EVALUATION

A uniform assessment of excellence in scholarship: reflections on Britain's research assessment exercise
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Imagine, if you will, a process by which a law faculty's scholarly output for the last four years is assessed by peer reviewers compensated by the government. The results are published on the Internet, and each law school's 'grade' forms the basis for a substantial percentage of the school's funding for the next four years. Faculties with poor scholarship rankings receive no research funding. Those receiving top scores receive a substantial bonus in their annual budget, at least until the process resumes four years later.

This process, known as 'research assessment', is in fact quite real and has been a routine practice in Britain, Scotland, Wales, and Northern Ireland since 1986. This article describes the research assessment process and the remarkable degree of acceptance it has achieved among the members of the law teaching profession in the United Kingdom. It also considers the ways in which the most recent research assessment exercise (RAE), completed in late 1996 under the auspices of the Higher Education Funding Council for England (HEFCE), might inform the faculty review process now in use in the United States.

The 1996 RAE was carried out jointly by the four national funding bodies, which depended on the work of 60 specialist peer review panels. Generally, the members of the panels were selected not only from the academic world but also from commerce and industry. In the case of law faculty assessments, though, the panel members all came from university law departments. The results of the peer review process were published on the Internet and in the British press. Each department's 'grades' on the RAE (ranging from 1 to 5, with 5* representing performance at an 'international' level of excellence) then were transposed into specific funding grants to the sponsoring universities and colleges. Faculties graded 1 or 2 received no research funding. Faculties with higher scores received a corresponding research grant.

The creation of HEFCE and the use of RAE rankings to determine departmental funding levels are a function, in part, of dramatically declining resources. From 1989 to 1995, student enrolment in UK universities rose by almost 70 percent while public funding per student fell by 25 percent.

HEFCE set out a general definition of research in its guidelines for the 1996 RAE, but left the detailed articulation of the standards of assessment to each individual peer review panel.

The peer review panel of legal scholars, a group of 11 academics selected by HEFCE and its counterparts from nominations by learned societies and professional associations, assembled in 1995 and set out the criteria to be applied in the assessment exercise. Several specific items of the panel's directive seem to reflect a good deal of care and high principle in designing the assessment process. It resolved not to establish a list of the relative standing of journals, but to assess articles solely on their own merits. It proposed to assess the quality of a publication and not its quantity, and the influence of a work as well as its scholarly content. The panel indicated from the beginning that, in assessing the research quality of an entire department, it intended to place great emphasis on 'the extent to which the department has developed a research culture'. A very specific grading scale was developed, against which the panel would measure every department. The panel's final product would be a single grade for the work of the department as a whole.

It was inevitable that there would be dissatisfaction with the RAE — both with the general process of the research assessment and with some specific outcomes. Recurring criticisms included the claims that the RAE was costly and intrusive; that it interfered with academic freedom and would lead to the homogenisation of research activities; that the process rewarded already successful institutions without providing adequate incentives to lesser institutions to improve their research performance; and that the assessment project reflected a governmental 'agenda' by which public resources for academic research could be reduced and ultimately shifted to the private sector.

Other critics contended that the process devalued interdisciplinary scholarship and work by maverick researchers. The frequency of the assessments tended to stimulate 'short-termism' in devising research projects. Morale at many departments was said to suffer as a result of the process of distinguishing between those members who were 'research-active' and those who were not. Many agreed that the RAE process itself, and the adjustments that were often made during the run-up period to facilitate completion of research projects, devalued the teaching enterprise and resulted in declines in teaching performance.

The most significant criticisms of the RAE process have revolved around its fundamental approach to funding academic research. Rather than funding entire departments, critics argue, the government should limit itself to funding individual research projects.

One of the most significant concerns about the impact of the RAE, perhaps unique to legal scholarship, is that the process, as it appears to function currently, discourages legal scholars from creating materials that are aimed at practical law reform or that speak directly to practitioners. Other concerns relating specifically to law departments and legal research include the difficulty of getting articles published due to the small number of law

journals in the UK, the questionable depth of review that submissions received, given the quantity overall and the size of the panel, and the problem posed for interdisciplinary scholars, whose work may not meet the perceptions for excellence developed in more mainstream areas.

There are some elements of the RAE process that might usefully be adapted for the self-evaluation every law school conducts from time to time. They may give cause to rethink some of the conventional wisdom about tenure and promotion practices, the appropriate reward structure for legal academics, and the criteria by which law schools are accredited. These elements may be characterised as follows: the recognition that there may be a useful distinction to be made between unfundable scholarship and fundable research; the recognition that there is a value in assessing the scholarly output of a law faculty as a whole, and not focusing exclusively on the output of individuals; the notion that one might create a meaningful grading scale by which scholarly products can be evaluated systematically; the recognition, when dealing with a law school as a whole, of the singular importance of a strong research culture; the notion that law faculties might be required to set a collective research agenda and then be held accountable by future evaluators and funders for its completion; and the observable fact that, with planning and co-ordination, a law faculty can appreciably raise its scholarship profile in a cycle as short as four years.

Many law teachers are living in a time of significantly reduced resources. In this environment, the need for 'objective' measures of faculty excellence — especially in black box areas such as research and scholarship — is likely to receive increased attention. So are related questions more broadly encompassing the idea of merit. What should be funded? Who should be rewarded? Is ongoing faculty scholarship — even conventional scholarship — an essential prerequisite to providing a useful legal education? The British experience with research assessment leaves much to be desired as a model for considering these questions. But if law teachers do not begin asking themselves some of these questions, and soon, they may find it being done for them by others.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

Parental responsibility agreements — successfully combining teaching with research
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A major debate amongst family lawyers is whether all fathers should have automatic parental responsibility for their children irrespective of their relationship with the child's mother. Mothers fear that fathers will interfere in an oppressive manner with the day-to-day care of their children. By contrast, some fathers feel excluded and devalued as parents. They wish to take an active interest in their children's upbringing and to behave towards them in a responsible manner.

The law effects a compromise solution. Where unmarried parents accept that the father should have parental responsibility, they can formalise the arrangement by making an agreement on a prescribed form. Where such agreement is not forthcoming, the father is entitled to apply to a court for a parental responsibility order. Many parents, particularly those living together in a stable union, are unaware of the relative lack of status of the unmarried father in the eyes of the law. Even fewer unmarried parents know about parental responsibility agreements or about the importance of making such agreements.

As teachers of family law, the authors are aware of the narrowness inherent in analysing and presenting human experiences and feelings merely as statutory rules interpreted by judicial discretion and illustrated by case law to be learnt and regurgitated under examination conditions. Sometimes there is no substitute for personal experience to bring about a better understanding of the law and how it operates in practice, and such experience and understanding can awaken a student's interest in, and appreciation of, how it feels to be a client.

For this project students were set the task of finding out how the ordinary woman or man would obtain the parental responsibility form. Students were asked if they were willing to try to find out which organisations and agencies have heard of the agreements, which have not, and how easy it is to obtain such a form. The debate about the relative positions of married and unmarried fathers has always captured the interest and imagination of family law students and they responded enthusiastically. It was hoped that a number of benefits would flow to the students from undertaking the project, including a build up in confidence in dealing with unknown personnel, in particular where it was necessary to question or challenge any advice given, and the ability not only to undertake some basic research but also to organise the results in a coherent and meaningful fashion.

Perhaps the most startling and disturbing finding was that, of the 137 registries of births, marriages and deaths approached, only four could supply the form. Furthermore, 62 not only had not heard of the form but also could not direct the student to where one might be obtained. Another worrying discovery was that only 95 out of 164 Magistrates' Courts stocked the form and eight did not know of their existence and were unable to tell the inquirer where to obtain one. It is of some concern too that 130 social service departments had not heard of the form. Al-