

Arts in IP Law Programmes

Employing Arts Study, Practice and Pedagogy in Law Programmes: When Students become Creators

Andrea Wallace

Abstract: This chapter reflects on three years of using arts-based teaching in the law programme at the University of Exeter. It details the design and delivery of the Art and Law module and its creative assessment. It then relies on a selection of the creative works and questionnaire results to illustrate how the atypical assessment form can empower students to explore their own creative capabilities and apply skills to different contexts, leading to greater engagement and deeper learning benefits consistent with studies on the integration the arts into other professional education programmes. In doing so, the chapter argues arts-based teaching provides many innovative and meaningful ways to support students in becoming generative lawyers who are more creative and critical thinkers.

Learning outcomes: This chapter provides an overview for instructors exploring how to incorporate arts-based teaching methods in their law teaching and assessments.

Keywords: creative assessment, student engagement, collaborative environments, critique, interdisciplinarity, research-led teaching

Resources: NA

Introduction

Though they may seem odd bedfellows, art and law make strong complements for teaching and learning purposes. In addition to critiquing the law and its systems, art is both shaped and regulated by a breadth of legal areas. Both disciplines engage methods of argumentation: one primarily textual and the other visual, with each relying on oral forms of communication and analysis. Moreover, the dynamics of arts- and process-based learning can bolster peer collaboration, individual engagement and facilitate deeper learning in ways that legal education, for all of its stress and competitiveness, can discourage.

Unlike medical and other professional education programmes, using arts-based pedagogies to nurture creative and critical thinking has been generally underexplored by legal programmes. This chapter contributes to this discourse by reflecting on three years of teaching Art and Law and the innovative methods used to engage learners through interdisciplinary research-led teaching. It begins by summarising the module's pedagogical goals and justifications before outlining the methods employed to support students' execution of the creative

assessment. It then discusses results demonstrated by a small selection of students' artworks, questionnaire responses and teaching observations consistent with studies on the benefits arts-based teaching in other disciplines. The chapter concludes with reflections on the integration of the arts and humanities into teaching methods and content.

Before proceeding, it is useful to discuss two key methods employed: the creative assessment and critique. The creative assessment has two parts: a creative work and a reflective commentary, each worth 50%. Students can explore *any* topic. The creative work but must undertake in-depth research and produce a work that makes a research-informed argument. The reflective commentary must justify the work's conceptual basis, various elements and decisions taken that support the argument. In other words, the commentary is an opportunity to reflect, self-assess and test the argument's validity. It cannot exceed 1,000 words (excluding footnotes and appendices), which requires strong analysis and writing skills.¹ A formal group critique occurs in our final seminar. Through this iterative process, students develop a research-informed visual, written, and oral argument tailored to the needs of their particular topic.

Although the assessment requires significant independent study, students are supported individually and in groups to aid information processing, analysis, and synthesis through critique. Critique is a discussion strategy for describing and interpreting a creative work; it is an intellectually engaging exploration of the visual effects, argumentation, meaning, purpose and new ideas presented.² Critiques develop skills in information gathering, communication, presentation and justification with the added benefits of crowdsourcing that process and receiving immediate peer and instructor feedback.³ For the most part, critiques are positive spaces: negative comments must be reframed as open-ended questions, which are more conducive to stimulating creative thinking and problem solving. This helps push the work to a higher level, as students hone their arguments and become more aware of internal processes. Recognising personal limitations is also important; no one is expected to know everything, nor is every message intended for everyone. Thus, it is the group discussion, investigation and exchange which brings together knowledges and perspectives to conceptualise a creative work. And it is that process and the subsequent learning which becomes transformative.

1. Employing the Arts in Law Teaching

Art and Law draws on a constellation of pedagogies.⁴ It is informed by studies on using arts in professional educational programmes, teaching methods and substantive content from art

¹ Footnotes are used to support in-text discussion. Appendices are used to document the work's creation, visual references, research process, and so on.

² For an overview of critiques, see Adelheid Mers, 'Adapting Techniques of Studio Critique for Arts Management Pedagogy' (2013) 43 *Journal of Arts Management, Law and Society* 88, 89–91; Deanna Dannels, Amy Gaffney and Kelly Martin, 'Beyond Content, Deeper than Delivery: What Critique Feedback Reveals about Communication Expectations in Design Education' (2008) 2 *International Journal for the Scholarship of Teaching and Learning* <<https://digitalcommons.georgiasouthern.edu/ij-sotl/vol2/iss2/12>>.

³ Students may rely on a critique sheet with prompts in areas of description, analysis, interpretation, judgement and evaluation throughout the term.

⁴ Undergraduate students in the Law School and College of Arts and Humanities may enrol in Art and Law.

and law disciplines, and pedagogies that support personal growth and social justice awareness.⁵ This is not a random convergence. Medical schools in the United States have used visual and performing arts, music, and literature in teaching for more than 50 years.⁶ Studies on these programmes demonstrate the critical reflection and thinking skills embedded in the arts and humanities lead to a more holistic understanding of medicine practice, improved observation and communication skills, and a heightened understanding of ethical concerns, bias awareness and empathy.⁷ Law programmes also want students to emerge with such skills but typically deliver topics as siloed through pedagogies that centre textual research and analysis, reading comprehension and independent thinking. This sustains intradisciplinary approaches to legal studies, practice and teaching via modules that focus on a single area, like Trusts, Torts, or Contracts.

Arts-based teaching can get students thinking about intersecting laws and disciplines in application and through personal experience. For example, most students have visited a museum and taken a picture of an artwork at some point in their lives. That simple act invokes assessments of copyright in the artwork *and* the photograph, as well as the enforceability of any entry terms that limit its creation and use, all of which might change based on the artist, date and country of creation, the student's photograph, the museum, its location, and any current laws or institutional policies. At minimum, this requires investigating and synthesizing aspects (and layers) of intellectual property, cultural heritage, contract, tort, and land law. That exercise enables students to meaningfully discuss how law mediates conduct, often without their awareness. It also provides an opportunity to unpick terminologies with concrete and distinct meanings among various disciplines and legal measures.⁸

Benefits extend beyond this problem-based approach: students can engage with legal topics *though* art content, practice and pedagogy that is built into the curriculum, delivery and assessments. This has benefits for both learners and educators. Law is an intimidating subject

⁵ bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge 1994); Paulo Freire, *Pedagogy of the Oppressed* (30th anniversary ed, Continuum 2000); Alina S Ball, 'Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics' (2015) 22 *Clinical Law Review* 54.

⁶ See Michael Hoinski, 'Improving Medicine With Art' *The New York Times* (22 December 2017) <<https://www.nytimes.com/2017/03/11/arts/improving-medicine-with-art.html>> accessed 10 June 2019.

⁷ Johanna Shapiro, Lloyd Rucker and Jill Beck, 'Training the Clinical Eye and Mind: Using the Arts to Develop Medical Students' Observational and Pattern Recognition Skills' (2006) 40 *Medical Education* 263; Anne de la Croix and others, 'Arts-Based Learning in Medical Education: The Students' Perspective' (2011) 45 *Medical Education* 1090; Mark Perry and others, 'The Effectiveness of Arts-Based Interventions in Medical Education: A Literature Review' (2011) 45 *Medical Education* 141; Elizabeth K Jones, Anne L Kittendorf and Arno K Kumagai, 'Creative Art and Medical Student Development: A Qualitative Study' (2012) 51 *Medical Education* 174; Virginia S Cowen, Diane Kaufman and Lisa Schoenherr, 'A Review of Creative and Expressive Writing as a Pedagogical Tool in Medical Education' (2016) 50 *Medical Education* 311; Paul Haidet and others, 'A Guiding Framework to Maximise the Power of the Arts in Medical Education: A Systematic Review and Metasynthesis' (2016) 50 *Medical Education* 320; Jaclyn Gurwin and others, 'A Randomized Controlled Study of Art Observation Training to Improve Medical Student Ophthalmology Skills' (2018) 125 *Ophthalmology* 8; Susan E Pories and others, 'What Is the Role of the Arts in Medical Education and Patient Care? A Survey-Based Qualitative Study' (2018) 39 *Journal of Medical Humanities* 431; Emilia Kangasjarvi and others, 'Patients as Teachers and Arts-Based Reflection in Surgical Clerkship: A Preliminary Exploration' (2020) 42 *Medical Teacher* 1362.

⁸ For example, "creativity," "originality," "work of art," "artistic work" and even "copy" are not necessarily interchangeable in the disciplines of art and law, let alone among different legal jurisdictions.

to study, which produces a highly competitive atmosphere. Fears of mistakes can impact group discussion, the breadth of ideas shared, and risks taken, reducing the overall potential for peer knowledge production. Using art as a proxy to develop thinking skills can dispel stress around making mistakes—everyone is out of their comfort zone. Visual content is also quicker for a group to digest and assess, which lends itself to more concrete oral analysis, perspectives and experiences students can share simultaneously.⁹ Finally, crowdsourcing this exercise through critique enables students and the instructor to stimulate and play off of each other’s thinking, challenging the authoritarian expectations around instructor-student relationships. Arts-based teaching turns everyone’s thought processes inside out, during which openly sharing thoughts and approaches leads to a greater awareness of cognitive and metacognitive processes and how they take different forms, with different results, among peers.¹⁰

Legal analysis is also hard. Students must learn new subject matter alongside a new way of thinking and reasoning around it. There are limited assessment opportunities for supporting iterative growth over the term: feedback, if any, is often returned long after submission without opportunities to incorporate comments, correct (mis)understandings or resubmit. Instructors teach the IRAC (Issue, Rule, Application and Conclusion¹¹) method to help students’ unlock structured reasoning and communication skills, but many come to over rely on it or believe a common or ultimate answer can be achieved.¹² Analysis can become formulaic and too focused on the end-product and its accuracy, rather than on the dynamic, iterative and creative processes of getting there.¹³ Arts study and critique can facilitate the critical and rhetorical thinking central to legal analysis in different ways. For example, with contemporary art, the work’s conceptualization can be equally—if not more—important than the work itself. Many art forms are metaphoric, allegorical or representational, which is useful for challenging rigid or literal thinking.¹⁴ Understanding the work requires time and reflection (and sometimes even research) through an interchange that reveals the importance of context, awareness and intentionality to solid argumentation.

These aspects enable students to both develop and question knowledge around art, law and argumentation by reflecting on the systems that have produced the knowledge we assume to be neutral.¹⁵ We focus on this by unlearning certain aspects of art history (and its supportive systems) and confronting individual and societal assumptions in order to challenge the legal systems that have supported them—as well as who has historically benefitted. This leads to a

⁹ Haidet and others (n 5) 325–326.

¹⁰ In other words, both an understanding of the law along with the thought processes and strategies that lead to sound legal reasoning. See Christine M Venter, ‘Analyze This: Using Taxonomies to Scaffold Students’ Legal Thinking and Writing Skills Legal Writing’ (2005) 57 Mercer Law Review 621, 636–637.

¹¹ Similar formulas include CREAC (Conclusion, Rule, Explanation, Application and Conclusion) and CRAC (Conclusion, Rule, Application and Conclusion).

¹² Venter (n 9) 624.

¹³ Kevin H Smith, ‘Practical Jurisprudence: Deconstructing and Synthesizing the Art and Science of Thinking Like a Lawyer Essay’ (1998) 29 University of Memphis Law Review 1, 2; Venter (n 10) 624–625.

¹⁴ Haidet and others (n 7) 324.

¹⁵ Bell Hooks, ‘Choosing the Margin as a Space of Radical Openness’ [1989] Framework: The Journal of Cinema and Media 15; Ball (n 5).

more holistic understanding of law and how it has shaped society, its values, and how “art” is perceived or defined over time.¹⁶

Together, these approaches challenge students to confront the limitations they set for themselves. We take risks, recognise lived experience as knowledge and expertise, and build confidence among each other. We build, break, and rebuild bridges around what they know or have experienced and what they are trying to learn. Through the creative work, students explore alternative methods of expression, argumentation and autonomous learning, and build research skills. Through the reflective commentary, students identify the concrete lens through which a contribution can be made and develop a voice that is both professional and personal. The goal is for students to leave the module with a framework to investigate, conceptualise, and address a given problem through a more holistic approach that can grow beyond the university experience.

2. Design of the Module and Creative Assessment

Art and Law is offered to second and third year students in both the Law School and the College of Arts and Humanities. Because of this, there is less focus on substantive law and testing students’ understanding (aside from copyright) and more focus on how the disciplines interrelate or contradict one another in fascinating ways. This enables our interdisciplinary group to interrogate creativity and dispel traditional assumptions embedded in both art and in law. This focus on function, rather than substance, students identify a narrow point of tension to explore in the creative assessment.

2.1. Teaching Creativity

Teaching methods incorporate curriculum from studio art classes, law pedagogies for participatory learning, like the Socratic method,¹⁷ and innovative educational programmes hosted by heritage institutions, like Hackathons.¹⁸

As an informal tool, we use Kaufman and Beghetto’s four categories of creativity to frame various gaps and tensions explored by the module.¹⁹ The first two, **Big-C** and **Pro-c Creativity**, help illustrate hierarchies of creativity in the art world; the latter two, **little-c** and **mini-c** creativity, help illustrate how creativity is interpreted by law. Students are encouraged to embrace the lower levels of creativity, and especially to challenge the value systems—both artistic and legal—that prioritize and reward some forms above others. We also actively resist this model through the practice and study of collective creativity, as outlined below:

¹⁶ This might include drawing out differences between art and artefact, who creates art versus artefacts, or even gendered aspects of creativity, like “craft” impacting a number of copyright-related assessments.

¹⁷ See, e.g., The University of Chicago Law School, *The Socratic Method* <<https://www.law.uchicago.edu/socratic-method>>.

¹⁸ See, e.g., #HACK4DK <<https://hack4.dk/>>.

¹⁹ JC Kaufman and RA Beghetto, ‘Beyond Big and Little: The Four C Models of Creativity’ (2009) 13 *Review of General Psychology* 1.

- **Big-C Creativity** describes innovative and ground-breaking works transformative to their respective disciplines.²⁰ Examples include Marcel Duchamp’s *Fountain*, the invention of the readymade and foundational to conceptual art, and Sherry Levine’s *After Walker Evans*, which challenged notions of originality, reproduction, authorship, and appropriation. We critique these works and others²¹ as examples of creativity that are inseparable from the visual and conceptual arguments they make. The legal world claims to not engage with aesthetic creativity.²² (I stress that, similarly, neither will the assessment of their creative works.) However, in reality, that relationship is difficult to disaggregate and set aside, and even worth interrogating through the assessment.
- **Pro-c Creativity** describes professional creativity that takes time and effort to develop, like artistic training that leads to a developed practice or teaching.²³ For this, we critique individual artists, like Jeff Koons and Richard Prince, evaluating their career trajectories, methods of production, encounters with law, and even the artistic validity of their works. We also discuss art movements in tandem with legal topics, for example, by conceptualizing precedent as a type of appropriation. To illustrate, we follow a famous work or composition through different iterations by different artists as a proxy for understanding the importance of: the history of a movement (or legal development); an artwork (or legal opinion); the artist (or author of the opinion); and any relative social context(s) in order to understand the impact of a particular intervention—both in art and law.²⁴ We explore how these moving pieces should inform the interpretation of an artwork (or case) as it is referenced and used by subsequent artworks (or cases), along with the benefits or drawbacks those references can carry.
- **Little-c creativity** describes creativity involving novelty, flexibility or intelligence in everyday activities.²⁵ This common form of creativity is required for problem-solving, intentional design, and everyday art making which has originality and meaningfulness. Seminars are structured around fostering and deconstructing this type of creativity, especially for the purpose of the creative assessment.²⁶
- Finally, **mini-c creativity** describes creativity inherent in the learning process, as it involves “novel and personally meaningful interpretation of experiences, actions and events”²⁷ by demonstrating little-c creativity during the generation of new ideas and

²⁰ Kaufman and Beghetto focus more on individual creators who reach Big-C status. *ibid* 2.

²¹ See, e.g., Maurizio Cattelan’s *America* and Michael Mandiberg’s *AfterSherrieLevine.com* and *AfterWalkerEvans.com*.

²² Another example is Constantine Brancusi’s *Bird in Space*. See Daniel McClean and Armen Avanesian, ‘Trials of the Title: The Trials of Brancusi and Veronese’ in Daniel McClean (ed), *The Trials of Art* (Ridinghouse 2007) 37–57.

²³ Kaufman and Beghetto (n 20) 4.

²⁴ For example, tracing the composition from Raphael’s lost drawing, *The Judgement of Paris*, to Mickalene Thomas’s contemporary and subversive use on *Le Dejeuner sur l’herbe: Les trois femme noires*, paired with the reading: Karsten Schubert, ‘Raphael’s Shadow: On Copying and Creativity’ in Daniel McClean and Karsten Schubert (eds), *Dear Images: Art, Copyright and Culture* (1999).

²⁵ Kaufman and Beghetto (n 20) 2–3.

²⁶ One student wrote: “The seminars encouraged us to think widely and creatively – beyond merely accepting the information.”

²⁷ *ibid* 3.

learning connections. Kaufman and Beghetto frame this as the intrapersonal, dynamic and interpretive process of constructing personal knowledge within a particular sociocultural context.²⁸ Lectures stimulate mini-c creativity using the Socratic method and informal critique. Seminars stimulate this through group work and formal critique.

Although the authors present these categories as a preliminary conceptual framework for articulating and recognising everyday forms of creativity, the model advances an individualist approach to novelty or “genius” and a sequential (albeit not always straightforward) process to reaching Big-C status.²⁹ In doing so, it perpetuates romantic authorship while downplaying forms of collective and hybrid creativity.³⁰ This adds to the model’s utility for teaching purposes. The model categorises contributions according to what the end-result achieves, rather than the level of creative, critical or rhetorical and often collaborative thinking that supports it, which is often reflected in students’ assumptions around individual performance and the goals of the creative assessment. Deconstructing these assumptions and legitimising creative collaboration and openly sharing ideas, despite their stage of development, supports students to set aside fears of mistakes and focus on the framing of the thought or idea, rather than the outcome it should achieve.

2.2. Fostering Creativity

Seminars are three-hours long and studio-style. They introduce students to creative and critique processes through group work designed build confidence around creative agency, art making and reflection.³¹ Seminars require no preparation to avoid adding to law school burnout and to reduce concerns around navigating the unfamiliar discipline.³² Not only does this positively impact on attendance and participation, but it facilitates in-classroom work with peers as collaborators (rather than competitors) while the instructor supervises and guides only when needed.³³

Our first seminar, *The Joy of Art and Law*, explores how the legal world interprets an “artistic work” versus the art world, as well as what is required to satisfy respective thresholds for “originality.” The preceding lectures cover these topics in addition to independent creation, copyright theories and copyist programs in museums.³⁴ Students receive a canvas, acrylic

²⁸ *ibid.*

²⁹ *ibid.* 4.

³⁰ See, e.g., Peter Jaszi, ‘On the Author Effect: Contemporary Copyright and Collective Creativity’ (1992) 10 *Cardozo Arts & Entertainment Law Journal*.

³¹ Sarit FA Szpiro and Marisa Carrasco, ‘Exogenous Attention Enables Perceptual Learning’ (2015) 26 *Psychological Science* 1854.

³² Liselotte Dyrbye and Tait Shanafelt, ‘A Narrative Review on Burnout Experienced by Medical Students and Residents’ (2016) 50 *Medical Education* 132.

³³ Students note they are less stressed and more likely to attend. Some comment it relieved the guilt normally felt when arriving unprepared, whether due to work-life pressures or unforeseen circumstances (e.g., “You never know what Uni will throw at you workload wise. Being able to attend regardless was so beneficial.”). Time normally spent on seminar preparation is directed to deeper preparation for the Socratic-style lectures.

³⁴ See e.g., ‘Copyist Program’ (*The Metropolitan Museum of Art*)

<<https://www.metmuseum.org/events/programs/met-creates/copyist-program>> accessed 19 June 2021; ‘Copyist Program’ (*National Gallery of Art*) <<https://www.nga.gov/opportunities/copyist.html>> accessed 19 June 2021.

paints, brushes, palette knives, and other materials to necessary to follow along with the popular television show, *The Joy of Art with Bob Ross*.³⁵ The exercise is an art making icebreaker with added pedagogical value. Rather than follow along in real-time (*i.e.*, 30 minutes), we take more than two hours to implement Ross’s instructions. We pause and re-watch segments, discussing aspects like technique, colour mixing and application. I provide additional information, for example, around the materials’ limitations (*e.g.*, the transparency of pigments or properties of oil paints compared to acrylic³⁶) or execution (*e.g.*, the angle of the palette knife or brush). Students are asked to note decisions made while using identical colours, tools and actions to not only Bob Ross, but also each other. Whether copyright arises in their (attempted) copy is compared to the copyists and paintings made in museums, which require immense skill, effort and labour yet produce no original or independently created expression. Our light-hearted reflection and critique around the range of unique results leads to a discussion of whose is the “most original” and how critique works going forward.

Our second seminar, *Fake it ‘til you Make it*, explores access to and reuse of the public domain, open access to heritage collections, and calls for the decolonization of material *and* digital cultural heritage.³⁷ It incorporates lenses of gender studies, queer theory, critical race theory, decolonial and post-colonial studies, and copyright and contract law. Our exercise mimics hackathons hosted by heritage institutions, during which the public is invited to work in groups to “hack” pre-selected datasets and make a new work. Students are told the lens of each data pack, which includes images, legal texts, articles, online terms, historical information, and other data.³⁸ They gather and review their packs individually before sharing observations among the group. This leads to a discussion on how to hack it and make a new creative work along with a title that captures the concept informing the intervention. Afterward, each group presents their hack with the information important to the audience’s (*i.e.*, reader) appreciation of their thought process, argument and the work’s final form. In this way, students work collaboratively toward conceptualising, making, and presenting a prototype appropriate for the creative assessment.

Our third seminar, *Critique Speak*, takes a deep dive into the critique method using two videos: the music video “APESH*T” by The Carters, filmed at the Louvre,³⁹ and the

³⁵ ‘The Joy of Art with Bob Ross,’ Public Broadcasting System, available on YouTube.

³⁶ Acrylics are used for their reduced cost and time required to dry.

³⁷ We start from the premise that decolonization must result in the repatriation of Indigenous land and property and life, as discussed in Tuck and Yang’s seminal article. Eve Tuck and K Wayne Yang, ‘Decolonization Is Not a Metaphor’ (2012) 1 *Decolonization: Indigeneity, Education & Society* <<https://jps.library.utoronto.ca/index.php/des/article/view/18630>> accessed 3 November 2019. From here, we consider the consequences of possession (bolstered by the possessor’s law) on knowledge production, representation and understandings of the work, the culture and related histories, which risk being extended through digital technologies. See Mathilde Pavis and Andrea Wallace, ‘SCuLE Response for the EMRIP Report on Repatriation of Ceremonial Objects and Human Remains under the UN Declaration on the Rights of Indigenous Peoples’ <<https://zenodo.org/record/3760293#.XqxAm5oo-j4>> accessed 1 May 2020.

³⁸ For example, the “decolonisation” data pack focuses on Hoa Hakananai’a and includes: (1) photographs of the British Museum display (and notice of the “gift” from Queen Victoria); (2) screenshots of the digital presentation and accompanying text on the museum’s website (and copyright notices); (3) screenshots of the 3D scan on Sketchfab and accompanying audio text (transcribed); and (4) the British Museum Act 1963.

³⁹ *APESH*T - THE CARTERS* <<https://www.youtube.com/watch?v=kbMqWXnpXcA>> accessed 19 March 2020.

performance “A Sort of Joy (Thousands of Exhausted Things)” by the artists’ collective Elevator Repair Service at the Museum of Modern Art.⁴⁰ We begin by discussing organisations and movements like Museum Detox⁴¹ #DecolonizeThisPlace⁴² and #MuseumsAreNotNeutral.⁴³ The exercise provokes students to confront the embedded histories of cultural collections to challenge the policies and systems of exclusion that sustain certain narratives around art and cultural value. It helps illustrate the depth of research required to investigate, understand and conceptualise a work, as well as how to use readings to support arguments and observations. We embrace silence and carefully compose thoughts (or reframe as questions) before speaking. It produces a rich discussion relevant to systems of exclusion also prevalent in law. This leads up to our final seminar: a formal critique of the creative works.⁴⁴

2.3. Assessing Creativity

Once students select their topic, they must research, absorb the literature, and construct a narrow visual argument to reflect on and justify in the commentary. Students are given prompts to provoke thinking around the creative assessment but are discouraged from relying on a formulaic approach that follows the prompts too closely: their argument should be driven and informed by their research, which should materialise in the creative work and all direct decisions taken during its creation. Midway through the term, students can submit their concept and a brief description to receive a mini-critique (from me) with feedback, questions and suggestions to push the concept.⁴⁵ This enables me to guide them towards relevant texts, artists, artworks, and other scholarship they may not otherwise encounter.

The assessment encourages the independent study, reflection and development of the logic necessary to produce and defend a work that can be read and understood by others. This requires being constantly aware of any internal decisions and processes informing the work, even questioning those decisions, around choice of medium, method of expression, and so on. Students are better able to reduce the argument to a written form for the reflective commentary but come to realise that writing is an important part of the critical thinking process required for making connections and articulating sound reasoning.⁴⁶

⁴⁰ Elevator Repair Service and others, ‘A Sort of Joy at MoMA (Excerpts)’ <<https://vimeo.com/133815147>> accessed 15 September 2018; Jer Thorp, ‘A Sort of Joy’ (*Medium*, 28 July 2015) <<https://medium.com/memo-random/a-sort-of-joy-1d9d5ff02ac9>> accessed 16 September 2018.

⁴¹ ‘Museum Detox/POC/Heritage/United Kingdom’ (Museum Detox) <www.museumdetox.org> accessed 9 July 2021.

⁴² ‘Decolonize This Place’ <<https://decolonizethisplace.org/>> accessed 9 July 2021.

⁴³ La Tanya Autry and Mike Murawski, ‘Museums Are Not Neutral: We Are Stronger Together’ (2019) 5 *Panorama: Journal of the Association of Historians of American Art* <<https://editions.lib.umn.edu/panorama/article/museums-are-not-neutral/>> accessed 19 May 2020.

⁴⁴ Critique occurs in the fifth seminar. Seminar four focuses on an exercise relevant to their second summative assessment.

⁴⁵ Because of this, the final submission is not anonymous for marking purposes.

⁴⁶ Responses included: “I enjoyed producing the creative work. My own research for it and then writing about it greatly enriched my knowledge of this area. The critique process was helpful in ensuring that I understood the points I was making and so was able to justify them to others when questioned.”

“The type of research I did led me to so many different areas of topics I did not know existed; this led me to a greater understanding. It made me dig a lot deeper, which I enjoyed.”

Everyone brings their creative work to the final critique. Each student is responsible for leading the critique of a colleague's work, whose name they draw from a cup. Our first ten minutes are spent reflecting and analysing the work, then everyone quietly circulates and engages with the rest. We then work through the submissions piece-by-piece. Each critiquing student presents the work of a colleague. Once finished, the floor opens to everyone. Only at the end is the student who created the work invited to respond.

3. Results

Each year has yielded fascinating results. Below, creative works are discussed before turning to responses to an end-of-term questionnaire and observations from teaching.

3.1. The Artists

Students explore a range of topics through countless mediums and produce works that are often innovative and of high-quality. Many directly or indirectly challenge the legal systems supporting the social conditions in which we live, bringing in personal identities or experiences to situate them within a wider context. A brief sample includes:

- An ice sculpture pipe affixed to a canvas in reference to Rene Magritte (*Ceci n'est pas une pipe*) exploring aspects of appropriation, the "artistic work" and fixation;
- A TikTok video exploring the defacing and refacing of Confederate monuments across the United States as part of the #BlackLivesMatter movement;
- A photographic series documenting sourdough bread-baking processes, reducing intangible cultural heritage to fixed expressions recognised by the authorised heritage discourse⁴⁷ and copyright law, created in partnership with a local bakery whose culture is more than 200-years-old;
- A curated (fake) Instagram feed pairing images of mega-influencers with research in traditional media sources on social media's detrimental effects on mental health, challenging the (un)regulation of such advertising;
- A 3D-printed music box (designed by the student) that, once opened, implicated the participant in questions of piracy and copyright infringement through a piano-based medley of pop music covers (composed and recorded by the student);
- An audit and data visualisation re-mapping the National Gallery's artworks on display according to categories of women as clothed subjects, nude subjects, and, lastly, as women artists;⁴⁸
- Reimagined movie posters exploring the Weinstein allegations and hidden narratives of assault rampant in the entertainment industry by recasting each strong woman lead as the hero of her own story;

⁴⁷ Laurajane Smith, *Uses of Heritage* (Routledge 2010).

⁴⁸ Only 21 of the 2,300+ works at the National Gallery in London are by women artists. Jesse Locker, 'The National Gallery Acquires Its First Painting by a Woman Since 1991' *Hyperallergic* (12 July 2018) <<https://hyperallergic.com/451309/artemis-gentileschi-national-gallery-london/>> accessed 15 July 2018.

- A reappropriation of a popular poster featuring “Great Modern Artists” sold in museum gift shops worldwide, which challenged the gendered, geographic and heteronormative narratives perpetuated by the Western canon about what (and who) can be great.

The following submissions further demonstrate the research-led approaches taken by students on various topics, and with such nuanced results.

Re-Visionist History resists the erasure of people of colour through art and art history, which is often replicated in online spaces (and with far greater reach) despite the webpage’s ability to include more context and information on an artwork and the persons it depicts. The student curated a selection of digitized paintings from online collections of museums with colonial legacies. The paintings featured white Europeans and families alongside a Black individual, who historically may have been included to signify wealth. Drawing on Titus Kaphar’s work, the student researched the persons and their participation in oppressive legal systems, analysing whether the curatorial text (in print and online) acknowledged the Black individual. The lack of attention paid inspired the student to re-contextualise each work by cropping and reframing each painting to feature the person erased, making them the prominent and only focus of the composition, accompanied by new titles and narratives about their life. Each title was a play-on-words revealing the “re-visionist” history that responded to the narrative denied, suppressed, or even fabricated by historical and contemporary dominant discourses.

Technological Birth of Art explores the impact of technological evolutions on artistic mediums of expression and our understandings of creativity. The student traced artistic processes via their own creative expression: they translated an image by drawing, then photography, then digital illustration and editing software, finally animating it to produce a gif. For this, they appropriated an iconic image, Botticelli’s *The Birth of Venus*, along with an iconic style, Andy Warhol’s screen print pop-art aesthetic, also a nod to his own appropriation of Botticelli’s work. Once complete, the work was uploaded to Giphy, a current form of technology for publishing and sharing popular content.⁴⁹ The work unpicked the layers of reproduction, appropriation and tension around copyright protection for gifs under UK law,⁵⁰ in addition to the contractual protections granted (or waived) through Giphy’s terms of service.⁵¹

Saeyama confronts the colonisation, pillage and destruction of the Benin Kingdom in 1897 and ongoing display of the bronzes in the British Museum. The student used spoken word (and produced an audio recording) from the perspective of a young Benin girl in 1897, who expected to become an apprentice and learn the technique of creating the bronzes to memorialise important events. With the help of collaborators back home, they incorporated contemporary audio recordings of ceremonies and cultural expressions with sound elements that disrupted and conflated our temporal understandings of the event (e.g., heartbeats transforming into drumbeats). The performance alternated between English and Edo; the title

⁴⁹ GIPHY <<https://giphy.com/>> accessed 9 July 2021.

⁵⁰ See CDPA 1988, s. 4(1).

⁵¹ ‘User Terms of Service’ (*GIPHY*) <<https://support.giphy.com/hc/en-us/articles/360020027752-GIPHY-User-Terms-of-Service>> accessed 9 July 2021.

refers to what the works are called, “saeyama”, as well as the process (“to cast a motif in bronze”) and their purpose: “to remember.”

Painter, Predator exposes the reality behind celebrated artist Paul Gauguin’s work and art history’s role in the erasure of the young girls he painted. In 1891, Gauguin travelled to the French colony of Tahiti expecting to encounter a utopia of beautiful, half-clothed women who openly welcomed foreign visitors. He was disappointed to learn Europe’s high-necked Victorian fashions had arrived, and thus painted the world he had desired. The student researched many art historical accounts complicit in this fantasy, referring to the young girls as women, wives or mistresses; in reality, they were 13- and 14-year-old girls. Using black-and-white photographs of Gauguin and the girls, the student replaced the girls with the “women” from his romanticised paintings, and in strikingly similar poses, to highlight disparities between reality and Gauguin’s sexual, racial fantasy. The work challenged viewers to reflect on the complicity of those who fail to confront this inconvenient legacy, including his contemporaries, art historians, curators, and cultural heritage institutions.

Can You Play? Colonialism challenges the paternalistic stance that culture, as property, is best valued when preserved and studied by well-resourced encyclopaedic institutions in countries with colonial histories. Focusing on the British Museum collection, the student created a card trading game for works subject to restitution requests: the Parthenon Marbles, Hoa Hakananai’a, the Gweagal Shield, Rosetta Stone, and Lander stool. Each card included digital images from the museum’s website with details like the date of theft, rightful owners and other information. When played, the cards are held by the possessor; those requesting restitution hold no cards to trade, reflecting the power dynamic between the British Museum with parties who must play according to their rules. The rules of the game are taken from section 5 of the British Museum Act 1963 (“Disposal of objects”).⁵² Use of the © symbol refers to the additional monopoly extended via copyright and control over reproductions.

3.2. Student reflections and instructor observations

Studies on medical programmes note the results of arts-based teaching can be difficult to measure, particularly considering its longer-term outcomes or impacts.⁵³ Even so, the short-term and process-based outcomes aid the development of many cognitive and metacognitive skills necessary to legal reasoning and practice. In an end-of-term questionnaire, students noted having an awareness of these benefits, with the majority finding the use of arts study, practice and pedagogy refreshing compared to standard modules and even expressing an eagerness for more opportunities during legal studies.⁵⁴

⁵² British Museum Act 1963, ch. 4, s. 5(1).

⁵³ Haidet and others (n 7) 326.

⁵⁴ Responses included: “The reflective commentary was different to any other essay I’ve done at Uni, and perhaps it shouldn’t have been. It has encouraged me to question my essay style across other modules.”

“The two elements of bringing legal analysis and art history broadened and enriched my understanding of the two areas, and both areas were able to give each other a unique analysis.”

One downside is that it is time-consuming. The instructor becomes a resource for students in many ways, as well as a co-learner,⁵⁵ and must reveal limitations to their own expertise, recognise and address discomfort in students and in themselves, and steer students away from topics that are attractive, complex rabbit holes (*e.g.*, IP and fashion). Marking is difficult. Instructors should not underestimate the time, including time management,⁵⁶ required to mark and provide productive feedback for the mini-critique and the final assessment. Arguments may require deciphering given students are learning a new communication style; parts of the commentary may be incorrect or misinterpret the source. Consequently, reading-up on a topic may be required to summarise how the mark reflects these shortcomings. Time spent marking could be reduced by limiting the topics students may engage with for their creative assessment, though this comes with some trade-offs as discussed immediately below.⁵⁷

Students relish the autonomy to research topics of their choice, whether or not it relates to law. Some choose to overlap research with other modules, enabling them to deepen their knowledge by repurposing it through a different lens or mode of expression. Others choose topics related to personal identity or interests to study an area they normally would not encounter in law school.⁵⁸ Many note the interdisciplinary and reiterative learning leads to an enriched understanding of an area, as well as greater insight into unconscious processes through the commentary and critique.⁵⁹ They appreciate the opportunity to share their creative works with colleagues and hear their reflections, and to see the range colleagues produce.

Some students struggle, but many excel, and notably many students who tend to struggle in traditional modules. Students often self-select Art and Law specifically because it is *not* law-heavy, believing they are unfit for practice based on their academic performance. Many come to understand it is not law, but rather the homogenised teaching and learning approaches that have not “clicked” with their individual needs and interests. There are always a handful of poor-quality works submitted each year. The creative assessment is a return-on-investment sort of exercise: often, lower performing students do not take advantage of the mini-critique

⁵⁵ I share various examples of my own creative works over the term and discuss biases in earlier works. This helps illustrate how slight alterations can be made with significant impacts on the work’s meaning, but also why we should constantly question the lens of our positionality brings to the work.

⁵⁶ I find it useful to informally mark students’ works prior to each critique, which provides an opportunity to ask questions and resolve any uncertainties around the work.

⁵⁷ At the same time, the focus on research, reasoning, logic, argumentation, analysis and writing skills in the mark provides adequate benchmarks.

⁵⁸ Responses included: “The creative work allowed me to explore an aspect of my own identity that I had never considered and has helped shape my understanding of the world and my perspective.”

“It allowed me to research an area of art and history which I would not have necessarily come across in my day-to-day life or even in my university life learning about law. I loved that we could step away from the law for a bit and explore something new and exciting which wasn’t available to us originally in the law degree. I think it was interesting that we could use sources outside of legal literature and case law to support our arguments.”

⁵⁹ Responses included: “The critique was a huge help and enabled me to clarify my work, even though it was a new way of looking at an argument, it was so helpful.”

“The critique helped me to clarify my thought processes but also to build my confidence as it enabled me to ask people questions about their work and justify my own decisions”

“It worked excellently. It definitely assisted in the clarification of (and formulation of, really) my argument.”

opportunity, are too rigid with their thinking or fail to undertake adequate research and self-assess their argument: they want the work to say something that it clearly does not. This dynamic is normally drawn out by their colleagues during critique, which benefits the instructor as peer feedback then aligns with the mark given, but also the student who sees more successful works to appreciate how theirs fell short.

Students who are “good” at art or have prior arts knowledge are just as likely, if not more likely, to perform worse than students without any arts background. This is because students with strong (aesthetic) art skills tend to over rely on them or submit something they *want* to make, rather than allow the research-led process to direct the work’s materialisation. The former comes across as descriptive or formulaic, while the latter requires creative and critical thinking. This means-to-an-end-approach often extends to the reflective commentary, negatively impacting both aspects of the mark.

Some short-term benefits, both observed and noted in responses, are that students become more aware of their learning as it happens in real-time. This leads to an increase in engagement, richness of conversations, and variety of contributing voices compared to other modules. Students appreciate the active, immersive and problem-based learning, which also benefits neurodiverse learners (and instructors!). They become conscious of moments when they excel and gain confidence in speaking up over the term. Engagement extends beyond the classroom: many students discuss their works openly with each other and share research and sources when topics overlap.⁶⁰

Students appreciate building relationships with their colleagues and instructor as co-learners, observing “everyone respecting each other’s thoughts, ideas, perspectives, and not talking over each other.” We work to create trust and build empathy through democratic engagement in lectures and seminars. Shared experiences and alternative perspectives provide entry points for meaningful discussions. Prolonged moments of silence and reflection become productive rather than disruptive. We embrace ambiguity and grey areas as spaces for creation rather than uncertainty. This leads to an increased sense of community and positivity.

One potential change includes adjusting submission deadlines. Currently, the assessment timeline is as follows: (1) concept submission at mid-term for a mini-critique; (2) creative work and reflective commentary submission one week prior to the final seminar; and (3) final critique in the final seminar. Studies show feedback is most useful when it can be used to improve a work in progress.⁶¹ Going forward, I may allow students to revise, polish and re-submit the reflective commentary within a week of the final critique. This provides students with an opportunity to consider any strengths, weaknesses and tensions discussed in critique and incorporate reflections in the final written submission.

⁶⁰ Responses included: “My classmates spoke frequently of how we all learned even more through having to critique our peers’ work – legally and artistically.”

“It sparks a lot of critical thinking. Also loved when we get classmates to discuss their view of our works. Just interesting to know how other people view things quite differently.”

⁶¹ T Schrand and J Eliason, ‘Feedback Practices and Signature Pedagogies: What Can the Liberal Arts Learn from the Design Critique?’ [2012] *Teaching in Higher Education* 51, 54.

Conclusion

As this chapter has argued, the arts bring a number of unique qualities that can promote deeper learning among law students. Blending pedagogies and using art as a proxy for argumentation can help cultivate the creative thinking and analysis skills students struggle to achieve with complex legal subject matter. These strategies also produce incredibly enriching learning experiences for instructors and students through exposure to new topics, perspective and sources through the creative assessment. As co-learners, we not only study the legal aspects of art and argumentation, but also the artistic aspects of law and legal reasoning. This interdisciplinary method could be incorporated into teaching on arts programmes, as arts students would greatly benefit from teaching on copyright and contract law to using law as a medium to create artworks that interrogate boundaries and contradictions. Accordingly, future work should focus on designing a conceptual model for modules that can be applied across law (or art) programmes, and more readily integrated by instructors without an arts (or law) background or education.