is limited opportunity to establish links and relationships with other students, student representative bodies and College of Law staff (both teaching and academic). These students tend to be a silent and often unconsidered majority.

This inability to fit in manifests because of the following:

- Limited opportunities to develop and build social relationship with other students and/or law school staff;
- Limited support opportunities for many students;
- Limited accessibility of the services that are provided;
- Support mechanisms available are ineffective at targeting non-“ressie” students;
- The over competitive approach fostered by the law school also leads to a lack of cohesion amongst the student population;

- While generally the exception, there are some unsupportive and unwelcoming teaching and support staff especially operating within the restrictive assumptions outlined above. Many are wedded to a strict compliance with processes and procedures without any consideration regarding flexibility or student needs;
- Limited diversity in the range of social events that are planned and generally no consideration of interests beyond undergraduate students.

Again this also significantly impacts on student's health and wellbeing, as there are limited avenues to access when struggling with course difficulties and/or emotional and/or external/personal matters.

Recommendations

- Decision making and planning needs to be focused on all types of students.
- When planning events and support activities the concerns of non-“ressie” students be factored into, considered and specifically catered for.
- Consideration of how to support non-“ressie” students needs be undertaken and action/recommendations put into place. If established this could be included as one of the terms of reference of a Student/Law School Faculty Advisory Board.

Issue: Teaching and assessment pedagogy

The structure of course delivery is very ineffective. Large lectures and limited numbers of tutorials do not enhance learning outcomes for most students. It is a one size fits not many, un-student focused teaching model. It needs to be remembered that universities are full of adults and there are far more effective teaching pedagogies than those reflected by most of the subjects offered within the law school, especially at the undergraduate level.

When developing courses questions such as the following need to be discussed and then teaching and assessment methods designed around the answers to these questions. Questions should include:

- What is the purpose of teaching this subject?
- Which text best suits student-learning needs and styles?
- What innovative forms of teaching and/or assessment have other teachers used i.e. question of teaching pedagogy?
- As a lecturer, how can I best engage students in current debates and issues?

Courses and assessments should be designed to deliver information effectively to the students enrolled rather than the most convenient manner (i.e. large lectures). There is too much emphasis on exams without an understanding that this is not an effective or the only way of engaging with the course material(s). The current assessment methods tend to test the same skills (i.e. writing and analysing). Current assessment does not often focus on reinforcing learning and only awards limited marks to such things as tutorial participation and presentations. Not everyone is great at exams and essay writing and success at these assessment methods does not correlate with whether that student will be a good lawyer. If you are going to have tutorials, and there should be, they should be assessed and valued more. Seminars and tutorials should be design such that it provides scope for students to demonstrate and participate in the learning process and learn skills that will be of use when going out into the profession.

There are so many resources (even within the ANU) about effective adult education and teaching/assessment pedagogy however it appears that these are seldom considered or incorporated into course design and assessment. The elitist nature of the ANU College of Law means there is a failure to recognise that different people learn differently and that there are many more student centre learning and teaching methods that would produce competent and knowledgeable students who can go into a profession with tangible skills. There needs to be a more interactive tutorials; methods of delivery; course and assessment designed such that there are opportunities to reinforce and cement the material being taught.

While having outlined some issues and concerns in relation to teaching pedagogy there are lectures who, within the restrictions of the current course and assessment structures and frameworks, have used some innovative practices in teaching and/or assessment. During the 2010 Summer School Evidence course there were two take home problem questions that while still testing writing and analysis also integrated with the course material being taught in the particular period. In the Occupational Health and Safety Summer 2010 online quizzes (3 questions selected at random about specific issues) where used to test students had read and comprehended the reading materials. This course also had very effective presentation requirements and interactive discussions throughout the course. Both these courses used assessment techniques that rewarded students for staying on top of the readings materials and reinforced course-learning outcomes as student's progress through the course.

The general difficulty with subjects and assessment is there tends to be emphasis on end of year exam and an essay so students marks' are totally dependant on two major pieces of assessment that test the same skills. Lecturers who wish to use alternative methods of assessment are limited in what marks can be apportioned to non-essay/exam types of assessment. A case in point would be that effort put in by Peta Spender and Molly O'Brien in Litigation and Dispute Management. Both of these lectures tried really hard to

make this course interesting however the College of Law course content and assessment guidelines appeared to limit flexibility and innovation around teaching and assessment processes. From my experience studying in different faculties and from talking to other students this is not the case across the University. The College of Asia and the Pacific (CAP) for example provide for all assignments to be submitted on-line. Both the CAP and the College of Humanities, Arts and Social Sciences (CHASS) allow for a variety of assessment mechanism to be used across courses including online techniques and no end of semester exam requirements. Both colleges also recognise and reward class participation to a greater extent than the College of Law.

Recommendations

- Course development and assessment needs to be student focused and developed based on best practice teaching pedagogy.
- More focus on interactive / participatory teaching processes.
- More and varied types of assessment that focused on different learning styles, outcomes methods and skills.
- An ideological change in the nature and purpose of teaching and assessment such that students are rewarded for what they know rather than penalised for what they do not, i.e. positive assessment.
- Greater focus on best practice teaching and assessment techniques/methods being used elsewhere at the ANU as well as other Australian and international universities.
- Greater use and application of online technology including moving to online submissions and online assessment.
- Need to incorporate more collaborative learning methods, small group tutorials; and using online mechanisms.

Issue: Recognition of prior learning

The ANU position is that they do not recognise prior learning and/or work experience and only recognises prior academic studies if it has not been counted towards an earlier degree. While appreciating that there needs to be standards, given the introduction of the JD and the attempt to attract post-graduate students this position should be reconsidered. Some movement in this position should be implemented as occurs in other Universities. The College of Law should allow consideration of prior learning and provide exemptions to some subjects if such experience meets specified criteria. Given many of the students attracted through the LLBG / JD program are more than likely to have

some relevant work experience a mechanism that recognises these skills should be considered. The whole stance that the ANU education is the best and thus relevant work experience cannot compete with the ANU law education is without foundation and untenable.

Recommendations

- Development of a mechanism/framework to consider and, where appropriate, provide for students with relevant work experience to be granted recognition of prior learning.

Issue: Administrative and operational issues / timetabling and scheduling (the 9am to 5pm mentality)

There is pretty much a 9am to 5pm mentality regarding everything including class, tutorial and consultation times, assignment submission and administrative office hours.

Assignment Submission: The requirement to submit assignments/written material in person is problematic for those with other commitments beyond being a law student and/or who don't live on campus. It could also be said to cause an inequality between "ressie" students and external students because external students need to travel onto campus and thus have less time to complete the assessment task. Why cannot law move to an e-submission process rather than requiring submission of hard copies. As far as I am aware on-line submission is done in the CAP, as well as in Economics and Business for some subjects and is available at other Universities for example UNE which has a quite effective distance and on-line facilities for all subjects.

Lecture and Tutorial Times: Leaving aside discussions in relation to teaching pedagogy, for part-time students or students with work commitments scheduling is an issue. Lectures are often scheduled in the mornings; not many lectures run at 3pm or 4 pm in the afternoon, which would be much easier for students attempting to manage work and study. Further now that lectures are taped there are no repeat lectures (and it should be noted listening to a taped lecture is a different learning experience to attending a lecture) means that attending lectures can be difficult and that many students have no access to face-to-face contact with lecturers. Similarly the scheduling of tutorials for many subjects during 9am to 5pm also creates problems with participating in these activities.

Timetabling: More generally for the College of Law the release of class/tutorial timetables, including exams, is often very late. This also applies to summer school schedules. For those attempting to manage study and work/other commitments this is problematic. Many students (not just those that work full-time) are attempting to balance study loads and work commitments. In other universities and in other ANU Colleges the timetables are done when you are pre-enrolling so some in excess of 6 months in advance of a semester

commencing and it seems that this information could be made available much earlier than is currently the case within the College of Law.

Consultation Times: While acknowledging that email is an OK form of communication and lecturers do respond, a lecturers consultation times are pretty much set to a period between 9am to 5pm and this can again restrict or limit access for students with work or other family commitments. Further the administrative office hours including the Services Office has very narrow opening times from the perspective of students with other commitments which make accessing services difficult for some students.

Recommendations

- Class timetables and schedules to be released earlier.
- More consideration of student needs when determining lecture and tutorial times.
- Reconsideration of office/administrative and consultation times to cover extended hours (for example longer hours Tuesday, Wednesday and Thursdays i.e. 8am to 6pm).
- Development and implementation of an online submission and return process for all assessment and written work.

[...]

Issue: Post-colonial focus

Within the College of Law there is a failure to promote Australian cultural issues, engage in current social justice and rights debates and to include more progressive post-colonial theory. While acknowledging that law and law schools are essentially conservative it also needs to be recognised that this leads to a failure to provide many alternative perspectives and engage in current debates. One specific deficiency is the lack of awareness and recognition of particularly Australian issues such as Aboriginal and Torres Strait Islander law and discourse. One example would be from the content of Legal Theory which tends to focus on works by white, Christian, Anglo-Saxon, upper to middle class men and leaves little opportunity to engage with and be informed about more local issues, gender and race concerns.

If, as is often claimed the ANU College of Law is focused on law reform and social justice, then one purpose should be to imbed more Aboriginal and Torres Strait Islander concepts into undergraduate law and at a postgraduate level have more opportunities for all Australians to connect with the discourse around post-colonial law theory. The College of Law needs to be more inclusive of views and opinions and discourse that does not necessarily get driven by the traditional/conservative legal theory discourse and general processes of teaching law.

Recommendations

- Specific undergraduate and post-graduate courses covering Aboriginal and Torres Strait Islander issues in more depth rather than just cursory coverage as part of other subjects should be developed.
- More resources in the law library around post-colonial legal theory that deal with local and international case studies, this may require a rethink of the course content for such subjects as Legal Theory.
- If a representative advisory board is established then they be allocated responsibility to review and consideration of the content of courses and course offerings with an aim of ensuring more course develop around topical Australia issues and issues such as social justice, equity, and diversity.

General concluding comments

Principally there needs to be a significant re-evaluation on the methods and techniques used within the College of Law to deliver law studies. Teaching and assessment methods / techniques need to be developed that are much more student focused and student centred to ensure all students are engaged and can excel. This requires a refocus of teaching and assessment frameworks and administrative structures so that they are more flexible and adaptable. Assessment of students needs to come from a positive position by rewarding student learning and there should be more and varied means of assessment.

4.6 Improving the marking scheme and introducing group work: A Medical School approach?

By Roman Dzioba¹⁷⁸

I understand from the forum report that there is divided opinion on the marking scheme, specifically the utility of the bell curve. In my own discussions with my colleagues, the matter of the bell curve is always something for debate with, as the forum indicates, more opposing it than supporting it. I come from an academic background where a bell curve was not generally used; I am an international student from Canada. I myself have no firm opinion on the bell curve as such, but I would submit that the College of Law's whole approach to marking is counterproductive. A more useful approach would be the one taken by several medical schools.

¹⁷⁸ Received as a written submission to the Law School Reform *Issues Paper*

At many medical schools there are only 2 or 3 marks given: Fail, Pass and sometimes High Level Pass. I would propose that the College of Law adopt this approach, or something similar such as Fail/Unsatisfactory, Pass and Distinction/High Distinction. This approach was adopted by medical schools to counter some of the problems that law students say they encounter, namely elitism and counterproductive competitiveness. In the real world you are not necessarily competing against others and better results are most often achieved through cooperation; medical schools and game theory operate on this principle. Indeed, I would submit that in practice a lawyer can call upon fellow colleagues to assist with a problem and the entrenching of competitiveness at law school has little bearing on real world scenarios.

Another point about the above marking scheme is that it more closely resembles the way real life operates. Regardless of whether someone achieves a high distinction or a pass average, at the end of the degree they are both lawyers and the same presumptions attach to them, in other words, that they have fulfilled all of the requirements. In practice, averages based on percentages only really serve bragging rights and once in practice fall away in importance. As well, the simplified marking scheme could be used in conjunction with a bell curve if that were decided as desirable.

An important corollary to the above point would relate to scholarships, clerkships and the like. Certainly most programs at present require some sort of graded average but I think this is a mere convenience rather than an important diagnostic tool. I think, though, it will be pointed out that employers require some sort of measure or means by which to assess the best candidates. After all, if employers are expending resources in expectation of a return on those resources (in effect, an investment in human capital) they must be able to distinguish those who would be assets and those who would not be. I would submit, though, that there are filtering mechanisms already in place to assist employers. First of all there are the preferences of the individual student. Not all students wish to work in firms or for corporations (I certainly don't) and so will not apply for those types of clerkships. Already at the first instance those uninterested in the proposition (the internship or clerkship) have removed themselves from consideration. Secondly, employers typically ask for character references and if given by instructors, their observations will help inform the opinions of the employers. Finally, there is the interview for the position. It is at that point that an employer could assess the quality of the applicant and make a final determination. I would submit that all this would still allow for adequate filtering of scholarship and clerkship applicants without resorting to a numerically based marking scheme.

Group work

... I would submit that the ANU College of Law follow the example of several medical schools and use groups, much in the way the GDLP is done. At medical schools, students are placed into groups throughout their time at medical school and these groups work together on problems and assessments.

This fosters a team atmosphere and eliminates the counterproductive competitiveness mentioned earlier. This is also a better reflection of how life in practice works. If you are in a firm, you can call on your colleagues to assist you and I would submit that the current approach of mostly individual assessment should be replaced.

4.7 The interaction of the JD and the LLB and information for international students

*Roman Dzioba*¹⁷⁹

I ... wish to submit upon the desirability of the JD program to be run as a separate stream from the LLB program, in other words that JD students would have their own classes throughout their time at law school. In a discussion in 2008 among JD students and the College of Law faculty responsible for the program, I understood this partition to be the ultimate goal. At least 1 JD student voiced opposition to this plan because they felt it would have a sequestering effect, in other words, that JD students would become disjointed from the law school social student life. However, I would submit that this partition should be strongly considered and only rejected if not practical. Because of our previous education and our age, JD students sometimes have specific needs that cannot be addressed in the regular curriculum. The one that comes to mind is that many JD students work and cannot come to the morning classes, even the compulsory courses. I have noticed a diminishing presence of JD students in the compulsory courses over the last 3 years and I am told it is often for reasons of employment.

Another argument favouring partition is that because of our previous education, JD students come in with more knowledge about certain subjects than regular LLB students. This then leads to a skewing of the bell curve as JD students already possess knowledge about certain courses and can do well without much effort. This was certainly true in my case to a certain extent in International Law (LAWS 2250) and Intellectual Property (LAWS 2222). I would submit that a partition of the JD program from the LLB program is preferable but I do realise that there may be practical limitations on this matter.

JD Student Categorisation

A technical, yet to some extent quite important, issue is the status of the JD program and its students. What I mean is the classification of JD students as undergraduate or postgraduate students is unclear, at least to my mind, but this can have important practical ramifications with respect to scholarships, clerkships, accommodation and immigration.

¹⁷⁹ Received as a written submission to the Law School Reform *Issues Paper*

The way I see it, there are 4 possible ways to categorise the JD program and its students.

- 1) JD students are undergraduate students who happen to take some postgraduate courses. I have found this to be the *de facto* position. I believe it is a result of the fact that the great majority of Australian law students are in their first degrees, albeit combined, in law school. Virtually all required courses, then, are run as undergraduate courses.
- 2) JD students are postgraduate students who happen to take many undergraduate courses. This is the official position of the law school.
- 3) JD students are a new hybrid of undergraduate and postgraduate. Such a characterisation would allow JD students to reap the benefits of both streams in terms of scholarships and accommodation. This could, however, prove to be an unfair advantage.
- 4) JD students present an entirely new category of student that is as yet unclassified. I understand this to be the position of some members of the law school faculty.

The ambiguity of the categorisation of the JD program and its students has consequences for those seeking accommodation. ANU's undergraduate accommodation guarantee would appear to effectively exclude JD students from accommodation in the residences given the shortage that has been reported. I remember having issues with this because I was unclear as to the categorisation of the JD program. Without guidance, JD students may not apply for scholarships or bursaries they might otherwise be eligible for. As well, the ANU attracts many international students some of whom contemplate remaining in Australia permanently; I am one of those people. The permanent residence points test has different point amounts for Bachelor's, Master's and Doctoral degrees and classification of the JD has implications here. I would like to note that I understand the law school holds the JD equivalent to a Master's as a postgraduate degree but that there is also considerable disagreement in some other JD jurisdictions as to how it should be classified and some classify it on par with a doctorate.

I would submit on this point that the law school must clarify the status of the JD program and its students. To that end, I would submit that position 3) is probably the most accurate reflection of the JD program, though I do realise that allowing JD students to double-dip, as it were, may be undesirable. If that is the case, I would then submit that positions 2) and 4) are equally desirable. With position 4), though, it would still be necessary to clarify which scholarships, bursaries and clerkships are open to JD students. Finally on this point, I would submit that position 1) should be avoided.

Information for international students

When I came to law school in Australia from Canada I intended to apply for clerkships and graduate positions. I was surprised to see that they are all, or virtually all, reserved for Australian citizens and permanent residents. Coming from a country where these restrictions are few, I felt a little disheartened. It meant that one of the primary vehicles by which law students gain experience is effectively closed to me. While I realise that this will not likely change in the near future, I would submit that it would be advisable that a statement to the effect that most clerkships and graduate positions are reserved for citizens and permanent residents be included in the law school's admissions literature. This would allow international students to plan accordingly and seek employment or experience elsewhere.

4.8 “Diploma of Legal Awareness”

Anonymous

The ANU could look into dealing with the very high attrition rate in law with something that recognises units already undertaken. This could be something like a "Diploma of Legal Awareness" for students who have already taken 48 law units (one full-time year), of which at least half must be ANU units.

Even a foundation year of law covers issues that could translate into highly desirable knowledge, so formal recognition of this would be beneficial to students and prospective employers alike.

Another advantage is that it would encourage disillusioned students who are undecided about continuing with law to push on for another semester or two to qualify for the diploma, by which time they may have overcome their difficulties and started to enjoy the program enough to complete it.

Such a diploma option could also help to attract high-achieving students to the ANU. Combined degree students from other universities who are concerned about "wasting" their first year law units after switching to a straight BA etc. might transfer across to the ANU in order to gain the ANU law units necessary to obtain the diploma. They might then continue with their other degrees at ANU and go on to become successful honours in those fields.

Students would need to be admitted into the law program in order to undertake the units required for the diploma, which could articulate into a degree if they decided to resume their law studies at a later date.

4.9 The UNSW approach?

Emma Lee

A close friend is studying the post-graduate law program at UNSW, and has described to me the small groups in which they do most of their learning. I think that this is called the Socratic method - and is used at UNSW, at least in the post-graduate program, as an alternative to large group lectures. For her, it has been amazingly effective.

This girl began her undergraduate law degree at ANU law school in 2005, but left as she was not enjoying her studies: she was not engaged in the material. After completing an Arts undergraduate degree, she began her law studies once again as a postgraduate in Sydney.

She has raved about the system: how the need for students to prepare in order to engage in a meaningful discussion both keeps you motivated, and is much more effective as a learning strategy. She is now doing exceptionally well and enjoying herself.

I understand that, to a large extent, the large lecture method as opposed to smaller more involved groups, is a question of resources. I do however perceive that engagement in law school education and community could be improved. Participation by students is waning. This is evident in the lack of preparation, even attendance in tutes. Lectures are grossly under attended: it is not uncommon for law students to start listening online to the entire course of lectures a few weeks before exams. I think that these trends detract from the overall education and experience of law students at the ANU. There is a pervasive attitude among law students that the courses are to be completed, not engaged-in, enjoyed or remembered.

I do not propose that increasing participation will be simple. I tentatively suggest the following:

- **Re-arrangement of some courses:** it is clear that some (generally compulsory) courses attempt to cover too much material. Evidence and Equity are two examples. It is suggested that the course content be restructured or the courses split into two separate units to lift the burden on students and allow students to engage in a more thorough and meaningful analysis of the topics covered.
- On the above point, but concerning elective courses, there is a complete lack of regulation of the material. Some courses, for example, IP, cover far too much material. Others are severely lacking and several weeks of the semester are written off. Further, some sort of **regulation** (peer review perhaps?) of these courses should be undertaken to ensure that the material is up to date and relevant.

- The introduction of a **structured support program**: a program which operates in Sydney is a mentoring program whereby later year students are selected (and the role is somewhat prestigious) to tutor several younger year students (available to all students regardless of academic merit) in an informal group setting. This promotes contact between students and discussion and understanding of the course outside of the formal learning structures.

Appendix 1 – Graduate attributes document

ANU College of Law Graduate Attributes¹⁸⁰

This document attempts a typology of attributes encouraged through an ANU LLB degree. It reflects the discussion with staff of the ANU College of Law at the Graduate Attributes Workshop, held on 1 November 2006.

Generic Skills

Elements	Description
Advocacy and Communication	Oral and written communication skills so as to be able to articulate a persuasive position
Problem Solving	Ability to solve problems through identification of the elements needed from a solution and the steps required to provide them.
Research	Ability to find relevant information, esp. legal material.
Critical Thinking	Ability to engage in a critical analysis involving independent and reflective thought
Teamwork	Ability to work with other people
Technological literacy	Awareness, recognition and adoption of effective technology
Basic Literary skills	Appropriate use of language, format, spelling, punctuation, grammar, etc.
Negotiation	Detachment and empathetic to another's position so as to be able to reach a common position
Creativity	Ability to respond in different ways or adapt to new situations
Listening	Includes note taking skills

Legal Content

Elements	Description
Core Principles	Sound understanding of substantive law in core areas as well as an awareness of the principles and policies that underpin this law and of the changing nature of legal doctrine and principle
Techniques of legal reasoning	Ability to analyse legal materials in light of an understanding of core legal concepts
Comparative / International	Recognition of the contextual dependency of Australian legal principles and awareness of alternatives

¹⁸⁰ As at Semester 2, 2010.

Impact	Ability to reflect on the impact of law from a legal policy, legal theory and law reform perspective
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Engagement and Commitment to Learning

Elements	Description
Lifelong Learning	Understanding of the need for a commitment to continued learning and maintaining a sense of intellectual curiosity
University Community	Commitment to the Law School and wider ANU community and desire to stay connected.
Commitment	Real , personal commitment to the rigours of learning and legal education
Global Engagement	Awareness of the broader legal, economic, political and cultural context, including the practices and norms of other nations and global legal systems
Self- and External- Scrutiny	An understanding of the contingency of knowledge and the benefits of external scrutiny

Personal Attributes

Elements	Description
Balance	A sense of enjoyment and balance in the relationship between study, work and other elements in our lives
Respect and Compassion	Empathy and concern for others
Confidence	Self-confidence and realistic self-awareness
Personal Responsibility	Sense of independence and commitment to enhancing and embracing the opportunities presented through legal education.
Integrity	Commitment to personal honesty and integrity

Professional and Ethical Values

Elements	Description
Ethics	Understanding of, and commitment to, professional and personal ethical values and their role in resolving courses of action
Responsibility	Recognition of the privileged position that comes from a legal education and a sense of responsibility to utilise that position to serve others
Social Justice	An interest in social justice through empathy and understanding of the situation of others
Respect of Diversity	An understanding of social and cultural diversity, and sensitivity of the operation of the law and legal structures in that context
Law Reform	Interest in improving the operation of the legal system
Professionalism	Aware of the responsibilities that come from being a member of the legal profession