

Assessment and Learning: the impact of professional body requirements

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Keywords: *assessment, assessment criteria, deep learning, reflection, competence*

Introduction

This paper is the result of personal reflection that I undertook during the course of a professional development programme at London Metropolitan University. It was also written days after the University's Legal Practice Course (LPC) had received its triennial, three-day monitoring visit by the Law Society. During that visit I had to represent the course and present our teaching, curriculum and assessment rationales. However, it is perhaps a misnomer to refer to our 'assessment rationale' because while we may develop our own learning outcomes and tweak the curriculum, the Law Society prescribes assessment instruments and criteria. I assumed I would be able to engage in a stimulating debate with the Law Society by plotting our course's progress with reference to current developments in teaching and learning. However, I emerged from the meetings with the feeling that the assessors did not appreciate what I was talking about. They appear to rely on assessment checklists based upon decades-old narratives and the now prevalent concept of 'deep-learning' did not seem to resonate with them.

So what are the benefits of 'deep learning'? Barron (2002) suggests that "a deep approach to learning is one in which the student intends to gain a personal understanding from the learning task." Conversely, surface learners "memorise information without meaning and organisation." Entwistle (2000) claims that "A deep strategic approach to study is generally related to high levels of academic achievement". But he continues that this only happens "where the assessment procedures emphasise and reward personal understanding".

I would contend that there can be little doubt among educationalists generally that deep learning, with its emphasis on 'reflection-for-learning', is superior to surface approaches – particularly in the development of professional competence (Schön 1987). So what do the Law Society appear to be encouraging? In a group presentation (made as part of the professional development programme referred to earlier) I characterised that professional body as being 'objectivist' (Biggs 1996), that is, having a traditional outlook in seeing knowledge as decontextualised or

independent of context: a 'thing' that a teacher hands on to students, as if the contexts of their lives are unrelated to the learning process. Such an approach has been identified as one which is "greatly concerned with quantitative measurement" (Cole 1990, cited in Biggs, *ibid.*). Whereas the Law Society were demanding quantitative benchmarks, a teacher trying to foster a deep approach would prefer assessment(s) based upon a qualitative, competency-based rationale.

Brown and Knight (1994) hold that assessment is the heart of the learning experience. Similarly, as Biggs (1996: 350) notes about assessment, "the system [is] driven by the 'backwash' from testing" (and here Biggs was ostensibly identifying situations where assessments address a low cognitive level). Given a lifetime of benchmarked assessment results, our LPC students crave recognition for the work in which they have invested, both for their own self esteem and so that they can display a finely calibrated qualification and, in this case, become solicitors

While educationalists at the Law Society may have initially tried to address these issues, the objective of deep learning appears to have been lost since the inception of the LPC in 1993, from which time, assuring the quality of course providers and students seems to have led to an overriding search for consistency and over-testing of students. In this way, even when assessments seem actually designed to promote deep learning (e.g. open book examinations in the main subjects), those who moderate the examinations tend to ensure pan-institution consistency by introducing endless assessment criteria. This has the effect of squeezing out marks for students who engage critically with material and rewarding students who have highly organised files. Brown *et al* (1997, Ch. 4) refer to just such a situation when they quote Slavin (1990) who suggests that detailed assessment criteria have been shown to yield low-level learning.

Similarly, some elements of assessment such as research and drafting were originally designed to be competency-based, qualitative assessments employing formative assessment with no indicative grades, simply lots of oral and written feedback for the students to reflect upon. Over time, the Law Society have, again in the name of consistency and quality assurance, ordered that this feedback take the form of 28 listed criteria with the examiner placing ticks in boxes marked 'competent' or 'not competent'. In this way it seems, judgement of competency (or not) can now be made 'quantitatively' simply by adding together the number of ticks in each column. Now, students do not have to, for example, reflect upon detailed feedback and amend performance in any holistic way as they can simply total their 'ticks' and offset one skill against another. This seems to be a prime example of that apocryphal, committee-designed horse that has become a camel.

There are other, fundamental problems with the current assessment regime, namely over-assessment and lack of alignment. As far as assessment is concerned, Bennett (2000) points to the fact that 25 years ago a law student in the polytechnic sector

would have had 13 assessments; now there are 36 assessments. With this regime comes less of the kind of formative assessment that would encourage Schon's reflection-in-action (1987) and deep learning. On the LPC, students now have 13 formal summative assessments in 9 months - with plans for an extra assessment from this year on. With this level of assessment, even if we create a climate that tends towards deep learning, we may be fostering what Bennett refers to as strategic learning and exam spotting, as opposed to the deep learning we want to encourage.

As for lack of alignment, Biggs (1996) advocates an approach based on a new master narrative, that of 'constructivism'. This narrative suggests that we must look to the learner's world and how learners construct their own knowledge. Constructivism therefore implies being student focussed as apposed to placing the emphasis on the teacher, curriculum or benchmarked assessment. Again within this narrative, assessment and teaching are not mutually exclusive events. According to Biggs's model of 'constructive alignment', we should design an integrated assessment regime; not one that reflects endless assessment criteria but one in which assessments reflect and are aligned with the learning outcomes. Here, Biggs quotes Cohen (1987) who reports that learning is maximised when curriculum and assessments are aligned.

The current learning outcomes were framed in the mid-nineties when the LPC was first conceived and generally, if indifferently, align with the curriculum. Each year we are presented with a document - the LPC Written Standards - which tells us what is to be taught. Using the area of Probate Law as an example, the Written Standards list the areas of Probate to be delivered as a lecture and separately provide a list of the related Probate interviewing skills which are to be assessed. This arrangement dates back to the late 1990's when the requirement for a formal assessment in Probate was dispensed with. Instead, students were required only to sit an Interviewing assessment in the area of Probate. This caused a great deal of confusion for students because they could not begin to construct a proper understanding of Probate Law required for practice.

To mitigate this situation and as part of the professional development programme to which I have referred earlier, I designed a 'new subject' – combining elements of both Probate Law and the associated interviewing skills. Using the assessment as a starting point and being aware of the 'backwash from testing' notion, I worked backwards, designing student-centred, small-group sessions. These sessions provided ample opportunity for students to practice interviewing and also to receive peer and tutor formative feedback – all based around the area of Probate. The small-group sessions built upon large-group sessions where Probate law was explored more generally. My hope was that the Law Society would have recognised this as a return to student-centred learning in an effort to encourage deep learning. However, assessors simply suggested that the students, who now have a demonstrably better

knowledge of Probate, should be 'rewarded' with a written examination to display their knowledge. There seemed to be a real lack of understanding that a written examination could encourage students to approach the area of Probate in a surface learning, memory-testing fashion and that the 'backwash' from written testing would destroy the progress we have made.

In the process of reflecting on approaches to assessment, my views on Law Society regulation have shifted. Initially I saw specified learning outcomes and uniform tutors' notes and assessments as a pedagogical straightjacket. Then I began to understand that such 'restriction' may be considered in a positive light, provided it is framed appropriately within 'constructive alignment', in which, Biggs (1996) posits, students become 'entrapped' within a web of consistency, engaging them with appropriate learning activities and objectives.

Having acknowledged potential benefits of the Law Society approach, my contention now is that while the fundamentals are sound, over-regulation by way of exponentially-increasing assessment regulation and overly-defined learning outcomes is destroying the ideal. Hussey and Smith (2003) caution against defining learning outcomes too narrowly. In urging teachers to make them both responsive and flexible, they highlight the notion, described by McAlpine *et al.* (1999), of a 'corridor of tolerance' where a tutor and, more importantly, students, are free to develop their learning within that 'corridor', provided aligned learning outcomes, curriculum and assessment methods are in place.

One of the reasons why the Law Society seem to compromise fundamentally sound approaches is that, in an effort to ensure that assessments will be reliable and fair, they end up constraining tutors who seek to facilitate 'deep learning'. As argued above, our hands are tied when faced with an endless list of prescribed assessment criteria (aligned or otherwise). As with learning outcomes, we must keep them flexible and not too detailed.

How do we therefore ensure sound assessment? Certain principles are identified by Brown *et al.* (1997: 239-224). Firstly, there is *intrinsic validity*, which essentially involves whether assessment criteria match the learning outcomes and curriculum. This is an area to which the LPC team could give attention. Since learning outcomes for the course were framed over ten years ago, we need to review them in terms of alignment with assessment and appropriate flexibility to permit a 'corridor of tolerance'. Secondly, the principle of *construct validity* concerns whether the assessment tasks measure the underlying learning which the assessment seeks to adjudge. As discussed above, I believe that when the Law Society initially moved towards specifying open-book assessments they wanted to encourage deep learning aimed at producing practitioners who could apply their knowledge and 'think on their feet'. In order to do this we need fewer assessments, more formative feedback, and a shift from quantitative to qualitative practices. This change could be

fostered by reducing the endless assessment criteria, and devolving some discretion to tutors. Finally, we have *criterion validity*, which entails whether assessment performance is comparable with results obtained on other assessments by similar groups of students. For the LPC we have a system of subject-specific external markers who comment on our examination papers, and 'third'-mark scripts in 'fail' and borderline categories. Some are more pro-active than others; some are more in tune with progressive educational practice than others. The question is how far we are all assessing work on the basis of similar notions of desired standards. All we can hope is that improved practice emerges from reflection upon this issue.

Conclusion

The dogged pursuit of consistency and quality by the Law Society has generated increasing regulation of assessment. The move to increasingly specified assessment criteria is driving students to a position where they detach from the learning outcomes and memorise knowledge in a surface approach to study. However, we should be designing assessment based upon progressive educational practice and be prepared to challenge regulatory bodies in defence of this. While we may be committed to the goal of promoting 'deep learning', Barron (2002) points out that we cannot force students, used to a lifetime of over-assessment, to embrace deep learning. We need to adopt a *psychotherapeutic* approach to teaching, employing openness, reflection and conscious awareness to enable students to find a suitable approach to learning in a professional context.

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