higher and lower order skills are, but it has not yet arrived at a 'coherent or articulated theory' of competence. The authors believe that the most appropriate context for the development for this kind of theory is within the domain of practical professional legal education, provided its development is grounded in precise scholarly activity. It is not enough, therefore, for practical legal education courses to focus on the achievement of prescribed minimum standards of competencies. To achieve excellence rather than mere competencies, courses should concentrate on equipping students with learning to learn skills which can be transferred from university to different learning contexts.

The authors conclude that it is only when practitioners can construct their own theory of practice based on their consistent performance of the skills necessary to carry out their work that they can be called competent. To qualify as competent a lawyer must display a consistent level of 'learned and practised skills', preferably at a high, rather than a base level. A competent lawyer will integrate holistically his or her knowledge of law with an ability to practice that law.

Gatekeeper or friendly guide? The role of the legal skills tutor

J Sprack

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Is there an irreconcilable conflict between certification and education? Professional legal skills courses are usually expected to do two things: first, train students to become autonomous professionals, equipped with the skills needed to cope with the challenges of practice; and, secondly, to decide which students are fit to practise, and which have to be refused entry to the profession. Teachers can feel that they are subjected to a stressful conflict of roles. Are they friendly guides whose main purpose is to provide students with a sympathetic learning environment? Or are they gatekeepers to the promised land of practice, with a stern duty to uphold the standards of the profession?

Although there is a substantial overlap between them, 'certification' and 'assessment' are not synonymous terms. Assessment can take a number of forms, and can be used for a number of purposes. The crucial distinction is between 'summative' and 'formative' assessment. Summative assessment is the judgment as to whether the student has the skills and knowledge necessary to become a lawyer. It plays a policing function on behalf of the profession and, ultimately, the public. Its effect is to cast the teacher in the role of judge in endorsing the student's competence, rather than as a partner in the learning process. It is, however, summative assessment which provides the most obvious incentive for learning on the vocational course. In a climate when competition for places in the profession is fierce, and students pay an ever increasing price in terms of accumulated debt for their legal training, it is not surprising that certification to practise comes to overshadow all other motivations for students.

The power to motivate, direct and focus is the strength of summative assessment, but is also the feature which causes problems. These problems are present in any professional course, but are particularly acute in the context of the criterion-referenced approach which holds sway in legal training. Amongst the problems, student preoccupation with certification leads to an 'assessment culture'. For teaching staff there is a tendency in summative assessment to specify minute aspects of behaviour, which are easier to verify than the more difficult areas of judgment. In addition, the search for the level playing field which summative assessment necessitates can lead to a narrowing of focus (for example, a tendency, on interviewing for solicitors, to concentrate on the initial client interview) and a departure from realism (for instance, videotaping the final certification performance in order to ensure an absence of interventions). Summative assessment has difficulty in dealing with a subject like ethics, having no way to test whether the values underlying apparently ethical behaviour have been internalised. Similarly, the summative assessment of skills may distort the relationship between skills and knowledge. Product is emphasised at the expense of process. Finally, concentration on summative assessment can lead to the development of 'assessment dependent' students and hinder the development of the 'reflective practitioner'.

The central idea of the 'reflective practitioner' is that professional knowledge develops through critical reflection on experience. Central to the concept is the acquisition of transferable skills. If the embryonic practitioner has merely acquired facility in the performance of a limited list of tasks, the chances of being able to internalise the lessons from practice are greatly reduced. The development of the reflective practitioner, able to grow professionally as he or she makes use of transferable skills in the context of deeply held values and a store of learning, is perhaps the fundamental aspiration of professional legal education. It opens up the prospect of lifelong learning, adapting to ever-changing circumstances. It is central to the notion of a professional, rather than just a vocational, qualification.

The problem is that certification, particularly with regard to skills, places its natural emphasis upon the student's *current* standard of performance. The concept of the reflective practitioner is concerned more with the student's future capability. The apparent contradiction has led to the development of a variety of perspectives with regard to the education and assessment methods used in legal training. They have the common aim of promoting a concern with education rather than certification, the acquisition of transferable skills and (as a long-term goal) the production of the reflective practitioner.

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-