

CAN ASSESSMENT POLICIES PLAY A ROLE IN PROMOTING STUDENT ENGAGEMENT IN LAW?

WENDY LARCOMBE

ABSTRACT

‘Student engagement’ is a measure of the extent to which students participate in activities that research has found to be associated with academic achievement, satisfaction and high-quality learning. Such participation reflects not only on a student’s disposition, but also on an institution’s creation of conditions that promote and foster student learning. Given that assessment is an important driver of student learning, this paper considers the role that assessment policies and practices can play in promoting student engagement in law, with a particular interest in encouraging student participation in enriching educational experiences such as internships, clinical placements, exchange programs and community service.

I. INTRODUCTION

‘Student engagement’ is an educational construct that, in broad terms, investigates the extent to which students participate in activities and conditions that higher education research has found to be associated with academic achievement, satisfaction and high-quality learning.¹ Such participation reflects not only on a student’s disposition, conscientiousness or effort, but also on an institution’s creation of conditions that promote and foster student learning.² Indeed, ‘student engagement’ is understood to ‘develop from the dynamic interplay between student and institutional activities and conditions’.³ The student’s responsibility for their learning is thus acknowledged within the framework of ‘engagement’, as is the range of factors that affect learning in higher education. However, the construct also acknowledges that the conditions for student learning can be favourable or adverse, and research on student engagement provides valuable information about the factors than an institution can change or adjust in order to create conditions that stimulate student involvement and learning.

‘Student engagement’ has been investigated and actively fostered in higher education for over a decade.⁴ In the United States, it has also become a measure of ‘collegiate quality’ through

* Dr Wendy Larcombe, Senior Lecturer, Melbourne Law School, University of Melbourne, Victoria 3010. T: +61 3 8344 1005; E: w.larcombe@unimelb.edu.au.

- 1 See, eg, Gary Pike and George D Kuh, ‘A Typology of Student Engagement for American Colleges and Universities’ (2005) 46 *Research in Higher Education* 185; Mantz Yorke, ‘Student Engagement: Deep, Surface or Strategic?’ (Paper presented at the 9th Pacific Rim First Year in Higher Education Conference, Gold Coast, Queensland, 12–14 July 2006) 1 <http://www.fyhe.qut.edu.au/past_papers/2006/Keynotes/Yorke.pdf> at 4 December 2008; Bonita London, Geraldine Downey and Shauna Mace, ‘Psychological Theories of Educational Engagement: A Multi-Method Approach to Studying Individual Engagement and Institutional Change’ (2007) 60(2) *Vanderbilt Law Review* 455.
- 2 See Shouping Hu and George D Kuh, ‘Being (Dis)Engaged in Educationally Purposeful Activities: The Influences of Student and Institutional Characteristics’ (2002) 43(5) *Research in Higher Education* 555; John Ryan ‘Institutional Expenditures and Student Engagement: A Role for Financial Resources in Enhancing Student Learning and Development?’ (2005) 46 *Research in Higher Education* 235.
- 3 Kerri-Lee Krause and Hamish Coates, ‘Students’ Engagement in First-Year University’ (2008) 33(5) *Assessment and Evaluation in Higher Education* 493, 494.
- 4 George D. Kuh, ‘Assessing What Really Matters to Student Learning: Inside the National Survey of Student Engagement’ (2001) 33(3) *Change* 10, 12.

the administration of the National Survey of Student Engagement (NSSE).⁵ The concept of ‘engagement’ is likely to become increasingly significant in the Australian higher education sector following the recent development and implementation of an equivalent Australasian Survey of Student Engagement (AUSSE).⁶ In 2007, 25 higher education institutions across Australia and New Zealand participated in the first administration of the AUSSE. The Student Engagement Questionnaire (SEQ) used in that research reproduces a number of items from the North American NSSE questionnaire, making international comparisons and benchmarking possible.⁷

Six dimensions or scales of student engagement were analysed in the 2007 AUSSE survey: Academic Challenge; Active Learning; Student and Staff Interactions; Enriching Educational Experiences; Supportive Learning Environment; and Work Integrated Learning (the last of these is unique to the Australasian survey).⁸ This paper focuses on the ‘enriching educational experiences’ dimension of student engagement and, more particularly, law students’ participation in experiences such as internships, clinical placements, exchange programs, social justice advocacy and community service. Given the important relation between institutional assessment practices and student learning,⁹ this paper considers the role that assessment policies and practices might play in promoting or discouraging student participation in enriching educational experiences. As Richard James notes, ‘[f]or most students, assessment requirements literally

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- 5 *About the National Survey of Student Engagement*, National Survey of Student Engagement <<http://nsse.iub.edu/html/about.cfm>> at 2 July 2009. For an evaluation of the construct validity of the five dimensions or benchmarks used in the NSSE, and a proposal for an alternative eight ‘dimensions’, see Steven M LaNasa, Alberto F Cabrera and Heather Trangsrud, ‘The Construct Validity of Student Engagement: A Confirmatory Factor Analysis Approach’ (2009) 50 *Research in Higher Education* 315. Note that a law-specific ‘engagement’ survey, the Law School Survey of Student Engagement (LSSSE), has also been developed and is administered in many colleges in the US: see *About LSSSE*, Law School Survey of Student Engagement <http://lssse.iub.edu/html/about_lssse.cfm> at 30 June 2009.
- 6 See Australian Council for Educational Research (ACER), *Attracting, Engaging and Retaining: New Conversations about Learning*, Australasian Student Engagement Report, Australasian Survey of Student Engagement: AUSSE (2008). Krause and Coates, above n 3, used a more comprehensive set of scales to assess first-year student engagement, and also argued for the further development of qualitative, not only quantitative, measures of engagement.
- 7 While the objective of the surveys is to enable institutions to reflect on and address strengths and weaknesses, it can also be used as a comparative measure of institutional ‘quality’ in ways that may be attractive to smaller or newer institutions that cannot compete on ‘facilities and resources’ measures of quality.
- 8 Each dimension identifies a known condition or facilitator of high-quality learning and academic achievement. In short, high-quality learning is identified as promoted when:
- Coursework sets high, yet achievable, standards, thereby challenging students to extend themselves;
 - Coursework provides opportunities for students to actively construct and apply knowledge;
 - Academic staff are seen as approachable, helpful and sympathetic, and students have opportunities to work alongside and interact with academic staff outside the classroom;
 - Students participate in enriching experiences such as community work, exchange programs, industry placements, internships, clubs and societies and so on;
 - Institutions work actively to integrate students within the social and academic life of the university, fostering supportive relationships with peers and professional staff as well as academic teachers; and
 - Students are prompted to consider the applications of knowledge and skills being developed in their course to work-related situations and contexts (see ACER, above n 6, 3).
- 9 See in particular the special issue on ‘Learning-Oriented Assessment: Principles and Practice’ (2006) 31(4) *Assessment & Evaluation in Higher Education*; see also *Assessing Learning in Australian Universities*, Centre for the Study of Higher Education <<http://www.cshe.unimelb.edu.au/assessinglearning/index.html>> at 20 September 2009.

— CAN ASSESSMENT POLICIES PLAY A ROLE IN PROMOTING STUDENT ENGAGEMENT IN LAW? define the curriculum'.¹⁰ If we are interested to promote student participation in educationally enriching activities, it thus seems pertinent to ask whether assessment regimes and policies can be designed (or better designed) so as to promote such participation.

In part based on a recent review of assessment practices at a number of UK universities (undertaken through a U21 Fellowship), and also on participation in the 'Community Engagement Legal Practice Forum'¹¹ and 'Let's Do Assessment Workshop',¹² which brought Australian law teachers together to discuss issues of community engagement and assessment in November 2008, this paper identifies two broad approaches to, or conceptualisations of, the relation between enriching educational experiences and assessment in law. The pros and cons of each, including the implications for academic staff, are briefly outlined and assessed. It is suggested that no single model would suit all law schools, and that student involvement in enriching activities is likely to be maximised if law schools develop a combination of strategies. Students will also benefit from clear advice about their law school's approach and its expectations of community and extra-curricula involvement. Finally, it is suggested that, whichever approach is adopted, a 'degree classification' or whole-of-course assessment scheme, such as is currently used in the UK, may have distinct benefits for promoting student participation in enriching educational experiences.

II. ENRICHING EDUCATIONAL EXPERIENCES AND ASSESSMENT IN LAW

'Enriching educational experiences', as defined by the AUSSE, include: study abroad or exchange programs; community service or volunteer work; practicums, internships, fieldwork or clinical placements; participation in campus publications, student government or clubs and societies; and conversations with students from different ethnic groups or students who hold different religious beliefs, political opinions or personal values.¹³ The concept of 'enriching educational experiences' considered in relation to legal education would thus include clinical

10 Centre for the Study of Higher Education, The University of Melbourne and the Australian Universities Teaching Committee, *Core Principles of Effective Assessment* (2002) Assessing Learning in Australian Universities <<http://www.cshe.unimelb.edu.au/assessinglearning/05/index.html>> at 20 September 2009.

11 Organised by Patrick Keyzer and Amy Kenworthy, 21 November 2008, Bond University, Gold Coast Queensland: <<http://www.bond.edu.au/about-bond/teaching-and-learning/the-recognition/bond-teaching-and-learning-grants/current-grant-holders/index.htm>> at 6 July 2009.

12 Sponsored by the Council of Australian Law Deans, 22 November 2008, Bond University, Gold Coast, Queensland.

13 ACER, above n 4, 49-50. The following scales are used in the AUSSE to measure student participation in enriching educational experiences:

- Had conversations with students who are very different from you in terms of their religious beliefs, political opinions or personal values;
- Had conversations with students of a different ethnic group than your own;
- Perceptions of the institution's emphasis on encouraging contact among students from different economic, social and racial or ethnic backgrounds;
- Hours per typical seven-day week spent participating in extracurricular activities (organisations, campus publications, student government, clubs and societies, sports etc);
- Use of an electronic medium (eg Blackboard or WebCT) to discuss or complete an assignment;
- Intention to undertake, or completion of, a practicum, internship, fieldwork or clinical placement;
- Intention to undertake, or completion of, community service or volunteer work;
- Intention to undertake, or completion of, a formal program where students take the same classes together;
- Intention to undertake, or completion of, study in a foreign language;
- Intention to undertake, or completion of, study abroad or student exchange; and
- Intention to undertake, or completion of, culminating final year experience (honours thesis, comprehensive exam etc).

Several of these scales (internship, volunteer work, community service) are closely related to the scales for Work Integrated Learning which considers 'industry placement or work experience': see ACER, above n 6, 53.

legal education programs and student involvement in pro bono activity, student exchange and study abroad programs, and a wide range of activities that involve students with their local communities both within and beyond their home universities. The latter activities would include: volunteering and community activism; participation in mooting, interviewing and negotiation competitions; journal editing; involvement in student governance and law student society activities; facilitating study groups and mentoring of first-year and international students; providing research assistance for academic and community projects; conference organising; and so on. The common denominator of such activities might be described as experiences that build students' understanding and appreciation of cultural and social diversity while developing their skills to work within and for the benefit of diverse communities.

The value of such enriching educational experiences for law students, as for all students, is widely recognised.¹⁴ What is less clear is *how* to foster and promote student participation in such activities. For example, should such participation be a required element of a law degree? If voluntary, does the award of academic credit for such activities promote or deter student involvement? The current debate about whether law schools should mandate or only encourage voluntary student participation in pro bono work demonstrates some of the issues that arise once student participation in certain activities is considered desirable.¹⁵ This paper focuses on the strategies that a law school might adopt to encourage or foster (rather than mandate) student participation in enriching experiences, including, but not limited, to pro bono work or 'clinical' experience. More particularly, this paper considers how assessment policies, broadly conceived, might promote or discourage student participation in enriching educational experiences. Assessment practices are widely recognised as an important driver of student learning in higher education.¹⁶ As will become evident, they cannot be ignored when considering how to promote student participation in enriching activities.

I want to identify two broad approaches to the relation between enriching experiences and assessment in law. The first approach, increasingly adopted in Australian law schools, is to bring enriching educational experiences within the formal curricula of a law school where they are assessed and credited to the student's workload and degree. For convenience, I will refer to this approach as making a 'place' within the curriculum for enriching educational experiences. The second approach, favoured by many UK law schools,¹⁷ is to offer enriching educational experiences primarily through the not-for-credit co-curricula life of the law school, and to coordinate the formal curriculum and participation in co-curricula activities as complementary elements of the students' learning experience. I will refer to this approach as making 'space' alongside the credit-bearing curriculum for enriching educational experiences.

A. Making a Place for Enriching Educational Experiences

In relation to the first approach, there can be little doubt that assessing and crediting students' learning through their participation in enriching educational experiences can emphasise the value

¹⁴ Clinical legal education and student pro bono activity have recently been advanced as an important element of legal education: see Selma Milovanovic, *Pro Bono Work Good for Law Students: Kirby* (27 May 2009) *The Age* <<http://www.theage.com.au/national/pro-bono-work-good-for-law-students-kirby-20090526-bm3x.html>> at 30 June 2009. A recent collection of essays is devoted to the issue of student involvement in community engagement more broadly: Patrick Keyzer, Amy Kenworthy and Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009).

¹⁵ Students involved in establishing a pro bono scheme at the University of Western Sydney argue, contrary to conventional thinking, that the value of such activities would not be compromised if undertaken by students for academic credit: Carolyn Sappideen and Figen Cingiloglu, 'Law Student Pro Bono: Report of the Australian Pilot' in Patrick Keyzer, Amy Kenworthy and Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 21.

¹⁶ See 'Learning-Oriented Assessment: Principles and Practice', above n 9; see also *Assessing Learning in Australian Universities*, above n 9.

¹⁷ See below Part III.

placed on such experiences by the law school and motivate a level of student uptake. Enriching experiences can be housed within the formal curriculum in a range of ways – for example, by offering ‘clinical’ subjects that place students in community or university-based legal centres; ‘internship’ subjects that involve a placement with a community-based organisation or service; ‘mooting’ subjects that support enrolled students to participate in national or international mooted competitions; ‘journal editing’ subjects that award credit for a student’s work in editing a legal journal; and formal exchange or study abroad programs. The ‘experiential’ learning element may comprise part of a subject, an entire subject or an entire semester of study. It is made attractive to students in part because it is offered within the formal, structured program of the law course and the activity is undertaken within the normal workload of the law degree. Because ‘experiential’ subjects are generally taught in small groups to enable close supervision, another benefit for students is the individual attention that they receive from their academic teachers and the opportunity for staff-student collaboration.

However, the resource-intensive nature of such subjects – either through the lower staff-student ratios or the additional administration required to arrange and deliver the programs – is also a disadvantage of formalising opportunities within the curriculum. If a law school cannot support such enriching opportunities for all students, allocation of available places presents equity issues. Which students are to be given the advantage of participating in such programs and experiencing the anticipated benefits in both personal and professional terms? There are also equity issues for academic staff. Which teachers are to be given responsibility for these types of initiatives/programs given that they ‘invariably require investments of additional time and resources before, during and after the actual implementation of each course’?¹⁸ Is there appropriate recognition (in terms of the calculation of teaching or administrative loads) of the extra time and effort on the part of those involved? Is successful implementation of such programs favourably considered in applications for promotion? Unless a law school takes steps to ensure that academic staff who adopt such responsibilities are actively valued and supported, and not disadvantaged in relation to research time, then such initiatives are unlikely to be offered on a wide scale, further exacerbating student equity issues.

There are also a number of issues surrounding the assessment or grading of students’ performance in ‘experiential’ programs.¹⁹ If enriching educational experiences are given a place within the credit-bearing curriculum, then students’ learning through these programs must (usually) be assessed. However, traditional assessment methods are not designed to assess students’ development of valued attributes – a key objective of student participation in educationally enriching activities. New assessment methods and measures can be developed but it may be difficult to distinguish what the student has learned or developed through the program from the skills and attributes they brought with them to the program. Is each student’s development to be assessed against their own entry level or is there a standard that all students are expected to reach? Who should make the assessment: the workplace supervisor of an ‘external’ placement who may be unfamiliar with assessment principles, or a law school academic who may not have observed the student’s work in context? Are sufficient numbers of academic staff qualified and confident to assess this form of learning?

Whether the examiner is external or internal, there may be student complaints of lack of objectivity and transparency regarding any negative assessment of their performance in ‘experiential’ subjects, especially as a result of the inevitable lack of anonymity. Developing

18 Amy Kenworthy and Timothy Peterson, ‘Service-Learning and Management Education: Introducing the WE CARE Approach’ (2005) 4(3) *Academy of Management Learning and Education* 272, as cited by Patrick Keyzer, ‘Community Engagement in Australian Legal Education: Some Contemporary Issues’, in Patrick Keyzer, Amy Kenworthy and Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 9.

19 These issues also apply to the teaching and assessment of professional skills: see Anne Hewitt, ‘A Critique of the Assessment of Professional Skills’ (2007) 17 *Legal Education Review* 143.

appropriate assessment criteria for ‘experiential’ subjects, and providing guidance for students on how to satisfy or demonstrate these, can be time consuming for academic staff. The need to develop confidence and proficiency with new forms of assessment may also be off-putting for some students as there is a degree of uncertainty involved: capable students may be keen to preserve their grade point average and so reluctant to undertake an option in which they may not perform as well; students who are struggling with the academic demands of their law course may not feel that they can risk taking an option that is likely to be more demanding (if also more rewarding).

B. Making Space for Enriching Educational Experiences

The second approach to enriching educational experiences – offering them primarily through the non-credit-bearing co-curricula program of a law school (with an expectation that all students should participate) – avoids the assessment issues associated with bringing enriching experiences into the formal curriculum. Assessed student learning can then remain principally anonymous, standardised and focused on knowledge and application – with the benefit of being efficient and familiar for many students and staff alike. However, innovation in assessment policies and practices may still be important in this approach, I would suggest. In particular, the formal academic program and its associated assessment schedule must be designed to ensure that there is ‘space’ in a student’s workload and schedule to undertake the desired co-curricula activities.²⁰

There are a number of advantages – to both students and academics – of providing enriching educational experiences principally through a law school’s co-curricula program. Importantly, the range of opportunities that can be offered through this means is likely to be far broader than those that could be supported by formal curriculum offerings. There need be no limits on the numbers participating, and experiences do not need to be standardised or comparable. Activities may also be more student-centred as students can use their own social, community and interest networks to identify appropriate projects. Existing student groups and organisations can also take a leadership role – for example, in organising competitions, conferences, publications, placements, mentoring schemes and so on. Ideally, academic staff would support students’ activities, in both formal and informal capacities. Provided such activities are adequately recognised as part of staff workloads, many academics are likely to be more comfortable working in such support roles than they would be if asked to coordinate and assess experiential subjects.

A question must remain, however, as to whether increasingly time-pressured law students will involve themselves in activities that do not ‘count’ towards earning their degree.²¹ Certainly, law schools who adopt this approach will need to actively promote students involvement in a range of self-initiated enriching educational experiences as being an important part of studies in law. Expectations of prospective employers also play an important role in this regard. But the expectations of participation – of law schools and employers – must be realistic in the context of the workload demanded by the formal academic curriculum. In short, the coursework and assessment schedule must leave time for students to participate in a range of educationally enriching activities alongside their core academic studies. Assessment-related strategies that might better enable students to plan to participate in co-curricula activities include: developing a coordinated assessment schedule for each cohort of students to ensure that assessment tasks are

²⁰ Research on assessment in higher education does not usually consider its impact and effects beyond the subject or program in which it is administered. Consequently, I have not found any research that investigates the relation between the number and scheduling of assessment tasks and student participation in co-curricula activities and other enriching educational experiences. I suggest that it is a topic that warrants empirical investigation and wider consideration.

²¹ Interestingly, while students are often heard to complain of the workload in law, a recent study has found that perceptions of workload reflect the perceived usefulness and value of the course requirements as much as the time demands of a course: see Anne MacDuff and Lynn Du Moulin, ‘New Challenges in Legal Education: Developing an Appropriate Response to the Issue of Student Workload’ (2008) 18 *Legal Education Review* 179.

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appropriately timetabled across the semester and exam-period; limiting the number of formal summative assessment tasks that students complete for each subject; limiting the variety of forms of summative assessment that students are asked to complete in a given year or semester so that there are efficiencies in developing familiarity with particular forms; concentrating assessment due dates within limited periods and designating certain periods as ‘assessment-free’; and increasing the flexibility available to students as to the timing and forms of assessment for a given subject.

Each of the broad approaches sketched here is positive and constructive, although each has particular pros and cons. Moreover, either approach, in isolation, is likely to be less effective than a combined approach that works simultaneously to make a place within the curriculum and to make space alongside the curriculum for student involvement in enriching educational experiences. The characteristics, location, resources (internally and in the immediate community) and priorities of a particular law school will determine which approach or combination of strategies might be most effective in the given circumstances. Student characteristics, resources and preferences will also be relevant. Any strategy will be enhanced when law schools are conscious about, and discuss with students, the importance of enriching educational experiences in legal education and the steps the school takes to increase the opportunities for student participation. In the absence of a strategy to emphasise the value of involvement in enriching activities, there is a risk that such experiences may be squeezed out of a crowded curriculum, the demands of which in turn leave little or no space for co-curricula involvement.

Whether enriching activities are made credit-bearing or not, I have suggested that program-level assessment policies need to be given careful consideration (although in different ways). I now want to suggest that assessment policies regarding the award of the law degree as a whole – such as through the awarding of honours points, the calculation of grade point average or other methods of creating student ‘rankings’ – may have a role to play in promoting student involvement in enriching activities, whether credit bearing or not. The practice of degree classification in the United Kingdom is outlined to explain this point.

III. UK DEGREE CLASSIFICATION

In the UK, with rare exceptions, the LLB is conferred with Honours.²² Both school leavers and previous graduates undertake an LLB (accelerated in the latter case). In Scotland, the LLB is a four-year program with the third and fourth years considered as an honours program. In England, the LLB (Hons) is a three-year program. A student’s degree is classified as LLB with either: First Class Honours; Upper Second Class Honours (2-1); Lower Second Class Honours (2-2); or Third Class Honours. There is no ‘Pass’ classification – an aggregate score below the level required for third class honours is a ‘fail’ mark, in which case the student may receive an Ordinary LLB. In general, an Ordinary LLB is only conferred if the student fails subjects in the final year which cannot be retaken.²³ The vast majority of UK law graduates receive a Second

22 Information in this section is based on interviews with, and assessment policy documents provided by, academic staff with program assessment responsibilities in seven law schools in Scotland and England: The School of Law, University of Glasgow; Edinburgh Law School; School of Law, University of Nottingham; Nottingham Law School, Nottingham Trent University; School of Law, University of Leicester; Leicester De Montfort Law School; and the Kent Law School. The interviews were conducted during April 2009 as part of a U21 Fellowship awarded to the author to study the use of assessment practices to promote student engagement.

23 It must be emphasised that the UK Honours classifications do not correspond to Honours classifications at most Australian law schools. For example, Third Class Honours in the UK corresponds to a bare pass with percentage marks in the 40-49 range; First Class Honours is given a percentage mark of 70+.

Class Honours degree.²⁴ Preferred employers commonly require a 2-1 degree. However, as in Australia, some employers may prefer a 2-2 degree from one law school over a 2-1 degree from another law school. Most law schools have a range of strategies in place to secure traineeships and employment opportunities for their graduates who receive 2-2 degrees.

Degree classification provides a means of distinguishing and recognising student achievement in broad terms. It has the advantage over grade point averages of providing prospective employers with an interpretation of a student's performance that does not imply that minor differences in marks should be regarded as significant. It also has the advantage of not 'classing' a student's academic performance too early in the program, with the added risk of discouraging a student's effort and engagement.²⁵ As a result, students who take longer to 'settle in' to law, and students with a less appropriate academic preparation for law, are not disadvantaged in the awarding of LLB Honours degrees, and the degree classification is more likely to reflect the knowledge and skills that the student acquired through the program rather than only those that they brought with them to the program. The emphasis on later-year results also means that students' achievement is not assessed on the basis of compulsory subjects in which they may not be interested. In short, it increases the chances of each student experiencing satisfaction and learning success.

For present purposes, however, it is the method of determining a student's degree classification that is of particular interest, because the scheme enables the assessment burden for both staff and students to be substantially reduced. It can also reduce the risk that participation in a range of educationally enriching experiences – whether for credit or not – may adversely affect the student's academic record.

Honours classifications are generally based on an aggregate of the student's results in the final two years of the program – third and fourth years in Scotland; second and third years in England. First-year results are not included in the Honours calculation in either England or Scotland. Each institution has its own formula for calculating Honours. For example, the Honours aggregate may not include all subjects undertaken in the second-last year – compulsory subjects may be excluded or the weakest result/s may be excluded. In general, the formula is heavily weighted to favour a student's results in their optional subjects and in their final year. All aggregate results at the 'borderline' – that is, the upper end of one class – are reviewed by an Honours Board or Committee that has discretion to raise the result to the next level. These strategies ensure that a 'bad day' or an aberrant marker for a particular exam, or a lack of interest in or aptitude for a particular subject, will not be determinative of a student's overall degree classification.

Degree classification by this means has a number of advantages for both staff and students. Principally, it enables the 'assessment burden' for both staff and students to be reduced. Because all first-year assessments are essentially 'practice' for later-year subjects, the assessment regime in individual first-year subjects can be minimised and still be fair to students. Student anxiety about performance and assessment requirements is also likely to be reduced when results do not 'count' until the student has had significant experience with law exams and assignments.

24 Several of the law school representatives that interviewed (see above n 22) indicated that only around 5 per cent of their graduates in a given year receive a First Class Degree and 5 per cent a Third Class degree. The 'older' universities with higher entry standards (Edinburgh, Nottingham, Leicester) indicated that 50-60 per cent of their students in a given year generally receive a 2-1 degree. The 'new' universities (such as Nottingham Trent and Leicester de Montfort) enrol students with lower previous academic results and they indicated that 50-60 per cent of their students in a given year would generally receive a 2-2 degree. There is no presumptive quota or 'grading curve' governing the classification of degrees.

25 See Anna Potter and Kathy Lynch, 'Quality Feedback on Assessment: Apple for the Teacher? How First Year Student Perceptions of Assessment Feedback Affect Their Engagement with Study' (Paper presented at the 11th Pacific Rim First Year in Higher Education Conference, Hobart, 30 June to 2 July 2008) <http://www.fyhe.qut.edu.au/past_papers/papers08/FYHE2008/content/pdfs/3e.pdf> at 30 June 2009.

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This in turn is likely to improve students' motivation and confidence.²⁶ In later-year subjects, formative and interim assessment can be reduced without undue disadvantage to students, because the various formulas ensure that an aberrant weak result will not be determinative of a student's degree classification. As a consequence, the marking burden on staff is minimised and often confined to the end-of-semester exam period. The assessment burden on students is also minimised and contained within a limited time frame. This permits students to concentrate on reading and class work (learning) during the teaching term.²⁷ However, it would also enable students to plan to participate in a range of enriching educational experiences without the risk of compromising their overall academic results. Credit-bearing experiential options may be attractive to a broader range of students under these conditions; non-credit-bearing activities are less likely to be viewed as detracting from time available for assessment tasks, thereby compromising academic results.

There are likely to be other advantages in terms of student engagement from an assessment policy in which the first year/s of the program do not 'count' towards honours classification.²⁸ For example, a more collaborative learning environment may be easier to institute and 'group work' marks in particular may not be so highly contested. Students may also be more prepared to select subjects on the basis of interest and the potential for skill development and experience rather than anticipated results. Some UK law schools already manipulate the Honours formulas so as to promote certain activities such as international exchange. For example, Edinburgh Law School awards credit for subjects completed at partner institutions, but the individual subject results are not included in the calculation of the student's 'average' for Honours purposes. As fourth-year results are generally higher than third-year results in the Edinburgh LLB, almost all their students go on exchange in third-year. Indeed, I was advised that if students do not undertake an exchange program in third year, they are at a disadvantage in terms of Honours calculation. There is no reason that similarly 'creative' strategies cannot be applied to promote student participation in a range of desired activities. The design of whole-of-degree classification or assessment thus provides an important opportunity for promoting student engagement in law.

IV. CONCLUSION

As Sally Kift has observed, the possibilities for 'harnessing and linking curricula and co-curricula domains to inspire, motivate and engage law students is currently an underdeveloped area of legal education.'²⁹ This paper suggests that assessment policies, broadly conceived, can play an important role in this regard. Two constructive approaches have been identified. Traditional 'co-curricula' educational activities, such as volunteering, internships, mooting and journal editing, can be brought within the formal curriculum and assessment schedule, giving students

26 David Boud and Nancy Falchikov note, '[t]here is increasing evidence ... that lack of success during earlier stages of education has an adverse impact on the motivation and confidence of learners': David Boud and Nancy Falchikov, 'Redesigning Assessment for Learning Beyond Higher Education' in Angela Brew and Christine Asmar (eds), *Research and Development in Higher Education* 28, Proceedings of the 2005 HERDSA annual conference, Sydney, Australia (2005) 7. <http://www.education.uts.edu.au/ostaff/staff/publications/B_FHERDSA05.pdf> at 20 September 2009.

27 This approach is adopted, for example, by the University of Nottingham School of Law: see University of Nottingham School of Law, *School of Law Undergraduate Information Pack*, time chart for 2008-09 (copy on file with the author). Assessed coursework that contributes to the final grade in a subject (as distinct from compulsory tutorial essays and problem answers for which formative feedback is provided) is due on the second day of the exam term.

28 This is not to imply, of course, that student learning should not be assessed in first-year programs. On the importance of formative assessment and feedback in first year for the development of academic skills and self-regulation, see David Nicol, 'Assessment for Learner Self-regulation: Enhancing Achievement in the First Year Using Learning Technologies' (2009) 34(3) *Assessment and Evaluation in Higher Education* 335.

29 Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1, 24.

the opportunity to have these activities formally assessed and graded as well as 'credited' to their degree. Alternatively, and additionally, the formal curriculum can acknowledge the importance of, and make appropriate 'space' for, co-curricula activities based either in the law school or the wider community. The experiential learning undertaken through such activities is not academically 'assessed' but it is likely to be valued by employers and will be reported on a student's curriculum vitae.

Whichever approach or combination of approaches is adopted, student participation in the enriching educational experiences available to them will need to be strongly encouraged and fostered by the law school and its culture. The worst 'mistake' that could be made in relation to student participation in enriching educational experiences and assessment policy would be to design an assessment schedule for the 'conventional', doctrinal subjects that is so demanding of students' time and energy that they have no time to become involved in activities outside the formal, traditional curriculum, or are loath to take on an 'experiential' optional subject or program which is likely to be more time-consuming and less familiar than a conventional subject. Unfortunately, I think we sometimes run the risk of the latter, particularly with the increase in the number of summative assessment tasks consequent on both semesterisation and the move away from 100 per cent end-of-unit assessment.³⁰

Engagement research has established that it is what the student 'does' during their time at university that is important for learning. A 'place' or a 'space' must be actively created for enriching educational experiences in the law student's studies. This requires careful planning, not only of curriculum but also of assessment forms, frequency and criteria. Without such planning, assessment policies may have an unintended negative effect on students' decisions to become involved in valued activities, either within or alongside the formal curriculum. Assessment policies can also play a constructive role in promoting student engagement, and not only by making participation in enriching activities subject to assessment. Assessment policies that relieve the overall assessment burden of the course, and also the 'pressure' on individual subject results, are also likely to promote increased student engagement in enriching educational experiences. Calculation of Honours points is just one strategy that may be able to be creatively used in this context.

30 Mantz Yorke, 'Formative Assessment in Higher Education: Moves Towards Theory and the Enhancement of Pedagogic Practice' (2003) 45 *Higher Education* 477, 480, notes that 'unitisation' of curricula in the UK has increased the number of 'end-of-unit summative assessments' with the effect of reducing the amount of formal formative assessment.