

# DESIGNING LAW SCHOOL ASSESSMENT TO MEET NEW FORMS OF LEGAL PRACTICE: A MODEL FROM AUSTRALIA

HEATHER ROBERTS & ANDREW HENDERSON\*

*The nature of legal practice is changing rapidly. Law schools' traditional emphasis on exams and essays provides little opportunity for students to build the broad range of skills they will need in order to meet the new legal workplace's demands. At the same time, the expectations held by universities, admitting authorities, and employers that law schools' assessment is valid, transparent, and reliable means that designing new assessment tasks needs to be approached carefully. Examples of broader assessment tasks that could be used as models are rare. This article contributes to filling the gap in models of assessment beyond traditional exams and essays, using an example of an innovative assessment task implemented at the Australian National University College of Law. It describes and demonstrates how returning to "first principles" in assessment design can guide innovative assessment. It includes empirical data on stakeholders' positive evaluation of the assessment design in meeting the current and future needs of the legal profession and clients.*

## I. INTRODUCTION

Legal practice is changing dramatically in response to new demands by both clients and the broader community. As Richard Suss-

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\* Associate Professor Dr. Heather Roberts, The Australian National University College of Law; Mr. Andrew Henderson, PhD Candidate, Tutor, and Research Fellow, The Australian National University College of Law. Dr. Roberts was supported by an Australian Research Council Research Fellowship (DE 180101594) during the delivery of the courses discussed in this article. The authors also acknowledge the financial support provided by The Australian National University's Vice-Chancellor's Teaching Enhancement Grant (2020). They also wish to thank the students enrolled in 'Selected Topics in Australian—United States Comparative Law' in 2019 and 2020, especially those who agreed to participate in the exhibition of students' work and follow up surveys. The delivery of the courses would not have been possible without the wisdom and enthusiasm of Professor Heather Elliott, and the participation and support of her students and the University of Alabama School of Law. The authors also wish to express their gratitude to the late Professor Michael Coper, who was instrumental in establishing the ANU/Alabama teaching exchange, and whose mentorship and enthusiasm for the High Court inspired this course. The ethical aspects of student and visitor surveys discussed in this article were approved by the ANU Human Research Ethics Committee (Protocol 2020/118).

kind<sup>1</sup> and others have pointed out, the landscape of legal services is moving rapidly. Simple, repetitive or administrative tasks “at the bottom of the licence” are being increasingly automated.<sup>2</sup> The advent of online chatbots like DoNotPay.com,<sup>3</sup> online legal advice services like Justia,<sup>4</sup> and more comprehensive online legal service providers like Rocket Lawyer<sup>5</sup> are also beginning to eat into some of the more non-administrative but less complex tasks that lawyers traditionally performed.<sup>6</sup> One of the outcomes of 2020 for lawyers was how critical the effective and efficient use of technology had become in a socially-distanced working environment.<sup>7</sup> Some law schools have moved to offer specializations in law and technology, in cooperation with law firms, and to increase law students’ opportunities to engage in this brave new world of legal practice.<sup>8</sup>

The increasing accessibility of legal advice through free or inexpensive services also raises an expectation that lawyers will be able to provide advice and information that is readily understood and equally accessible. From clients’ perspective, 2020 highlighted that they no longer needed to attend a lawyer’s office to get legal advice and assistance. Legal service consumers will expect an increasing level of flexibility in the future.<sup>9</sup>

Lawyers are being encouraged (or compelled) to focus on how their experience, knowledge, and skills can be employed in more diverse roles that provide value to clients and the community. Conse-

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<sup>1</sup> RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

<sup>2</sup> Susan Hackett & Karl Chapman, *The Higher Use of Lawyers in a Data- and Tech-Enabled World*, LAW.COM (Sep. 17, 2019 at 03:10 PM), <https://www.law.com/corpocounsel/2019/09/17/the-higher-use-of-lawyers-in-a-data-and-tech-enabled-world/>.

<sup>3</sup> DoNotPay, <https://donotpay.com/> (last visited Mar. 30, 2021).

<sup>4</sup> JUSTIA, <https://www.justia.com/> (last visited Mar. 30, 2021).

<sup>5</sup> ROCKET LAWYER, <https://www.rocketlawyer.com/> (last visited Mar. 30, 2021).

<sup>6</sup> Hackett & Chapman, *supra* note 2.

<sup>7</sup> For example, in its report on changes in legal practise, Bloomberg highlighted the increasing use of cloud-based and remote working technologies to support the traditional or ordinary business of law firms. *Future of the Legal Industry*, BLOOMBERG, <https://pro.bloomberglaw.com/reports/bloomberg-law-2021-future-of-the-legal-industry/> (last visited Aug. 8, 2021).

<sup>8</sup> See, for example, Stanford University’s LLM in Law, Science and Technology (*Stanford Program in Law, Science and Technology*, STANFORD LAW SCHOOL, <https://law.stanford.edu/stanford-program-in-law-science-technology/> (last visited Mar. 30, 2021)) and the University of Technology, Sydney’s major in Technology and the Law (*Legal Futures and Technology Major, WHY STUDY UTS LAW?*, <https://www.uts.edu.au/future-students/law/courses/undergraduate-law/why-study-uts-law/legal-futures-and-technology-major> (last visited Mar. 30, 2021)). Australian Law Societies have also promoted student ‘hackathons’ to promote the use of technology in legal practice. See, e.g., *#Innovate Law 2018 Hackathon*, THE LAW SOCIETY OF NEW SOUTH WALES <https://www.lawsociety.com.au/2018-hackathon#> (last visited Jul. 29, 2021).

<sup>9</sup> CLIO, *LEGAL TRENDS REPORT* (2020).

quently, there is an expectation that law graduates will be equipped with the skills to be able to meet these demands, which includes the capacity to utilize new technologies to communicate complex legal principles to clients and broader, non-legal, audiences.

However, there is a gap. Law school has traditionally assessed student achievement through formative essays and high-stakes summative exams focused on problem-solving.<sup>10</sup> Essays and exams rarely provide the opportunity for students to demonstrate their understanding of the underlying concepts of the legal system or their capacity to communicate complex ideas to the diverse audiences they will encounter post-graduation.

The emphasis on exams and essays presents a challenge in designing and delivering innovative assessment that allows students to develop and demonstrate the broad range of skills they will need. Examples of broader assessment tasks that could be used as models are rare. At the same time, considerable care needs to be exercised in venturing into different forms of assessment. The expectations of universities, admitting authorities, and employers that graduates are adequately prepared mean that law schools' assessment must be valid, transparent, and reliable.<sup>11</sup>

This article contributes to filling the gap in models and examples of law school assessment beyond traditional exams and essays. It describes the process of design and implementation of an assessment task provided to students in a course offered by the Australian National University College of Law ("the ANU") on comparative Australian and United States Law. It also describes the extent to which students and the wider public saw the course outcomes and the assessment as effective in building the skills necessary for law students entering a professional career. The approach, the lessons learned, and the reflections of students and the public are equally applicable in Australia and the United States. The substantive content of the course itself also, naturally, drew extensively on United States material, demonstrating that innovate assessment models can successfully showcase legal principles relevant to both the Australian and United States legal contexts.

As part of its Bachelor of Laws (Hons) program, the ANU offers

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<sup>10</sup> DENNIS PEARCE, ENID CAMPBELL & DON HARDING, AUSTRALIAN LAW SCHOOLS: A DISCIPLINE ASSESSMENT FOR THE COMMONWEALTH TERTIARY EDUCATION COMMISSION (1987); Alex Steel, Lyria Bennett Moses, Julian Laurens & Charlotte Brady, *Use of Exams in High Stakes Law School Examinations: Student and Staff Reactions*, 29 LEG. ED. REV. 1 (2019).

<sup>11</sup> Karin Gerritsen-van Leeuwenkamp, Desirée Joosten-ten Brinke & Liesbeth Kesterd, *Assessment Quality in Tertiary Education: An Integrative Literature Review*, 55 STUD. IN ED. EVAL. 94 (2017).

‘Selected Topics in Australian—United States Comparative Law’. The course is co-taught with the University of Alabama School of Law (“Alabama”). Students from both the ANU and Alabama can elect to enroll in the Canberra or Tuscaloosa based deliveries of the course. The ANU and Alabama cohorts are, however, assessed according to different assessment structures.

In 2018 and 2019, the course offering focused on a comparative study of the two countries’ apex courts; the High Court of Australia and the United States Supreme Court. Rather than focusing exclusively on comparative jurisprudence, the course applied a broad socio-legal perspective, examining the courts’ histories and judicial biographies, constitutional roles, appointment procedures, administration, and depictions in popular culture.

Australian students were offered the opportunity to apply a comparative methodology to draw out similarities and differences between an aspect of each court of their choice. Students could elect to write a research essay. However, they were also encouraged to direct their project to an audience of their choosing, and adopt any form of communication they thought appropriate to communicate their findings to that target audience.

At the end of the course, and with the students’ consent, examples of their projects were publicly exhibited in a display at the ANU and online.<sup>12</sup> The exhibition provided an opportunity to celebrate students’ work and share ideas about assessment design with the broader law school community. It also provided an opportunity to evaluate the extent to which the diverse array of visitors to the physical and virtual exhibitions saw the assessment, as reflected in the students’ projects, as meeting their expectations of lawyers and law school.

Inviting students to approach their assessment in this way presented some unique challenges. The assessment needed to be designed so that it linked to learning outcomes and be broad enough to capture the diverse communication approaches that students were encouraged to explore. Students also needed to be scaffolded to use communication techniques and technologies with which they were unfamiliar. The exhibition also opened the law school and the academic staff involved in the course to the wider community’s critical gaze in an unusual but essentially valuable way—making the process of legal education visible to the broader communities served by university legal education.

Part II of this article sets out the framework under which Australian law schools operate and the learning outcomes against which Aus-

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<sup>12</sup> *Exhibition of Student Work*, SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW, <https://apexcourtsanu.wordpress.com> (last visited Mar. 31, 2021).

tralian law students' achievement is assessed. This framework is not dissimilar to that applying to American law schools, and the section identifies those similarities. Part III explains the process of designing and executing the assessment, students' projects, and the response from students to the task collected through a survey and informal feedback received. Part IV explains the process of curating students' work for the exhibition and the empirical data collected from students and visitors regarding the assessment regime.

## II. AUSTRALIAN LEGAL EDUCATION

Law as a liberal, university-based degree has a shorter history in Australia than in the United States. During the 1850s in Australia, a small number of universities offered legal studies. However, disputes over who should control the curriculum and whether universities should focus on law as a philosophical or practical course of study hampered the development of legal education in some parts of Australia.<sup>13</sup>

Those disputes persisted even after Federation in 1901 and the transformation of the British colonies into States within an Australian Commonwealth. Although more law schools began to open in the early 1930s, there was very little innovation or change in Australian legal education until the 1960s—a period that Barker, in his history of legal education, refers to as “the waiting years.”<sup>14</sup>

Between 1960 and today, Australia has seen an ongoing expansion in the number of law schools, driven in part by reforms to the Australian tertiary education sector to increase accessibility to university study.<sup>15</sup> Those same reforms also changed the structure of fees and university funding that encouraged universities to add law schools to their faculties to attract additional student enrolments.<sup>16</sup>

In addition to the proliferation of the number of law schools, Australian legal education has also seen changes to pedagogy. There is still no universal agreement on whether legal education should be vo-

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<sup>13</sup> DAVID BARKER, *A HISTORY OF AUSTRALIAN LEGAL EDUCATION* (2017); Linda Martin, *From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales*, 9 UNSWLJ 111 (1986).

<sup>14</sup> BARKER, *supra* note 13 at 51.

<sup>15</sup> Susan Bartie, *Towards a History of Law as an Academic Discipline*, 38 MULR 444 (2014); David Barker, *An Avalanche of Law Schools: 1989 to 2013*, 6 JNL. OF THE AUST. LAW TEACHERS ASSOC. 1 (2013).

<sup>16</sup> Conor King & Richard James, *Creating a Demand Driven System*, in *TERTIARY EDUCATION POLICY IN AUSTRALIA* 11 (Simon Marginson ed., 2013); Vivienne Brand, *Decline in the Reform of Law Teaching - The Impact of Policy Reforms in Tertiary Education* 10 LEG. ED. REV. 109 (1999); MARGARET THORNTON, *PRIVATISING THE PUBLIC UNIVERSITY: THE CASE OF LAW* (2012).

cationally or conceptually focused.<sup>17</sup> However, the adoption of national curriculum documents, which are discussed in the next section, has attempted to balance the two. There is an emphasis on “professional” skills, extending the law school curriculum beyond technical mastery and role-specific tasks to include communication, thinking, and relationship-management skills applicable in a range of professional settings.

### A. Australian Legal Education Curriculum

In Australia, a Bachelor of Laws (LLB) is recognized as meeting the academic requirements for admission as an “Australian lawyer.”<sup>18</sup> It is most commonly offered as a three-year, full-time program of study. It can be undertaken jointly with another undergraduate degree, extending the period of study to four years.

Unlike the Juris Doctor (“JD”) in the United States, the LLB is an undergraduate degree. Law students can enter law school the year after graduating from high school. Most Australian law schools also offer a JD to students who have completed an undergraduate degree. However, the LLB degree remains the principal academic pathway to admission.<sup>19</sup>

Australian law schools operate within a hierarchy of learning outcomes that determine the expected graduate outcomes for tertiary studies generally, law students specifically, and the common core subjects that all Australian law students are expected to complete.

Like the United States, legislation regulates the accreditation of Australian higher education. However, there is no prohibition on the Australian regulatory regime extending to universities’ administration or curriculum.<sup>20</sup> For any Australian university to award a recognized tertiary qualification, it must meet the requirements of the *Tertiary Education Quality and Standards Agency Act* (“the TEQSA Act”).<sup>21</sup>

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<sup>17</sup> For an example of the contemporary debate in Australia see Rosalind Dixon, *Studying law is about much more than becoming a lawyer*, Malcolm Turnbull, UNSW NEWSROOM (Feb. 5, 2018), <https://newsroom.unsw.edu.au/news/business-law/studying-law-about-much-more-becoming-lawyer-malcolm-turnbull>.

<sup>18</sup> Requirements for admission are regulated separately by each Australian state and territory. The phrase “Australian lawyer” is used to denote a legal practitioner who has been admitted but does not hold a current practising certificate, which entitles them to practise law. In addition to the academic requirements, applicants for admission must also undergo a period of practical legal training and be certified as a fit and proper person to practice law. See, e.g., *Legal Profession Uniform Law 2014* (NSW) pt 2.2.

<sup>19</sup> Australian Government Department of Education, *Enrolments time series*, SELECTED HIGHER EDUCATION STATISTICS – 2018 STUDENT DATA, <http://tiny.cc/vdzfziz>.

<sup>20</sup> In the United States, the Secretary of Education is not entitled to “exercise any direction, supervision, or control over the curriculum.” 20 U.S.C. § 3403(b).

<sup>21</sup> *Tertiary Education Quality and Standards Agency Act 2011* (Cth) [hereinafter *TEQSA Act*].

The *TEQSA Act* gives effect to the *Higher Education Standards Framework (Threshold Standards)* (“the *Threshold Standards*”) that governs a broad range of university functions, including governance, administration, facilities, course design, and student assessment and attainment.<sup>22</sup> Australia is similar to the United States insofar as registration and accreditation are distinct outcomes.

To become a higher education institution, an Australian university must apply for registration to the Tertiary Education Quality and Standards Agency (“TEQSA”), a government agency.<sup>23</sup> Individual degree programs must also be accredited in order to be recognized. Unlike the United States, accreditation is not undertaken by third party organizations or by states,<sup>24</sup> but is instead performed by TEQSA or by the university itself where TEQSA authorizes it.<sup>25</sup>

For a degree program to be accredited, the *Threshold Standards* require learning outcomes to align with the Australian Qualifications Framework’s learning outcomes (“the AQF”).<sup>26</sup> The AQF is a set of expectations of the knowledge, skills, and the application of both across ten levels, from the final year of high school (Level 1) to doctoral degrees (Level 10).<sup>27</sup>

Since 2015, the ANU College of Law has awarded an LLB (Hons) to students who complete the course of study. The honours component is “embedded”, that is, all graduates receive an honours level degree without the requirement to complete an honours research dissertation. Graduates are awarded first-, second-, or third-class honours based on their academic performance throughout the degree.<sup>28</sup> In the AQF, a Bachelor (Honours) Degree constitutes a Level 8 qualification.

While the AQF sets requirements applicable across all disciplines, it applies and adopts a curriculum—the *Threshold Learning*

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<sup>22</sup> *Higher Education Standards Framework (Threshold Standards) 2015* (Cth) [hereinafter *Threshold Standards*].

<sup>23</sup> *TEQSA Act*, *supra* note 21, pt. 3, div. 1.

<sup>24</sup> U.S. Department of Education, *Accreditation in the United States*, U.S. DEPARTMENT OF EDUCATION, <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited Mar. 31, 2021); U.S. DEPARTMENT OF EDUCATION, *RETHINKING HIGHER EDUCATION: ACCREDITATION REFORM 1* (2018).

<sup>25</sup> *TEQSA Act*, *supra* note 21, sec. 45.

<sup>26</sup> AUSTRALIAN QUALIFICATIONS FRAMEWORK COUNCIL, *AUSTRALIAN QUALIFICATIONS FRAMEWORK* (2nd ed., 2013) [hereinafter the AQF].

<sup>27</sup> It is agreed nationally by the Australian, State and Territory governments and administered by the Commonwealth Department of Education, Skills and Employment. The learning outcomes within each level are generally expressed so as to be applicable across all disciplines. *Id.*

<sup>28</sup> Australian National University, *Bachelor of Laws (Hons)*, PROGRAMS AND COURSES, <https://programsandcourses.anu.edu.au/program/allb#inherent-requirements> (last visited Mar. 31, 2021).

*Outcomes* (“the TLOs”)—for the LLB determined by the Council of Australian Law Deans.<sup>29</sup> The TLOs establish what the AQF expects LLB graduates “to know, understand and be able to do as a result of learning.”<sup>30</sup> Among the materials on which the Council drew to develop the TLOs were the MacCrate Report’s outcomes on American legal education<sup>31</sup> and the American Bar Association (“ABA”) Standards as applied at that time.<sup>32</sup>

Although the drafters of the TLOs had regard to the ABA Standards, there is an explicit acknowledgement that while an LLB program must meet the academic requirements for admission to practice, “not all students pursue legal study with that purpose in mind.” Consequently, the TLOs emphasize professional skills that are considered applicable in “diverse roles beyond professional legal practice”<sup>33</sup> as distinct from “professional skills needed for competent and ethical participation *as a member of the legal profession*.”<sup>34</sup>

Much like the post-2015 ABA Standards, the TLOs identify learning outcomes rather than learning inputs.<sup>35</sup> At the same time, they are also more prescriptive in defining the expected outcomes from the program than Standard 302.<sup>36</sup> The TLOs identify six out-

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<sup>29</sup> AUSTRALIAN LEARNING AND TEACHING COUNCIL, LEARNING AND TEACHING ACADEMIC STANDARDS PROJECT - BACHELOR OF LAWS - LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT (2010) [hereinafter TLOs]. The TLOs were agreed and adopted by the Council of Australian Law Deans in 2010 following an extensive development and consultation process with universities, professional bodies, legal professional regulators, student bodies, courts and the judiciary. There is a comprehensive summary of the history of their development in the TLOs themselves.

<sup>30</sup> The AQF, *supra* note 26, at 11; TLOs, *supra* note 29, at 1.

<sup>31</sup> ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) [hereafter MacCrate Report].

<sup>32</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2000-2010 (2010); ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2010-2011 (2011); TLOs, *supra* note 29, at 29.

<sup>33</sup> TLOs, *supra* note 29, at 8.

<sup>34</sup> AMERICAN BAR ASSOCIATION, 2020-2021 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 302(d) (2020) (emphasis added) [hereafter ABA STANDARDS].

<sup>35</sup> The 2015 revision was intended to “effect a reduction in reliance on input measures and to ‘adopt a greater and more overt reliance on outcome measures.’” Section of Legal Education and Admissions to the Bar, *Explanation of Changes*, AMERICAN BAR ASSOCIATION 6 (Aug. 14, 2020) [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201408\\_explanation\\_changes.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201408_explanation_changes.pdf).

<sup>36</sup> Standard 302 provides only “at a minimum,” a law school’s learning outcomes should address: “(a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communica-



comes that graduates from all Australian law schools are expected to be able to demonstrate:

- knowledge (TLO 1);
- ethics and professional responsibility (TLO 2);
- thinking skills (TLO 3);
- research skills (TLO 4);
- communication and collaboration (TLO 5); and
- self-management (TLO 6).

Within each is a short statement of what a graduate is expected to understand and be able to do and explanatory notes that define terms used within each TLO.<sup>37</sup>

At a level beneath the AQF and the TLOs, Australian law schools, including the ANU, have adopted statements of learning outcomes for their LLB programs that reflect the other documents' content while also taking into account the school's particular perspective or emphasis.<sup>38</sup>

### B. Learning Outcomes and Assessment

LLB programs and individual courses within them are expected to demonstrate clear links to their learning outcomes and assessment frameworks.<sup>39</sup> Like Standard 314, there is also an expectation that courses will incorporate formative and summative assessment to allow students to understand how they are tracking against the learning outcomes overall.<sup>40</sup> CALD's *Standards for Australian Law Schools*,

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tion in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession." ABA STANDARDS, *supra* note 34, at Standard 302.

<sup>37</sup> The TLOs, *supra* note 29. The TLOs do not determine the substantive content of the LLB. TLO 1 dealing with knowledge refers to "fundamental areas of legal knowledge, the Australian legal system and underlying principles and contexts." *Id.* Australian law students are, however, required to complete eleven core courses as part of the LLB—the *Prescribed Areas of Knowledge*. The eleven core units, including a syllabus to be covered in each, are determined by the Law Admissions Consultative Committee (LACC). The LACC is colloquially known as "the Priestley Committee" after its first chair, Justice LJ Priestley. Consequently, the eleven *Prescribed Areas* are commonly referred to as "the Priestley 11." TLO 1 "encompass[es]" the *Prescribed Areas*. The balance of units required to complete the LLB may be taken from electives offered by the university. *See generally*, Law Admissions Consultative Committee, *About Us*, LEGAL SERVICES COUNCIL (16 November 2020), <https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>.

<sup>38</sup> Australian National University, *Bachelor of Laws (Hons)*, *supra* note 28.

<sup>39</sup> COUNCIL OF AUSTRALIAN LAW DEANS, THE CALD STANDARDS FOR AUSTRALIAN LAW SCHOOLS [3.2.1] (2009). ANU policy also requires a demonstrable link. Australian National University, *ANU Policy: Student assessment (coursework)*, AUSTRALIAN NATIONAL UNIVERSITY (Dec. 23, 2019) [https://policies.anu.edu.au/ppl/document/ANUP\\_004603](https://policies.anu.edu.au/ppl/document/ANUP_004603).

<sup>40</sup> COUNCIL OF AUSTRALIAN LAW DEANS, *supra* note 39; Australian National Univer-

against which Australian law schools may be evaluated, provide that each law school is entitled to determine its assessment methods and criteria, but they must be published.<sup>41</sup>

Although the curriculum addresses links to assessment, there is little guidance on how progress against learning outcomes should be assessed. The Pearce Committee Report<sup>42</sup> on Australian legal education, published in 1987, argued there was an overemphasis on exams as a form of assessment across law schools. It encouraged law schools to consider adopting more diverse forms of assessment. While the Committee's recommendations advocated for a change to assessment, they tended to avoid detailed suggestions about how law schools could, or should, implement that change.<sup>43</sup> A decade later, the absence of clarity had resulted in a "holistic and effective educative process . . . proceed[ing] slowly".<sup>44</sup>

Consequently, the extent to which Australian law schools have forms of assessment other than exams and research essays is a mystery. There has been no national survey of assessment methods being used in Australian law school. Some Australian law schools have adopted a range of alternative assessment methods. However, discussion of their design or evaluation of their implementation tends to be focused on specific courses and content.<sup>45</sup> The absence of models for assessing tasks other than traditional written forms or oral presentations against the TLOs meant that for Selected Topics in Australian—United States Comparative Law, it was necessary to return to some "first principles" in assessment design.

### III. COURSE DESIGN

Against this backdrop, designing the assessment for Selected Topics in Australian—United States Comparative Law presented both a challenge and an opportunity. The TLOs are explicit and guide the skills and attributes that instructors should cover in designing a course. However, the curriculum is silent on how students' progress against the learning outcomes should be assessed, presenting a challenge in thinking about how to give students opportunities to demon-

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sity, *ANU Policy: Student assessment (coursework)*, *supra* note 39.

<sup>41</sup> COUNCIL OF AUSTRALIAN LAW DEANS, *supra* note 39.

<sup>42</sup> PEARCE ET AL., *supra* note 10.

<sup>43</sup> CRAIG MCINNIS & SIMON MARGINSON, AUSTRALIAN LAW SCHOOLS AFTER THE 1987 PEARCE REPORT 258 (1994).

<sup>44</sup> Sally Kift, *Lawyering Skills: Finding their Place in Legal Education*, 8 LEG. ED. REV. 43, 44 (1997).

<sup>45</sup> Alex Steel, *Empirical legal education research in Australia: 2000–2016* in IMPERATIVES FOR LEGAL EDUCATION RESEARCH THEN, NOW AND TOMORROW 74 (Ben Golder et al. eds., 2020).

strate their progress against some aspects of those learning outcomes.

As outlined above, successful completion of an LLB is accepted as evidence by admitting authorities that an applicant possesses some of the attributes expected of a legal practitioner. Unlike the United States, there is no further testing of the applicant's abilities undertaken by the admitting authority before admission. Consequently, admitting authorities rely on law schools to ensure that applicants are academically competent. The expectations of admitting authorities mean that law schools' assessment must be valid, transparent and reliable.<sup>46</sup>

#### A. *Selecting the Assessment Task: Validity*

Validity is a slippery concept in assessment, with a range of definitions and approaches. There are, however, some common themes that can guide assessment design. First, the assessment must have a demonstrable connection to the quality, attribute or skill that is supposed to be measured.<sup>47</sup> Secondly, it must reflect the types of activities performed, and the way they are performed, by profession(s) that graduates might enter, sometimes referred to as making the task "authentic".<sup>48</sup>

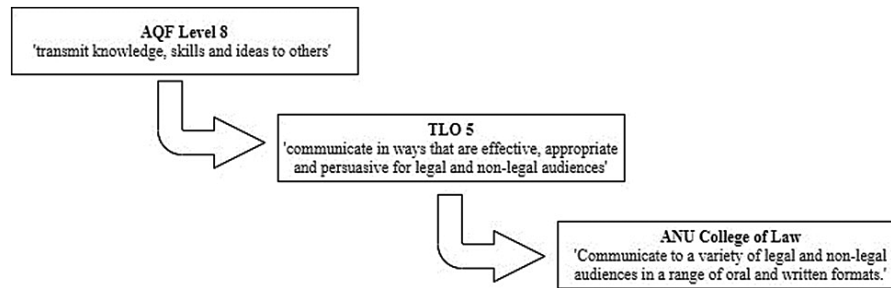
The cascading learning outcomes of the AQF, the TLOs and the ANU College of Law, specific to communication, could be represented in the following way:

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<sup>46</sup> Gerritsen-van Leeuwenkamp et al., *supra* note 11.

<sup>47</sup> Denny Borsboom, Gideon J Mellenbergh & Jaap van Heerden, *The Concept of Validity* 111 PSY. REV. 1061 (2011). This approach to validity is sometimes referred to as "construct validity." The advent of more qualitative-type learning outcomes and the increasing scope of both professional education and assessment practices have meant that reliance solely on construct validity has been questioned. See, e.g., Samuel Messick, *The Interplay of Evidence and Consequences in the Validation of Performance Assessments*, 23 ED. RESEARCHER 13 (1994). Where there are externally imposed expectations of performance, the authors would argue that "construct validity" as it has been defined in this article is still relevant. The expectation that there is a clear link between law schools' assessment methods and the legal education curriculum is also reflected in the standards applicable to Australian Law Schools. TLOs, *supra* note 29.

<sup>48</sup> Sabine Dierick & Filip Dochy, *New lines in edumetrics: new forms of assessment lead to new assessment criteria*, 27 STUD. IN ED. EVAL. 307 (2001).



Applying these cumulative learning outcomes, law students enrolled in Selected Topics in Australian—United States Comparative Law would be expected to communicate their knowledge and ideas on comparative subjects to legal and non-legal audiences and in various formats. The commentary to the TLOs provides some additional guidance on what constitutes effective, appropriate and persuasive communication.

Effective, appropriate and persuasive“ communication goes beyond the mere transmission of information to a passive recipient but requires a graduate to be able to *listen to, engage with, and understand the needs of their audiences*. Further, to communicate persuasively, a graduate will need to be able to *choose the right form of communication for the particular legal context of that communication* . . . .<sup>49</sup>

Using the cumulative outcome and the additional commentary, we would expect students to communicate their knowledge and ideas on comparative subjects to legal and non-legal audiences *in a format* that meets that audience’s needs and is appropriate to the context. Building and demonstrating these skills effectively in diverse contexts means that students must be provided with the opportunity to think about, and engage with, diverse audiences in a way that exams or research papers do not ordinarily provide.

However, if the assessment was going to be valid, assessing these nuanced communication skills was not enough. It also needed to reflect the attributes and skills used by legal practitioners and other legally educated professionals to produce “effective, appropriate and persuasive” communication. As discussed earlier, the Australian legal education curriculum acknowledges that graduates are likely to enter “*diverse roles* beyond professional legal practice.”<sup>50</sup> Consequently, the assessment task needed to offer students the opportunity to explore a wide array of communication practices best suited to different audiences.

<sup>49</sup> TLOs, *supra* note 29, at 21 (emphasis added).

<sup>50</sup> See *supra* note 33 and accompanying text (emphasis added).

The decision was made to provide students enrolled in Selected Topics in Australian—United States Comparative Law the opportunity to choose the subject of their research, the audience to which it would be presented, and the presentation method. While students would be allowed to write an academic research paper, they would also be encouraged to take the opportunity to think about who, how and why other audiences might be engaged.

The opportunity to design projects to meet different audiences' needs aligns more closely with the objective of validity than merely setting a research paper or exam question. The cascading curriculum framework within which law schools operate expects graduates to be flexible and adaptable in communicating with others. It also expects that they will be able to assess and understand different audiences' needs. The repetitive production of essays and exam answers with a generally consistent audience does little to build the skills expected.

In terms of providing authenticity in the assessment, the benefit of the task is also that students could align their project with their ideas about what they might do after law school. Students enrolled in the course were either in their penultimate or final year of study. Unlike first-year students,<sup>51</sup> more senior students generally have a clearer picture of their post-law school careers. An additional benefit was that allowing students to “co-design” the project within the course's scope meant that they were also directly engaged with determining how they would be assessed, encouraging both enthusiasm and commitment.<sup>52</sup>

### B. Designing the Assessment Task: Transparency

Transparency in assessment is critical to ensuring students understand both the “what” and “how” of the assessment process.<sup>53</sup> It is essential at different levels within the assessment task. The language of the assessment instructions and criteria must be clear. Simultaneously, the overall process of submission, assessment and feedback must be unambiguous. Law schools' central role in assuring their graduates' competence means transparency is also fundamentally important to external evaluation and accountability.<sup>54</sup>

The approach adopted in Selected Topics in Australian—United

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<sup>51</sup> Melissa Castan, Jeannie Paterson, Paul Richardson, Helen Watt & Maryanne Dever, *Early Optimism - First-Year Law Students' Work Expectations and Aspirations* 20 LEG. ED. REV. 1 (2010).

<sup>52</sup> MICHAEL SCHWARTZ SOPHIE SPARROW & GERRY HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2nd ed., 2017).

<sup>53</sup> Karin Ploegh, Harm H. Tillema & Mien S.R. Segers, *In search of quality criteria in peer assessment practices* 35 STUD. IN ED. EVAL. 102, 103 (2009).

<sup>54</sup> Menucha Birenbaum, *Evaluating the assessment: Sources of evidence for quality assurance*, 33 STUD. IN ED. EVAL. 29 (2007).

States Comparative Law was likely to be a potentially challenging one for students familiar with standard assessment methods. It was identified early on in the design process that students would need to be supported and scaffolded in their thinking if they chose to engage with an audience beyond that traditionally adopted for law school assessment. This decision presented a challenge. How could that support be built into the course while at the same time keeping the focus on its comparative content? Three key measures were introduced in the course.

First, students were given more detailed instructions than might be expected for a law school. They covered various forms of presentation, clear guidance on the assessment's objectives and expectations, and directions to resources to assist with their production. The instructions also provided students with examples of alternative presentation formats to provide models through which to discuss expectations.<sup>55</sup> However, asking students interested in producing a podcast, for example, to match the high quality of commercial talkback radio or subscription podcasts would require resources and skills well beyond what could be expected of first-time producers. It was felt that providing such high quality examples would likely have added to student anxiety, and potentially dissuaded students from attempting a creative assessment piece. Examples were therefore carefully selected to ensure that they reflected a high level of knowledge of the legal issues but an achievable quality of presentation.

Secondly, before starting the final assessment, students were required to prepare and submit a proposal for their assessment for review by the convenor. The proposal had to address the project's theme, the resources that would be used, and provide clear identification of the intended audience. The proposal intentionally carried a small proportion of the marks for the course overall, to encourage students to test out new ideas or take risks that they might not otherwise take if the assessment were perceived as being the difference between passing or failing the course overall.<sup>56</sup> A disproportionately large amount of feedback was provided, including advice on other resources, other people to whom the student could speak about assistance, and comments on the overall direction. Again, acknowledging

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<sup>55</sup> Trevor Anderson & John Rogan, *Bridging the educational research-teaching practice gap: Tools for evaluating the quality of assessment instruments*, 38 *BIOCHEM. AND MOLECULAR BIOL. ED.* 51 (2010).

<sup>56</sup> In his book on preparing students to face "wicked" problems, Hanstedt talks about the value of low stakes and even nominally graded assessment tasks to give students the opportunity to try new things in an environment where the risk to their academic progress is small. PAUL HANSTEDT, *CREATING WICKED STUDENTS: DESIGNING COURSES FOR A COMPLEX WORLD* (2018).

the unique nature of the assessment, and understanding the likelihood of some anxiety at taking risks in the assessment, students were provided with opportunities to discuss their proposal and their project both informally and at formally scheduled meeting times.

This process of small formative assessment tasks and consultations with students can be time-consuming. A small cohort of students assists, in part, with managing the time commitment. There were, however, additional measures in place to manage student demands. For example, informal consultation was limited to specific times. Formally scheduled times were planned and a sign-up process created through the learning management platform so that students could allocate themselves to specific blocks.

The limited time available for student support provided an additional, unplanned teaching opportunity. Students were encouraged to plan for their meeting with the convenor. That is, they were invited to identify their questions in advance of the meeting and, where possible, send them to the convenor. Limits on time compelled a focused approach to student consultations. However, it also provided an opportunity to scaffold students into setting objectives, planning and managing face-to-face meetings. Planning and managing meetings, whether with managing partners, opposing counsel or clients, are valuable professional skills that rarely gain attention but were also developed during the course.

Another outcome that assisted in time management was that, by providing flexibility in student choice, some students opted to pursue projects that used multi-disciplinary knowledge and skills with which they had prior experience or interest. For example, one student with marketing experience chose to pursue a project on raising the courts' profiles. Another student with a visual arts background chose to write a children's book on the courts' role. While they were taking a risk in opting for unique projects, those students required very little additional faculty support, given that they were already aware of or had access to other resources on which they could draw.

Lastly, the assessment was supported by a detailed rubric that described the standard expected at each grade. For example, the expectations of "Communication" at each grade level were explained in the following way with a similar level of detail provided for the other five criteria:

<b>Fail</b>	<b>Pass</b>	<b>Credit (C)</b>	<b>Distinction (B)</b>	<b>High Distinction (A)</b>
<p>The project:</p> <ul style="list-style-type: none"> <li>■ makes little or no use of structure;</li> <li>■ is difficult to understand;</li> <li>■ demonstrates little or no awareness of the Australian Guide to Legal Citation (4th ed).</li> </ul> <p>If the project is a written paper (unless in a form in which it would be inappropriate to do so) it is not 12-point font and double line spaced.</p>	<p>The project:</p> <ul style="list-style-type: none"> <li>■ makes use of structure;</li> <li>■ is generally understandable having regard to the audience for which it has been prepared;</li> <li>■ uses appropriate terminology but may do so inconsistently;</li> <li>■ provides a bibliography;</li> <li>■ demonstrates some awareness of the Australian Guide to Legal Citation (4th ed) but may reflect some confusion.</li> </ul> <p>If the project is a written paper (unless in a form in which it would be inappropriate to do so) it provides footnotes;</p> <ul style="list-style-type: none"> <li>■ provides footnotes;</li> <li>■ uses correct grammar, syntax and spelling;</li> <li>■ is in 12-point font and double line spaced.</li> </ul>	<p>The project:</p> <ul style="list-style-type: none"> <li>■ makes good use of structure;</li> <li>■ is clear having regard to the audience for which it has been prepared;</li> <li>■ uses appropriate terminology;</li> <li>■ provides a bibliography;</li> <li>■ uses a citation style that is mostly consistent with the Australian Guide to Legal Citation (4th ed).</li> </ul> <p>If the project is a written paper (unless in a form in which it would be inappropriate to do so) it provides full footnotes;</p> <ul style="list-style-type: none"> <li>■ uses correct grammar, syntax and spelling;</li> <li>■ is in 12-point font and double line spaced.</li> </ul>	<p>The project:</p> <ul style="list-style-type: none"> <li>■ makes appropriate use of structure;</li> <li>■ is clear having regard to the audience for which it has been prepared;</li> <li>■ is precise and accurate in its communication;</li> <li>■ uses appropriate terminology;</li> <li>■ provides a bibliography;</li> <li>■ uses a citation style that complies with the Australian Guide to Legal Citation (4th ed).</li> </ul> <p>If the project is a written paper (unless in a form in which it would be inappropriate to do so) it provides full and accurate footnotes;</p> <ul style="list-style-type: none"> <li>■ uses correct grammar, syntax and spelling;</li> <li>■ is in 12-point font and double line spaced.</li> </ul>	<p>The project:</p> <ul style="list-style-type: none"> <li>■ makes excellent use of structure;</li> <li>■ is consistently clear having regard to the audience for which it has been prepared;</li> <li>■ is consistently precise and accurate in its communication;</li> <li>■ consistently uses appropriate terminology;</li> <li>■ provides a bibliography;</li> <li>■ uses a citation style that complies with the Australian Guide to Legal Citation (4th ed) throughout.</li> </ul> <p>If the project is a written paper (unless in a form in which it would be inappropriate to do so) it consistently provides full and accurate footnotes;</p> <ul style="list-style-type: none"> <li>■ consistently uses correct grammar, syntax and spelling;</li> <li>■ is in 12-point font and double line spaced.</li> </ul>



The rubric was drafted before the commencement of the course so that it could be applied to different types of projects. However, as the course developed, students began to identify an even more diverse array of projects and presentation style than anticipated.

Rather than seeing this as a weakness in the assessment process, the convenor negotiated appropriate amendments to the rubric with students. There were several benefits to this flexible approach in terms of transparency. For example, in order for students to understand what amendments could be made, they were exposed to the TLOs and the program learning outcomes in much greater detail than might be expected in other courses. Amendments were consulted on and agreed upon with students before being adopted. In terms of outward transparency, the consultation process also provided a record of the process of negotiation and rationale for change for law school evaluators.

Perhaps the most valuable outcome from the negotiation process was that it reflected a high degree of critical thinking, analysis, enthusiasm and commitment by students. Offered the opportunity to engage with new skills, students actively pursued this opportunity with it within the course's scope and the learning outcomes.

### C. *Delivery of the Assessment: Reliability*

Reliability in assessment is challenging in competency-based contexts, like legal education. The absence of numeric test scores means that traditional concepts of reliability, such as consistency, stability and precision, are generally inapplicable.<sup>57</sup>

Frameworks for reliability in competency-based assessment tend to overlap with concepts of validity and transparency.<sup>58</sup> To the extent that the assessment task meets expectations of validity (including authenticity and meaningfulness) and transparency, it also supports an assertion that the assessment is reliable. However, reliability also incorporates practices like reproducibility and comparability. In a competency-based context that is not objectively able to be reproduced and comparable, the criteria must be sufficiently clear and unbiased so that different assessors would reach the same assessment.<sup>59</sup>

As is common in many education settings, one method to ensure reliability was that students' projects were "double marked" by two

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<sup>57</sup> Peter Knight, *The Value of a Programme-wide Approach to Assessment*, 25 *ASSESSMENT & EVAL. IN HIGHER ED.* 237 (2000).

<sup>58</sup> Liesbeth Baartman, Theo J. Bastiaens, Paul A. Kirschner & Cees P.M. van der Vleuten, *The wheel of competency assessment: Presenting quality criteria for competency assessment programs* 32 *STUD. IN ED. EVAL.* 153 (2006).

<sup>59</sup> *Id.*

faculty members independently of one another, followed by a moderation discussion. In large courses, that can be challenging but can also be achieved by identifying work samples, either individually as groups, for review by several assessors to ensure consistency.

The unique approach adopted in Selected Topics in Australian—United States Comparative Law was that, given the unusual nature of the assessment tasks and the emphasis placed on communication to different audiences, a decision was taken early in the design to exhibit students' work (with their consent). Exhibiting the work and making it accessible to other faculty members and the wider public provided the opportunity to assess the assessment task's reliability, including the audience to which some projects were addressed. Those reactions are discussed below.

#### IV. STUDENTS' REACTIONS

Students reacted enthusiastically to the assessment, producing an incredible diversity of work. Some produced research papers. Others produced audio recordings and podcasts. One group of students created a magazine, while others produced pre-teen children's books accompanied by educational materials for classroom teachers. Other students wrote a short story, produced a short play, created special interest websites and scripted an imagined conversation between two judges of the High Court of Australia and the Supreme Court.

Although a number of the projects might not be perceived to fit within traditional ideas of law school assessment, every project engaged thoughtfully and carefully with the course's comparative themes. All students had thought carefully about the audience to which their work was directed, and adopted the appropriate language and presentation techniques. Three examples are discussed in more detail below.

##### A. *Penumbra – A Magazine for Students*

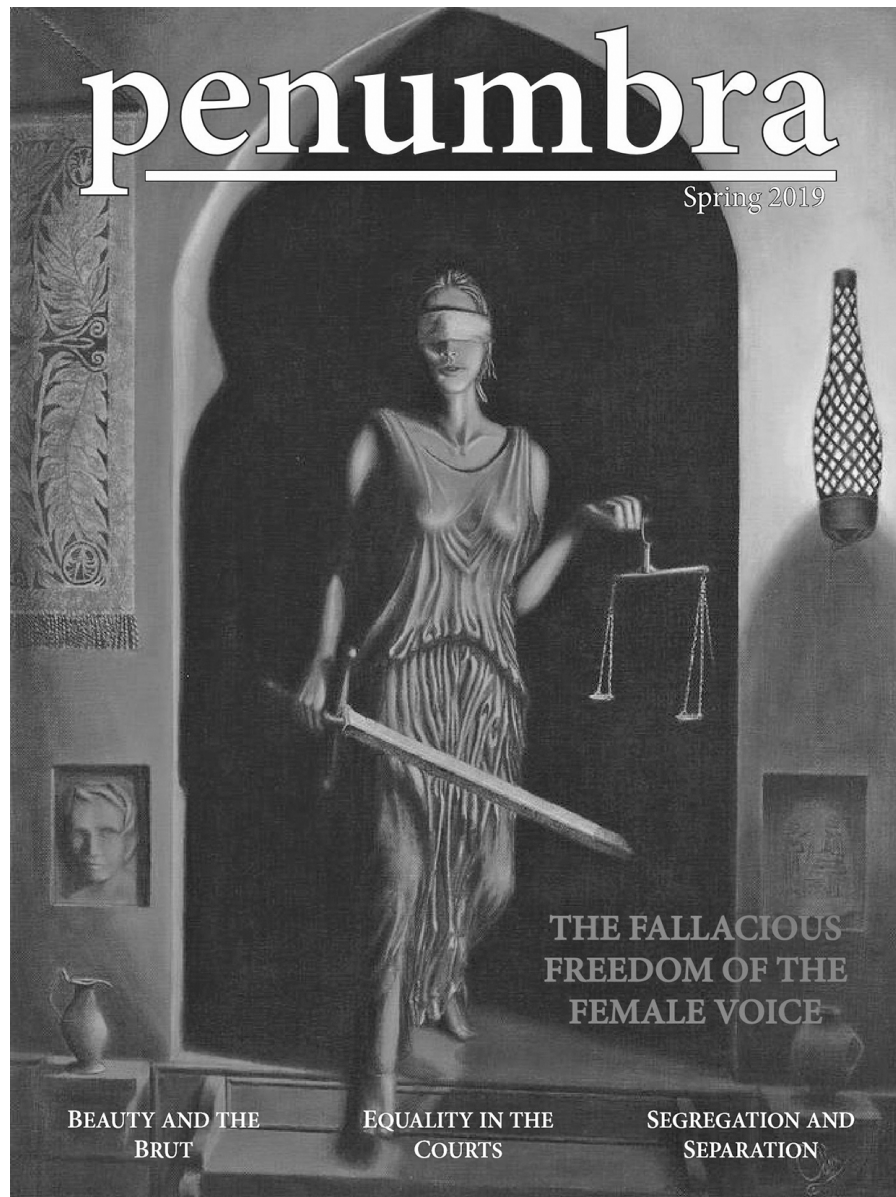
A group of students chose to write a magazine directed towards fellow students, designed to address comparative topics. The group explained their decision in the following way:

We selected the magazine format largely because we wanted to write stories that would appeal primarily to young law students like ourselves. *Penumbra* is modelled on what *Kinfolk* is to design-oriented people, *032c* is to fashionable, alternative artists or *Frankie* is to young, educated women. In this vein, *Penumbra* seeks to be a magazine for the engaged, curious and aware law student/ legal

Spring 2022]

Assessment to Fit New Forms of Practice

469

professional.<sup>60</sup>Cover of *Penumbra* magazine

<sup>60</sup> Sophie Aboud, Luke Davis, Hamish McLennan & Genevieve Mukkati, *Sophie Aboud, Luke Davis, Hamish McLennan and Genevieve Mukkati*, SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW (Aug. 6, 2020) <https://apexcourt-sanu.wordpress.com/2020/08/06/sophie-aboud-luke-davis-hamish-mclennan-and-genevieve-mukkati> (last visited Aug. 8, 2021).

The magazine included a series of articles presenting comparisons of judicial decisions, social justice issues, and the architecture of the two courts' buildings. In keeping with the selected format, the group also chose to include some entertaining elements that might be found in magazines, including judicial horoscopes. In addition to preparing articles and other items for publication, the group presented the magazine in a graphic format as if ready for publication.

The diversity of the topics covered was impressive. For example, one article entitled "Shooting Liberty" explored the comparative use of originalism in the two courts. Another discussed comparative approaches to marriage equality. A third examined the female voice in judicial decision-making.

The magazine attracted attention from academics across Australia, including from a legal academic at the University of South Australia who tweeted they "wanted this magazine in [their] life."<sup>61</sup>

#### *B. Power of a Pedestal: The Relationship between Architecture and Legal Power – A Podcast*

Another student chose to examine the High Court of Australia and the Supreme Court's architecture and how each "imparts particular ideologies or impressions of the law"<sup>62</sup> that might be interpreted as legitimizing the judiciary. The project built on an emerging body of research by academics such as Professor Linda Mulcahy,<sup>63</sup> who have examined the implicit messages courthouse and courtroom design might convey to professional and lay visitors. The project was singled out on Twitter by Professor Les Moran, a leading socio-legal scholar and curator of the Judicial Images Network, as a positive example of students engaging with the significance of architecture in the study of the modern judiciary.<sup>64</sup>

The student's work was initially produced as a research paper which was then converted to a podcast published on the course website in the style of Slate's *Amicus*<sup>65</sup> or the Australian Broadcasting Corporation's *The Law Report*.<sup>66</sup> Although students were not ex-

<sup>61</sup> Joe McIntyre (@Dr\_Joe\_McIntyre), TWITTER (Aug. 6, 2020, 2:17PM) [https://twitter.com/Dr\\_Joe\\_McIntyre/status/1291226944466345984](https://twitter.com/Dr_Joe_McIntyre/status/1291226944466345984).

<sup>62</sup> Georgie Juszczuk, *Georgie Juszczuk*, SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW (Jul. 24, 2020) <https://apexcourtsanu.wordpress.com/2020/07/24/georgie-juszczuk/> (last visited Aug. 8, 2021).

<sup>63</sup> See, e.g., LINDA MULCAHY AND EMMA ROWDEN, *THE DEMOCRATIC COURTHOUSE: A MODERN HISTORY OF DESIGN, DUE PROCESS AND DIGNITY* (2019).

<sup>64</sup> Judicial Images (@JudicialImages), TWITTER (Aug. 3, 2020, 3:46PM) <https://twitter.com/JudicialImages/status/1290162180797550592>.

<sup>65</sup> *Amicus*, SLATE <https://slate.com/podcasts/amicus> (last visited Mar. 31, 2021).

<sup>66</sup> *The Law Report*, ABC <https://www.abc.net.au/radionational/programs/lawreport/> (last visited Mar. 31, 2021).

pected to produce podcasts similar to professional broadcasters, the project was of an exceptionally high quality.

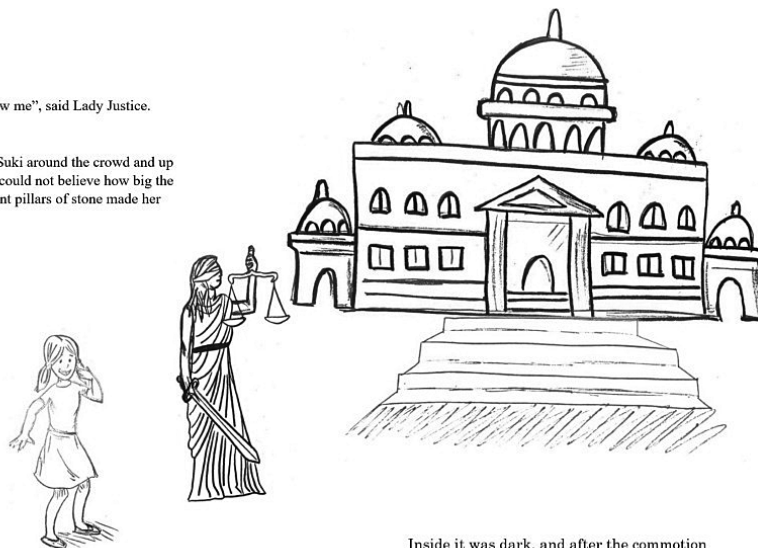
The podcast attracted considerable attention on social media, including from the Senior Executive Deputy Registrar of the High Court of Australia.<sup>67</sup> Between September and December 2020, it had been downloaded from the website 137 times.

### C. *Suki's Day in Court – A Children's Book*

*Suki's Day in Court* saw a young girl, Suki, being guided through some of the most significant challenges to the High Court of Australia and the Supreme Court by Lady Justice come to life. The book also contained a series of hand-drawn illustrations. Although addressed to children, the book carried an important message, as explained by the student: "My project focused on the pursuit of universal equality and understanding in the face of discrimination. Of paramount importance to the content of the book is the significance of how judicial decisions shape the future of how society and individuals treat those who are different from them."<sup>68</sup>

"Why don't you follow me", said Lady Justice.

Lady Justice hurried Suki around the crowd and up the Court steps. Suki could not believe how big the building was. The giant pillars of stone made her feel very small.



Inside it was dark, and after the commotion outside, it was very quiet

An illustration from *Suki's Day in Court*

<sup>67</sup> Ben Wickham, *SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW* (Aug. 13, 2020, 6:18AM) <https://apexcourtsanu.wordpress.com/2020/07/24/georgie-juszczuk/>.

<sup>68</sup> Caitlin O'Brien, *Caitlin O'Brien*, *SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW* (Aug. 22, 2020) <https://apexcourtsanu.wordpress.com/2020/08/22/caitlin-obrien/> (last visited Aug. 8, 2021).

The student had written the book to be accessible by elementary school students. To support the book, the student also prepared a series of explanatory notes, lesson plans and activities for use by classroom teachers. The explanatory material provided links to the Australian elementary school curriculum to reinforce its relevance and utility; itself an excellent example of students addressing interdisciplinary aspects of the course and its design.

Similar to most other universities, students at the ANU complete a student evaluation of the course. However, this course was unusual. To better understand student perceptions of the assessment, all students were invited to respond to an anonymous online survey explicitly directed to the assessment task and the associated outcomes. The survey was also constructed to identify students' perceptions of the validity of the assessment.

Eight students out of twenty-five enrolled in the course responded to the survey. The low response rate is understandable, given the significant challenges that both faculty and students confronted during 2020. However, it suggests that some care should be taken in interpreting the results. Nevertheless, the responses received from students who would have been completing the survey independently rather than in class alongside peers are consistent.

Students' responses indicated that from the perspective of validity, a majority perceived the task to have been beneficial to them personally in building the skills to be successful after graduation. Every respondent indicated that they perceived the assessment to support law graduates' skills now and in the near future.

Every respondent agreed or strongly agreed that the assessment had contributed to their ability to "think creatively in approaching issues," an objective corresponding to the Australian legal curriculum's TLO 3(d). Every respondent strongly agreed that it had contributed to their ability to "communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences," which corresponds to TLO 5(a). Importantly, every respondent rated the assessment task as effective or highly effective in developing law graduates' skills generally and in developing the skills needed in the next five to ten years.

A majority of respondents agreed or strongly agreed that it had contributed to their "understanding of the Australian legal system" (TLO 1), their "ability to identify and articulate legal issues" (TLO 3(a)), "ability to apply legal reasoning and research" (TLO 3(b) and 4), and "ability to engage in critical analysis" (TLO 3(c)). In their comments, respondents appreciated the opportunity to explore a broad range of topics of interest to them in a creative way. One respondent, in particular, welcomed the opportunity to pursue an assess-

ment task other than a formal essay.

In terms of achieving learning outcomes, students' responses indicated some potential gaps in some areas in the design of the assessment task, especially concerning the application of research and critical thinking. However, none of the respondents disagreed that it had contributed to those skills.

Students also commented positively on their experiences in public forums, including social media.<sup>69</sup> Some students agreed to be interviewed by the ANU about their experiences. Reflecting issues of reliability in assessment, students' interviews revealed how they had drawn connections between their project and real-world environments in ways that had not been contemplated when the task had been designed. For example, the student who had written *Suki's Day in Court* referred to part of her motivation coming from the lack of materials on the legal system in Australian elementary schools.<sup>70</sup> Another student who had created a website of biographies of women judges of the High Court and Supreme Court commented on how they had used the project to examine the profession they were contemplating joining and as a way of building skills in web design with which they had not previously had contact.<sup>71</sup>

## V. VISITORS' REACTIONS – TESTING RELIABILITY

With assistance from a small teaching grant from the ANU, what had initially been envisaged as a temporary physical exhibition was expanded to include a long-term physical display space and a permanent online exhibition. Although the physical exhibition was still created, the pandemic's onset made the online exhibition the primary site for visitors.

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<sup>69</sup> Hamish McLennan (@hamish\_mclennan), TWITTER (Aug. 6, 2020, 9:56PM) [https://twitter.com/hamish\\_mclennan/status/1291342442902388736](https://twitter.com/hamish_mclennan/status/1291342442902388736).

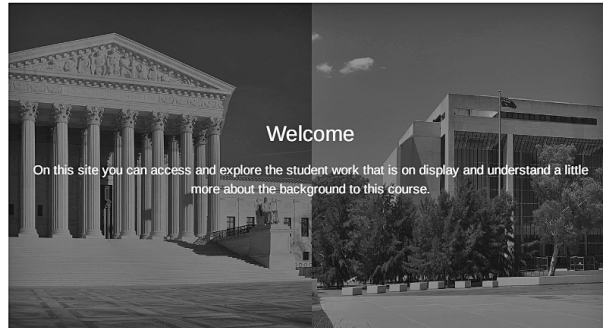
<sup>70</sup> *News and Events*, ANU COLLEGE OF LAW (May 6, 2020) <https://law-school.anu.edu.au/news-and-events/news/caitlin-creates-children%E2%80%99s-book-comparative-law-assessment> (last visited Aug. 8, 2021).

<sup>71</sup> Chelsea Rock, *Chelsea Rock*, SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW (Aug. 22, 2020) <https://apexcourtsanu.wordpress.com/2020/08/22/chelsea-rock/> (last visited Aug. 8, 2021).

## Selected Topics in Australian-United States Comparative Law

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### Exhibition of Student Work



The front page of the online exhibition

The online exhibition was formally launched on 22 August 2020 as part of the ANU's virtual Open Week. The site, which can still be accessed,<sup>72</sup> provided background on the course and samples of 20 students' work ranging from research papers to audio recordings. The physical exhibition was opened in October 2020 to coincide with the university campus's re-opening to visitors.



The physical exhibition of student work, including an oversized mobile device to allow visitors to access online content.

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<sup>72</sup> *Exhibition of Student Work*, *supra* note 12.



Between 22 August 2020 and 31 December 2020, the online exhibition received 878 visitors from all over the world. Students' work was viewed by visitors 3,473 times. On average, each visitor viewed between four and five student projects, the most popular being *Penumbra*. No data was collected from the physical display.

Admittedly, the exhibition was an "add on" to the original course design, and it was also not assessable in the initial offering of the course. It was important to its success that it was student opt-in. However, the exhibition offered another opportunity for student engagement across the course themes by engaging with other students about their projects and experiences. Although added after the design process, it will definitely become part of future iterations of the course.

Visitors were invited to respond to an almost identical survey to the students, providing feedback on the extent to which they perceived the assessment task contributed to learning outcomes and prepared students for success. Twenty-nine visitors responded to the survey, representing only a small number of visitors overall. The majority (65%) were associated with the ANU and had either been told about the exhibition or invited to visit it (75%).

Interestingly, visitors' responses to the survey were more supportive than students' responses. From the perspective of validity and reliability, the overwhelming majority could see the links to the curriculum clearly. A majority strongly agreed that the task contributed to students' knowledge (79%) and their ability to articulate issues (86%), apply their research (79%), critically analyze (86%), think creatively (95%), and communicate to diverse audiences (93%). Ninety-three per cent indicated that it was highly effective or effective in building the skills necessary for students to succeed after graduation, and 92% as being highly effective or effective in building the skills necessary in the next five to ten years. None indicated that it was not at all effective.

The comments from respondents were overwhelmingly positive. Almost all of the respondents focused on the advantages of exposing students to various forms of communication and the challenge of communicating complex concepts to diverse audiences. One comment, in particular, spoke directly to the task's validity and authenticity in a broader context and reflected some of the students' objectives: "The emphasis on communicating legal concepts to a non-legal audience (sic). That is one of the most important benefits a well-educated lawyer can bring to society and Law Schools should be encouraged to teach this skill."

Another respondent suggested, however, that they could not see how the task connected to "what lawyers do." The response reflects

the tension in modern legal education, especially in Australia, between preparing law students for legal practice and preparing them for a diversity of professional careers. As noted earlier, the modern curriculum places a significant emphasis on the latter.

## VI. CONCLUSION

The face of legal practice is rapidly changing. Legal education needs to adapt and change to keep ahead of those challenges, so that its graduates are prepared for the future that awaits them. This includes both changing the content of legal education, and how students are assessed. The reaction of visitors and international academics to the model outlined in this article demonstrates the level of interest in the community in looking for new forms of teaching and assessment.<sup>73</sup>

However, designing courses from scratch is time-consuming. There is also the challenge of cultural expectations and resistance to change among students and the academy when presented with new ideas. Getting over the “hump” of inertia and fear requires careful and well-thought-out design, supported by rigorous justification. When faced with these obstacles, returning to first principles of assessment design provides the persuasive arguments for change.

It is hoped that the model described in this article will provide some of the groundwork for other academics who are exploring opportunities to introduce new assessment methods into their own courses. The results and rewards are there. The creativity in students’ projects originated in the students themselves. Their engagement, creativity, and pride are immediately apparent in the recordings about their work and their feedback.

At the time of writing, the ongoing effects of the COVID-19 pandemic raise questions about how aspects of this course might run in the future. However, the online archive means that the materials and projects are always available. They will continue to inform students and academics about the possibilities for creative assessment.

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<sup>73</sup> In addition to the responses discussed above, another student’s podcast comparing the lives of Justice Kagan and Justice Bell of the High Court of Australia was cited on The Feminist Law Professor blog. Bridget Crawford, *ANU Student Work Comparing Justice Kagan and Justice Bell*, THE FEMINIST LAW PROFESSOR (Aug. 21, 2020) [http://www.feministlawprofessors.com/2020/08/anu-student-work-comparing-justice-kagan-and-justice-bell/?fbclid=IWAR1IePXoYvoFgM5Qen9gKuC-E2T47gOT6uM7hW78cUMyRbJ-DO\\_Ji7xhwOY](http://www.feministlawprofessors.com/2020/08/anu-student-work-comparing-justice-kagan-and-justice-bell/?fbclid=IWAR1IePXoYvoFgM5Qen9gKuC-E2T47gOT6uM7hW78cUMyRbJ-DO_Ji7xhwOY).