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Teaching Cycle Two: The Article

Assessment Strategies in Higher Education: Making it Fair!

Introduction

Assessment constitutes a central tenet of the western education system. Every educational institution, from the primary school to the university, routinely monitors and assesses the academic performance of its students: from a very early stage in their academic careers children learn to expect and accept periodical benchmarking of their progress against fixed criteria as a normal part of life. Assessment may not always be very popular with students but most would, no doubt, readily accept that course work and examinations in one form or another are a necessary evil. Any educational system that seeks to prepare young people for life in the adult world of work and responsibility must be able to provide both the student him/herself and potential employers with some (hopefully fairly reliable) indication of an individual's strengths and weaknesses.

This paper considers the question of effective and fair assessment in the specific context of undergraduate legal studies. In addition to providing some general discussion of the aims of assessment and the experiences of one examiner, the paper reviews the various methods of assessment utilised in one compulsory undergraduate module over a period of three years: Administrative Law. The aim here is to consider the various strategies employed by the course co-ordinator in an ongoing effort to promote greater fairness and reliability in higher education assessment. Thus the following discussion addresses three key assessment-related issues: the difficulties inherent in the process of assessment and the fallibility of the human examiner; the impact of heavy marking loads and increasing student numbers on the validity and reliability of student assessment; the ever present problems of bad and unfair practice and in particular the increasing incidence of plagiarism.¹

Administrative Law: Methods of Assessment, 2002 - 2005

Administrative Law is a ten credit compulsory module and is taken by undergraduate students during the second year of their degree studies. When the current co-ordinator assumed responsibility for this module three years ago, the method of assessment in place was a fairly typical coursework / examination combination, with a 2000 word assessed essay accounting for 50% of a student's marks and a 1½ hour unseen, closed book examination accounting for the other 50% of the overall grade.

This combined method of assessment remained in place until the 200-6 session when the coursework element was removed in an attempt to address increasing concerns about the rising incidence of bad and unfair practice amongst undergraduate students. Student performance is now assessed by means of a single two hour unseen, closed book examination accounting for the other 50% of the overall grade.

¹ Biggs states that ‘.. plagiarism rules are … learned – and can therefore be taught. A major responsibility of teachers is clearly to see that they are taught, whether students are international or local.’ I agree with his statement, but would add that one can not always teach commitment, diligence and honesty. As he notes at another point in the book, some students ‘simply do not see it as a moral issue or that it undermines assessment.’ Biggs (2003) Teaching for Quality Learning at University (Maidenhead: Open University Press), at pp. 129 & p.141.

² A straw poll conducted in a lecture mid-way through the semester indicated that around 50% of the students preferred a mixed assessment to the 100% examination option.
that this strategy provides a simple and effective solution to the growing problem of cheating it is extremely unlikely that the course work element will be reintroduced in the near future. The background to this development is discussed in some detail below.

The Fallibility of the Examination Process and Fair Assessment

The number students registered on the Administrative Law course in 2002 was in the region of 157. Thus, at that time, this course generated around 300 units of marking. By 2005 the student population had expanded dramatically and this year the number of students registered on this module has risen to 210, creating an over all marking load of over 400 units. The responsibility for marking student work generated on this course falls to the teaching team - i.e. one full time member of academic staff and one postgraduate tutor.

On a practical level it is inevitably the case that the marking of this quantity of student work presents certain challenges for the staff involved. When time limits apply and students are eagerly (and sometimes impatiently) awaiting feedback, maintaining consistent standards of objectivity and thoroughness in assessment becomes extremely difficult. Consistently fair marking is, at the best of times, 'difficult' to achieve. Generally, there [will be] broad agreement as to what constitutes quality [in terms of] what we should be looking for when we assess students in higher education [but] there are wide differences between teachers in their standards and judgements; often the difference between teachers' appraisal is greater than the difference between students' performance.3

In addition to this sort of 'base line' variability inherent in the marking process, any honest teacher would have to concede that work-load and time pressures also impact detrimentally on the consistency of assessment: a mediocre paper read at 11 am in the morning is likely to gain a better grade than an equivalent paper read at 11 pm in the evening! To a certain extent - or, in fact, to a rather uncertain extent - a degree of inconsistency and variability in marking is inevitable.4 Thus, the reality of student assessment must be recognised and accepted as a fact of life.

Of course, it is to be hoped that stringent moderation procedures will serve to identify any major discrepancies in grading that result from the unavoidable fallibilities of the marker. This is all very well – unless you happen to be a student who falls through the net: the student who finds that they have been awarded 48% for a piece of work that could, or indeed should have achieved a grade of 63%. Ultimately, it is probably reasonable to assume that over the course of a three or four year degree course - with its two dozen or more separate pieces of assessed coursework - the occasional unfortunate major error of judgement on the part of an examiner will be counterbalanced by a student's other grades and will not impact notably on their final degree classification.

Moreover, in the interests of maintaining a reasonable level of student confidence in 'the system', and also of course, the preservation of the general peace of mind of academic

4 As is regularly noted by commentators and those directly involved in the assessment process ‘assessment is by no means a precise science.’ This point has been noted by, amongst many others, Brown, Rust and Gibbs (1994) ibid, at p.7. The authors of this text have used two sample essays to illustrate the variability of marking. The results make very interesting reading. See above at pp.7-9.
staff, it is to be hoped that the large majority of students will remain blissfully unaware of the pitfalls inherent in the assessment process. After all, although formal challenges of assessment decisions are still relatively rare in the UK, the transformation from university to educational marketplace and from student to consumer is now well underway. As Fry et al commented in six year ago:

[T]here are signs that this may change. With payment of fees, students are increasingly starting to look like customers, and may well start to behave like them.\(^5\)

It certainly seems unlikely that this trend will have reversed itself during the intervening period between 1999 and 2005 - in fact, from the inside it certainly appears to be the case that some students have made the transition from student to consumer with surprising ease: the increased incidence of plagiarism (a matter to which we return later) may well be testament to such changes in student attitudes to purpose and value of higher education.

Assessment: What's it all about?

Law students are subjected to range of assessments over the course of their three years as an undergraduate student: non-assessed essays; assessed essays; examinations (open or closed book and seen or unseen). Most course co-ordinators aim to employ a combined assessment strategy, and commonly this will involve one piece of assessed coursework (worth between 30 and 50% of the over all marks) and an end of session examination. Both formative and summative assessment strategies are utilised in an attempt to promote a rounded academic development and a reasonably reliable picture of a student's ability, academic progress and ultimately their employability.\(^6\)

The imposition of assessment requirements is driven by the need to benchmark both student and teacher performance. In answer to the question 'what is the point of assessment?' one might respond by flagging a variety of purposes that may be served by an effective and reliable assessment process. From the student's perspective the grading of academic performance (pass, fail, good or bad) provides valuable feedback on academic progress and a guide to their strengths and weaknesses. For the bright and motivated student, the grading or ranking of their performance against that of their peers or against certain benchmarks also provides a well earned reward for and official recognition of, the effort they have put in to their studies. For the less able student, assessment can reveal areas of weakness that may then be effectively addressed. For less motivated or lazy student, it is to be hoped that the anticipation of a future assessment might drive him/her to the library when the virtue of learning for sake of broadening one's horizons fails to provide the necessary impetus.

From the perspective of the teacher and the wider world of academia and employment, reliable assessment strategies can serve to validate the teaching process or even the institution itself. It may provide a valuable indication of a student's suitability for further study - e.g. postgraduate study. The grading of student performance is also relied upon by prospective employers in order to predict an individual's aptitude for certain types of

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\(^6\) As Biggs explains, formative assessment explains, ‘the results... are used for feedback during learning. Students and teachers need to know how learning is proceeding. Feedback may operate both to improve the learning of individual students, and to improve teaching.’ In summative assessment - ‘the results... are used to grade students at the end of a unit, or to accredit at the end of a programme.’ See Biggs (2003) *Teaching for Quality Learning at University* (Maidenhead: Open University Press), at p.141.
employment. There are, of course, various other 'purposes' that could be listed here, but the above provide an adequate overview of the variable goals of assessment.

The Virtues of Mixed Assessment & the Realities of 21st Century Higher Education

A coursework element to assessment provides students with an opportunity to independently research a particular administrative law issue over a period of a month or so. This type of assignment encourages students to engage effectively with a question and (in the stronger students at least) encourages a 'deep approach' to learning. The hope is that this type of assignment will engender some level of enthusiasm in students for learning - 'a need to know' and that they will 'automatically try to focus on underlying meaning, on main ideas, themes and principles or successful applications' thus ultimately gaining a greater degree of benefit from their studies. As Biggs explains, this level of engagement with a question, 'requires a sound foundation of relevant prior knowledge, so students needing to know will naturally try to learn the details, as well as make sure that they understand the bigger picture. In fact, the big picture is not understandable without the details. When using the deep approach to handling a task, students have positive feelings: interest, a sense of importance, challenge, even of exhilaration. Learning is a pleasure...

An essay assignment focusing on one or two key areas cannot provide a reliable indication of a student's performance across the whole of the syllabus. Thus, it is commonly practice to adopt the combined approach relied upon in this course. The examination element of the assessment is enables the examiner to gauge student understanding of the full range of topics covered during this 12 week course.

This combined approach to assessment - when it works - provides a rounded picture of a student's aptitude, academic ability and progress. In an ideal environment, where all students are diligent and honest, and where examiners do not periodically find themselves swamped by an unmanageable marking load, this combined approach to assessment is, in this author's view, certainly the most satisfactory. However, in the real world of higher education teaching, rising student numbers, increasing work loads, the internet age and a burgeoning student textbook industry conspire to render fair and thorough assessment via coursework and examination extremely challenging. It is certainly possible to develop relatively 'cheat proof written assignments and to reduce the likelihood that strategic (and lazy) question spotting will payoff. However, maintaining standards and ensuring rigorous assessment can prove to be extremely difficult in practice!

Nowadays of course, all students are routinely provided with clear guidance on essay technique, academic referencing and the perils of plagiarism. Nonetheless, it remains the case that some students do still make genuine mistakes - some really do fail to grasp the basic principles of academic good practice. For these students, being hauled up in front of an unfair practice panel is not only extremely upsetting, it is also inappropriate to deal with these students in this way. At the other end of the spectrum, there are some students (hopefully as small minority) who, despite the fact that they know they being unfair both to themselves and to their peers, still engage in

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7 This list draws upon a list set out in Goodall & Elvidge (1999) Developing Post-Graduate Students Teaching Skills in the Sciences (Norwich: UEA), sections 8.6 & 8.7.
8 Biggs (2003), op cit note 1, at p.16. 
9 Biggs (2003) ibid, at p.16.
questionable practices. The strategies employed by these students range from sloppy paraphrasing and deliberately minimal referencing to copying and pasting whole articles from the internet or even buying a ready written paper via a website: those who can afford it will opt for the (hopefully) untraceable, tailor-written version. These students take a gamble - for some it pays off, for others, it does not.

Monitoring student performance and policing bad and unfair practice is, as any member of teaching staff will testify, extremely hard work and nowadays, more than ever before, a high level of diligence is necessary if the incidence of bad and unfair practice is to be kept to a minimum. For the examiner who, having read two pages of one sentence paragraphs peppered with grammatical errors and spelling mistakes, a page or so of perfectly constructed, coherent text, the process of investigation and evidence gathering, can prove to be both upsetting and arduous - especially when one bears in mind that for every case that is identified it will undoubtedly be the case that one (or perhaps more than one) case will go undetected. However diligent the examiner, it will inevitably the case that for some students the gamble pays off. They may be cheating themselves out of a valuable learning experience but ultimately, if they are approaching their degree studies with the mindset of a consumer, they really will not care that they are effectively devaluing the hard work and achievements of their fellows.

Administrative Law and the Shift from Mixed Assessment to 100% Examination

This final section provides an account the author’s experiences of teaching and assessment in the context of this particular module and explains the strategies employed in an attempt to improve the value of the assessment process in terms of its rigour and fairness as well as in terms of the broader educational value provided by this course.

As has been noted above, when the current co-ordinator assumed responsibility for the running of the Administrative Law module, students were assessed by means of a 2000 word assessed essay submitted in week 7 or 8 that accounted for 50% of the overall marks and a 1 ½ hour examination taken at the end of the course. The previous section of this paper considered the purposes and pitfalls of mixed assessment. This arrangement seemed, initially, to be fairly satisfactory. However, when the assignments were marked it very quickly became apparent that a significant minority of students failed to enter into the true spirit of the exercise. Some simply based their assignments on what could be gleaned from one or two basic texts, some failed to reference sources properly (or honestly) and inevitably, some (a small minority) engaged in blatant cheating.

When the time came to set the assignment the following year, care was taken to design a question that was not so amenable to a ‘short cut’ approach. The essay question required students to consider a current administrative law related issue - the regulation of the rail network and the demise of Railtrack. In order to produce a convincing piece of work students had to read beyond the basic textbooks, carry out some independent research and think laterally. At least, that was the theory.

Unfortunately, despite the best efforts of the author to devise a ‘cheat proof question, a number of students still failed to provide an adequately referenced piece of work. A minority attempted to dishonestly exploit internet sources by copying and pasting sections of current news articles and pieces from official websites into their essays and attempting to pass them off as their own work. In terms of the overall performance of the
class, although (as would generally be expected) some students performed extremely well, and others did not perform so well. The majority of students seemed to fall into the lower 2:2 and 3rd class range. Although many students attained grades within their normal range, some students earned uncharacteristically high grades whilst some received uncharacteristically low marks: a small (but notable) number of students who would routinely expect to obtain grades in the 2:1 band did rather badly, whilst some previously stolid lower 2:2 students, excelled themselves. It seemed to be the case that moving away from the traditional assignment format threw some students, but allowed others to demonstrate abilities that had been brought to the fore by previous textbook or case report based assignments.

The general impression after this second attempt at setting a coursework assignment was that a greater degree of fairness had been achieved, but that there remained plenty of scope for improvement - both in terms of adding educational value to the exercise by pushing students to engage more effectively with the learning process and in terms of enhancing the rigour of the assessment process. Thus, the assignment set for the third year required students to build their essay around a specific report published by the Parliamentary Ombudsman. Again, the choice of assignment was designed to demonstrate the topicality of administrative law, and to encourage a genuine interest in this field amongst the students registered on the course.

As had been the case the previous year, the general spread of grades brought no surprises: grades ranged from fail through to first class with a significant proportion landing somewhere in the lower 2:2 or upper 3rd class range. However, again there were some interesting results (and a few surprises) with some students responding very well to this slightly unusual assignment. Despite the fact that it was impossible (without some inventive cheating) to obtain a good 2:1 grade without adopting a critical and analytical approach to the task in hand, yet again some students failed to make any real effort to engage with the question. Disappointingly, despite my best efforts, poor referencing, inadequate research and over-reliance on internet sources were again something of a problem. This time though, I was fairly confident that any student who had succumbed to the temptation to take a gamble would have also suffered a disappointment!

Following this particular assignment - once the agony of waiting for provisional grades and feedback was over - I conducted a straw poll in class in order to gain some impression of student enthusiasm for this type of focused research exercise. It was clear that although some students had found the assignment interesting many were ambivalent. This was disappointing as I had hoped that this sort of 'law in action' approach to coursework would engender a greater degree of enthusiasm amongst the student body than the more traditional approach had done.

Aside from the difficulties inherent in designing assignments of this nature, as has been noted at an earlier point in this paper, creates difficulties for the staff involved. Student numbers are on the increase - consequently, so are marking loads. The expectation amongst law students is that they will be given provisional grades and feedback within three weeks of submission of coursework. When one is faced with over a hundred papers to mark three weeks can prove to be somewhat unrealistic target. The

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10 i.e. by encouraging students to consult a wider range of sources, develop a deeper knowledge base and synthesise the knowledge gained from their research more effectively. Biggs (2003), at p. 176.

11 In fact, by the fourth week students were becoming rather agitated about the tardiness of the markers. At times, I was sorely tempted to turn the office light off, lock the door and pretend to be out!
combination of heavy teaching loads, administrative duties, a family and a conscientious approach to marking - i.e. a firm belief that all essays must read thoroughly from beginning to end if they are to be fairly assessed - can leave a marker feeling exhausted and defeated.

This year an alternative assessment strategy has been adopted. In light of the persistent problem of bad and unfair practice, increasing student numbers and the virtual impossibility of reading ever increasing numbers of student essays thoroughly within a limited time-frame, the decision was taken this year to revert to assessment by examination only. Although the news that the coursework element had now been dropped received a rather mixed reception from students, most seem to have accepted the change. Personal experience as a student and a lecturer has left this particular teacher in no doubt whatsoever that for every student who finds themselves hauled before an unfair practice panel, there will be at least another one (or probably another two or three) who slip through the net. This state of affairs is grossly unfair on the majority of students who continue to resist the drive towards consumerism in education and who earn their degrees through their own hard work. Moreover, informal discussions with students on the topic of assessment and student practice have reassured this co-ordinator that examination-only assessment on balance offers the fairer. It will be interesting to see how the overall spread of marks this year compares to the spread of marks in previous years.

As student numbers continue to rise and staff work loads continue to increase, identifying the gamblers will inevitably become more difficult: thorough marking of coursework takes a significant amount of time and effort. This being the case, it is surely only a matter of time before the realities of effective teaching and learning in higher education dictate a return to traditional examinations as the mainstay of the assessment process. Such a shift may be subject to criticism on the grounds that examination only assessment simply encourages a surface approach to learning, thus weakening the overall value of a university education. This criticism can be countered. Mid-course self assessed quizzes conducted during lectures, creative seminar questions and carefully structured examination papers can ensure that students are encouraged to adopt a deep approach to their learning and that formative assessment remains a central element of a rounded educational experience. Bearing in mind the ongoing shift in student culture and the gradual transformation of the university environment, it may be argued that rather leading to a further weakening the higher education system, a wholesale shift to an examination may prove to be the only realistic way forward.

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12 Around 70-80% of my annual teaching load fell into the same semester as the coursework that year!
13 As Biggs comments, examinations encourage coverage in learning but do not promote a deep approach to learning. However, he does note the various advantages of examinations and timed essay examinations. See Biggs (2003), op cit, note 1, at pp. 173-176.
14 Seminars can be a useful way of providing students with both an incentive to work and an opportunity to demonstrate their knowledge. The focus may be on declarative or functioning knowledge depending upon the tasks set. As Biggs notes, ‘if used carefully [a seminar] offers good opportunities for both formative and summative assessment.’ Biggs (2003), op cit, note 1, at p. 185.
The Teaching Cycles

Section 4.2

Cycle Two

The Article: *Supporting Evidence*

With reference to the following cases concerning alleged breaches of the Code of Practice on Access to Government Information explain and evaluate the role and effectiveness of the Parliamentary Ombudsman.

Case No. A 14/03. Department of Health: Refusal to provide information about the awarding of a contract to supply a stock of smallpox vaccine.

Case No. A21/03 Cabinet Office: Refusal to provide information about the contact that had been made between Ministers and representatives of a trade association.

Case No. A1/04. The Commission for Racial Equality. Refusal to provide a copy of an investigation report

Case A35/04. Cabinet Office. Refusal to release the Attorney General's advice on the legality of military intervention in Iraq.

A starting point for your research.


You can access the relevant sections of the Report via the links provided at http://www.ombudsman.org.uk/pca/document/aoi0304/performance.htm

A pdf version can be found at http://www.ombudsman.org.uk/pca/document/aoi0304/aoiju03jun04.pdf

You may also wish to refer directly to the following documents:

The Code of Practice on Access to Government Information - accessible via the Department of Constitutional Affairs webpages at http://www.dca.gov.uk/foi/ogcode981.htm

1. What is the State? Write down a brief definition.
2. What is 'the law'? Write down a brief definition.
3. What is meant by the term the 'rule of law'? Write down a brief definition.
4. Briefly explain the concept of Parliamentary Sovereignty.
5. What does the term 'the separation of powers' mean?
6. Describe the main purposes and functions of administrative law in one or two sentences.
7. What is the key restriction on the law-making powers of the Welsh Assembly Government?
8. What does 'QUANGO' short for?
9. What does the acronym PFI stand for and what is PFI?
10. What are the '3Es'?
11. Where does local government get its powers from?
12. How many 'unitary authorities' are there in Wales?
13. What is judicial review and what purpose does it serve?
14. What is Wednesbury unreasonableness?
15. If a health authority makes a decision not to fund surgery for varicose veins due to the fact that it considers such treatment to be a very low priority - is this an administrative law issue or not?
16. Is a university disciplinary body a 'judicial' body or not?
17. Identify three key public sector ombudsmen
18. Who abolished the Greater London Council?
19. Who is the Mayor of London?
20. Which Government was responsible for introducing the 'Poll Tax' and what was this tax?