

faculty hiring is an important first step in unravelling sex and race biases in the workplace. In future research, however, we must move beyond those direct effects to understand the more systemic biases against female and minority job applicants.

SKILLS

The moot reconceived: some theory and evidence on legal skills

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8 *Legal Educ Rev* 1, 1997, pp 1–41

One of the major contemporary challenges to legal educators is the effective incorporation of skills training into the undergraduate law curriculum. Many of the most interesting issues in curriculum development are concerned with the identification of skills that should be taught, the subjects with which they should be associated and the particular means of teaching by which skills can be conveyed to the undergraduate. It is possible to affirm the importance of skills training, while feeling uneasy about legal educators' capacity to give reasoned answers to these curricular questions. These doubts arise from a lack of useful applications of assessment theory, which informs the structure, content and processes of skills training, to legal educational practice.

The moot is a long established method of skills training which develops a number of skills other than advocacy. However, in its traditional form, the moot can be an inefficient means by which to develop student skills, especially when explored through the lens of learning and assessment theory.

Cognitive theory emphasises that learning is an on-going experience, whereas experiential theory stresses the importance of reflective aspects of learning. The most effective way for the individual teacher to influence learning is by using progressive assessment strat-

egies to provide feedback. The focal point of subject design is the articulation of learning objectives, which should found every aspect of the subject and should ensure consistency between learning objectives, the modes of subject delivery and assessment. Making an activity assessable increases its value to most students and hence their motivation and application.

Assessment is formative where it occurs as part of a progressive learning exercise and where the main purpose is to facilitate student learning. Formative assessment usually incorporates the provision of feedback as activities are completed. Through feedback, the teacher may directly assist students in achieving the learning objectives of the subject by providing responsive information about aspects of their learning.

Teachers should be less concerned about ensuring that every skill in the inventory is covered and more concerned to identify learning objectives. When the learning objectives are clear, they will establish parameters for specific learning activities. Since skills training is a learning activity, it must be responsive to these parameters. However, the extent to which skills training can accomplish learning objectives depends in large measure on how it is assessed. Because the acquisition of skills is envisaged by teachers as a lifelong learning exercise, formative assessment is of great practical importance. It gives the instructor the ability to appraise the way in which a student's skill level is developing and can beneficially influence that development.

Mooting presents the opportunity to develop a number of important skills. These include: the ability to conduct legal research, to apply legal principles to a factual situation and to formulate a submission for oral court delivery; the skills of advocacy; strategic skills; and finally, skills of co-ordination within groups.

Like the one-off assignment and the terminal examination, the traditional moot is inherently summative. If the student gets any feedback, it is too late to be of any use, because it comes after the student has performed all the requirements of the exercise. No attention can be paid to student learning. The most logical way to overcome these problems and to incorporate formative feedback is to have two hearings. The initial or 'directions' hearing gives an opportunity for the judge/ assessor to provide feedback to students on their work within the context of a court hearing, which is for use by teams in the preparation of their submissions and advocacy for the subsequent or 'main' hearing.

In this formative moot the oral submission of argument is eliminated in favour of the written submission. Hence, the main hearing can be spent entirely in the examination of that submission and the students' understanding of it, through a questioning procedure. The rebuttal process is formalised by requiring each team to exchange submissions when they are handed in, with the opposing teams being required to deliver a written case in reply before the main hearing. The multi-tasked requirement of the moot also demands considerable abilities of teamwork and co-ordination.

The article goes on to describe the implemented procedures in more detail, as well as the results of surveys of the moot's effectiveness. The students perceived the formative moot to be a more realistic one, both procedurally and in the demands placed on them. Students felt that their legal and advocacy skills were being developed. Quantitative evidence was consistent with the ability of the formative moot to develop skills, as well as substantive law abilities, and its superiority to the traditional summative moot.

Based on this analysis, the point can be made that teachers and law schools must spend more time thinking about learning objectives and the implications

these have for skills training, subject to resource constraints. Moreover, when teachers decide to teach particular skills, they should not assume the appropriateness of traditional delivery methods. Above all, teachers must look at the opportunities for providing formative feedback and assessing the impact it makes on student learning. Unless the work of law teaching is motivated by improving student learning, its onerous demands are hardly worth the effort.

Lawyering skills: finding their place in legal education

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8 *Legal Educ Rev* 1, 1997, pp 43–73

Subject to institutional commitment, theoretical approaches are always susceptible to accommodation within traditional teaching and learning models. However, the incorporation of practical training is more difficult: even if it is accepted that there is a place for skills teaching within law schools, how is this to be done? In the absence of any blueprint, and no indicators against which quality teaching in the delivery of that training might be assessed, it cannot be surprising that the integration of skills development, skills theory and practice, into a holistic and effective educative process has proceeded slowly.

Bloom's taxonomy has been justifiably criticised as being too broad, as having no place for certain of the objectives of professional education and as failing to distinguish between knowledge and skills — the difference between knowing how to do something and being able to do it. In particular, once the validity of this latter distinction is acknowledged, three different types of learning may be identified: cognitive learning; skill learning; and affective learning. Intuitively, Bloom's psychomotor domain, which seems of little relevance to university education, appears to bear close resemblance to skill learning, which could be considered a variant of 'doing' in the professional context.

The case for the assimilation of skills as an explicit learning objective is strengthened on an analysis of Bloom's six hierarchical categories of cognitive learning. Knowledge, comprehension and application may be satisfied by the simple acquisition of factual information; whereas analysis, synthesis and evaluation require, to varying extents, the cultivation of intellectual skills to achieve their cognitive objectives.

The learning objectives for law are capable of explicit and relevant classification in a way that more accurately reflects many of the perceived goals of professional legal education, particularly the acquisition of actual cognitive knowledge, the ability to use that knowledge in a legal context and the cultivation of affective and other social and interpersonal characteristics and qualities. With these goals firmly in place in designing courses, it should be possible to address the imbalance that exists in legal education between the three domains — cognitive, skills and affective.

Cognitive research suggests that specific subject matter knowledge, particularly if it is neither embedded in the context of its discipline nor supported by appropriate skills, is becoming less valuable because the detail is quickly superseded. It is more valuable today for students to acquire the flexibility to be effective in different situations and on graduation for them to display some generalisable skills over and above their content matter expertise. A key factor is that students be provided with a theory of the relevant skills, one of the purposes of which is to provide a framework for promoting transfer.

Real purpose and relevance must be made explicit to learners to demonstrate the place and importance of the learning in the overall context of lawyering activity, otherwise students will become quickly uninterested. What legal educators should remember is to make the vocational link explicit and not to

assume that recognition of a task's value, and consequent motivation, will be automatic. The author offers 11 observations about the essential features of skills instructions based on the theory of teaching lawyering skills to this point in its development.

The constructivist paradigm is the shift in perspective from the view that knowledge is something external that is transferred to a passive learner who appropriates and masters the learning, to the view that knowledge is something that must be internally constructed by an active learner. It is concerned with how learners construe knowledge and how they will construct personal meaning from the knowledge into systems and structures, using both cognitive and affective processes. Students will not learn a skill by being told about it, nor even by discussing it and thinking about it. They must be provided with the opportunity to practise the skill, as well as opportunities for reflection and feedback on the performances of the skill so that they are able to reconstrue or modify their previous constructs.

Experiential learning is the best and possibly the only effective way to prepare students for the tasks and skills of practice. However, before embarking upon experiential learning, it may be useful for students to recognise the nature of their own learning styles and to appreciate that skilled behaviour at each stage of the learning cycle can be learned. The importance of planning learning activities that incorporate each stage of the learning cycle cannot be overstated.

Reflective activity plays a pervasive role throughout the learning cycle and reflection is also important in professional practice. In analysing the literature on experiential methods in law school, little regard is generally had to the mechanics of such a process. Moreover, even though time might be allocated to reflection and self-evaluation,