

ASSESSMENT METHODS

REVIEW ARTICLE

Improving criteria and feedback in student assessment in law

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One notable paradox about the function fulfilled by assessment in legal education is that many law teachers habitually neglect the important task of constructing clear objectives and performance criteria. Furthermore, they fail to provide systematic feedback to their students — often in the case of essays and assignments and almost always in the case of end of year examinations where the only performance indicator the students receive is their grade.

The aim of this guidebook, the latest in the Cavendish series¹ in which Richard Johnstone has had a hand, is to help law teachers to remedy this deficiency by introducing feedback procedures into law school. As the authors state, *(the book) is written for law teachers and aims to improve student learning by suggesting ways in which teachers can positively influence student learning through the design and implementation of assessment.* (p.1) Elaborating on this general goal, they set out four basic principles which underpin effective assessment criteria and feedback procedures: (1) determining

the learning outcomes or objectives that students will aim to achieve in the subject; (2) designing assessment tasks which test the extent to which students have achieved the objectives; (3) determining and communicating to students the criteria for performance in assessment; and (4) providing effective feedback to students on their performance in assessment tasks.

Chapter 2 lays the foundation for the role of assessment as one component in the wider task of subject design. It contains an interesting examination of the general purposes and functions of assessment but focuses on those elements which impact upon student learning. There is a short discussion of assessment as a motivator of student learning and its role in defining the boundaries of the curriculum in the eyes of the students. Woe be to the law teacher who neglects to observe this dictum: *If there is a disjunction between the expressed learning objectives and the chosen form of assessment, students will tend to adopt the learning strategies that help them complete the assessment, rather than seeking to achieve the expressed objectives of the subject.* (p.9)

The authors also discuss how the teacher can use assessment to structure and consolidate student learning, which can scarcely happen if assessment is confined to a summative end of course examination. Not surprisingly, they lay greatest emphasis on assessment as a vehicle for providing feedback to students, whether the feedback source be their peers or teachers or takes the form of self-assessment. Clearly, the objective of constructive feedback is to assist the student to reflect upon his or her performance and understanding of the subject matter, to identify strengths and weaknesses and to show the student how to effect improvement or to capitalise on the areas of strength. However, all this can only be successfully achieved if objectives, assessment tasks, assess-

ment criteria and feedback are congruent.

The point is also made that feedback is of limited use unless students can link it into their own strategies for learning and foster the skill of self-monitoring of their own performance through critical self-reflection. Yet again teachers have a role to play in helping their students to develop these learning techniques and strategies.

Chapter 2 provides concrete practical advice for law teachers on how to write learning objectives as part of the design of the subject and how to communicate those objectives to their students in a specific and unambiguous manner. There is brief reference to the familiar typologies of educational objectives much beloved of educationalists which nonetheless provide a convenient framework for the curriculum designer. An illustration is provided of how the objectives for one first year subject might be set out and advice is given as to how the objectives for subjects over each of the years of a law degree should be co-ordinated in order that the new learning conveniently sits upon the shoulders of what preceded it.

This chapter also deals with the choice of the assessment tasks linked to the objectives determined for the subject. Emphasis is placed upon the capacity of the assessment methods to lead to valid and accurate judgments about the students' performance levels and understanding of the subject matter. An example is given to illustrate the relationship between objectives, assessment and teaching methods and how that interconnection in turn shapes the selection of methods and media. The authors stress the importance of choosing a variety of assessment methods because different assessment tasks will be better suited to different kinds of learning objectives. They discuss the uses and the pros and cons of take home examinations and assignments, reflective essays,

¹ Three of the books in this excellent and immensely practical series have so far been reviewed in the Digest: O'Donnell A & Johnstone R, 'Developing a cross-cultural law curriculum', 6 *Leg Educ Digest* 3, 1998, pp 3-5; Johnstone R, 'Printed teaching materials: a new approach for law teachers' & Johnstone R & Joughin G, 'Designing print materials for flexible learning and teaching in law', 7 *Leg Educ Digest* 1, 1998 pp 16-18

reports, mooting, class notes, essay or assignment 'biographies', other more creative tasks and class participations and presentations.

Finally in this chapter, the authors turn to the important question of formulating and communicating assessment criteria. They identify five reasons for carefully articulating how assessment will be measured: to focus teacher attention on ensuring consistency between objectives and assessment tasks; to focus students on what teachers want them to achieve in the assessment; to provide a basis for qualitative judgments in awarding grades; to give students a yardstick by which to evaluate and improve their own performance; and to provide a medium for feedback from teachers.

There are some very down-to-earth recommendations as to how to go about devising a clear statement about exactly what the teachers will be looking for in the assessment task, including choosing between the use of descriptive statements and exemplars illustrating different standards of work and the separate question of what relative weighting to give to each of the criteria — none of which is easy in law teaching where assessment criteria are likely to require complex qualitative judgments which are difficult to distill into a formula. Under communicating the criteria to students, the need is underlined for discussing the requirements of the assessment tasks, preferably in class time, at the very beginning of the subject. Students can then start developing the beneficial learning strategies, as well expand their abilities to judge the qualities of their own work by comparing their own performance with the desired standards reflected in the criteria.

A grade or mark gives a student a vague idea of what the teacher thought of the quality of the student's work, but virtually no idea of which parts of the assessment

satisfied the teacher's criteria, which did not, which parts of the subject the student understood, and which were misconceived. It provides no suggestion of what the student might do to improve her or his learning in the subject, in other subjects, in other assessments. (p.39)

The provision of feedback is covered in chapter 4. It contains an excellent summary table of eight essential ingredients of proper feedback on assessment tasks. Timeliness is identified as one of the major issues for effective feedback, which include the difficulties both of handling those who do not want feedback and providing feedback on terminal assessment. There is a handy section on selecting the right feedback method, both with respect to the factors that will influence that choice and the range of procedures available. Seven methods are presented: standardised feedback sheets; model answers; generalised feedback; statement banks; comments on the assessment script; personal interviews; and the use of audio and videotapes. Finally in this chapter, there is an excellent section on a topic which was beyond the scope of the project as originally conceived, the authors' recommendations to law teachers about how to assist their students to develop the separate skill of being able to make effective use of the feedback and monitoring their own performance.

Every properly designed assessment strategy demands a feedback loop and in chapter 5, 'Evaluating feedback procedures in the context of the overall evaluation of the teaching', the authors describe how this can be designed. Evaluation is obviously a step which law teachers omit at their peril, given the dynamic and responsive nature of subject design. The authors advise that evaluation should be based on data drawn from a variety of sources: the students themselves (from evaluation questionnaires, individual and group in-

terviews and, where kept, student diaries and journals), colleagues (where they sit in on classes or are asked to comment on teaching materials or share) and other sources. Once again, we also return to the earlier theme of determining whether there is consistency between objectives and assessment and teaching methods. Teachers are encouraged not to treat evaluation as exclusively the terminal activity in subject design; they are exhorted to be systematically collecting evaluative data from students during the presentation of the subject so that adjustments can be made to ensure the subject is on track. To drive the point home, the authors volunteer two examples of how ongoing evaluation can be used to improve assessment and feedback procedures.

Perhaps at this point, or indeed in the introductory chapter, they might have provided as an aid to readers a diagrammatic model illustrating the component parts of the system they have designed and how they interrelate, including the feedback loop. After all, subject or instructional design, which is at the core of this book, is essentially about systems and models constructed to be used as a guide to practice.

One of the great strengths of the manuals in this Cavendish series is that the presentation of the educational theory and general guidance is vitalised with a wealth of practical examples. Part 2 of this book provides just that essential link, so often missing from similar publications, which are strong on painting the big picture, weak on solving the small picture issues involved in the application of theory. Within the span of a further 96 pages the authors provide examples, across eight law subjects, of subject objectives, assessment criteria and illustrations of different assessment methods in action, including self-reflection checklists, model answers and generalised and individualised feedback.

This book measures up very well against the standard set by its predecessors in the Cavendish series, no doubt substantially because of the common thread of the calibre of Richard Johnstone's contribution. There can be no doubting the importance of what the authors set out to achieve and that assessment coupled with the sort of feedback that will impact upon student learning is a continuing weakness in law school teaching, despite the trend toward 'progressive assessment'. Hence, this guidebook indubitably addresses a problem of considerable significance. Although the treatment of some of the issues could be improved (for example, the discussion on educational objectives is a tad superficial), those law teachers inspired to enhance the quality of their students' learning through structured and systematic feedback will find a great deal of practical use to them in this book.

Editor

The impact of a pass/fail option on negotiation course performance

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Law faculties frequently debate the appropriateness of pass/fail grading options. Should students have the right to choose a conventional grade or the credit/non-credit alternative, or should a course be designed as graded or pass/fail and all students in it treated alike?

Students who take the author's Legal Negotiation class may elect a conventional letter grade or a pass/fail arrangement. Students explore the negotiation process and engage in a series of negotiation exercises, with the participants negotiating one against one or two against two. Students are also required to prepare a paper exploring the negotiation process, analysing bargaining interactions in light of the concepts covered in the course. Although the majority elect a grade, a sizeable minority choose pass/fail.

The author decided to examine his class data over the 11 years he has taught the course at George Washington University to determine whether there are any statistical differences in class performance between graded and pass/fail students. Over this period, the percentage of students taking the author's course on a pass/fail basis has increased. In 1986 pass/fail students were 15.6 percent of the class. In the past six years the percentages have ranged from 30.5 in 1993 to 48.2 in 1995. Possible explanations for the increase are that law students have become more risk-averse or more grade-conscious during the 1990s, or perhaps more recent students have heard that graded participants in the author's course experience greater anxiety because of the competitiveness of the exercises.

Many students suggest that pass/fail participants have an advantage in the negotiation exercises, because they are affected far less adversely by non-settlements than are the graded students. Since non-settlement options are usually less beneficial than realistic settlement agreements, non-settlements tend to lower the grades of graded students while having no negative impact on pass/fail students. The contrary argument is that graded students have the advantage because pass/fail students are less likely to commit the time and effort needed to get optimal negotiation results. Their graded opponents may make the extra effort to obtain better results from their less dedicated pass/fail adversaries.

Several factors diminish the likelihood of indifferent participation by pass/fail participants. One is the fear of embarrassment when weekly negotiation results are announced and analysed. No one likes to be considered incompetent or indifferent by classmates, and most pass/fail students work hard enough to achieve at least respectable results. Also

influencing the negotiating behavior of pass/fail students is the fact that on several exercises they are assigned partners who are taking the course for a grade and are committed to getting optimal results.

It is not clear whether the pass/fail option affect the quality of the papers that students prepare. They know they must prepare acceptable papers to receive credit for the class, inducing pass/fail students to strive for at least minimally acceptable papers. Once they accept the need to write a reasonable paper, it takes little additional effort to produce a final paper rivalling those of graded students. In short, one can make the argument that the pass/fail alternative does or does not affect student performance on the exercises and/or the papers, and that any advantage is with the graded or with the pass/fail students.

The years for which the author observed no individually significant mean differences lend support to the hypothesis that graded students achieve higher average negotiation results than pass/fail participants. In 10 of the 11 years graded students attained higher average results. So there is substantial support for the proposition that graded students tend to achieve more beneficial negotiating results than their pass/fail classmates.

The author's hypothesis for the papers differed from that for the negotiation exercises. Since pass/fail students would lack motivation to prepare outstanding papers — being virtually guaranteed credit — the author would expect either to find no difference in paper scores between graded and pass/fail students or to find a higher average score for graded students. The fact that graded students earned higher average paper scores in eight of the 11 years does suggest the existence of a statistically significant pattern. This lends support to the theory that graded students tend to achieve higher paper scores than their