The University of New South Wales

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UNSW Law School in the Assessment Project

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THE LAW SCHOOL
AND THE ASSESSMENT PROJECT

Alex Steel

UNSW Law (which is a single school faculty so the terms Law
School and Faculty of Law are interchangeable) was founded in
the early 1970s with a deliberate rejection of prevailing teaching
norms. Rather than lectures and tutorials all courses are taught
purely in seminar format, most commonly of two 120-minute
seminars each week with 44 students in each class. Most staff teach
two such classes a semester. For a considerable time after the Law
School’s founding, individual teachers were permitted to structure
the content and assessment of their classes in each course as they
saw fit – the idea being to encourage both innovation and aca-
demic freedom. While content and assessment in courses is now
standardised, there is a legacy of a light touch approach to this
standardisation. As the Law School has grown in size it has worked
to maintain this ‘small group’ approach to teaching. One result had
been a large number of staff teaching in each offering of a compul-
sory course, not always with a clear understanding of the place of
their course in the program as a whole. Also, with the growth of the
faculty, a generational turnover of staff and the increased empha-
sis on research outputs in recent years, the broader discussion of
teaching practice and assessment had declined. In addition, the
faculty had not had the opportunity to reflect broadly on its own
practices and to consider how it is situated in the broader educational environment.

Both the Bachelor of Laws (LLB) and the Juris Doctor (JD) degrees are accredited as qualifying graduates for legal practice. In order to meet the content requirements of accreditation, two-thirds of the degrees are compulsory courses. Consequently, the primary focus of the Assessment Project was on these courses.

Legal practice is overwhelmingly a life of words. Laws, legal judgments, contracts and letters all involve complex concepts reduced to written English. Much of the verbal communication lawyers have with clients, each other and the courts also involves a process of translating life and environments to words. It is therefore not surprising that assessment in law has overwhelmingly been based around writing. Extended academic writing has also long been seen as an efficient way to assess a student’s ability to grapple with complex ideas, apply judgment and place implications in context – while at the same time being able to reduce this to written form.

Assessment in law schools has thus been traditionally based around final examinations and research essays. UNSW Law follows this tradition in the main, but with an increasing range of different assessment methods. However, assessment has generally not been seen by staff as something that specifically builds towards a set of agreed outcomes in a formative way other than through the gaining of expertise via repetition. There is an emphasis on assessment for summative purposes.

Importantly, the Assessment Project was also undertaken concurrently with the faculty undergoing a fundamental rethinking of its law degree curriculums (Bachelor of Laws and Juris Doctor degrees). This meant that it was possible to consider assessment and content in a more fluid environment and both processes were able to influence each other. Realistically, it was not possible to engage staff with both a fundamental rethinking of content and course ordering in the degree and also a complete re-examination
of assessment practices. Consequently, the Assessment Project aimed to effect a number of pivotal innovations in assessment, and also to build an underlying basis for ongoing development.

Aims of the Assessment Project in the Law School

The overriding aim of the Assessment Project was to begin a cultural change in the way the Law School saw assessment: both raising the level of intellectual engagement with the purposes and effects of assessment in learning; and also making the Law School’s practice of assessment more responsive to both student and professional needs.

To do this the project aimed to provide an authoritative evidence base on the nature of assessment in the Law School — both in terms of the forms of assessment set and also in terms of student understandings and attitudes to the assessment. It also sought to create a programmatic understanding of the role of assessment in the degree and its contribution to program learning outcomes. This would make staff and students more aware of how each item of assessment built on earlier assessment and how items are inter-related. Instilling a programmatic sense of assessment among staff aimed to increase the sense of particular skills and values being developed throughout the degree rather than within individual courses. It aimed to help to encourage the development of alternative forms of assessment that could be seen to complement other assessment in different courses, particularly those related to developing professional values. The opportunity to do this was increased by the development of new courses in the revised curriculum.

The project also sought to develop a rigorous intellectual basis for considering the continued use or introduction of key forms of assessment by both extensive literature reviews and also analysis of survey findings.
The process followed by the Law School

Due to the size of the curriculum review process in the faculty, no staff were practically available to give substantial commitment to the Assessment Project. As a result, funding provided by the university was used to employ two staff. Both had strong connections to the issues under consideration. One was a law graduate who had returned as a sessional teacher and was completing a research degree in student wellbeing, and the other was current JD student who had a degree in education and significant work experience. Together with the Associate Dean (Education), the Director of Learning and Teaching and the faculty’s Learning and Teaching Fellow (who was also an experienced student academic adviser), the team had a good balance of teacher and student perspectives on assessment practices.

Much of what was undertaken and achieved in the Assessment Project was due to the efforts of this team. One significant factor in the success of the project was ability to undertake the project’s tasks – such as curriculum mapping – in ways that were seen to be complementary to the assessment review process. In fact many staff may have not initially realised that two projects were running concurrently. Overall this meant that the initiatives of the project did not run into any real opposition, but on the downside the impact of the initiatives may have been more hidden because of the spotlight on curriculum review. Time will tell whether acceptance remains high as the policy changes roll out.

Employing dedicated staff was an efficient way to achieve the project’s goals rather than attempting to second already busy faculty staff, but one downside was a siloing effect of much of the knowledge gained. With the end of funding, those staff are likely to be lost to the faculty. While reports and updates were regularly produced for faculty information, in hindsight, establishing a steering group of academic staff who could have reviewed progress regularly might have been a way of ensuring a broader and deeper awareness of the project’s work.
Building an evidence base: Discovering the current approaches to assessment

A first objective for the Law School was to become aware of the current landscape of assessment and how certain assessment types are privileged over others. This was intended to provoke a discussion over whether some forms of assessment were overly repeated and whether this led to over assessment of some learning outcomes rather than others.

To enable this discussion, a comprehensive analysis of all summative assessment in 2010 was undertaken, a process similar to that undertaken across the rest of UNSW. The audit involved analysing every course outline for courses taught in both semesters, compulsory and elective. Set assessment was extracted and grouped according to standard assessment types. However, analysis of the results demonstrated that the level of analysis of the assessment types was limited in significant ways. For example, the audit put together a range of writing tasks into one category of ‘extended writing’ but failed to identify more specifically what forms of writing this amounted to. Given that much of legal practice involves extended writing, more granularity was needed to determine whether the forms of writing were appropriately balanced.

This led to three further audits designed to expose the degree of diversity in assessment practices. The first audit involved retrieving every examination paper set in the courses audited in 2010 and further disaggregating those exams by type of question asked and degree of scaffolding provided. This led to a number of key findings. Overwhelmingly, examinations involved either a problem question alone or paired with an essay style question. Examinations were largely in the compulsory core rather than the electives. The degree of scaffolding varied across the stages of the degree and often was higher in later courses. On closer inspection, this was often because students were being directed not to analyse certain issues and instead to concentrate on particular aspects. As such,
the scaffolding appeared to increase the complexity. These findings provided important background to the parallel curriculum review process and informed discussion on what should be the appropriate balance of assessment.

The second audit involved collecting all the data from course outlines that related to the assessment of class participation and following that up with a call for staff to supply any additional information that they handed out separately. The aim was to assess the range of forms of assessment of class participation and the degree of use of feedback against criteria (often through rubrics). The findings of this audit then led to a report on the range of approaches to class participation in the Law School, the distillation of these practices into four main typologies of class participation and some criterion-based rubrics based on the best practice examples collated, further discussed below.

The third audit involved asking staff to outline the nature of any forms of assessment that did not fall within the assignment, exam, participation triad. This information was then collated and presented to the faculty as a report on innovative assessment practices, in order to encourage further consideration of assessment development. Many of the assessment types were also collated in the typologies of assessment document, discussed below.

Building an evidence base: Discovering the student experiences of assessment

Complementing the audit of the nature of assessment set, two comprehensive surveys of students were undertaken. One focused on attitudes to assessment types, the other on broader issues of student engagement with learning.

The Law School Assessment Survey

In mid 2012 all LLB and JD students were sent a comprehensive survey on the key forms of assessment set in the Law School: class
participation, group work, scenario-based problem assignments, essays and exams. They were asked about their experiences of, and attitudes towards, those forms of assessment. There was a response rate of 10-15 per cent, many with extensive text comments. Key findings included that students were extremely happy with problem assignments as the fundamental assessment tool and were reasonably happy with exams and essays. Two-thirds considered class participation enhanced their learning and improved their oral skills and were in favour of its retention as a marked form of assessment but a significant number found it stressful and were uncertain of the criteria on which it was marked. Students generally accepted that group work was a valid form of assessment but were strongly resistant to any increase in its use. In terms of feedback, significant numbers of students reported that written feedback on essays was a significant method for self-improvement.

These findings, particularly when broken down by cohorts, will provide important empirical evidence to back up discussions about the appropriate mix and use of assessment. They provide a balance to assumptions of staff and extrapolations from literature in other fields. The survey of law student attitudes to class participation appears to be particularly significant. As far as we know it is the only survey of this kind since a similar survey of UNSW law students in the 1970s.

The Law School Survey of Student Engagement

In November 2012, after a year of planning and negotiation, all law students were invited to participate in the first Australian version of the Law School Survey of Student Engagement (LSSSE). LSSSE is a US-based survey of law student engagement conducted since 2002 and has involved to-date 178 law schools in the USA and Canada. It is based on the NSSSE survey of US college students, with the questions tailored to issues relevant to law students. The UNSW survey was further tailored for Australian law students. UNSW Law School is the first law school outside of North
America to be involved and it is hoped that the success of the survey as part of the Assessment Project will lead to broader involvement by other Australian law schools.

The survey covers a range of issues associated with student engagement, with a focus on engagement with their assessment, including how much time they devote to assessment and preparing for class, what critical reasoning skills they think develop through their degree, and their career intentions. These attitudes are critical to an understanding of what motivates students to do their best in assessment and also provide indications as to what aspects of their study they most value. Four hundred and forty-eight UNSW students completed the survey, which had 111 items. The results were also able to be compared to 25,000 North American responses, giving for the first time a direct international comparison of the Australian and North American law student experiences.

**Combining the surveys**

Data from the audits and both surveys now provides a detailed insight into the student experience of assessment and UNSW Law will be able to develop strong evidenced-based responses and justifications for the assessment regimes in its degree programs. This degree of empirical data on assessment is unparalleled in the faculty’s history. It will provide a firm basis for ongoing discussions about efficient and effective assessment strategies and to benchmark the efficacy of changes made.

**Building an evidence base: The research database and rationales for assessment**

In parallel with the audits and surveys, a comprehensive review of the literature on the key forms of assessment in law schools was undertaken. This included both publications by legal education scholars and also education scholarship more broadly. This research led to three outcomes.
First, a database of informative and useful articles was compiled, containing publication details, abstracts and links to online databases. This was organised into topic headings and placed on the Law School’s internal website as an ongoing resource for staff. The intention is that the database can be used by staff wishing to write up their teaching practices for publication, to provide easy access to key articles as part of professional development, and as an easy introduction to the scholarship of teaching and learning for new staff. To that end a ‘Top 5’ list has also been created in key areas. It is intended that staff will add to the database over time.

Second, the knowledge generated by this literature review was collated into a number of discussion papers for law staff that theorise on and critique key assessment methods. It is intended that these discussion papers will be then compared to the survey results to inform further use and development of these forms of assessment, and the resulting analysis will be made publicly available.

Third, the literature review informed the development of assessment typologies and feedback criteria.

**Building clarity: Assessment typologies and criteria-based feedback**

We hypothesised that one significant stress for students, and communication difficulty for staff, was the variation in format and grading given to forms of assessment that have the same name. Thus class participation can involve free-form contributions, prepared answers, formal presentations, and so on. This was confirmed by both the results of the student assessment survey and the variety of approaches to class participation we found in the 2010 audits and underpinned by the range of practices described in the academic literature review. Consequently, an aim of the Assessment Project was to increase the efficiency of explanation of assessment formats and more explicitly link learning outcomes to various forms of assessment by describing typical variants to the main forms of assessment and producing associated default feedback criteria.
(rubrics). These could then be made available to students as signposts to the expected assessment in the program and also as default explanations to be adopted by staff in setting assessment. The goal is to approach a degree of standardisation of assessment forms from the bottom up but in a way that respects the professional ability of teachers to develop their own adapted forms of assessment.

This creation of typologies has significant merit and efficiencies in itself. It also contributes to the broader goal of a more programmatic understanding of assessment by unpacking the different learning outcomes of different variants of assessment types. This is necessary to allow a discussion on what learning outcomes are to be assessed in the degree program.

Initially it had been thought that by separating out the types of assessment tasks, distinct rubrics would become clear for each type. However, it became clear that while the format of the tasks might differ, the underlying learning outcomes remained largely similar. Because of this, it was decided to develop generic criterion rubrics for the main assessment types and leave staff to demonstrate the different emphasis given to the criteria in different forms of an overall type of assessment. The rubrics were discussed by the faculty at its 2012 retreat and endorsed in 2013 as appropriate generic statements of how those tasks would be assessed. Where appropriate, all courses will now use these rubrics or alternatives in describing and providing feedback for assessment tasks. Feedback from staff and students in 2013 will determine their final forms.

Building clarity and purpose:
Revised learning outcomes, graduate attributes and comprehensive course mapping

The development of a new compulsory law curriculum at the same time as the Assessment Project provided an opportunity to embed alignment of assessment as part of the development of the new courses. This was undertaken in a multi-layered approach. The aim
was to produce clear explanations of how assessment built towards the learning outcomes of the degree – not only to assist students but also staff.

Program learning outcomes

The first stage was the development of a discipline-wide set of six graduate attributes, known as threshold learning outcomes (TLOs). The Law School played a significant role in the articulation of these standards in 2011 (LLB) and 2012 (JD). This provided a generic basis for the Law School’s curriculum review.

Staff were asked to articulate what they considered to be the key qualities graduates should have – and be guaranteed by assessment. These suggestions were then matched to the TLOs and an expanded set of learning outcomes drafted, known as the program learning outcomes (PLOs). What was important in this process was the development of the PLOs from the ground up. This meant that it became clear that certain graduate qualities that were able to be captured in the general TLOs were so important to the Law School’s identity and the character of its graduates that they were best captured in separate PLOs. It also became clear that it was possible to group these PLOs into three key pillars of the degree: knowledge, analytical skills and professional skills:

- **Knowledge**: Graduates of UNSW Law will understand and appreciate:
  - legal knowledge in its broader contexts
  - Indigenous legal issues
  - principles of justice and the rule of law.

- **Analytical skills**: Graduates of UNSW Law will have developed the skills of:
  - statutory interpretation and analysis
  - legal reasoning
  - legal research and writing
  - reform-oriented analysis of law and policy
  - application of interdisciplinary perspectives to legal issues.
• **Professional skills:** Graduates of UNSW Law are professionals with:
  » communication skills
  » interpersonal skills
  » professional and ethical dispositions and values
  » capacities for self-management.

This list of learning outcomes has significantly clarified the intent of assessment and learning in the law degrees. It does so in a concise manner helpful for those external to the faculty. However, what it cannot do is provide any detailed guidance to staff and students around how these outcomes might be achieved. As a result, a third tier was developed underneath the PLOs. This tier constitutes the course learning aims. This much longer list constitutes a series of possible routes towards achieving each PLO, representing approaches taken in various courses. The list is not intended to be closed or prescriptive. Instead it aims to flesh out the PLOs for students and staff and encourage understanding of what could form part of the generally worded PLOs. For example, PLO 3 currently contains the following course learning aims:

• principles of justice and the rule of law
• tensions between law and justice/morality
• distributive justice, including social justice
• corrective justice
• justice as desert and retributive justice
• restorative justice and ADR
• legal protection of rights, including by the Constitution
• legal practitioners’ duties to clients, the court and society
• due process and natural justice
• the maintenance and operation of the rule of law
• constraints upon government power and the review and correction of government decisions
• the rule of law in context.
Mapping courses to the program learning outcomes

Having developed tiered outcomes, all learning outcomes and assessment in the newly revised curriculum were mapped to the outcomes. As part of the mapping process, all compulsory course descriptions were revised into a standard format and all learning outcomes recast as active student-centred activities. Learning outcomes were required to be warranted by an item of assessment. Staff were then asked to nominate to which PLO the learning outcome mapped. In conjunction with this process, staff were also asked to nominate the top three PLOs that were associated with each item of assessment.

To avoid this process being seen as a negative compliance process, a member of the Assessment Project team sat with each course convenor and discussed the vision of the course, translating that into learning outcomes tied to assessment. Overwhelming feedback was that staff found this an inspiring process of reflection on the aims of the course that had benefits independent of the mapping process itself. The mapping was compiled in an Excel spreadsheet developed by the Learning Unit at the University of Technology Sydney.

This process led to three different mapping outcomes, presented at the 2012 faculty retreat. The first chart set out the quantity of assessment items set for students in the compulsory part of the degree to illustrate the degree of repetition and provide a contrast to the results of the 2010 exercise. This demonstrated that there had been a significant shift towards more professionally oriented forms of assessment, but that more work could be done to provide variety and increasing levels of complexity to final examinations.

The second chart mapped the degree to which the PLOs were ‘hit’ by the learning outcomes. Given the restriction of only one PLO for each learning outcome, this produced a heuristic sense of the main emphases in the degree and provoked significant discussion. The second document (Table 9.1) mapped the top three PLOs for each assessment item. This provided a more nuanced sense of
Table 9.1  Mapping of program learning objectives against assessment items

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<th>33</th>
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PLO

PLO 1.1: Legal knowledge in context
PLO 1.2: Indigenous legal issues
PLO 1.3: Principles of justice and the rule of law
PLO 1.4: Statutory interpretation and analysis
PLO 2.1: Legal reasoning
PLO 2.2: Legal reasoning and analysis
PLO 2.3: Research and writing skills
PLO 2.4: Law reform and policy analysis
PLO 2.5: Interdisciplinary perspectives
PLO 3.1: Communication skills
PLO 3.2: Interpersonal skills
PLO 3.3: Professional and ethical disposition and values
PLO 3.4: Self-management
what skills or knowledge was being emphasised to students in the choice of assessment. Importantly, it highlighted very clearly what PLOs two new pivotal innovations in the degree (a new course on Lawyers, Ethics and Justice and an integrated legal skills component running vertically through the degree) would need to assess — an important aid to the development of those courses.

It also demonstrated that some of the PLOs considered to be fundamental to the character of the degree were far less heavily assessed than those that developed professional skills. Discussion of this finding led to the recognition that these PLOs were in fact repeatedly assessed as part of legal reasoning and writing tasks, but that more could be done to make students aware of the importance of these aspects of the tasks. To take one example, PLO 2 Indigenous Legal Issues, was central to much of the assessment of criminal law courses but this had not been captured in the mapping exercise.

Additionally, staff were asked to consider their courses within degree-wide themes. This was both to overcome this limitation of the mapping process and to further emphasise the cultural shift from assessment as being relevant only to the content of the course in which it is set to a broader understanding of how assessment develops student capacity throughout a degree. An initial set of themes — aimed to complement the emphases in the courses and overlap the PLOs — included Indigenous Legal Issues; Human Rights; Justice and the Rule of Law; Environment, Class, Gender, Race and Disability Issues; Experiential Learning; and Personal and Professional Development. These themes were written up into documents that provided a narrative of how the themes ran throughout the degree, linking between courses and explaining their role in assessment. These theme documents will develop over time as the new curriculum is taught, and more themes are likely to be added.
Building innovation: New forms of assessment

One important aspect of the curriculum review was a belief that that way the faculty teaches law should shift towards a greater emphasis on practical skills and professional values, a move that is currently also occurring in the United States. Part of the underlying aim of the assessment audits and mapping was to demonstrate the extent to which existing assessment was capable of developing those broader learning outcomes. In doing so it became clear that the program would benefit from the introduction of new forms of assessment and a stronger emphasis on formative elements. Key developments over the life of the project have been:

- experiential learning
- group assessment
- online formative assessment
- values-based assessment.

Experiential learning

The faculty has made a commitment to placing experiential learning at the centre of the degree and further consolidating its position as the leader in providing such learning to most, if not all, of its students. In doing so, the faculty has committed itself to growing the internship program to the point where every student who wishes to take an internship can do so. This was achieved in 2012 with a majority of the relevant cohort undertaking internships — and more internship places offered than were taken up.

As part of this growth, the faculty has sought to make the assessment of internships more rigorous and reflective. Consequently, the faculty has:

- articulated an experiential pathway through the degree, with mandatory court visits in early years, role-playing in middle sections and an opportunity to take internships at end of the degree
- developed an assessment strategy for this stream that enhances
students’ reflective learning without increasing staff costs through the introduction of small practice group classes

• placed a stronger emphasis on the centrality of workplace experience for interpreting legal materials and classroom discussions

• developed a clear statement of the role of experiential learning in the Law programs for dissemination to students and staff. From 2014, course outlines will highlight assessment related to experiential learning. Experiential learning in these assessments is clearly linked to learning outcomes and graduate attributes.

**Group assessment**

Group work has not been widely adopted as an assessment form in Law. One learning outcome that is now sought after by the profession is the ability to work and communicate as a member of a team. The student survey revealed ambivalence about assessment of group tasks but recognition that it was an important professional skill. As part of the Assessment Project, the faculty has now developed a theoretical justification for group work in law, collated examples of best practice and developed a generic rubric for student self-assessment of the process of group work. That theoretical framework involves progression from cooperative through collaborative to team-based small group activities.

This now means that the faculty can articulate its approach to the development of group work competency in the curriculum as follows:

• Formative *co-operative group work* will be encouraged as part of in-class teaching in earlier year courses.

• *Collaborative group work* assessment tasks will be used in Equity and Trusts; Resolving Civil Disputes; and Court Process, Evidence and Proof, all of which are compulsory core courses as part of the new LLB and JD degrees. In Equity and Trusts, a group-based trust deed drafting exercise will
constitute the mid-semester assignment; in Resolving Civil Disputes, small groups of students will place themselves in the position of legal practitioners to advise on dispute resolution options and undertake a drafting and advocacy assessment; and in Court Process, Evidence and Proof, the mid-semester group assessment task will provide an opportunity for students to observe and reflect upon professional dispositions witnessed during court observations.

- Later year electives can then build *team-based group assessment* into their teaching strategies. The review of elective teaching and assessment is a major project for 2013.

**Online formative assessment**

The combination of program simplification and curriculum review led the Law Faculty to the decision to no longer teach Legal Research and Writing as a stand-alone course. UNSW Law had been a leader in Australia in creating such a course to give appropriate emphasis to such skills. However, the utility of online forms of formative assessment and the advantages of adopting a just-in-time approach to skills development, in association with other assessment tasks, led the faculty to move to integrating development of such skills throughout the entire degree and to support those skills with online modules and formative assessment. Work on this development will be a major project for 2013.

**Values-based assessment**

A fundamental concern in US legal education is an acknowledged lack of ethical awareness and professional values in law graduates. UNSW Law has long had a reputation for producing graduates who possess such values but that was largely based on the inculcation of such values by osmosis. With a larger student body and
increased use of sessional staff this has been recognised as insufficient and difficult to measure. Concerns in the US and moves there to mandate such aspects of legal education have formed a catalyst for the faculty to reaffirm the importance of those values and to more explicitly incorporate them into the degree program.

One significant way of doing this is to design assessment tasks that require awareness of professional values and an emerging ability to apply such values. This will be achieved in 2013 three ways:

- Existing assessment will be tweaked to emphasise the real-world professional implications of the analysis students undertake.
- A new foundational compulsory course on Lawyers, Justice and Ethics will be designed around professional values and explicitly linked to other compulsory courses. Assessment in that course will be developed with this in mind.
- New, explicitly reflective assessment around professional values will be developed to complement the new Lawyers course.

Reference