

Experiment in Assessment

By:

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Examinations and grades are understandably important to law students, even at the moment they arrive at the first-year orientation program. As soon as they have received the first assessments of academic performance, law students' professional possibilities start to take shape. In some cases, aspirations begin to rise, and in others, hopes and opportunities diminish. With employers evaluating law students as early as their first year, students have a powerful incentive, from the very beginning of law school, to focus their attentions primarily on the professors' assessments of their performance.

As a law teacher, I have been concerned about the importance of grades and what pressures associated with examinations do to legal education. I fear that many students' efforts are too often dominated not by developing the habits and skills of good lawyers but by what it takes to receive good grades on law school examinations. Certainly there is some common ground in these two objectives but I believe they are also somewhat at odds with one another. If examinations are only about assessment of student performance and not about developing the skills and thought processes a good lawyer needs, perhaps the examination process should be reexamined.

Because examinations are so important to students, they present a valuable teaching opportunity. Early in my career I was frustrated by what I perceived as significant limitations of the typical law school examination. Law students have traditionally been required in each course, in a few hours at the end of the semester, to digest one or more somewhat complicated factual settings and to apply their understanding of the law and legal process to resolve or analyze hypothetical problems. That model of examination doesn't allow much time for reflection and probably emphasizes quickness in thinking and writing to a fault.

For many years, in an attempt to change my examinations to a more reflective and educational experience, I have used a simple process designed to motivate students to review the subject matter and to "imagine" or create pertinent legal problems as they study for the examination. During the semester, I distribute to students a document containing factual and legal information. I present a story or stories with the potential for numerous legal disputes and problems relevant to the subject matter of the course. The document also contains a variety of statements about the law that will be applicable in the examination, usually including a number of statutory provisions or references pertinent to the course. I encourage students to study this document and to imagine legal problems that might arise from the facts and law presented. Students often take this advice seriously and become very engaged in the process, realizing that they have an opportunity to anticipate actual examination problems. Initially I noticed that many students would work on the information on facts and law in groups, brainstorming at some length to extract potential exam problems from the document. Many of them seemed to become very engaged and excited about the process and the potential problems they were discovering. Some clearly started to see the variety of potential legal problems and to understand the complexities of resolving those problems. I came to the conclusion that this "focused review" approach to examinations, and the collaboration among students which it fostered, motivated and helped students to think more deeply about legal problems and to develop a better sense of a lawyer's work.

For a number of years, I combined this focused review with a traditional three-hour examination at the conclusion of the semester. Then, about ten years ago, I began to consider collaboration *during* the exam as a

simple extension of the process I had seen working well in focused review. Based on the positive comments I had heard from students about the educational benefits of working with other students to discover legal problems, I concluded that the benefits of collaboration might be magnified and expanded by allowing students to work together in composing their responses to actual examination problems.

Although I can sometimes be a bit oblivious to the reactions of others to some of my ideas, I realized that allowing students to collaborate on examinations would be controversial. At some point during the semester in which I first tried this approach to examinations, I told my students that I was contemplating the possibility of permitting, but not requiring, collaboration on the final examination. These were first-year students and their reaction was somewhat mixed, but many of the students seemed favorably disposed toward my proposed experiment. The primary concern of those who opposed the idea was the possibility that some students might be free-riders, receiving better grades than they “deserved” because of the work and abilities of their friends. After discussing the matter with the class on several occasions, I decided to permit collaboration among students in that first semester exam in a year-long property course.

During that semester, I didn’t discuss my plan for the examination with other faculty members or the Dean. I assumed that I had the academic freedom to do what I had decided to do and I didn’t want to invite unnecessary controversy. I did inform a scheduler that I would be giving a take-home test and wouldn’t need rooms scheduled for my Property exam. I don’t know whether any students communicated my plan to other faculty members or to the dean’s office, but I don’t believe I heard any comments on the subject from either my colleagues or the dean’s office during that semester or the examination period. At times, I did worry that this model of examination might be a disaster. Deep down, I assumed that my experiment with collaboration on examinations would be short-lived. I did not think it would necessarily be a failure, but I guessed that the benefits of such a process ultimately would be overshadowed by the detriments. Ten years later, my tentative conclusion is that I was wrong. I am still using this model of examination in many courses.

I was initially very interested in, and concerned about, the effects collaboration on an exam would have on students. For one thing, I assumed that group work would almost certainly have an effect on the grades some students would receive, but I had no preconceived notion about the general nature or scope of that effect. Also, I wanted to test my hypothesis that this model of examination might enhance the education of law students, although initially I was not confident that this proposition had substantial merit. I also wondered about the effects of collaboration on students in terms of group dynamics in such an important project.

I assume it would be extremely difficult, if not impossible, to prove or disprove conclusively my assumption that collaboration on examinations would have some effect on students’ grades, but intuitively it seems almost irrefutable. Some of my colleagues question or criticize my experiment because of the probability that some students’ grades will differ from the grades they would have received had they been required to work alone. Such concerns about the impact of collaboration on grades seems to focus primarily on the possibility that some students will be helped by the collaboration, not that they will be hurt by it. I acknowledge that in our school and many others, grades and class standing are very important to students and therefore these concerns are not trivial. On the other hand, I do not regard grading as an exact or absolute science. I assume that many individual students could take two exams for one course (or even the same exam twice) and earn two different grades, but that is not a sufficient reason to question the legitimacy of either grade. The grade simply gives a student information about how well she performed on that exam on that day. In any event, up to this point at least, I have tentatively concluded that the educational benefits of collaboration outweigh the detriment of any compromise of the evaluative function of exams.

To get some feeling for the actual impact of collaboration on grades, I have compared students’ grades

in my courses with grades they received in other courses during the same semester. Based on those comparisons, I believe that collaboration does not have a particularly significant effect on grades for *most* students. As one would expect, however, some students' grades do seem to be affected by working with a group. Contrary to the assumptions of some, however, the impact on grades seems to go both ways. Some students have apparently been helped by collaboration, but others have probably been hurt. For an unusual example, consider a student who worked with others on my exam and received a B- in that course but earned A grades for her individual effort in each of the other three courses she had that semester. This difference could have resulted from other factors, but it seems likely that the collaboration in my course hurt that student.

The primary reason I am still allowing collaboration in some examinations is the positive feedback I have received from students about its educational value. To obtain reactions and other information, I have asked students to complete a simple survey after the examination process has ended. In year-long courses such as the Property course in which I first permitted collaboration, I have distributed the survey early in the spring semester, after they had received their fall grades. In the surveys, I have given students an opportunity to express their reactions to the examination process and to rate it as both a learning experience and a means of evaluating performance. I have also had numerous personal conversations with students about the examinations.

There have been negative comments about these exams, but for the most part, the student reaction has been remarkably positive and even enthusiastic. For example, of the students surveyed who expressed positive or negative opinions on the process in two exams administered in different years and different courses, 91% concluded that the collaborative exam was a positive learning experience. Asked to rate the exam "as a learning device," 46 students in two sections of one course said it was "excellent," 63 characterized it as "good," and 10 referred to it as "poor" or "very poor." Two years later, in one section of Procedure students, the numbers were 16 (excellent), 24 (good), 3 (poor), and 1 (very poor). (A fifth choice, "neutral," was chosen by 17 students in the first course and 8 in the second.)

In addition to specific survey questions, I have usually asked students to evaluate, in writing, their collaborative examination experience. Their comments have been enlightening. Some have been cautionary: "Too many cooks spoil the soup" and "Select your partners carefully." Others have raised the concern that "people could slide by and still get a good grade." One poignantly summed up some of the risks of collaboration: "My enthusiasm for collaboration dwindled when my fellow collaborators were crying and yelling."

Going into the experiment, I had very little insight as to what the ultimate reaction of students would be. I have been relieved to learn that far more students report positive experiences about collaboration than negative ones. Many seem to confirm my hope that the process was a valuable learning experience for students. Here are a few of the encouraging comments:

Collaboration is good because it forces students to work together and exposes them to other ideas and perspectives.

The exam gave me a better understanding of property concepts. Things I thought were clear became unclear as others questioned the concept.

The exam forced re-evaluation of my understanding and interpretation and required me to defend my position or compromise and caused me to look at the analysis on a deeper level. There was a psychological benefit because I felt a little less pressure.

The process allowed opportunity for discussion, during which we realized that law is

not black and white.

Working through problems, issue by issue, forced us to a level of specificity and a depth of analysis that we wouldn't have gotten to without the seriousness that creating exam answers moved us to. We were forced to take opinions of others into account, vastly improving my understanding.

Comments such as these cause me to wonder whether I should *require* collaboration on these exams, but I have been reluctant to do so. For now at least, I believe required collaboration on exams would be too much of an intrusion on a student's autonomy.

Some students have assumed that those who collaborate on the exam have an advantage: "Those who worked in groups were more likely to make higher grades." I suppose one could even contend that if those who work in groups *don't* receive higher grades than those who work alone, my hypothesis that collaboration enhances learning is disproved. My answer to this is that the correlation between learning and grades is not necessarily a strong one. In any event, my evidence does not support the conclusion that students who work alone are necessarily at a disadvantage. Indeed, in one recent exam, all but one of the highest eight scores were earned by individuals who worked alone.

By nature, I am not one who would be inclined to work with others on an exam, but this experiment has caused me to reevaluate some of my own opinions about the learning process. Late in 2000, the National Research Council published *How People Learn—Brain, Mind, Experience, and School*, an expanded version of a 1999 publication, *How People Learn—Bridging Research and Practice*. It was used as a text for the AALS Conference on New Ideas for Experienced Teachers in 2001. At page 13, the NRC's report states: "The emerging science of learning underscores the importance of rethinking what is taught, how it is taught, and how learning is assessed."

Perhaps it is time for some reevaluation of how law is taught and how learning of the law is assessed. In several places in its report, the NRC speaks directly to the value of cooperative and collaborative work. At page 25, for example, they note that learning "is influenced in fundamental ways by the context in which it takes place," and offer the following pertinent comments:

Teachers must attend to . . . helping students organize their work in ways that promote the kind of intellectual camaraderie and the attitudes toward learning that build a sense of community. In such a community, students might help one another solve problems by building on each other's knowledge Both cooperation in problem solving and argumentation among students in such an intellectual community enhance cognitive development.

On pages 73-74 of their report, the NRC further states:

The question of how people function in a number of practical settings has been examined by many scientists, including cognitive anthropologists, sociologists, and psychologists. One major contrast between everyday settings and school environments is that the latter place much more emphasis on individual work than most other environments. A study of navigation on U.S. ships found that no individual can pilot the ship alone; people must work collaboratively and share their expertise. More recent studies of collaboration confirm its importance.

My students' reactions to collaborative exams, in both written evaluations and personal conversations, are certainly consistent with the observations in the National Research Council's report. Many students have come away from the experience convinced that they had learned much more because of the collaboration than they would have learned on their own.

I conclude with the story of three students from my first-semester Property course some years ago. During the semester, on several occasions, they vigorously contended with me over the prospect of a collaborative exam. They expressed principled and justifiable reasons for their opposition. Notwithstanding their well-considered arguments, I did give a collaborative exam at the end of that semester. A month or two after the exam, one of the three students came to my office. He exuberantly told me that he had changed his mind about collaboration on exams. He explained that he and his two friends who had argued against collaboration had decided to work together on the exam. They spent the exam period in a cabin somewhere in the Texas Hill Country, discussing the issues and formulating their responses to the examination problems. It was, he said, the best educational experience he had ever had.