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# Design-a-Court: An Introductory Socio- Legal Assessment Exercise

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NOTE:

# DESIGN-A-COURT: AN INTRODUCTORY SOCIO-LEGAL ASSESSMENT EXERCISE

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INTRODUCTION

First-year law has always been a challenge for both students and teachers alike. Both groups have high expectations of what can be achieved in an introductory law subject. Students want to master "it", usually understood as chunks of knowledge, immediately. Teachers understand that the foundations of a good legal education are much more elusive and involve mastery of method, as much as substance. An introductory subject requires finding an appropriate balance between these two elements. Too often the first year curriculum also gets bogged down in abstract "either-or" debates about the importance of "black-letter law" versus critical perspectives about law.[1] Missing from much of the discussion of the first year curriculum are theoretically informed practical strategies which simultaneously develop first year students' skills in legal analysis, and preserve their capacity to look at law and legal institutions critically.

An unsatisfactory, or unbalanced, introduction to law can lead to some of the disturbing learning pathologies that characterise some first year students' experiences of law school.[2] In their rush to become "discipline literate", for example, some students undergo a form of conversion experience or "go native". The result is high achieving students with little motivation for reflexive thought about the intellectual and practical world they are entering.[3] In some

cases, this early experience colours their approach to professional life. These bright, but uncritical, students often become the arrogant professionals depicted in the popular caricature of insensitive lawyers oblivious to the strangeness of their profession to ordinary citizens.[4]. More commonly, though, students fall prey to a second pathology. They are so intimidated or bored in their first, fragile year of study that they lose confidence and/or give up intellectual engagement with the subject matter. These students either drop out altogether or "play it safe" by risk-free reproduction of knowledge which will ensure them a pass. Unwilling to engage in creative critical thought, they never capitalise on the benefits of a liberal university education.

One attempt to overcome the problems of this unfortunate start is to introduce students to law as a complex culture in its own right. This approach integrates the acquisition of factual knowledge with the development of skills under the rubric of a theory of law as culture.[5] It underscores the design of La Trobe University's first year Legal Studies introductory subject, *Law and Society,* taught to *un*dergraduates enrolled in the social science/humanities faculty as well as *Legal Skills in Context* an introductory subject for law (LLB) students, enrolled in the Faculty of Law and Management. (The latter however follows a more intensive syllabus, students being given a more rigorous grounding in traditional legal processes and skills.)

The general aim of both subjects is to equip students to evaluate critically the role, nature, and operation of law in Australian society. Specifically, the subjects aim to help students to:

- critically reflect on their own socialisation into legal culture, including legal ways of seeing the world, legal reasoning and problem solving;
- appreciate both the "rational" and "irrational" elements of law and legal institutions; and
- identify the dynamic relationship between law and legal institutions and the impact of political, social and economic developments on them.

The approach attempts to promote students' capacity to look at law from both the informed position of the "insider" while preserving the critical eye of the "outsider" toward legal practices and institutions. The subject-matter is designed to be engaging and rewarding for students commencing studies in law. The first year

subject, *Law and Society,* was designed to reflect this philosophy.

## THE SUBJECT: LAW AND SOCIETY

Law and Society is offered in the first semester of the first year of study (although second and third year students from other faculties sometimes take it as a terminal subject to make up a shortfall in their degree requirements).[6] It is one of the largest first year subjects at the university, typically having an enrolment of between 500 and 600 students in any one year. The large enrolment has necessitated maintaining the traditional two lecture, one tutorial per week format. Lectures are presented principally by the co-ordinator with some assistance from another member of the permanent staff. The bulk of the tutorials are provided by casual staff who have, however, been paid to participate in training sessions about the subject and encouraged to participate in continuing education sessions about first year teaching.

The subject has two distinct components. In the first six weeks the focus is on investigating the language and ritual of law. This component sits well with transition education issues which consciously encourage students to engage with their experience of the peculiarities and opportunities of university life and study. Throughout this component the teaching emphasis is on drawing parallels between the strangeness of law with the "strangeness" experienced by many students on entering a new physical and intellectual milieu. The second component of the subject introduces students to more traditional legal skills such as legal reasoning and problem solving. Using prostitution as a case study, students learn how to read and interpret legislation as well as how lawyers think, reason and solve problems. The design of the curriculum mirrors the process by which tourists or immigrants typically first learn about a new society — starting with its external dimensions and, as they become more familiar with their environment, the more sophisticated cultural patterns of thought of their hosts.

There are only two formal pieces of assessment in the subject, although the students are obliged to complete a number of exercises each week for informal discussion and review in their tutorials. The first piece of assessment deals specifically with the language and ritual section of the subject and takes the form of an essay or assignment. It is designed as "developmental assessment". That is,

its primary aim is to teach students important skills and ways of thinking about law rather than merely "check" that they have learnt the material presented in the subject.[7] The second piece of assessment is a three-hour written examination which involves a number of short answer questions testing the students' knowledge base as well as a complex legal problem which requires them to apply their skills in legal analysis. Below, I outline the assignment we set in 1998 as a case study of how assessment can be used strategically to promote the learning objectives and philosophy of a subject.

## THE ASSIGNMENT

The 2,000 word "Design-a-Court" assignment (Appendix A) was piloted in 1998. The assignment constituted 50 per cent of the marks for the subject. The assignment was handed out in the fourth week of semester and students were given a further four weeks (two of these during the mid-semester break) to complete it. The assignment included both substantive and skill development components.

The objectives of the assessment task, made explicit to students in the assignment handout, were to learn to

1. do a literature review (Part A);
2. conduct their own empirical testing of the ideas in the literature (Part B); and
3. apply their own and others' insights on the topic to create their own "model" court (Part C).

### *Part A*

The main aim of Part A of the assignment was to help students learn how to undertake a literature review. The assignment explained that this is a generic skill which underlies all scholarly enterprise.

The selected literature provided to students included shorter, more accessible writing about the theoretical and practical aspects of court design and its impact on public perceptions of courts as key social institutions. The students were encouraged, and supported, in undertaking independent research to locate further writing about this emerging field of research. (The Law and Legal Studies librarian gave three short fifteen minute demonstrations of

how to use appropriate Law and Social Science finding aids in the weeks preceding submission of the assignment). Research skills, however, were not the primary focus of this first assignment. The exercise sought to engage students in a piece of writing which went beyond retrieval, comprehension and reproduction of knowledge. It is predicated on the view that tertiary study requires students to develop higher order intellectual skills such as synthesis and analysis.[8] There is no rational basis for assuming that skills need to be introduced sequentially from "lowest to highest". Students learn "new" skills best in context.

## *Part B*

Part B introduced students to the possibilities of empirical research. It required them to attend at least one court and reflect on how their own observations of the architecture, layout and interior design of the court, support, qualify or refute the ideas they canvassed in the literature they reviewed. The pedagogical objectives of this second task included:

- *Empowering students to actively engage with scholarly dialogue based on their own observations.* First year students often feel overawed by the authority of the texts they are asked to read and review. Reflecting on the literature in the light of student's own "empirical" findings legitimates students as original contributors to scholarly debate. This approach lays the foundations for the exercise of independent critical judgement.

- *Presenting scholarly knowledge as dynamic and constantly evolving in the light of new insights and critiques.* Too often students think of knowledge as a static body of facts and views that they need to remember and reproduce on demand.[9] The opportunity to contribute through active participation to the creation of new knowledge is a rewarding experience for young, nascent critical thinkers. It also gives them a better feeling for the value added nature of scholarly work in the university.

- *Appreciating the varied nature of "evidence" in intellectual inquiry. In* traditional university assessment exercises, many students incorrectly assume that "quotes" from authorities, for example authors of secondary sources, constitute acceptable "evidence" to substantiate their main contention/s. Their misunderstanding is compounded by teachers who tend to

reward diligent research, failing to distinguish the use of references from the use of evidence to prove an argument. Combining the literature review with the empirical exercise demonstrates that the views of scholars are never definitive. The use of primary observations provides a link between the often obscured relationship in academic texts between evidence and argument.

The assessment module also had the advantage of immediately differentiating high school approaches to knowledge from the approaches valued within university culture, thereby highlighting the transition education message communicated in the first part of the subject.

## *Part C*

The final section of the assignment required students to creatively apply the insights they gained through their reading and observation. The aim of this section was to encourage students to apply higher order skills such as synthesis.[10] Students were asked to either sketch, or provide a design brief, describing their "ideal" court. At one level, the benefits of including a creative, applied component to the assignment are obvious and require little justification.[11] There are many benefits in allowing students to apply their creative talents in an assessment task. An opportunity to apply one's knowledge has always been part of educational folklore. "Tell me, and I will forget. Show me, and I will remember. Involve me and I will understand." We now know that actively involving students enhances their learning.[12] Less obvious objectives for this section derive from wider pedagogical debates such as:

- T*he lure of relevance.* Increasingly universities are being criticised for being "irrelevant". What we teach our students, it is claimed, is esoteric and unrelated to the real world. Requiring students to visit a court, at first sight, panders to the demand for immediate relevance. This was certainly the way most students initially appreciated the exercise. There was, however, a more subtle message about the relationship between ideas and the "real world" built into the exercise.

    The assignment was preceded by an excursion to nearby Pentridge Prison. The large blue-stone 19th century jail, built as

a model prison along the lines of a horizontal panopticon, had recently closed and, for a short time, was opened to the public as a museum. The students toured the jail and were presented with a lecture on how Jeremy Bentham's radical concept of penal reform, his sketch of "the panopticon" and its elaborate defence, was the impetus for the building and development of the modem institution of the prison. The students had little alternative but to confront the scary, concrete manifestation of an "ivory tower" idea. Their sketch of their ideal court required that, at some level, they recognise the inexorable link between theory and practice.

We should make no apology for failing to confine our pedagogical horizons to the "real", "here and now". University education must strive to develop the ability of students to imagine, and so deal with, what is not apparent or does not yet exist. We can only prepare our students for the future by providing them with opportunities for creative problem-solving and skills in normative thinking.

- Negativism and unproductive critique. Contrary to the understanding of some post-modernist teaching practice, the ability to critique is important but not an end in itself. The harder and ultimately more rewarding skill (and therefore pedagogical challenge) is not just to deconstruct, but to reconstruct reflexively, what we know and do. It would be intellectually unsatisfying (perhaps even dishonest) to allow students to indulge in the luxury of criticism without a fuller appreciation of the complexities with which our social system and its institutions have to wrestle. In designing their own court, students implicitly confronted the difficulties of giving abstractions concrete form. At the very least, they needed to grapple with balancing form with function as well as the problem of accommodating multiple and conflicting expectations/priorities.

- *Global assessment vs specific skill acquisition.* Traditional forms of university assessment are, at one level, quite efficient. For example, the essay genre, the main mode of assessment in the arts and social sciences, requires students to demonstrate high order skills, such as research, analysis and synthesis. It usually provides a reasonably accurate indicator of students" level of intellectual performance. The limitation of this form of

assessment, however, is that it is global. The mark awarded is an overall measure of achievement. Teachers' comments are usually random observations about particular strengths and weaknesses rather than a systematic response to the student's performance on the wide range of skills being tested. Furthermore, there is no graduated model of skill development. The essay form remains constant from the first to the last year of study. There are few, if any, opportunities to identify and practice the discrete skills on which good essay writing depends. The Design-a-Court exercise disaggregates complex skill components, thereby allowing students to identify and refine specific skills. It also introduces some variety to the monotonous staple of exams and essays which typically constitute the standard assessment fare in university courses.

The most important feature of the assignment is that it is directly related to both the substantive and skills based objectives of the subject. As Ramsden argues, "assessment always defines the actual curriculum".[13] A marriage between the aims and assessment in a subject is crucial since assessment "sends messages about the standard and amount of work required, and what aspect of the syllabus are most important:[14] Students are savvy and efficient in their learning strategies. Whatever the stated objectives of a subject might be, and however idealistic the hopes of their teachers about the range of skills that students should develop, unless these are actively included as part of formal assessment, there is little chance that students will devote any energy to their acquisition. The Design-a-Court assignment was a direct attempt to link substantive understanding of the nature of the legal culture (and its reform) to the skills which provide a necessary foundation for further university study in this (and other) discipline/s.

## EVALUATION

The assignment was marked by the six members of the teaching team in *Law* and Society after thorough review of the assessment criteria. We completed a generic marking grid indicating the strengths and weaknesses of each paper. Subject teachers also made specific comments in the margin and provided overall comments at the end of each paper.

The assignment was returned to all students within one week of

the date of submission. On the day it was handed back, teachers devoted the weekly tutorial to discussion of the assignment. This onerous marking regime was undertaken by the teaching team because of the consistent findings from educational research that prompt feedback is vital to learning.[15] After the papers had been returned, and with the permission of the students concerned, seven of the "A" papers were made available to all students. Students were also encouraged to attend specific skills classes devoted to common writing problems encountered in the assignment. These sessions were conducted by the Language and Academic Skills Unit (LASU) teacher who had worked with the teaching team and the students throughout the semester. Attendance at the LASU class was voluntary. However, students who had failed the assignment were obliged to attend one of these sessions to be eligible to resubmit reworked papers to obtain a pass grade. These strategies were implemented because the learning literature suggests that feedback is the key to student mastery of a field of study.[16]

The considered view of the teaching staff, based on discussions with their students, is that the assignment was "not easy". Nevertheless, there was a lower percentage of failed papers and a higher than usual number of honours grades. The results are particularly pleasing since the assignment was the first piece of writing in the discipline for all students and, for many, their first at University. The vast majority of students demonstrated a conscious effort to grapple with both the substantive and skill-development objectives of the assignment.

The honours papers exhibited a capacity to place the topic within its broader intellectual framework; that is, to generalise beyond the ambit of this "unique" piece of assessment. For example, one paper began with a reference to Mesopotamia and the significance of architecture as a marker of civilisation and social life. The paper went on to argue that:

> Similar to our need to personify the imperceptible (ie God, nature), the building is a tangible concept of power. For example, the stately and austere Palazzo Vecchio had the power to create awe in the Florentines and discourage rebellion. The courthouse is no exception.

Implicitly, and often explicitly, the highly graded papers understood the nature of semiotic representation. One student contended that, "Architecture can be seen as a type of language that may convey to us historical, social, cultural and political influences

and values". Better papers also were able to compare and contrast both the views of scholars and their own interpretations of the "message" communicated by different court buildings. To one student, for example, the Geelong Magistrate's Court appeared as a:

> very unassuming building from the outside, this court's architecture conveys the idea that it gets things done. It resolves disputes quickly and efficiently, and is not extremely concerned with symbolism… While the architecture of the Supreme Court is intimidating and authoritarian, the Magistrates' Court, although not possessing the same strength and superiority, leaves the impression that its function is to deliver justice, and resolve disputes not to create awe and intimidation in its spectators [sic].

Many good papers also demonstrated a capacity for "relativistic"[17] thought and were mindful of the contingent and culturally specific nature of representation. One paper observed that "courts must be individually designed with hierarchical, jurisdictional, historical and cultural aspects taken into account." Many of the "good" papers tended to comment on changing community expectations of law and legal institutions. Some even highlighted the need for court design to have a distinctively Australian, rather than a British, or American, character.

Some perceptive students also noted, and addressed in their own sketches, some inherent tensions in court design. One student concluded, for example, that while "judiciary and architects favour the reversion to more traditional courthouse [design] there is seemingly very minimal input from the general public to which any form of symbolism is eventually directed at". [sic]

Some of the "good" papers did come from (naturally?) talented students but this was less true than might be supposed. The assessment, and the teachers' marking regime, heavily weighted the quality of the ideas presented by the students. Many papers scoring an honours grade showed evidence of a student's genuine struggle to communicate the complexity of their original insights. These papers did not necessarily have the theoretical background, conceptual jargon or the polished writing style of the gifted student. They all, however, showed evidence of careful reflexive thought about the topic. A consistent indicator was the tendency of these students to have researched and read more extensively and visited more than just the one court required in the assignment guidelines. The feedback from these students was that typically they "got into"

the topic and were motivated to "look at things a bit more — a classic subjective account of the mind-set of the "Deep" learner.[18]

The overall distribution of marks for the assignment suggests that students did significantly better on this piece of work than in the standard essay topics set in this subject in previous years. The student intake has remained relatively stable,[19] so it is reasonable to infer that the nature of the assignment contributed to an improvement in learning outcomes. The results support the consistent findings of the educational literature that rewarding assignments which provide clear and specific directions to students enhance the opportunity for learning.[20]

The papers which scored at the lower end of the scale exhibited all the usual problems of student work at first year level: poor expression, hurried and superficial argument and inadequate documentation and referencing. The nature of the assignment did not "cure" these problems.

Responsibility for the short-comings of many papers cannot even be sheeted home entirely to the students themselves. A major difficulty with students' conceptual approach to the task was an inadequate grasp of the nature and implications of the hierarchy of courts in our common law system. Frequently, students conflated their reading about the High Court with their critique of a Magistrate's court. Many students were oblivious to the different nature of cases heard by courts throughout the hierarchy. Likewise, their designs would frequently fail to specify the level of the court they were imagining and the nature of the work it was expected to do. This probably reflected limitations in our preparation of the students for this assignment. The material on hierarchy was linked to the unit on precedent and legal reasoning, which was covered in classes after the assignment had been handed in. This curriculum design problem can easily be rectified. Had the assessment been piloted on the first year law, rather than social science students, the problem would probably not have been as acute.

The assignments also exhibited evidence of the perennial complaint of university teachers: that students tend to be more comfortable with description than analysis and critique. The problem was most evident in Part B of the assignment Many students merely provided an account of the court they visited without any analysis. There was also little or no discussion of the relationship between the concerns they had identified in the

literature review in Part A and their court observations in Part B. This may have been due to a too literal approach to the compartmentalisation of the assignment into three sections. In other papers there was only a superficial nexus between the comments in the literature and students' own observations of the court, (For example, "The building was overpowering just like X said"). These students had not yet understood the need, or developed the confidence, to express their own conclusions on an intellectual topic.

Many court designs (Part C) exhibited a similar reluctance to extend beyond a description of their ideal court. The students clearly had ideas which informed their design choices, but these mostly remained implicit. The benefit of the third section, however, is that it provided a concrete basis for discussing with the students the difference between "description" and "analysis". After appropriate feedback, many students admitted to having had an "ah ha" experience about this hitherto mysterious distinction.

The problems encountered by students with Part *C* also provided a focus for discussing the contrast between "point" and "evidence". In the feed-back sessions students were invited to specify each of their criteria and to explicitly use these to justify their design decisions. It might be hard to prove, but many seemed to appreciate a method of thinking about argument which they seem not to have previously been able to grasp. The test of the effectiveness of the skill development exercise, however, will be the capacity of these students to internalise and generalise this newly acquired method to other university writing.

### EXTENDING THE ASSIGNMENT: A VIRTUAL DESIGN-A-COURT?

Part *C* of the current assignment lends itself to multi-media teaching. We are currently investigating the feasibility of developing a graphics package providing a variety of mix-and-match court exteriors and interior design items.

For law students, the introduction of a computer assisted learning component should enhance their familiarity with the kind of software that is becoming increasingly important in legal practice. Many of the so-called "super trials" dealing with white collar crime, for example, now rely upon specially designed

graphics programs to assist juries understand the complex transactions which are alleged to have taken place. More importantly, however, a computer assisted learning option will allow all students an opportunity to think about the myriad of subtle discretionary judgements they make while fine tuning their design.

The options provided in a comprehensive software package go beyond aesthetic considerations. Students will need to grapple with issues such as how an exterior view can best represent, for example, a court's mandate to deliver efficient justice, in the manner of all other consumer services, while still preserving the feel of the unique place of justice in the community. In the interior design, students will be confronted by options which challenge them to think about the appropriate balance of features which, for example, make participants feel "relaxed", while still preserving their respect for the adjudicator and the proceedings. Small details, such as the appropriate height and distance of the judge's bench from the parties, encourage this line of critical inquiry.

The crucial precondition for developing expensive and time-consuming multi-media learning options is to demonstrate how the use of technology will enhance student learning beyond more traditional modes of teaching. In theory, providing creative options, beyond what first year students could devise on the basis of their own limited experience, should extend the boundaries of their imagination. An appealing and user friendly program, should enhance students' capacity for conceptual thought and argument. The design-a-court software, used in conjunction with the other components of the assignment, would ideally engage students in the field of study. The opportunity to apply students' knowledge of the substantive topic while equipping them with useful academic skills is one of the great challenges of university teaching.

## CONCLUSION

Design-a-court was devised as a developmental exercise. By completing the required tasks students were expected to acquire new insights and learn new skills. There are strong grounds for concluding that the assignment fulfilled at least some of these ambitions.

A limitation of the exercise is that it was normative assessment — measuring student performance comparatively and assessing

individual performance against a mean. This is always a somewhat unfair basis upon which to base first year teaching, especially the first assignment. It rewards students who may have had a head start in their schooling and those who, for various reasons, have settled into the culture of the university a little more smoothly.[21] The indications are that, notwithstanding this limitation, the students themselves saw the task as sufficiently rewarding to realise the positive advantages of applying themselves to the subject and the discipline.

Design-a-Court is also a "one-off" piece of assessment. No allowance was made for the learning that took place as a result of completing the exercise and obtaining feedback. A number of students had the perspicacity to articulate this concern. To some extent this conflation of developmental with summative objectives is inevitable. In a large subject it is probably unrealistic these days to allow students a number of opportunities to practise skills independent of assessment requirements. There are limits to the staff resources which can be expended on assessment. Nor is it feasible to expect that students are in a position to devote themselves to learning tasks without the incentive of assessment.

It may have been possible, in hindsight, to reward those students who were diligent enough to capitalise immediately on their learning by setting a further "similar" assignment to allow them an option to demonstrate what they had learned. We set a similar, alternative exercise on "the Role of Costume and Ceremonial Language in the Courts" for late submissions. One useful experiment with this pilot might have been to allow all students the opportunity to resubmit their first piece of assessment. Few students are likely to want to undertake, or be in a position to complete, an additional piece of work. Those that volunteer may well be able to be rewarded, at this level, for any improvement through their willingness to assume responsibility for their own learning.

The challenge for introductory subjects is to devise assessment exercises which work at a number of levels. "Design-a-court" is an example of assessment led teaching and learning innovation. The assignment is part of an overall pedagogical strategy which introduces students to the discipline from the perspective of "law as culture". The real test of its efficiency and efficacy, however, will come later. Will students view the assessment narrowly, confined

to the subject matter or will the learning benefits of the assignment carry over into other subjects and attitudes to study in the discipline? Evaluation of the benefits of the assignment, therefore, awaits longer term review of the effect of an alternative approach to legal education which seeks to preserve students' "insider" and "outsider" perspective about the strange and rich world of law.

## APPENDIX A

## LA TROBE UNIVERSITY
## SCHOOL OF LAW AND LEGAL STUDIES
## ILS: LAW AND SOCIETY

## ASSIGNMENT

| | |
|---|---|
| Length: | 2,000 Words |
| Assessment: | 50% of total mark for this subject |
| Due Date: | Tuesday, April 28th, 1998 |

**Aims**

This assignment is designed as a Developmental Exercise. By doing the required work carefully and conscientiously you should learn to:

1. do a literature review;
2. conduct your own *"empirical"* testing of the ideas in the literature; and
3. apply your own and other's insights on the topic to create your own "model".

**Assignment: Design-a-Court**

Courts and courtrooms serve an important symbolic and practical role in all societies. Much of this can be gleaned from the physical design of courts of law. Changing attitudes and priorities are evidenced in the location, architecture, layout and interior design of courts throughout the hierarchy. This exercise requires you to explore some of these ideas both theoretically and practically.

The assignment has three main sections — Part A, Part B and Part C.

**Part A: Literature Review**

WRITE A "LITERATURE REVIEW" OF THE MAIN IDEAS EXPRESSED BY SCHOLARS ABOUT THE RELATIONSHIP BETWEEN COURT ARCHITECTURE/DESIGN AND THE ROLE OF COURT/COURTS.

Scholarship is based upon the accumulated wisdom and insights of thinkers and researchers who have come before you. Reviewing their work and placing your own efforts within this scholarly context is both a convention and a necessary part of intellectual endeavour. In the jargon of the Academy, the collected view of writers is known as "the literature" on a subject. A survey of this literature is referred to as a "literature review".

A literature review is not a summary of every article you have read. Rather, it is a thematic overview of the various perspectives or approaches to a topic. A literature review categorises these themes and draws on specific illustrations from individual papers/authors. (In other contexts, the literature review also notes any "gaps" in the literature and areas requiring further research — but this is not expected in this exercise.)

A measure of success of University education is that graduates are equipped with the skills to "find" information which, in any event, is constantly changing. Therefore the important first step in all academic disciplines is to undertake the library research which allows you to identify the key writing on a particular topic. Making yourself familiar with the library and its "finding aids" is a crucial part of your education at the University.

*Reference*

The following list of books and articles (as well as the material extracted in Chapter 7 of *Law as Culture),* provides the basis for your review of the literature. This material has been placed on Reserve in the Borchardt Library. The reading we have assembled is the "tip of the iceberg". You are encouraged to undertake you own research to find additional reading on this topic and include it as part of your literature review.

*BOOKS*

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*INTERNET*

*High Court of Australia.* Information about the High Court Building. http: / / www.hcourt.gov.au/link.htm.

## Part B: Court Observation

TO WHAT EXTENT DO YOUR OBSERVATIONS OF THE ARCHITECTURE, LAYOUT AND INTERIOR DESIGN OF THE COURT CONFIRM, SUPPORT, QUALIFY/MODIFY OR REFUTE THE PERSPECTIVES ABOUT COURT/S RAISED IN YOUR LITERATURE REVIEW IN PART A? WHAT IMPRESSION IS THE COURT DESIGNED TO CREATE IN THE OBSERVER/VISITOR?

Visit at least one Court (Magistrate's or County Court or the Supreme Court of Victoria). Addresses for the courts are to be found in the Melbourne telephone directory.

The idea in this section is that you use your own observations as a way of providing new and original insights on the topic. It is an opportunity to both test the literature and make your own original "value-added" contribution. You can choose to do this section as a free standing descriptive piece cross referenced to the literature. Alternatively, (and this is more in the tradition of scholarly writing) you may fuse Part A and Part B together as a coherent piece of writing.

## Part C — Your Ideal Court

WHAT DO YOU THINK THE DESIGN CRITERIA SHOULD BE FOR THE BUILDING OF YOUR VISION OF THE NEW, IDEAL COURT? PROVIDE EITHER A DESIGN BRIEF (OF NO MORE THAN ONE PAGE) OR PREPARE A SKETCH DESIGN AND NO MORE THAN A HALF PAGE RATIONALE/JUSTIFICATION FOR YOUR DESIGN.

This section requires you to apply *your* reading of the literature and *your* own observations within the Courts. *You* need to clearly articulate *your own* influences/values/conclusions and use these creatively to design a new court.

this "pilot" assessment module. Veronica Taylor, Michael Prosser and Mort Stamm provided helpful comments on an earlier draft and John Brigham was encouraging about the project.

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[1]   This has been the particular critique of law schools emanating from the critical legal studies movement, eg in the United States see the collection edited by D Kairys, The *Politics* of *Law: A Progressive Critique* 2nd ed (1990). For Australia, see I Duncanson ed, *Law* in *Context: Special Issue "Legal Education"* (Melbourne: La Trobe University Press, 1991).

[2]   There is a plethora of accounts of the "horror" law school experience in academic commentary, novels and film. More recently there has been a good deal of feminist interest in the particular difficulties experienced by women in the law school culture, for example L Guinier, M Fine, J Balin, A Bartow and DL Stachel, "Becoming Gentlemen: Women's Experiences at One Ivy League Law School" 143 *U Pa L Rev* 1; L Harmon and D Post, *Cultivating Intelligence: Power, Law and the Politics* of *Teaching* (New York: New York University Press, 1996); R Graycar and J Morgan, *The Hidden Gender of Law* (Sydney: Federation Press, 1990). The best of the commentaries about the process of acculturation to law school are: J Elkins, "Rites de Passages: Law Students 'Telling their Lives'" (1995) 35 *J Legal Educ* 27 and *A* Schwartz, "Law, Lawyers and Law School: Perspectives from the First Year Class" (1980) 30 *J Legal Educ* 437. There is also a significant body of secondary literature documenting the high levels of psychological distress experienced by many law students, eg ME Carney, "Narcissistic Concerns in the Educational Experience of Students" (1990) 9 *Journal of Psychology and Law* 28 and PW Beck and D Burns, "Anxiety and Depression in Law Students: Cognitive Intervention" (1979) 30 *J Legal Educ* 270. Most of this literature is based on the rather more harrowing experiences of students in American law schools. There are, however, good indications that Australian students still experience some forms of "culture shock" during their first year of study, eg K Laster, *Law as Culture* (Sydney: Federation Press, 1997) 8.

[3]   I use the conventional social theory term, "reflexive" (eg P Bourdieu (transl. M Adamson) *In Other Words: Essays Towards a Reflexive Sociology* 1st ed (Oxford: Polity Press, 1990) 140–149 in preference to the word "reflective" which is more commonly found in the legal education literature. Social theory's use of the concept predates Donald Shon's influential book, The *Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983). More importantly, I think it is unfortunate that learning theory should isolate itself from the vocabulary and conceptual framework of philosophy and social theory. "Reflexivity" draws on strong non-English linguistic traditions which have always had the ready grammar, usually reflexive verbs, to describe pithily the process of self awareness while engaged in an activity. This consciousness is far more active than its closest Anglo equivalent. Compare for example, the abstract nouns, "reflectiveness" with "reflexivity".

[4]   The dynamic nature of popular grievances against the legal profession is readily tapped in the lawyer jokes website, eg http://student/www.uchicago.edu/users/krlearn/humor/humor.htm/.

[5]   Laster, *supra* note 2.

[6]   Some third year Humanities students who are short of one first year unit are able to enrol in Law and Society as a one semester terminal subject to complete their degree. They obviously do not continue on in Legal Studies. There were only 10 such students in the class this year. A number of them took the opportunity to tell me that it was only after completing the assignment that they finally realised the nature and role of a literature review. During their *three* years of study in the Bachelor of Arts, no teacher had explained it to them. It was just expected that they would "know how to do one".

[7]   P Ramsden, *Learning to Teach in Higher Education* (London and New York Routledge, 1992) 184 distinguishes between "summative" and "formative" or-developmental assessment, based on pedagogical intent. Some teachers he argues, treat assessment as a mere "summary" or report on the student, often a

way of judging their performance relative to other members of the class. They are not interested in employing assessment as a way of teaching students, ie seeing how they are managing the learning task according to the learning aims and objectives of the subject or area of knowledge. The distinction is often used pejoratively in the learning and teaching literature. For example, according to Ramsden, formative assessment is about "using assessment to encourage interest, commitment, and intellectual challenge" (at 185) and is diagnostic rather than primarily used for the purpose of determining final grades. In practice, resource problems at universities mean that all assessment serves both purposes simultaneously. Still, it is useful to keep the theoretical distinction in mind in the design of assessment.

[8]     BS Bloom ed, *Taxonomy of Educational Objectives: the Classification of Educational Goals, Handbook 1, The Cognitive Domain* (New York: DK McKay, 1956).

[9]     Marton, D Hounsell, and N Entwistle, *The Experience of Learning: Implications for Teaching and Studying in Higher Education* 2nd ed (Edinburgh: Scottish Academic Press, 1997).

[10]   G Perry, *Forms of Intellectual and Ethical Development in College Years* (New York: Holt, Reinhart and Winston, 1970).

[11]   Richmond, Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education (1995) 26 *Cumberland Law Review* 943, at 953 quoting R Keeton, Why Use a Computer in Teaching and Learning in Law? (1979) in *Teaching Law with Computers: A Collection of Essays.*

[12]   Richmond, *supra* note 11.

[13]   Ramsden, *supra* note *7,* at 188.

[14]   *Id.*

[15]   P Nightingale et al, *Assessing Learning in Universities* (Kensington, NSW. University of New South Wales: Professional Development Centre, 1996).

[16]   J Entwistle, "Motivational Factors in Students' Approaches to Learning" in RR Schmeck ed, *Learning Strategies and Learning Styles* (New York: Plenium, 1988).

[17]   Perry, *supra* note 10.

[18]   For example, F Marton, D Hounsell, and N Entwistle eds, *The* Experi*ence of Learning: Implications* for *Teaching and Studying in Higher Education* 2nd ed (Edinburgh: Scottish Press, 1997).

[19]   If anything, based on TER scores, the students entering from the Faculty of Arts and Social Sciences at La Trobe University were slightly "weaker" than students who had previously applied for admission under the (old) Faculty of Social Sciences before the merger of the School of Law and Legal Studies with the Business and Economic Schools to become a new Faculty of Law and Management.

[20]   M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: The Law Book Company, 1994) 151.

[21]   C McInnes, R James, and C McNaught, *First Year on Campus: Diversity in the Initial Experience of Australian Undergraduates, A Commissioned Project of the Committee for the Advancement of University Teaching,* (Melbourne: University of Melbourne: Centre for the Study of Higher Education, 1995).