Who's "Number One"?: Contriving Undimensionality in Law School Grading

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After the 1991 college football season failed, as had others before, to produce a clear "Number One" team, some sports fans took up, in earnest, the merits of a collegiate football playoff system that would yield an annual champion. Setting aside the hours of discussion possibly saved by adopting a playoff system (though the evidence from college basketball seems otherwise), such a search is unrealistic and possibly harmful.

Because of X's strong passing game and Y's weak pass defense, X may be able to beat Y consistently The well-balanced attack of Y can, however, prevail over Z, which relies upon a running game. That ground attack, in turn, allows Z to beat team X fairly consistently A round robin, even repeated a few times, could yield the same record for all three teams. A playoff provides a winner; but which team wins depends largely on the initial pairing.

And so it is with law students. Because of differing abilities to parse arguments, communicate effectively, and synthesize creatively, three students might each beat one, but not both, of the others in litigation. Which student appears to be the most promising litigator depends upon who is paired against whom in the courtroom. Likewise, at the negotiating table, the best may depend upon the pairings. Being "Number One" is contingent and contextual.

THE MULTIDIMENSIONALITY OF QUALITY

These problems of apparent intransitivity are merely telling examples of a more general problem inherent in rankings, that of reducing multiple criteria to a single dimension. Most of us have encountered the difficulty of determining a "Number One" product preference. For example, automobile A seems preferable to B and C because it handles best and is not too small; B seems preferable to C and A because it handles well and excels in comfort; and C seems preferable to A and B because it is very roomy and still handles acceptably In reality, there is sometimes no clear "best."

Again we can see the parallel in law students. Alpha is better at counseling clients in divorce proceedings, and Beta is better at giving tax advice, while Gamma is better at litigating a negligence claim. The best lawyer of the three depends upon the setting. None of the three can fairly be called the best law student or the most promising lawyer. The importance of different attributes depends upon the circumstances.

THE CONTENT TO BE REPRESENTED

The same problem occurs within a single course in law school and within most tests. Correlations between tasks or items and across students run high; that merely indicates top students tend to do well across the board. It does not tell us which students actually understand any particular concept or can perform any particular assignment. When we examine the tasks one by one, we also find some important correlations are not high. Some accomplishments do not merge into the single scale that we use to grade each course or test.

We could communicate some of the different omitted traits and understandings on report cards like those my son, Christopher, brought home from the second grade. That form prompted his teacher to comment on antonym usage, ball handling, subtracting, and dozens of other skills. But—like the fans and sports media calling for a playoff—law school administrators, faculty, placement offices, and even students themselves seek simple rankings of students in each course. To meet the demand, we implicitly equate a pinch of analytical acuity with a spoonful of expressive fluency to come up with a univariate ranking of our students. And once we have done it, the registrar does it again, compounding the problem. Grades in Property are combined with grades in Appellate Advocacy—happily the professors use numbers that hide the incomparability—to generate the all-important GPA.

However, the rankings hide the multidimensional truth. A playoff provides a criterion for crowning one team only by devaluing and filtering out the information inconsistent with its result. In law school grading, differences we notice are glossed over. We know this, yet we rank anyway—sending graduates off with one summary measure of expected professional value and a reasonable expectation that they will receive similar help from us when it is their turn to make difficult hiring decisions.

Good letters of reference mitigate the problem, but not enough. Only a few particularized skills are carefully assessed. Students try to select as references the faculty that have formed the best impression of them, hoping to keep some useful information quiet. The student always unprepared for my class will likely ask someone else to write a recommendation. Conversely, we teachers agree to write or be listed on the resume only if we have something good to

say And we select positive qualities for our message. Also problematic, and maybe responsive to the level of utility of past returns on the effort, many employers hire without checking references at all. Descriptions from references augment some records, but many facets remain hidden.

Misrepresentation of reality is not the only consequence of the drive to find a "Number One." The outcome feeds back into the initial evaluation. In order to produce an ordinal ranking, attributes measured by a rich set of criteria which may yield intransitive results must, somehow, be projected onto a single scale. The use of incomparable and unquantifiable criteria at early stages of evaluation just makes the final ranking harder. The ultimate result, which gives no hint of the various underlying components, repays little of the extra effort spent earlier on fuzzy and orthogonal factors. Limiting our evaluation to correlative and quantitative criteria makes the process both easier and seemingly more fair. While we bemoan oversimplicity and decry unidimensionality, the need for numbers and ordinal ranking pushes unquantifiable and contradictory vectors into the background.

That narrowing of our focus correspondingly limits students' values and aspirations. By our law school grading and class rankings, we teach that academic performance (and a narrow sort at that) is most vital. We say that it is important to be a responsible officer of the court; and a few times those of us who do not think it ultra vires might note the importance of family, citizenship, and decency The message, however, remains the same: a lawyerly brain counts most.

BEYOND GRADING—EFFECTIVE DESCRIPTION

What does this suggest for the future of law school grading? Grades will not, in most schools, be abolished. A reasonable fear of adverse reactions from employers will cause students to resist a gradeless curriculum. Nor would most law professors, I suspect, choose to eliminate grades. Even teachers confident that they could motivate their own students to study diligently would worry about the prospect of other teachers' students graduating and practicing law without having read a case.

Employers need information about students, and students need information about themselves. Grades convey some information. We need not, however, attempt to capture all we know about students in grades. This is, after all, the age of information. The computer has freed us from the paper forms of yesterday with their limited space for elaboration. The magnetic data file expands automatically to hold whatever we wish to tell. And much of what we might say could be of use to students and employers. Both may wish to know whether the student asks good questions in class, comes prepared to

discuss cases, manipulates complex doctrine with dexterity, offers insightful policy analysis, makes creative arguments, or shows empathy for the plight of a party to litigation. Even such a mundane fact as class attendance could be recorded and might be viewed by an employer as an important indicator of diligence or ability to learn without supervision. An employer or a student might wish to know whether the student treats others with respect. Prompted to do so by a series of evaluative questions, many of us could provide some of this information.

For large law classes it would be difficult to address even these few criteria for every student. But it is not necessarily unfair to say what is known without digging deeper into what is not. We would shudder at the thought of having our students evaluate us with a single grade when they know so much more. Should we not tell what we know about them? Schools could provide a series of questions or a form with appropriate headings to prompt teachers to respond to these concerns when they have information. The form or questions should also encourage the evaluating professor to make other comments about attributes that might be relevant to an employer's legitimate informational needs.

Torts teachers might be quick to point out that negative comments of a general nature could engender a lawsuit for defamation. Recognition by the courts of a qualified immunity for honest, good faith opinions might be appropriate. If not, new legislation might free faculty members from fear of litigious reprisal. Without some protection, evaluations would tend toward objective criteria and positive descriptions. However, even those biased reports would send far more information than bare grades.

Besides the improved information, there is an additional benefit of sharing more information via the transcript. Teachers might, by the repeated act of responding to questions about other (non-exam) kinds of performance, develop an appreciation for the importance of good information about students. Once teachers internalize its importance, they might seek additional information by listening more to students. Such attention would improve the relationship between faculty and students, to their mutual benefit.

Even without doing any more work, we can fight the attractions of unidimensionality At the very minimum, we could stop publishing grade point averages and class ranks. Employers can, of course, calculate averages on their own. But in the process of doing so they may realize that the average of an A in Appellate Advocacy and a B- in Property simply does not mean much. Employers may also, in studying the particular grades, pay some attention to the courses and try to determine whether likely job performance is indicated in some of the grades more than others. Furthermore, over time, employers might begin to see patterns in the predictive quality of the

data—for example, tax grades might predict performance as a tax planner, but not as a litigator. Employers could, in other words, get more information out of the data they already receive if they were made to take a longer look.

By producing a "Number One," a grading system, like a playoff, helps us forget that evaluations and comparisons depend on the situation and that it is possible that there is no "best" in any meaningful and important sense of the word. Public views are shaped by the structures that our institutions, especially our schools, adopt for decision making. Like playoffs, our law school grading systems dangerously reinforce and validate the idea of "Number One" by treating it as a concept that matters. We may hope that law schools of the future will report knowledge and opinions in a manner fulfilling the promise of the information age.