The role of formative assessment is much more congenial to the fundamental objective of creating the reflective practitioner. All of these methods have in their support powerful arguments which relate to their ability to promote transferable skills. Ideally, the student will receive a mixture of the various methods, for their strengths complement each other. One crucial area in which the role of summative assessment is subject to obvious limitations, and the force of formative assessment must be brought to bear is ethics. Where the student has been encouraged to reflect on the relevant attitudes, both as an individual and as part of a group, then there is at least a better chance that the values inherent in the professional code of conduct will survive the shock of practice.

Based on his experience of teaching practical legal education, the author makes the following suggestions. The roles of summative and formative assessment must be clearly separated. If formative assessment is allowed to 'count' towards certification, it will be subsumed within the assessment culture. The criteria for summative assessment must, however, permeate teaching, and be clearly related to the objectives of the course. The tasks which will form part of the summative assessment should not be publicised at the start of the course (although the criteria should) because there is a virtual certainty that if students know them, they will concentrate on these tasks to the exclusion of other integral parts of the course. Summative assessments should not be spread throughout the length of the course, as teaching which occurs at the same time as these assessments will be compromised. Generally, the summative assessments need to be timed for minimum disruption. Staff should consider whether it is necessary to grade students, as distinct from certifying them. Assessment criteria and methods should be favoured which assess the process as well as the product. Criteria should be weighted and priorities identified, so that the checklist does not reign supreme.

Although in teaching it may be helpful to deal with each of the component elements, summative assessment should be made using criteria which require the integration of technique, knowledge and understanding. Paramount among the objectives of the course should be the aim of producing practitioners who will have the capability and the motivation to embark on the process of lifelong professional education.

RESEARCH

Risk assessment, resource allocation and fairness: evidence from law students

C E Houston & C R Sunstein

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At the University of Chicago Law School (UCLS), the economic analysis of law is of substantial importance and emphasis. This article details a study conducted at that law school, which sought to compare the priorities and assessments of students of Administrative Law, with those of 'experts' in risk assessment and resource allocation, and those of 'laypersons'.

The rationale for the study was that lawyers tend to dominate arenas of governmental decision-making, and thus their patterns of assessment and allocation are probably very influential. The literature on risk assessment says little about how lawyers and public officials respond to risk. Finding out how law students *think* was considered representative of how lawyers *do*, although the authors are in doubt as to whether some results are indicative of law students, of law school itself, or of the UCLS.

The study also served the pedagogical aim of giving students a sense of the range of problems encountered under the general rubric of 'administrative law' (with similar problems occurring in environmental law). An understanding of these problems can illuminate both regulatory policy and judicial review, and can usefully be brought to bear on many cases in the Administrative Law course in directing students to consider regulatory priority-setting.

Debate and literature about risk assessment and resource allocation often refer to observed differences between 'experts' and laypersons. The latter give weight to qualitative variables that make for distinctions among quantitatively identical risks. Ordinary people, it is said, care about whether risks are equitably distributed, voluntarily incurred, controllable, or faced by future generations. Not so the 'experts', who assess risk and allocate resources 'efficiently' with the goal of maximising the expected number of lives saved.

Surveys were administered to second and third-year law students taking Administrative Law. The resource allocation component asked respondents to choose between several options for allocating a budget of $100 million dollars for health and environmental policy. The authors found it interesting that participants did not allocate their budget for 'maximum efficiency' i.e. why respondents did not choose to allocate their entire available budget to anti-smoking education at the expense of AIDS and cancer research, treatment and prevention, increased nuclear power plant safety, enforcement activity directed at toxic air pollutants and prevention of lead ingestion by children. A possible explanation is that people are hedging against the risk that any one program might fail to meet its projections for lives saved. 'This explanation is analogous to the explanation for asset allocation and diversification in investment portfolios the authors helpfully explain. However they subsequently reject this explanation and conclude that 'fairness' or 'equity' is probably a better explanation for the tendency.

In terms of assessing risk levels, students assessments were, at the very least more congruent with expert assessments than those of laypersons. But when asked to establish funding priorities, partici-

pants did go beyond assessments of risk alone.

A third component of the study tested students' evaluation of the fairness of market forces. The authors found that, with regard to resource allocation, law students at UCLS deviated from experts in giving weight to factors other than number of lives saved, when any such information was presented to them. That is, they also cared about equitable issues of fairness and breadth. With regard to risk assessment, the law students were able to act like 'experts' in assessing risk levels alone.

When establishing funding priorities, however, they were responsive to the concerns of laypersons, even when such concerns were not supported by expert assessments; and they appreciated factors such as voluntariness, the availability of solutions aside from government funding, and potential effects of each risk. But UCLS students also differed, strikingly, from ordinary people in their judgements about the role of fairness in certain markets. Among ordinary people, about 80 percent found the specified market outcomes unfair and 20 percent found them fair. For these law students the proportions were almost precisely reversed: 20 percent found unfairness and 80 percent fairness. It is unclear from the study, however, to what this remarkable finding might be attributed. Quite possibly it is indicative of UCLS training.

SKILLS

Integrating procedure, ADR and skills: new teaching and learning for new dispute resolution processes
K Mack
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Clinical legal education as a method incorporates the key elements of structured experience and reflection. As a substantive focus, it looks at what lawyers really do and what really happens in practice. Clinical legal education methods and insights can be effectively combined with conventional legal education to further the goals of legal education.

This paper elaborates on those teaching and learning ideas, in the specific context of teaching civil procedure. The second part of the paper describes a program designed to integrate theoretical, critical and practical approaches to the formal rules of civil procedure.

Ideally, university education should enable students to acquire, develop and use information and ideas for themselves, and to apply, evaluate and connect diverse new ideas and information. Law schools must enable graduates to analyse critically legal institutions and the place of law and legal institutions in society and encourage scholarship which develops broader doctrinal and theoretical understandings of law.

At the same time, legal education necessarily includes a competence component, but it must be generalisable. Students must be able to locate, understand and apply new law, rather than reproducing doctrines learned in law school. Increasingly, many law graduates will not practise law at all. For all these reasons, competence in legal education cannot be limited to knowledge and legal rules and skill at legal analysis and adversarial advocacy. Legal education must include transferable skills as well as the intellectual abilities expected of university graduates. The changing nature of law, legal practice and the future careers of law graduates also demand a greater stress on ethical values in a broad sense.

Critics argue that university legal education is simply not doing the professional training job expected of it and that law graduates lack the skills or competence necessary before they can be released upon an unsuspecting public. However, such criticisms are quite broad and general and are no longer generally applicable. Many Australian law schools, perhaps especially the newer schools, pay substantial attention to critical theory, consider law in context and integrate skills with the undergraduate curriculum.

Related and similar criticisms can be made of skills components, such as interviewing/counselling, negotiation and advocacy. A skills component can intensify the focus on adversary litigation as central and reinforce the false image of litigation and trial as the dispute resolution norm. When put into a lawyer role in a skills activity, without substantial preparation, students tend to emulate extreme or stereotypic lawyer behaviour.

Another concern about the way procedure is taught and the ways skills are taught is their relationship with ethics and professional responsibility. The consideration of ethics may be limited to attention to formal rules of professional conduct or adversarial etiquette. Adversarial strategy can too easily be used to ignore the moral complexity of much that lawyers do.

A recurring issue in legal education is the tension between mainstream and special focus subjects. For example, curricular issues arise with considerations of race, gender, ethics or theory and the same question arises with ADR, procedure and skills. Should there be a separate procedure topic, a separate ADR topic, a separate skills or lawyering topic? Or should any or all of these be integrated with substantive law topics? The author rejects divisions such as theory and practice or procedure and substance, so, in this context, she supports integration of ADR, procedure, substantive law and skills in first year and in later years, with specialist optional topics for those with greater interest.

ADR is a piece of the process puzzle that is missing from the picture of litigation we present to students. Combining ADR and procedure enables us to break away from a false image of litigation as the norm and as what ought to happen. It also illuminates the strategic and practical relationship between various stages of litigation and the parallel settlement processes.