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# Assessment: exploring a new discourse

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## Introduction

This paper combines a theoretical framework with reference to how contemporary assessment approaches might operate with practical experience gained from recent events within the Faculty of Business, Sport, and Enterprise (FBSE). The focus of the paper is assessment and the spheres of influence which impact on the thinking and implementation of new assessment techniques. It provides arguments for supporting the proposition that the Faculty is adopting learning, teaching, and assessment practice at the cutting edge of Higher Education. This claim is made in the light of the new funding methodology and the current indications of what Higher Education is for in the new order. The paper is based on the experience of recent developments in Legal Education and the extent to which such indications can provide common areas across disciplines. The emphasis is on current change in Education rather than Law *per se*. Having considered the theoretical framework and prevailing external factors, the paper identifies current initiatives being undertaken in the Faculty to meet the strategic developments of the University.

In terms of the theoretical framework, the paper revisits themes identified in the author's previous work (Mytton, 2003) in relation to spheres of influence on Legal Education and reconsiders this with reference to recent experience in working with assessment strategy and its implementation. It also takes into account the extent to which revalidation events enable teams to review their professional practice and opportunities to develop a new discourse. The theoretical framework considers first principles such as 'Why assess?' (Brown et al, 1994). This is considered against a background of understanding the institutional context from theoretical perspectives on 'perfomativity' (Lyotard, 1984) and 'supercomplexity' (Barnett, 2000).

A profound shift in the educative experience is manifest from the origins of the human experience of learning derived from the Aristotlean notion of the educative to that which is now digitally driven. The implications are captured by Boud (Boud et al, 2008):

> New technology makes access possible to a vast range of digital sources. The environment makes some activities possible and constrains others but it does not change the fundamental processes of human learning.

In addition to striking a balance between the advantages of digital sources and human learning, tutors are also tasked with accommodating external factors related to assessment such as:

- The National Student Survey
- Assessment as a key driver in terms of student satisfaction and retention
- The integrity and validity of assessed work
- The cost of verification and impact of Turnitin
- Compliance with the Equality Act and reasonable adjustments
- Enabling students to engage with the assessment process
- Tutors' responses to student performance in shaping teaching

Whilst tutors come to terms with designing relevant and contemporary assessment strategies, the external environment also needs to be taken into account not least in terms of the government's stance on Higher Education. The impact of the new funding mechanism is of significant interest to Heads of Department. Those Heads with devolved budgets need an entrepreneurial flair to make things work to best effect. Financial acumen is necessary to deal with budgets, targets, attracting income, and allocating available funds to best effect.

## The Market

The key theme here is competition. Private providers are more able to control their business, they have less complex structures and decision-making is far more straightforward. Such providers have greater opportunity to control costs than University law schools. A key concern affecting law schools is where there is cross-subsidy; an issue which does not arise in the private sector. It is becoming clear that private providers have the ear of employers and indeed the government. They are more able to provide 2 year degrees designed for qualifying lawyers who have committed to the profession. To date there are less than 10 Universities providing 2 year 'fast-track' degrees which may suit career changers and mature students far better than school leavers, who have a different set of life and learning skills to develop before committing to an expensive professional course of training. Private tutors are not required to have the same qualifications as university law academics who hold academic and professional qualifications. The growth of multiple discipline practices is also having an impact of the shape of Legal Education and the training of professionals. There is a significant paralegal population of well-qualified lawyers who are unable to secure a pupilage or a training contract and are working for a very modest income.

## Professional bodies

Currently, there are discussions among the professional bodies relating to 'the moral question' about the oversupply of Law graduates. It may be acceptable on leaving University to have a significant number of Law graduates who are able to seek a range of a career options. However, the question arises as to those students who graduate from the vocational stage. Suggestions focus upon a possible cap on numbers and aptitude testing which is currently being piloted by the Bar. It is recognised there are perils associated with aptitude testing and that very able students may not get through and some who get through may not make it. There are also issues in relation to diversity and access.

Law schools are continually under scrutiny in terms of what should be taught. Very often it is felt City firms are driving the agenda yet they tend to recruit from a relatively narrow sector. Post 92 universities often design courses with employability and business skills built in whereas the traditional universities tend to focus on academic areas which reflect the strengths of the discipline and intellectual endeavour. It is becoming clearer that Law graduates are expected to have a sense of business awareness and prepare for careers in the event they cannot or do not wish to proceed with a professional Law qualification or a career in Law. Indeed, typically only 40% of Law graduates proceed to practice.

It is suggested that universities make it easier for students to transfer across courses. We certainly need to take the model of alternative business structures into account, advise students well, and provide a menu from which students are able to make appropriate choices. Currently, a major review 'Legal Education 2020' is underway. This is being led by the Law Society, the Bar, and the Institute of Legal Executives. The outcomes will be known in due course, however, there are aspects of current Legal Education and alignment with the professional world which are becoming apparent. Legal Education requires students to gain business awareness and the ability to engage with the world of business. However, there are different views across the sector about what a University education is for. Some Universities will claim to be sites of pure academic endeavour and will resist signing up to the world of preparing students for employability; such knowledge and skills are not for the purists. It may

well be the case that qualifications from a traditional University import a brand and that may well work for them. That said, in the light of the new funding methodology, employability opportunities now count in a way they never did before. This is where SSU is ahead in setting a scene in which students can embark on a course of study which has already been designed with students' futures in mind. Hearts and minds are already focussed on employer engagement and enabling students to study courses which will enable them to do well.

## The Solent experience: a comparative comment

Recent events such as the Faculty away-day and the Faculty conference clearly demonstrate our approaches to teaching, learning, and assessment are contemporary, relevant, and real. Whilst this is the prevailing discourse at SSU it is clear that there remains a more traditional view in the academy. It is for this reason that SSU is poised to provide a learning experience which students will be seeking in increasing numbers given the changes in the market economy and funding.

Clearly, there are universities which will claim to be sites of pure academic endeavour and will resist signing up to the world of preparing students for employability; such knowledge and skills are not for the purists. (Bradney, 2003) refers to the liberal University law school and asks 'what it should be doing in terms of its teaching, research and administration'. He asserts 'the liberal law school responds to the inalienable curiosity that is at the heart of human nature.' Further, he claims that the liberal curriculum 'should not attempt to determine what students will become or take out' whilst acknowledging the proposition is in conflict with intended learning outcomes (ILOs).

Perhaps Bradney's preference for a liberal education cannot accommodate the idea of what University education means to students who are keen to pursue their own career path regarding University as a means to an end rather than an end in itself. It may well be that the traditional University imports a brand and that may well work for them and their graduates. That said, in the light of the new funding methodology, employability opportunities now count in a way they never did before.

## Assessment: a theoretical framework

Barnett et al. (2008) suggests there are six qualities which help to make out the student's 'educational being': courage, bravery, determination, persistence, integrity and sincerity. Whilst acknowledging this position it would be interesting to know the extent to which such qualities are considered when constructing an assessment strategy. Do educators have in mind the qualities and dispositions to ensure the 'authentic educational being'? We have a learning environment which could not even have been imagined a decade or two ago.

If we can only make sense of the new order, we can play it to our advantage. With one eye on what is required, a little imagination, and the courage to push the boundaries, the deeply held traditions of what legal scholarship stands for can co-exist with new possibilities.

## Performativity and values

The starting point must be that legal scholarship within the context of university Law teaching is framed by measurement since only that which can be measured can be valued according to Lyotard (1984). The underlying flaw which threatens the essence of the educational endeavour is that moral values and the moral good cannot be measured. Teaching Law is a microcosm of the wider socio-political environment in which competing claims abound. The central question is the extent to which external spheres of influence determine the essence of the University and furthermore whether it is legitimate that they should do so. If the purpose of the University today is to produce resourceful people equipped to enter and participate in the world, it creates a contested discourse about what is valued. This has a degree of resonance with Lyotard for whom 'performativity' captures that which might be described as an underlying epistemological shift within the academy. Lyotard deconstructs different knowledges recognising that what is of use or what can be measured is what is valued. Given that universities are essentially corporate bodies it would appear that a corporate body is only capable of valuing that which can be measured.

Performativity raises questions about the University value system. The first question to ask is whether an institution can have a value system. Barnett (2000) recognises the University may have its place within an accepted value background, e.g. 'the pursuit of knowledge is a good thing' or 'social justice is worth striving for'. Further, he observes that in an era that has difficulty with large ideas there is also some difficulty in sustaining such a value position. Barnett, in exploring the underlying challenges, draws upon architectural metaphor by suggesting that 'the building will shake but it will not fall down'. The essential difficulty for him seems to be that 'the University in the contemporary era is unsure of its value basis; and that is to put the matter charitably'. It can be argued that it is not only the building which is

shaking but educators too are required to make sense of a rapidly changing environment. We are constantly making judgements about what counts and what has to be considered when engaging with educative endeavours.

Contemporary education may be far removed from the Aristotelian Greek state but, for some, those values hold good and a way has to be found for them to subsist within a world which Barnett refers to as 'supercomplexity' (Barnett, 2000). Erben (1999) traces the use of the word educative to mean two things; as a synonym for educational, and a word associated with ethics and values where educative experience and educative knowledge carry a wider compass that that characterised by the term educational. He refers to the Aristotelian idea that 'in both formal and informal environments the educative  relates to a conception of personal identity originating in moral choices…from infancy to feel joy and to feel grief at the right things: true education is precisely this'. He refers to the Aristotelian proposition that moral good is identifiable with social good.

> *Yet Law educators as academics themselves are the determinants of values and what it means for them to be part of the community of Law educators. Deeply held traditional understanding is a feature of the legal academic community for example that which has been espoused by Birks (1998). That said, different ideological and epistemological perspectives are at play. Barnett argues the influx of both internal and external ideologies have impacted on the University to the point that it is problematic to sustain the idea of the University solely as a site of reason.*

Many terms of reference used in assessment are deeply embedded and it is sometimes difficult to invite others 'to do assessment differently'. Why should they? Whose interests are being served?  Educators make judgements and the recipients are judged. We need to appreciate the impact of what is being undertaken. It is relatively straightforward to draft the documents required for institutional purposes yet reflexivity is profoundly significant in terms of the reality of the student and indeed the tutor's experience.

## Assessment: a critical discourse

A starting point is to ask 'What assessment is and what it can do?' This is explored by Boud and Falchikov (2008). They acknowledge that 'assessment affects people's lives' and that: 'Assessment is a value-laden activity surrounded by debate about academic standards, preparing students for employment, measuring quality and providing incentives'. Furthermore, they assert that 'Examination systems are resistant to change as they unreflexively embody many socio-political assumptions about what education is for'. There are contradictions in terms of what we are required to do and what is worthwhile. Boud et al. argue 'It is only through establishing a counter-discourse to the one that currently dominates higher education that some of the fundamental problems created by current assessment assumptions and practices can be addressed'.

> *His study surveys a range of institutions to discover their statements on how they frame assessment concluding, as one might have anticipated, that there is 'an assessment bureaucracy'. He suggests the time has come to contest this dominant discourse and reframe assessment to emphasise the more important underlying purpose of 'informing judgement' and suggests three key features. Firstly he argues the need to connect assessment and learning and that it is necessary to look at the consequences. This can be achieved by asking the question, 'Do assessment acts actively promote development of students' capacity to make judgements about their own work and its relevance to future learning'. Secondly, he proposes assessments should 'foster reflexivity and self – regulation'. This goes to the root of building confidence and self-image of oneself as an active learner as opposed to the learner being solely directed by others. Thirdly, he espouses the case for having a new focus on the variety of contexts in which learning occurs such as real work settings. It may well be the case that all three of these features can be found in law schools and there is scope for further study in this regard.*

## Why Assess?

If we are to reflect on the idea of 'Doing Assessment Differently' it is worth asking why assess at all? This question is explored by (Brown, Rust and Gibbs, 1994) who suggest seven basic reasons for assessing:

> Motivation
> Creating learning opportunities
> Feedback to students such as strengths and weaknesses
> Feedback to staff to indicate how well the message is getting across
> Judge performance
> Quality Assurance (internal)
> Quality Assurance (external)

When devising an assessment strategy it would be interesting to know how law schools approach such a task (Bone, 1999). Sanders found in his exercise for Heads of Law that there is no consistency in terms of whether there is an assessment policy across law schools. It would be interesting to know who determines whichever policy exists in law schools where such policy exists. The significance of this relates to how law academics and law educators prioritise assessment practice and the terms of reference they use. In a Business School, for example, if the assessment policy is drafted by a non-lawyer, what are the mechanisms for ensuring compliance with Qualifying Law Degree (QLD) rules and the Quality Assurance Agency (QAA) subject benchmark for law?

## Assessing Law differently: the rules

Given the context of competing spheres of influence upon legal scholarship this paper focuses particularly on the possibilities of assessing differently whilst balancing regulation and in pursuit of innovation. First things first; we cannot rely entirely on claims to unfettered academic freedom – there are limits. It is necessary to know the limits and operate freely to the extent to which freedom is possible. In terms of regulation the spheres of influence upon a QLD operate externally and internally. In terms of the latter the key determinant is the Joint Academic Stage Board Handbook. This is read in the context of individual law schools who in turn determine how to deliver the programmes of study in accordance with the rules. Professor Andrew Sanders has produced a set of findings in relation to 'Assessment and regulation of assessment on QLDs' having undertaken a questionnaire sent to Heads of UK Law Schools to which 38 responded (Warwick, 2009). His findings are more extensive than is possible to report here but the following observations can be made for the purpose of simple illustration:

- Half of law schools have a policy on traditional closed book exams and other forms of assessment
- Not all law schools felt constrained by the move away from examinations but some felt exams contribute to upholding standards
- The majority did not feel constrained intellectually regarding what is appropriate for a QLD
- The balance between exams and other forms of assessment varies considerably

Law schools are differently located in terms of their approaches to Legal Education. In broad terms, the epistemological character of a law school will be largely dependent upon whether it is essentially a site of academic endeavour in its own right or whether it has an emphasis upon the professions and vocational training. Within a typical law school with a Qualifying Law Degree (QLD), there will be the following reference points:

**External**
Professional networks

Joint Statement
Law Benchmark statement
National Qualifications Framework (NQF)
Quality Assurance Agency (QAA)
Higher Education Funding Council (HEFCE)
Solicitors Regulatory Authority (SRA)
Bar Standards Board (BSB)
Joint Academic Stage Board (JASB)
Research Excellence Framework (REF)
National Student Survey (NSS)
League Tables
Statutory requirements e.g. the Equality Act 2006

**Internal**
University strategic plan
Academic citizenship
Team meetings
Subject expertise
VLE
Subject teams
Equality & Diversity
Quality Assurance
Unit guides
Assessment regulations
Research
Student Satisfaction Surveys

## Innovation at Southampton Solent University: developing a new discourse for assessment

Southampton Solent University is strongly committed to the student experience and prevailing ethos is to enable students from all backgrounds to have the opportunity to benefit from a University course of study. This ethos impacts on all aspects of the learning, teaching and assessment experience. The Business School focuses on the theme of 'Solentness' designed to enable students to become well-equipped to align their studies to employer enhancement and personal effectiveness. There is considerable emphasis on supporting the student and enabling them to reach their potential. This context impacts significantly on the approach to assessment. Recently, the Law provision has been comprehensively reviewed which provides opportunities for reviewing traditional approaches to assessment. It was clear the design and implementation of innovative and stimulating assessment requires a robust infrastructure. It is particularly important that technical staff and academic staff feel able to communicate effectively at every stage in order to develop a contemporary pedagogic discourse where the following is recognised and becomes part of the quest for doing assessment differently:

- Knowledge exchange is the essence of intellectual discovery and learning
- New vocabulary and new ways of thinking about access to knowledge are critical
- The dynamic interface between inspiration and implementation
- Different ways of thinking about what is possible in problem-solving
- Excitement about the generation of new ideas, new technology, and vocabulary
- New modes of communication between academics, students and technologists to produce new ideas in the design of a dynamic learning environment.

## FBSE away-day and conference

Student presentations at the away-day indicated that courses at SSU are on the right track but there is still a way to go in 'making it real'. This was also borne out at the FBSE conference in the session on 'Assessment: Exploring a new discourse within an institutional framework'. From those two events the following key points emerged. Students need more 'live' opportunities for learning; techniques which are very easy to incorporate to reflect business practice to enable students to recognise what they will actually encounter. The time has come for a move away from entirely academic exercises for undergraduates such as essay writing which may no longer be the most effective away to enable students to acquire the skills required for business. Some examples were identified as:

> Live client briefs
> Practical exercises
> Presentations
> Report writing
> Business mentors
> Co-teaching and learning with business professionals and student.

In addition to the above, a further list of desirable knowledge, skills, and attributes were obtained from external key stakeholders in Law.

> Clarity of thought and expression
> Applied knowledge
> Business practice
> Client relationships
> Client management
> Client perspective
> Project management
> Tax
> Accounting
> Good flair for business
> Writing and Drafting
> Presenting
> Risk analysis

## Key Changes to the Law Degree

The above factors were taken into account when designing the revalidated LLB (Hons). A single new course was designed to reflect the aspects of Law and practice most relevant to students, academics, practitioners and business. From the outset, Law was taken to be integral to the business community. Given that around 40% of all qualified Law graduates go on to practice Law it is recognised the course needs to reflect both Law and Business practice. A unit has been introduced at level 5 'Lawyers Working with Business' to enable students to learn the realities of the world of work.

A skills spine was integrated through the course. At Level 4, new units were introduced to provide opportunities for learning subject knowledge whilst the ability to gain a range of skills. Resources were obtained to set up a Mooting Room. Mooting had been piloted and, as a result, it was found to be a particularly effective method to incorporate staff, students and practitioners in the teaching and learning process. A unit named 'Aspects of Law and Practice' (ALP) was also introduced to promote self-development and reflective practice. There are four parts to this unit reflecting the key themes through levels 5 and 6. Mahara (ePortfolio system) is a key opportunity for students to make informed decisions about their chosen

paths. ALP comprises parts which optimise existing strengths in the Law Subject Group: Criminology, Social Law, and Commercial Law. These themes provide students with the chance to test out their preferences before they commit to the rest of the course. Their reflective practice and personal development is supported through Mahara. In addition, it was recognised that traditional part-time courses do not provide the required mode of learning for professionals, new learners and career changers. A new idea was to introduce a form of 'Flexible Learning'. This provides non-standard participants with flexibility according to their needs supported by a Flexible Learning Tutor.

Through the revalidation process there many lessons learned illustrated by the following examples:

> Play to our strengths
> Generate buy-in
> Excite, inspire, lead
> Understand the chaos of change
> Pilot new innovative methods of assessment
> Listen to the student voice
> Students are the future – appreciate their world
> Interface with professionals
> Apply current best practice in everything we do

It became clear a focus needed to be found to bring these elements together so as to ensure we maintain momentum and play to our strengths. The Southampton City Law Network is being established to bring the Law and Business community together. This will promote placements and 'live' learning opportunities for students, as well as continuing professional development (CPD) and professional training for employers. A particularly innovative arrangement is where a Law firm supports students in 'live' activities and awards prizes. The firm gains publicity and is able to provide professional opportunities for students.

## Concluding remarks

Taking these experiences  into account it is fair to say that SSU  LLB (Hons) is very well placed to meet the objectives articulated through current University strategic aspirations through the Strategic Development Programme and the 'six strands' which set out how the student experience can be aligned with the SSU learning experience. Certainly, the revalidation of the Law provision generated many opportunities for review of our practice and how to align student learning with current expectations from students, practitioners and key stakeholders.

The impact of the funding methodology will impact on us all. The good news is that students choosing to embark on a learning and career path at SSU will be starting from a very strong position taught and supported by staff who understand the huge significance of 'making it real'.

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