

whose judgments they have special reason to trust.

In practice, however, law faculties rely almost exclusively on the average numerical evaluation a teacher receives from all students who return a class evaluation — i.e. on the average evaluation of the direct consumers of the pedagogic service. To the author, this practice is indefensible. It manifests professors' doubts about their own pedagogic expertise and the value of what they have to teach.

In terms of legal scholarship, assessments are also increasingly market-based rather than personal assessment based. Faculty pay increasing attention to the status of the publication in which scholarship appears. In reality, however, the correlation between a law review's status and the quality of the articles it publishes is not high. Faculty assessments of legal scholarship also give substantial weight to data about the frequency with which the work has been cited in other academic publications. Since many frequently cited articles are cited because they contain succinct statements of boilerplate propositions of law or of a particular academic approach to some set of issues, or because they fall squarely within a particular academic paradigm whose proponents make a practice of citing each other, the frequency of the authors' citations has little to do with their influence, much less with the quality of their work. Law faculties also sometimes base their assessment of scholarship on whether the author is regarded as a 'player' by other 'leading figures' in the field. The correlation between being recognised as a leader and doing good scholarship is too low to justify this practice.

The current generation of law teachers is simply more interested in acceptance than substance. Perhaps, the author suggests, that is because they are relativists about legal and scientific truth as well as about moral truth. If there is no objective metric for scholarship quality, all that remains is acceptance.

Four explanations are offered for this trend to using market evaluations of academic performance. First, legal academics have become sceptical about the distinction between morally legitimate and morally illegitimate legal argument and, relatedly, the existence of internally right answers to legal rights questions. Secondly, the trend may also reflect the increased diversity of scholarly approaches. This heterogeneity of genre and approach may explain the attempt of law teachers to rank each other in ways that are numerical and apparently objective. Thirdly, although legal academics at high-status law schools have traditionally tried to separate themselves from members of the practising bar, it seems likely that they may be particularly prone to substitute market evaluations for personal objective judgments of quality, because they belong to a larger profession in which they are a minority. Most of the members are practising lawyers who are more interested in whether an argument will be persuasive to the decision-makers their clients want them to convince, than in whether the argument is objectively correct. Finally, the shift to market evaluations in the legal academy may be part of the general trend to believe in the desirability of market outcomes, which is likely to be particularly strong in the United States, where interpersonal relations and private choices seem to be particularly influenced by market indicators — i.e. by image considerations.

Several consequential considerations lead the author to conclude that the shift to market evaluations is undesirable. First, to the extent that the shift manifests and reinforces the belief that there are no internally right answers to moral rights and legal rights questions, it undermines society's moral identity. Secondly, the shift has caused some faculty to alter their teaching in pedagogically unjustified ways to secure better ratings. Thirdly, the shift is undesirable because it encourages legal academics to write articles that will be accepted by leading

journals and cited by their colleagues even when such writing involves the sacrifice of academic quality. More specifically, it leads academic lawyers to address fashionable topics, to eschew the kind of complicated doctrinal, methodological, empirical, and sophisticated interdisciplinary work that law review editors tend to reject, and to substitute facile, apparently easy-to-understand approaches and conclusions for the more difficult approaches and complicated conclusions that capture more of the 'truth'. Fourthly, the shift to market evaluation encourages legal academics to devote energy to social activities that have little academic product but increase the probability that they will be regarded as 'players' in their field. Fifthly, the shift discourages both social and academically substantive interaction within law faculties by reducing the extent to which institutional rewards depend upon one's colleagues' personal assessment of quality. Sixthly, faculties are encouraged to defer to student opinions even on matters where faculty clearly have the greater expertise and a less biased set of incentives. Seventhly, and most directly, the shift is undesirable because it means that faculty decisions about hiring, promotion, salary, and chairs are less positively correlated with the objective quality of the academic performance of the person being evaluated.

The trend to market evaluations of law teachers' academic performance is highly undesirable. Law faculties should make every effort to combat and reverse it.

TEACHING METHODS & MEDIA

Teach in context: responding to diverse student voices helps all students learn

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Because most law school pedagogy tends to teach to a generic student, it does not

adequately address ways in which learning is influenced by students' prior background and experience. Since law students do not understand the context and purpose of what is being taught, they often make errors, and the errors go undetected because there is little meaningful dialogue between student and teacher until the exam.

This disjunction between what teachers mean and how students interpret what is being taught explains why a significant number of law students are not learning or performing to the level of their capabilities. Although lack of context is a challenge for all students, it is often exacerbated for 'diverse' and non-traditional students — defined here to include students of diverse race, culture, socioeconomic status, gender, sexual orientation and disability. Alienation creates a significant barrier to learning because it undermines students' sense of their place in the world, their confidence and the validity of their values and goals.

Because they face greater dissonance between effort and performance in law school, these students' insights about the problems they experience as learners and their suggestions of ways to solve those problems, offer fertile ground from which to develop a pedagogy that would benefit *all* students. The author of this article asked diverse students from nine law schools to discuss what the barriers to their learning are and what helps them to learn.

Students described a myriad of factors that create barriers: the institutional environment; the competitiveness; the narrow view of success; the psychological stress; the outside pressures from family and financial problems and — most resoundingly — their feelings of alienation. In addition to reporting that they learned better whenever teachers used a variety of exercises and a variety of mediums, students explained that the most effective teaching techniques were those premised on contextualised learning.

Contextualised learning involves three basic concepts. First, when students interpret new information, they relate it to their own lives and their existing knowledge structure. Second, when students develop their ideas about the new concepts, express them and reflect upon them, they own the concepts. Third, when students can articulate the concepts in a conventional context, they translate them. In short, to understand and use new information, students must be able to relate it, own it and translate it.

Facilitating contextualised learning is relatively simple and can be broken down into three main goals of teaching: (1) start from the students' existing context; (2) give students the opportunity to explore and express their ideas and feelings about the material; and (3) explicitly develop the context in which the students will use what they are learning. Teachers can help students relate new material to their prior experiences by discovering what those experiences are and then explaining how the new information or concept is analogous, by putting new material into a relevant context and by having students create their own hypothetical problems, using situations and names that have meaning to them.

For students to 'own' what they are learning, they must first internalise it. Teachers need to encourage all students to speak and need to provide time and opportunities for them to process new concepts and explore different perspectives. Helping students 'own' the concepts is not only necessary as part of the cognitive process; it helps students resolve dissonances of culture and values and feel a sense of inclusion. Teachers need to help students develop the context for what they are learning and where it fits in the overall schema of the course.

In pursuing these three teaching goals, it is important to integrate a range of learning exercises which incorporate various learning styles and processes. Experiential learning exercises help students who learn more in practical situations than in the abstract. For these stu-

dents, exercises that involve role playing, oral arguments, clinics, internships and other types of real-life experiences are extremely effective.

Writing exercises provide students with feedback about what they are learning and how well they are learning it. In addition they provide students with valuable practice in writing which they need for exams. Writing exercises should take a variety of forms to encourage students to brainstorm, to discover what they already know, to summarise what they have just learned, to help them refine their analytical process and to encourage reflection.

Collaborative exercises have multiple benefits. They give students an opportunity to form social bonds that decrease their feelings of alienation, to explore in a small group what they understand and what they do not understand and to increase their participation, practise their verbal skills, and get feedback from the members of the group. Collaborative exercises are best for having students synthesise materials, analyse hypothetical problems and compare writing samples. They expose students to diverse perspectives and provide checks on student understanding through peer interaction.

To reduce alienation and enhance learning for all students, law schools must create a culture and climate in which diverse students can flourish. This means increasing the diversity of the students, staff, and faculty and modifying both curriculum and pedagogy to provide greater context. The law school experience should motivate, not alienate. One way to accomplish a better learning environment is for teachers to listen to students. The main idea is for teachers to begin teaching from the students' reference point and then gradually and explicitly help them make the transition to the legal reference point.