CHAPTER 5

Using legal policy and law reform as assessment

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Introduction

This chapter discusses an innovative way of assessing students in a Civil Liberties module. Richard Glancey has used his experience of coordinating various student policy projects and the Student Law Think Tank, a policy clinic at Northumbria University, to develop his assessment methods.

Policy projects are a great way to get students more actively involved in the law and to equip them with a wide range of skills, explored in this chapter. Richard has taken this clinical approach and developed it into a successful group assessment on his module. We begin by discussing the Student Law Think Tank at Northumbria University and how it operates. We outline the benefits of policy clinics and how they can advance the learning of students, and then look at the civil liberties module at Northumbria University and how it has been developed, highlighting that this can be replicated on any law module in any jurisdiction, dependent upon their law reform processes. Students participate in an understated form of assessment, researching and recommending areas of law for reform, which is then sent to the relevant regulating or governing body. It allows them to explore a new kind of writing and assessment responsibility. Following this, we explore group and problem-based learning in pedagogy, discussing the advantages and disadvantages of this kind of learning and assessment. We then go on to analyse how the use of policy and law reform in teaching creates better learning from a pedagogical position. We highlight the challenges of this approach of

learning and assessment, and conclude by looking at how other disciplines use policy in their teaching, further embedding this design of learning and assessment, while emphasising the lack of publications relating to it.

Throughout this chapter, we argue that policy projects and recommending law reform is a valid and valuable method to teach and assess students. The benefits of such a model are discussed, while also appreciating the difficulties and how Richard has addressed them on the Civil Liberties Module.

The Student Law Think Tank

Policy clinics are by no means a new concept within clinical legal education.[1] They can either be a freestanding student society or integrated as part of an already established clinic or module.[2] At Northumbria, after a few years of experience with policy clinics, we now have both models operating. There are universities around the world now incorporating law reform and policy into their learning in some capacity. For example, at The Australian National University (ANU) they have an elective devoted to law reform and policy. Furthermore, they have now incorporated it into their clinics and created internships whereby students work with members of staff on their law reform research projects.[3] These projects do not have to be full responses to consultation papers. At Whittier Law School, the use of a policy clinic varies from writing letters to editors of newspapers on legal matters to community projects.[4] Using policy as a form of legal education, whatever the model, is expanding throughout law schools as we are appreciating the educational value they can provide.

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1   For example, see SH Leleiko, 'Clinical Education, Empirical Study, and Legal Scholarship' (1979–80) 30 Journal of Legal Education 149. This article gives examples of how policy projects were integrated into a live client clinic. Also, RH Graveson, 'Legal Education' (1943) 25 Journal of Comparative Legislation and International Law, pts 3 and 4 at 55 states, 'The social and often legislative duties of a practising lawyer call for an ability to fix and follow a policy based on non-legal as well as legal considerations. Ability to do this demands a wider background than mere legal training can provide'. Thus, we can see evidence that there was a call for this kind of training in 1943.
2   J Carolin, 'When Law Reform Is Not Enough: A Case Study on Social Change and the Role that Lawyers and Legal Clinics Ought to Play' (2014) 23 Journal of Law and Social Policy 107 provides us with a student perspective of participating in a policy project during their live client clinic experience.
3   M Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2007–08) 39 University of Toledo Law Review 244.
4   WW Patton, 'Getting Back to the Sandbox: Designing a Legal Policy Clinic' (2011) 16 International Journal of Clinical Legal Education 116.

The Student Law Think Tank is a policy clinic run by students at Northumbria University. It was born from policy projects Richard had organised previously with students, responding to consultation papers set by various government bodies. The first project he embarked on was a response to the Draft Cabinet Manual in 2010, which involved over 50 students working on the response. It was followed by a response to the Bill of Rights Consultation Paper, set by the Law Commission, the year after. After the success of these two projects, the Student Law Think Tank was created.

The responses to consultation papers, before and after the Think Tank started, have the same process:

1. A consultation paper is selected, based on complexity, staff available to provide guidance and enough time to respond to the paper to a high standard.

2. There is an initial meeting with all the students involved. They will have had an opportunity to read the paper prior to the meeting. There is a big group discussion about the paper, initial thoughts and debate over the legal issues. After this meeting, smaller groups are selected to research a part of the consultation for the next meeting.

3. By the second meeting students are expected to have met in their smaller groups, researched the issue they are given from the consultation and started to form ideas for the response. This is presented back to the larger group whereby a discussion will resolve any issues. Targets are set for the next meeting and students are expected to start writing a response to their specific section.

4. There is a final meeting. The document is put together and any final issues are discussed. General editors will be chosen to produce the final document ready to be sent to the governing body of the consultation paper.

5. General editors will finalise the document. This will be emailed to all students involved in the project for any final comments.

6. A copy is delivered to the governing body. The general editors and students who dedicated the most time and effort to the project are usually then selected for a trip to meet the governing body to deliver the response in person.

The trip to meet the governing body is an amazing opportunity for students. The governing body will meet with relevant members, for example MPs, and discuss their response, really engaging with the students. In the past, students have also gone on tours of parliament, sitting in on parliamentary debates, watching evidence being taken by Select Committees, and met with the local MPs for afternoon tea. It is a great way to end some very rich and rewarding projects, and the students enjoy it thoroughly. It is a way to show the students that their responses are valued and not just filed out of sight after all their hard work.

Academic staff also get involved with the student projects. Those with expertise in the area being consulted upon attend meetings to give guidance on legal issues and procedures to ensure that students understand the law and issues correctly. Students can sometimes get distracted with other matters, thinking certain points important, and lose sight of what the actual consultation is asking. Having academic staff involved can help projects stay focused and on topic. It also creates opportunities for staff and students to work together on a piece of work, which does not happen often in universities.[5]

The benefits of policy clinics

There are many benefits of policy clinics, both for students and for the university. Not only do they provide an opportunity for students to develop certain skills, they can raise the profile of an institution with various governing and regulatory bodies. In this section, we wish to place a greater focus on the benefits for the students, as they are at the heart of these projects. This is by no means a new kind of clinic; policy clinics have been running in America since at least the 1980s.[6] There is not, however, a great deal of literature on this area and how it can be used as a successful assessment method, particularly in the UK. We would like to establish how this assessment method, or indeed policy projects for

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5   The Student Law Think Tank was one of four highly commended for the HEA Student and Staff Partnership awards 2013. For more information, see <www.heacademy.ac.uk/student-and-staff-partnership-awards>.
6   For example, see L McCrimmon and E Santow, 'Justice Education, Law Reform and the Clinical Method: Educating Lawyers for Social Justice' in FS Bloch (ed), *The Global Clinical Movement* (OUP 2011).

voluntary clinics, can be beneficial to students. While this chapter is based on our observations of the students during the projects, we are working to provide data to support our claims, to be published in the future.

Skills – this kind of work allows students to develop skills that they may not have the opportunity to in other areas of the curriculum.[7] Students are encouraged to think of the law in a different, but still practical, sense: how is law made and what can we do to help shape the future of a specific legal area? Normally during legal education students are taught what the law is currently and how to use it in practice. McCrimmon and Santow express, after reflection on the Carnegie Report,[8] that 'While it is crucial for law students to learn how to identify and apply legal rules, this should not be the sum total of their skills set'.[9] There is scope to discuss the issues with the law and what can be done to reform it. That said, this is not done in great depth, nor are students encouraged to actively do something about it.[10] Thinking of law reform is a very important skill for our future lawyers to gain during law school.[11] McCrimmon and Santow emphasise that 'A good lawyer will not only notice when the law produces an injustice, but will also do something about it'.[12] As lawyers we must fight for change as well as for our clients, which students may find a difficult concept to grasp during legal education. It has been noted that 'If asked, students would probably agree that law is constantly changing, but current teaching (and examination) methods may discourage students from thinking deeply and critically about the evolving nature of law'.[13] Thus, incorporating law reform and policy into teaching and assessments can help students to think more deeply about the law and how they can shape its evolution.

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7   RH Graveson, 'Legal Education' (1943) 25 Journal of Comparative Legislation and International Law, pts 3 and 4 at 54–59.
8   For more information on the Carnegie Report, see WM Sullivan and others, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007).
9   For example, see McCrimmon and Santow (n 6) 212.
10   This is also highlighted by Maxwell, as a way to encourage students to think more critically and to express their opinions on the legal system: LL Maxwell, 'How to Develop Law Students' Critical Awareness – Change the Language of Legal Education' (2012) 22(1) Legal Education Review 99, 117–120.
11   L Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' (2004) 7(2) Flinders Journal of Law Reform 287, 294.
12   For example, see McCrimmon and Santow (n 6) 211.
13   ME O'Connell and JH DiFonzo, 'The Family Law Education Reform Project Final Report' (2006) 44 Family Court Review 538.

The skills developed in responding to consultation papers or suggesting law reform range greatly. First, students advance their research skills. They look to how the law is now, discover what the issues are and alternative ways of reforming it. It gives them the opportunity to look to other jurisdictions and how they have developed a certain legal position and whether it is better or worse. It is fairly easy for students to look up what the law is currently, but harder for them to gather research on what needs changing to make it better. It is a different kind of legal research that students may benefit from.

Students are given the opportunity to develop their legal writing, perhaps in a different style to which they are familiar with. Usually during clinical education students are developing client-based legal writing skills, such as client care letters, advice letters or a practical legal research report. It is appreciated that these are valuable skills for students to learn, but responding to consultation papers requires students to write for a different and more technical audience. When responding to consultation papers or suggesting law reform students can discuss the law in a more sophisticated manner, including cases and complex legal issues in their responses. This creates a valuable opportunity for a potential assessment as an alternative to traditional coursework.

It also enables students to produce work they are proud of. Curran, from her experience in Australia, states that 'Students become more interested in their student projects not just because they are assessable but because they can see that their work may have a positive impact in generating change'.[14] Students perform better when they are interested and personally care about the work that they are doing, and we should give them credit for that. As the responses are sent to the governing or regulating body it concerns, we find that the work the students produce is of a higher quality than traditional coursework. Other institutions besides Northumbria have noted that students work harder on their law reform projects than they would normally on a piece of assessed work. For example, Curran observed, 'Realising that they may have the ability to inform or change the laws and policy means the students work to a much higher standard than that which would normally be the case'.[15]

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14   L Curran, 'University Law Clinics and Their Value in Undertaking Client-Centred Law Reform to Provide a Voice for Clients' Experiences' (2007) 12 International Journal of Clinical Legal Education 107–108.
15   ibid 116.

These are all skills that help in the professional and academic development of students. For some students, it complements the law they are working with in other modules on the curriculum, helping them understand their learning in more depth. They are transferable to other elements of their legal education and later in their careers. However, this kind of learning should be consistent across all law schools. Redding argues that in the USA 'lower ranked schools' focus on teaching practical skills, in order to make their students 'practice ready', risking their students' future ability to critically address the law and policy.[16] Thus, we can argue that, for our students to become holistically skilled lawyers, law reform should be taught and not left to the 'elite' members of society.

Confidence – we have seen a boost in confidence with the students we work with through our observations. We have students from a variety of courses participating in the Student Law Think Tank, from different stages of their studies. There are often first-year MLaw students working with postgraduate students enrolled on the Legal Practice Course or the General Degree in Law.[17] This variety of students allows learning from peers and communication with those who they would not normally work with. Students start to share their opinions and ideas and any nervousness eventually disappears. Students may express themselves in a safe environment, able to make mistakes and learn from peers. Boud et al. have promoted the use of peer learning in higher education, stating the skills and outcomes of peer learning are not always pursued by other learning methods. They provide four main skills that are associated with peer learning:

1. the development of learning outcomes related to collaboration, teamwork, and becoming a member of a learning community;

2. critical enquiry and reflection;

3. communication skills; and

4. learning to learn.[18]

16 RE Redding, 'The Counterintuitive Costs and Benefits of Clinical Legal Education' (2016) 67 Wisconsin Law Review 55, 65–66.
17 The MLaw Degree is a four-year course, integrating a Masters and either the LPC or the BPTC.
18 D Boud, R Cohen and J Sampson, 'Peer Learning and Assessment' (2006) 24 Assessment & Evaluation in Higher Education 415.

They advance this argument, stating that communication skills are strengthened by students not working as closely with tutors, but relying on working with each other to articulate their understanding of a particular area. They become more open to critique by their peers, learning how to work more collaboratively with other students. All students become responsible for their learning and learning outcomes, providing them with the skills of teamwork and facilitating their own learning, vital to their employability.[19] Providing students with the opportunities to work in this way helps to improve their confidence and ability to work with those they may not originally feel comfortable with.

Realisation of other legal careers – one of the results of the policy projects, which we were not expecting initially, is that students appreciate that there are other career paths available other than legal practice. Not all law students want a career as a practising lawyer. Students may choose law as they are interested in the subject in a more academic sense or because they realise the potential value of a law degree and the transferrable skills. Working in a policy clinic shows students that there are other ways they can use their law degrees after graduating, such as working for the Law Commission as a researcher.[20] Policy clinics can inform students of how these consultations can help persuade the government of their different options, showing them different legal and social issues to consider within the legal system.[21] As we are in an era where employability and skills for our graduates are becoming increasingly more important within universities, it is essential that we provide them with the skills for a variety of careers. Curran identified that 'A side effect of this extension of the clinical work beyond only client work is that students become motivated and are more employable … with skills in policy development and submission writing'.[22] Our students are potentially leaving university with more skills in law reform and advanced research.

Partnership between students and staff – this is also an opportunity for staff and students to work together. While our responses are student led, having staff check and approve them means that the students are working in closer contact with academics. They are continuously learning from the staff and developing their interpersonal skills. Allin highlights

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19   ibid 415–416.
20   Curran (n 11).
21   ibid 293–294. Curran here highlights that her students have connected with the law reform process and develop their own links within the government.
22   Curran (n 14) 105.

that this collaboration is 'vital, because it has the potential to transform teaching and learning in higher education'.[23] She continues with how this collaboration can be difficult in higher education 'due to the power relations that exist between lecturers and students'.[24] However, the work done in the Student Law Think Tank is predominantly by the students, with the staff facilitating and overseeing. There is a great balance in this collaboration and it has transformed how the students and staff work together.

Creating a law reform ethos – engaging students with law reform from an early stage of their legal education also has the potential of producing lawyers with a greater social justice ethos. As stated above, students are not often encouraged to think about law reform and the role that they can play in it. Allowing students to think about how the law *should* be and how *they* can shape it is something they may carry throughout their careers.[25] Coper highlights this benefit when discussing his law reform work he conducts with students at ANU. He states:

> Legal education with an ethos of law reform and social justice would give a more altruistic focus to the pursuit of law as a career, and inspire more graduates to use their knowledge and skills to give something back to the society they serve, the society that gave them their privileged position.[26]

Thus, giving students the knowledge and skills needed to engage with policy and law reform may create lawyers who continue to help their community and continue to fight for social justice, not only wish to better their own careers.

There has been some research conducted in this area in the USA, exploring the link between clinical courses and lawyers continuing pro bono work after graduating from law school. Sandefur and Selbin analysed data gathered from *After the J.D.: First Results of a National Survey of Legal Careers*,[27] which looked at 5,000 attorneys during the 10 years after they have left law school. This national survey collected a wide range of data,

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23   L Allin, 'Collaboration between Staff and Students in the Scholarship of Teaching and Learning: The Potential and the Problems' (2014) 2 Teaching and Learning Inquiry: The ISSOTL Journal 95, 96.
24   ibid.
25   Carolin (n 2) 107. Carolin argues his belief 'that legal clinics and lawyers do have a role to play in movements for social change, and, perhaps, even an obligation to play such a role' at 109.
26   Coper (n 3) 247.
27   For more information, see <www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>.

including where the graduates were now working, practice setting and whether they have continued with pro bono work. Sandefur and Selbin concluded from the report that there was no link between clinics and those lawyers working in the private sector. They highlighted that 'clinical experiences are significantly associated with public service employment only for new lawyers who expressed civic motivations'.[28] They also found that 'on average, there was little relationship between clinical training experiences and lawyers' rates of participation in the community, charitable, political advocacy and bar-related organizations'.[29] Even though this study has produced some very interesting results, there is still a need for more information and data to be collected. As Patton states:

> Although clinical professors may hope that students' reflections upon meaningful lawyering events may be transformative in relation to those students' notions of social justice, we simply do not have sufficient evidence to determine the frequency of such change.[30]

While studies have shown that, at the moment, there is no direct link between clinical work and pro bono work after graduation, clinical work can teach students that legal practice does not just have to be a career but can also be a responsibility to society to make change if they wish it to be. It is important, however, not to force our own values on our students. We think this kind of project works best if students are allowed to choose their own area of reform, enabling them to make a difference in an area of the law that they feel passionate about, encouraging their own autonomy in their learning. Patton notes that a 'professor's social justice selection can conflict with the interest of self-directed learning'.[31] If we were to force our own values on them it would ruin the kind of learning we wish for them to engage with and affect the kind of law reform they would like to influence themselves.

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28   R Sandefur and J Selbin, 'The Clinic Effect' (2009) 16 Clinical Law Review 57, 99.
29   ibid 82.
30   Patton (n 4) 112.
31   ibid 111.

The evolution of the Civil Liberties module

Richard saw value in trying to embed these benefits into the curriculum to give students credit for such work that would be getting exceptionally high marks if it was an assessment. Richard is Module Tutor for the Civil Liberties optional module so he considered how he could adapt the model of the Think Tank into the assessment of this module to try and replicate its advantages. The module builds on knowledge gained in public law and is intended to develop legal and general intellectual skills, discuss some legal theory, develop knowledge of human rights issues and promote European legal awareness. The module also aims to significantly develop students' abilities to work in groups and produce assessed material within them.

The Civil Liberties module had historically been assessed in the traditional law school method of unsupervised coursework halfway through the module and an unseen examination at the end. Richard changed this in 2012 by replacing the examination with a group-based task akin to the written submissions produced by the Think Tank. He asked students to choose for themselves what topic, from a list of topics covered in the module, they wanted to do their assessment on. Students were then allocated into small groups of whom wanted to do the same topic area, with approximately four to a group. Students were given autonomy over the content of the assessment. Each group would then choose what specific legal issue within that topic they wanted to focus on. The instructions were that each group had to produce one written submission of 3,500 words in which they had to identify an area of law they thought needed reform, set out and analyse that area, and then suggest proposals for reform. The students had to write their submissions to an identified audience, a regulatory or policy role of the area of law concerned; that is, a government minister, the Law Commission, or a Parliamentary Select Committee. The students were told that if their response was of a sufficiently high standard, then it would be sent off to the intended recipient, as with the Think Tank responses. Each group submission was given a single mark, so all students in the group received the same mark.

The students' results in the first year of this new assessment were disappointing. While no one failed, nobody produced a written response that was of a high enough standard to send to a relevant body. After looking at the work of the students it was apparent they struggled significantly in working together in a small group to produce a single coherent piece

of writing. The students did not have the requisite teamworking and collaborating skills to achieve a high-quality piece of work. This was not the students' fault – it was Richard's and the law school's for not training and equipping the students with these skills over the course of the program.

Group work and problem-based learning

Given the potential benefits, Richard wanted to persist with the alternative assessment, so he realised that something else would have to change, and the problem lay in the method of delivery of the module; he needed to improve the students' group-working skills. He was using the traditional lecture and seminar, which has been used for the traditional assessment, and then putting students into groups at the very end of the module and asking them to produce a collective piece of work – this was too much to ask and to expect. Thus, he looked at alternative ways in which the module could be delivered to facilitate the development of collaborative-working skills in order to allow the students to succeed with the group task.

When researching group-working, one method particularly stood out as being suited to Richard's needs: problem-based learning (PBL).[32] Richard had some experience of PBL from previous teaching, but not to a great extent. Through a colleague, Richard was introduced to some tutors at York Law School who taught their entire LLB degree using PBL, and he visited them to observe and find out more about the method.

The advantage of using PBL as a method of delivery was that students could be asked to work in groups from the beginning of the year all the way through to the end. This would allow them to practice over the course of an entire year and gain the necessary collaborative-working skills that were previously missing.

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32   Problem-based learning has been defined as 'Problem based courses start with problems rather than the exposition of disciplinary knowledge. They move students towards the acquisition of knowledge and skills through a staged sequence of problems presented in context, together with associated learning materials and support from teachers': D Boud and GE Feletti, *The Challenge of Problem-Based Learning* (2nd edn, Kogan Page 1997) 2.

For the academic year 2013–14, Richard made some changes to the module. He changed the delivery method to PBL and, to allow students some individual input over the final module mark, he introduced an individual oral assessment halfway through the module weighted at 30 per cent of the overall module mark, and he increased the word limit for the group task to 5,000 words to allow a more meaningful piece to be achieved.

The new delivery entailed giving the students only one introductory lecture at the very beginning of the year, explaining what PBL is so students understand the method of learning they are using. They had some practical training workshops: one on group-working and the skills required and one doing a simulation of a PBL scenario. There are six PBL tasks over the course of the year and each scenario lasts for three weeks. Students are put into different groups of three or four for each scenario, so they get to work with different students each time, thereby learning to work with different people. They have a workshop every week where they follow a clear structure working through the problem facilitated by academic staff and there are no lectures. At the end of each scenario they participate in a group presentation and produce a piece of group written work and a reflective exercise. These serve as formative tasks for their summative assessments, using feedback to feed-forward and help them maximise their performance in the summative tasks.

The group assessment remained the same as the previous year, the only difference was the delivery method, and the results were astounding. The majority of groups (five out of seven) had their submissions sent off to the intended recipient, a stark contrast to the previous year, where there were none. The change in delivery method was evaluated as the main factor in this. Students now had the requisite skills to produce a collective written task and they thoroughly enjoyed doing so. The feedback from the students via their anonymous module questionnaires was overwhelmingly positive, from students saying it is the best module they have ever studied to students saying they used to 'hate' group work to now actually enjoying it. This structure has remained in place ever since and the results have been similar each year, with the majority of groups having their submissions sent to the relevant body.

Arguments against group grades

There are challenges to this type of assessment with the main assessment being a group task that is given a single mark and all students on the group receive that mark – a group grade. Spencer Kagan has said 'Every time I see group grades I am appalled. They are, in my view, never justified. Ever'.[33] This is a very strong condemnation of giving a group grade and he is not alone. Some of our own colleagues share similar sentiments to those of Kagan when they learn about the Civil Liberties assessment. Brown and McIlroy explored group working in healthcare students' education.[34] They found that what they termed group learning activities (GLAs) can have a negative impact on the students' learning experience, due to factors such as 'free-riding' (less hard-working students benefitting from peers who work harder than them), lack of personal control over the grade, the stress of trying to make sure the group is harmonious and avoiding conflicts, and feelings of being alone and isolated. They quote George Bernard Shaw's famous words that 'Hell is paved with good intentions, not with bad ones. All men mean well'.[35] For them, group work in healthcare had become almost the norm, and, while it was well-intentioned, perhaps the benefits were being taken for granted and were actually producing negative experiences for students. More mindful and managed use of GLAs was needed in order to try and prevent such negative experiences.

Kagan's reasons for such a vehement dislike of group grades include that they are unfair, as they are not a true reflection of an *individual's* academic ability, which is precisely what a grade should be. Good students can be adversely affected by a poor one and poor students could receive inflated marks compared to their actual academic ability – this is unfair. This leads to *motivation* being undermined, as 'slackers' are rewarded and they have no incentive to work harder, they will get a result without having to put effort in. Also, this demotivates high achievers as why should they do all the work for someone else to get rewarded for their efforts? Further, this conveys the wrong message about education itself. The message should be that in education the harder you work, the more you will learn, and the

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33   S Kagen, 'Group Grades Miss the Mark' (May 1995) Educational Leadership 52, 68–71.
34   CA Brown and K McIlroy, 'Group Work in Healthcare Students' Education: What Do We Think We Are Doing?' (2011) 36(6) Assessment and Evaluation in Higher Education 687–699.
35   George Bernard Shaw, *Man and Superman: A Comedy and a Philosophy* (Archibald Constable & Co. Ltd 1903) 239.

higher your grades will be. Group grades mean the grades students get are partially outside their control. This weakens the relationship between efforts and rewards, alienating students from the education process.[36]

Kagan quotes Slavin's work about cooperative learning, stating when students are individually accountable for their own learning and performance, they are more likely to achieve higher grades.[37] For Kagan, group grades go against this, thereby conflicting with educational theory. Ultimately, he believes group grades confuse what grading is about. It is to evaluate a student's competence in a given subject, and group grades do not do this. Rather, group grades are used for alternative reasons, such as to lighten heavy workloads, motivate students or to socialise students, and this is an abuse of process for him.

These are some of the more plausible arguments of Kagan's aimed at group grades, and which likely accord with the views of many traditional academics. However, we do not accept they are fatal to the use of group grades in assessments. The criticisms are too generic to be applicable to specific instances of group assessments and contain erroneous beliefs. We will set out counterarguments to the kinds of views discussed above and show that, if done mindfully and in the right setting and conditions, group grades are not just feasible and viable, but have many beneficial qualities.

Arguments for group grades

One of the Programme Learning Outcomes for the undergraduate law degree at Northumbria University is for a student to be able to demonstrate that they can work effectively as part of a group, and most institutions will likely have something similar. Boud et al. refer to the growing tendency for HE institutions to want to provide skills to students that increase employability by being transferrable across a range of careers.[38] To prove they have satisfied this by merely asserting that students work together in seminar discussions is insufficient. To comply with Outcomes-Based Learning and Teaching (OBLT), the learning and teaching strategy and

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36   Kagen (n 33) 69–71.
37   ibid 70. Also see R Slavin, 'When Does Cooperative Learning Increase Student Achievement?' (1983) 94 Psychological Bulletin 429–445.
38   Boud, Cohen and Sampson (n 18) 415.

assessment need to align with the intended learning outcomes – so-called constructive alignment is required.[39] More work therefore needs to be done from a strategic perspective to satisfy this learning outcome about group work. One of the aims of the group assessment is to be able to map this learning outcome, and the aim of the group grade is to evaluate the students' ability to work effectively as a member of a group, and not just their academic ability in the subject matter. This addresses the criticism highlighted above by Kagan, that a grade is about an individual's competence in a subject. The grade in the Civil Liberties assessment includes evaluating *their competence at working as a group*, so a group grade is viewed as justifiable and valid.

To try and prevent the assessment being unfair by 'free-riding', a professional work ethic is instilled in the Civil Liberties students, so they feel responsible for their own and others' learning, taking the task seriously. This strategy targets the cause or root of the problem itself, rather than focusing on treating the symptoms. It is done by the structure of the module being built upon six tasks over the course of the year. The first five are formative exercises for the summative assessment that takes place in the sixth task. These tasks build upon and equip the students with the skills they need to succeed in a group assessment, and they not only learn how to do it, but why it is important and how to achieve their goals collectively. Further, in the sixth task which forms the assessment, the students decide for themselves what they want to do the assessment on. This autonomy instills great ownership of, and responsibility towards, the task, as they have all invested and contributed thought and effort and this ownership instils the professional work ethic to contribute equally to the task. The students are all *individually and collectively* responsible for the final written piece and grade they get, so rather than this conflicting with the cooperative learning theory as suggested by Kagan above, it adds an additional layer of responsibility, enhancing and strengthening accountability – students are more accountable, not less.

The aims of HE include promoting personal and professional development of students, and this assessment attempts to make huge strides in these areas. It provides a vehicle for students to learn in great depth about

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39   See the Dearing Report for the background for a move towards focusing on learning outcomes in higher education: R Dearing, *Higher Education in the Learning Society. Report of the National Committee of Inquiry into Higher Education* (HMSO 1997). For an explanation of OBLT, see J Biggs and C Tang, *Teaching for Quality Learning at University* (4th edn, McGraw Hill 2011) chs 1 and 6 for a discussion of Constructive Alignment.

an area of law in context – how it functions in practice, its role and place in society, how it can be improved, and what role *they* can play in helping to achieve such ends. This is possible due to the students writing their submission to a specific person or body who has an oversight or responsibility for the area of law chosen, and the submission not only sets the law out and critically analyses it, but it engages with the *reform* of law, and how and why it should be reformed. If the submission is sent off to the intended recipient, the students sometimes get responses back. Students have received responses from the Home Office and the Law Commission, for example, and this gives them great satisfaction to know that their work has been looked at by policy makers or those who can influence law reform. If students understand what they are doing and why they are doing it, they invest into it and produce work of a good standard with very high marks.[40]

Having three or four students work on one piece of work allows much greater strength, depth and quality to be achieved than a single student could typically produce individually. This power of the group dynamic helps them produce high-quality work. Students learn that effective communication lies at the heart of conflict resolution and the importance of listening to understand what the problem is.[41] It is more than likely, if not a certainty, that students will find themselves at odds with a colleague during their professional career, and learning how to cope and deal with such conflicts provides valuable experience. Students are required to sign a group declaration when the assessment is handed in, stating that they agree or disagree that all group members have contributed equally to the task. This makes students tackle the matter expressly and if a student complains after their grades are given out that they were not happy with the contributions of certain group members, they would be reminded they have already had a formal opportunity (in addition to informal opportunities to approach staff) to raise such concerns. These mechanisms

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40 The highest group mark in the 2014–15 academic year was 85 per cent and 100 per cent of MLAW students achieved a grade of 60 per cent or above.

41 To illustrate the power and benefits of group work, the students are put into new groups of three or four and given 20 minutes to prepare a five-minute 'performance', which they must give to the other groups, the only compulsory criteria being there must be a Civil Liberties theme. We have had poetry performances, short stories, linguistic performances and illustrated performances to name but a few. Law students are typically not used to being creative academically. Finding out the different skills and ideas their group members have and utilising them illustrates a valuable lesson in group work and they find comfort and safety in numbers rather than having to do this individually.

treat the symptoms rather than the cause, and are needed so all eventualities are able to be dealt with and so the concerns as identified above by Kagan about the potential unfairness of group grades can be addressed.

Another strategic tool that is employed is the use of a contract in the form of a group agreement. These management strategies are discussed by Ford and Morice in their analysis of the fairness of group assessments.[42] They highlight the importance of good management of groups with clear and agreed methods to allow groups to function effectively. Civil Liberties students alternate the roles of manager, secretary and group member on a weekly basis. This has the advantage of providing a management structure to each group so it knows how to function and who is doing what. Managers organise and chair meetings, secretaries record minutes of meetings and are the conduit of communications with the group, and group members contribute to meetings and the general running of the group. The roles alternate weekly so that one student doesn't end up doing too much work in one task, and over the course of the year all students will have experience of performing each role several times, enhancing the different skills that each role demands, furthering their personal and professional development.

At the end of each task students are required to complete a reflection journal, requiring them to consider both their *individual* performance and effort and the *group* performance. This reflection allows insights to be identified and worked on in the next task – again aiding personal and professional development.[43]

Pedagogical credentials of using policy projects as assessment

Engaging students with law reform in the way this assessment does allows great depth of learning to be achieved.[44] The benefits have been discussed and now we move on to look at this from a pedagogical perspective.

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42   M Ford and J Morice, 'How Fair Are Group Assignments? A Survey of Students and Faculty and a Modest Proposal' (2003) 2 Journal of Information Technology Education 367–378.
43   C James states that 'Reflection leads to self awareness which is fundamental in all models of emotional intelligence': 'Seeing Things As We Are: Emotional Intelligence and Clinical Legal Education' (2005) 8 International Journal of Clinical Legal Education 123, 138.
44   Curran (n 11).

Biggs famously identified three different learning and teaching strategies, or what he referred to as 'levels' of thinking about what teaching is.[45] Briefly:

- Level one thinkers focus on what the student is. Teachers desire to know their subjects well and deliver their material clearly. It is then the responsibility of the student to learn the material that has been given to them.

- Level two focuses on what the teacher does. Teachers at this level focus on 'getting it across' to the students. There has been a shift in responsibility to the teacher from level one, where the student is seemingly responsible for their failure. This, says Biggs, while being better than level one, is still a blame-focused model.

- Level three then, for Biggs, is what effective teaching really is. This level focuses on what students *do*. Students are at the centre of this level and the purpose of teaching is to support student learning and focus on what the students are actually learning. Biggs suggests three issues are addressed at this level that are not covered in the first two:

  1. 'What is it students are to learn and what are the intended or desirable outcomes of their learning;
  2. What it means for students to "understand" content in the way that it is stipulated in the intended learning outcomes;
  3. What kind of teaching/learning activities are required to achieve those stipulated levels of understanding.' [46]

This is a much more complex and holistic way of learning and teaching. We believe this chapter can demonstrate that this assessment complies with Biggs's theory. Clear goals have been designed, including academic content about Civil Liberties, law reform and group working skills. Instructions are given to students about these, students are then trained in the techniques they will be using so they understand what they are doing and why they are doing it. The PBL approach then facilitates their learning and the assessment and criteria clearly maps and aligns with the learning outcomes. As a result, the deep learning that Biggs and others, such as Macduff, discuss is taking place, and the students' results and feedback on module questionnaires evidences this.[47]

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45 Biggs and Tang (n 39) ch 2, 17–20.
46 NS Cole, 'Conceptions of Educational Achievement' (1990) 19(3) Educational Researcher 2–7.
47 A Macduff, 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2005) 15 Legal Education Review 125.

There are challenges with this mode of assessment and learning and teaching method, and some of these have been highlighted above. Further to these, facilitating and managing the module can be time consuming and emotionally demanding if problems do arise. Sensitivity and effective communication skills are needed by staff engaging with such activities and training and exposure to the demands of the tasks is required. Not all members of staff accept the validity of the assessment that brings internal challenges from a staffing perspective. It is also important to remember that the experience outlined in this chapter is from an optional module for final-year undergraduate students. Attempting something similar with a compulsory module in the first year for example, which while in theory would work, would highlight and exacerbate the potential challenges mentioned above due to the increase in numbers and would therefore require more resources from a staffing and student management perspective. But, just as with any method, there are always pros and cons, and the traditional method of delivery and traditional coursework and examinations have a great many pitfalls of their own, which need not be discussed here.[48]

Comparisons to other disciplines

Law is not the only discipline that uses law reform or policy debate in their education. Medicine and healthcare, for example, are increasingly introducing their students to law reform and the part they can play in shaping the future of their profession. It may not necessarily be assessed, but there is evidence of it being used. While they may not get their students to actively respond to consultations, it is becoming more common to get them engaged with policy matters. Nguyen and Hirsch highlight how using policy debates in their classroom has been beneficial to their students. They state that 'The policy debate format allowed each resident to study a specific area in depth and then share that understanding with the group'.[49] This is a very similar outcome to what we have found with using policy in teaching and assessment. Not only does it give

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48   See Biggs and Tang (n 39) ch 2. See also S Hatzipanagos and R Rochon (eds), 'Approaches to Assessment that Enhance Learning in Higher Education' (Routledge 2012); R Muldoon, 'Is it Time to Ditch the Traditional University Exam?' (2012) 31(2) Higher Education Research & Development 263–265.
49   VQC Nguyen and MA Hirsch, 'Use of a Policy Debate to Teach Residents About Health Care' (2011) Journal of Graduate Medical Education 376–378 <www.ncbi.nlm.nih.gov/pmc/articles/PMC 3179223/> accessed 14 August 2015.

students the ability to understand an area in-depth, but they are then able to intelligibly argue their opinion based on that study and use it to form debates. This work discusses how using this form of pedagogy has prompted students to *'critically evaluate the larger health care system'*.[50] This is the same in legal education. We are trying to teach our students not just what the law is, but how *they themselves* can fit into the bigger picture. While Nguyen and Hirsch admit that the purpose of this debate wasn't to change their students' opinions of healthcare reform, but merely to use a different teaching method, there has obviously been a positive impact.

There is even now health policy teaching within the healthcare curriculum, with some arguing for even more implementation. Patel et al. have argued that medical and healthcare education should be adopting a policy curriculum, for healthcare reform to 'achieve its greatest possible impact'.[51] They express a concern that if their students are not effectively trained in health policy matters it could have negative consequences in the profession. Furthermore, we can see Student Think Tanks emerging in other disciplines such as geography. Here, they are being used to encourage students to research, analyse and synthesise secondary data, to help predict future trends in the profession. There are examples of this being assessed through a debate on 'the important issues',[52] displaying the various methods of assessment that can be used in policy-based learning.

Conclusion

The Student Law Think Tank at Northumbria University has provided a great opportunity to incorporate policy projects and law reform into the curriculum. The experience gained from the various student-led projects has allowed Richard to develop an interesting assessment, giving students a wide range of skills. These skills are applicable whether they wish to continue their career in law or if they decide to follow another path, pushing students to consider their social justice ethos and how they can influence the future of their legal system.

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50   ibid.
51   MS Patel, MS Davis and ML Lypson, 'Advancing Medical Education by Teaching Health Policy' (2001) 364(8) The New England Journal of Medicine 695, 695–697.
52   J Buswell, 'Student Think Tanks: Predicting and Debating the Future' in M Healey and J Roberts, *Engaging Students in Active Learning: Case Studies in Geography, Environment and Related Disciplines* (Geography Discipline Network 2004) 62–65. <http://gdn.glos.ac.uk/active/engagingstudents.pdf> accessed 23 January 2017.

There are valid concerns about using group grades. All of the above mechanisms and strategies are aimed at making the group assessment feasible, viable and, above all, extremely beneficial for the students involved. They address the concerns that most critics of group assessments have and we believe a successful model has been achieved.

Also, there is an important staff perspective here that could be overlooked. Working with the students in this module is some of the most rewarding and enjoyable teaching we have done to date: seeing the students progress from being almost complete novices at group work and apprehensive about it, to becoming extremely effective at it, enjoying it, learning and becoming passionate about human rights and how they work (or not, as the case may be) in real life and our society in particular. The final outcome is a high-quality piece of work that can be submitted to governmental, parliamentary and other such bodies, which brings a great deal of joy and satisfaction to both staff and students, which may be hard to recreate under the traditional lecture and closed-book examination method. The design of this assessment allows students to explore what they are interested in, develop their teamworking and research skills, while also instilling a responsibility for their work being received by those who could take it further in the reform and policy process.

Using law reform and legal policy as a vehicle for assessment also has its own benefits, and when conjoined with enhancing students' group working skills, a powerful learning and teaching method is employed that benefits staff, students, the university and society. This project at Northumbria University is still in its infancy so generalisations need to be used with caution. However, the benefits have been so great that we would strongly endorse more work and research to be undertaken in these areas.[53] This method is replicable to other jurisdictions, encouraging students to evaluate current legislation and how it may better work for members of society while also developing necessary skills they will require later in their career.

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53   Richard himself is currently undertaking a Doctorate in Education analysing the benefits of students getting involved with the work of the Think Tank and results will be published in due course.

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