ASSESSMENT

The ideology of the case method/ final examination law school

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The case method/ final examination system of law schools remains the predominant method of legal education despite dramatic changes in modern legal practices, powerful criticisms of the case method and final examinations, and challenges from new ideas and new forms of legal education, such as clinical education and the legal writing movement. The case method/ final examination system is grounded in both material and ideological factors that produce an apparent consensus about the necessity, if not also the wisdom, of the system. The ideological forces that sustain the traditional system of legal education require examination in order to establish a fair and open evaluation of the system and of proposals to change it.

Legal academics today hold diverse ideas about law, the nature of legal practices and the nature of legal scholarship, but they continue by and large to pursue common methods of teaching: the case method and the final examination/grading/class ranking system that evaluates, certifies and allocates students to different positions in the legal profession.

What might explain the substantial disjunctions between these diverse legal practices, diverse legal ideas and law teaching? One factor is that legal employers rely on the class ranks of law students to help screen their applicants and the case method/final examination system is commonly perceived as an efficient way to generate class ranks. However, employers appear to rely more heavily upon the relative prestige of law schools and overall academic credentials of all the students at particular schools in order to screen applicants. Other kinds of evaluation could provide equivalent or even better information to an employer about a student's prospects as a future lawyer. In any event, law school class ranks could be based on more diverse methods of teaching and evaluation. Moreover, there is no empirical evidence that the case method/final examination system is a good way to educate lawyers.

The systematic use of the case method in law schools appears to have some deleterious side effects. As the dominant if not exclusive method of teaching law, especially to impressionable first year students, it misrepresents the nature of law practices, making them appear more orderly, rational and adversarial than the range of legal practices actually are. Narratives have a way of making themselves true, and the many narratives of the case method signal to law students that the practice of law is like the practice of appellate law, where the facts are 'given' by lower court findings and the basic job is to determine the application of legal doctrines to these quickly stated, well-ordered facts.

In addition, many students confess to confusion, indifference, alienation or anger in the face of a steady diet of case method teaching, and these are hardly ideal learning conditions. Many students learn to avoid the case method as they realise that there are better or easier ways to prepare for their exams and earn their degrees, thus reducing law school learning to learning for the final examinations.

The system imposes a single time-limited examination at the end of the semester that covers the course material 'comprehensively' by posing a series of novel problems that students must resolve under considerable time pressure. However, the case method provides little practice for students on the major examination task of 'issue identification,' a task that is crucial for developing valuable answers to examination questions. This means that students must somehow acquire this skill on their own, with little or no help from their professors.

While a number of cultural mechanisms and the ideology of the case method seem to support the final examination ideology as a means of evaluating and ranking students, these justifications may not hold up under closer analysis. The law school's final examination system certainly produces class ranking systems with relative ease, and these class ranking systems are used by employers, especially large corporate law firms, to help screen new law graduates for employment purposes. On the other hand, we do not really know how important class ranks are to employers, or whether employers would be more satisfied by alternative or additional forms of evaluation, such as faculty comments on writing samples or letters of recommendation that consider a broader range of a student's skills. Nor is it clear that the monolithic practice of final examinations is necessary to prepare students for bar examinations or that students work harder because of their final examinations.

Arguments for the case method/ final examination system as a system are infected with self-interest and ideological beliefs or instincts. There are no persuasive empirical demonstrations that the case method or the final examination system accomplishes the goals that are claimed for each of them. Moreover, one important factor that helps maintain the mythology surrounding both the case method and final examinations is their idealisation by many law professors. Upon a careful examination of their effects, these procedures do not appear to be that effective for most students and they, in fact, produce some serious side effects. The case method/final examination system both logically and impressionistically appears to teach large numbers of law students to engage in an excessive memorisation of legal authorities as students prepare

for examinations in an essentially unguided way.

In sum, the case method/final examination system may be relatively effective at teaching 'analysis' in the sense of breaking complicated materials into many small discrete parts and stating legal rules that relate to such parts in a careful, precise way. But this system does not seem effective at teaching more sophisticated skills and habits such as those of 'critical analysis' or 'creation' or, in other words, the skills of reflective, critical and imaginative reading, writing and thinking about law. If the case method/ final examination system rests on a mythological basis and has serious side effects, then there should be considerable virtue in decentring the system, in particular by reducing its powerful influence in the first- and second-year curricula.

The utopian law school created for the purpose of this essay may be referred to as the 'Reflective Law School.' The governing concept of this utopia is that law schools and legal education should primarily be sites of reflection, critique and writing about law and lawyering. The primary goal of both the education and scholarship produced at the Reflective Law School should be to engage law students, law professors, lawyers and other audiences in a process of reflective, critical and ethical reading, thinking and writing about law, the lawyering process, one's own legal work, and the law's relationships to the social lives of Americans. This would entail constructing courses that employ diverse teaching methods and forms of evaluation. In this process, for example, the problem method could replace the case method as the major technique in a majority of the basic first and second year courses; advocacy exercises would probably appear in many doctrinal courses; and — most importantly — many varied writing assignments, including taking practice and mid-term examinations, drafting legal documents and writing reflectively and critically about difficult issues, would supplement and in some instances replace the writing of solitary final examinations.

The Reflective Law School would also abandon or at least modify the final examination/ grading/class ranking systems of law schools in favour of more particularised evaluations of law student work.

Testing multiple intelligences: comparing evaluation by simulation and written exam
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8 *Clinical L Rev*, 2001, pp 247–288

Written examinations play a key role in legal education. The LSAT is the most important factor in law school admissions. Once students enrol in law school, exams are used to evaluate and sort first year students. At most American law schools, a single, end-of-semester or end-of-year, timed, written, in-class exam determines the grade in each first year class. Although exams continue to play a major role throughout law school, once students are sorted at the end of first year, it is often difficult for them to significantly change their place in the law school hierarchy. Written exams are not adequate assessment tools for law schools and present data exist which suggest that using both graded simulations and exams would better assess and promote the development of law students into lawyers.

Legal academia's reliance on written exams raises questions at all stages of the process, from student selection through graduation. Although the LSAT is a valid statistical predictor, it has serious limitations. The test can only predict a portion of the variation in grades. Like any statistical tool, its predictions are most powerful for the large group. The test offers progressively less information about smaller subgroups and is not equally valid for all subgroups. It tends to over-predict the success of white males and under-predict the performances of women and people of colour.

The same cannot be said for law school exams. Presumably, success in law school should have some predictive relationship to success in the legal profession. In stark contrast to the LSAT, however, there are very few data supporting or analysing the presumed predictive relationship between law school exam performance and lawyering. The studies that have been done are at best equivocal and some show no correlation between success in law school, as measured by grades, and success in the profession. This is a very difficult issue to study. While successful law students often go on to be successful lawyers, law students with strong first year grades also have significantly better opportunities than their less successful peers. Their relative professional success may reflect those opportunities, as much, or more than, their particular merit relative to their law school classmates, all of whom met the same narrow and well-defined admissions criteria. The profession is also full of lawyers who enjoy professional success but did not excel in law school.

One way to explore the relationship between law school exam performance and lawyering performance is to consider it in the context of the long running debate about the nature and testing of intelligence.

There is much criticism of traditional legal education and the doctrine-centric view of thinking like a lawyer. Although few defend the view that lawyers only need to analyse doctrine to be effective lawyers, some defend law school's narrow focus on abstract reasoning. According to this view, law school is the place to learn the central, or superordinate, abstract skill of applying general rules to particular cases — thinking like a lawyer.

Law school pays particular attention to logical-mathematical reasoning. Students are required to construct