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Article:

Title

Not a Moot Point! Mooting as an Authentic Assessment Practice in Law?

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Abstract

Authentic assessment, understood as a form of assessment in which students demonstrate the applicability of the skills and concepts they have learned in a real-world context, is increasingly prized in an instrumentalist higher education environment that views university as a training ground for the workplace (Armitage et al., 2016). While traditional assessment practice in law typically involves an applied aspect, it would be judged as lying at the lower end of the 'continuum of authenticity' (Mueller, 2006). In this highlight, I therefore propose the adoption of mooting not only as a more authentic, but also effective and efficient assessment practice. I consider how far mooting fulfils the essential characteristics of an authentic assessment (Ashford-Rowe, Herrington and Brown, 2014) and stands to offer a more inclusive

and engaging learning experience for students. This approach to assessment could be adapted to suit various law modules both within and beyond Keele.

Keywords

Authentic Assessment; Curriculum Design; Law; Mooting

Authentic assessment, understood as a form of assessment in which students demonstrate the applicability of the skills and concepts they have learned in a real-world context, is increasingly prized in an instrumentalist higher education environment. This is an environment that views the university first and foremost as a training ground for the workplace rather than in more ideal terms as somewhere simply to extend students' powers and possibilities as human beings (Armitage et al., 2016). Authentic assessment tasks are also prized by students. In a study completed by Riva et al. (2020) on student wellbeing in the university teaching and learning environment, it was found that a student-focused assessment strategy where students perceive that their future aspirations are taken into account in the assessments' design has a positive effect on their wellbeing. While traditional assessment practice in law does typically involve an applied aspect, requiring students to apply the legal principles and rules they have learned to a fictitious scenario generated by the teacher, this would be judged as lying at the lower end of the 'continuum of authenticity' (Mueller, 2006). In this highlight, I therefore propose the adoption of mooting not only as a more authentic, but also effective and efficient assessment practice by which I mean that it is not, in its most basic form, any more intensive in terms of resources and staff/student time than other forms of assessment (Gillespie, 2009). While discussed in more detail below, in essence, the process of mooting involves students taking part in simulated court proceedings – drafting briefs or memorials and then participating in oral pleadings.

The seeds for this idea were planted as part of my studies on the Masters in Higher Education Practice here at Keele. The design and development component required that I select and critically evaluate a module, including its assessment. I chose a second-year undergraduate module, Introduction to Public International Law, of which I am a core member of the teaching team. This is an elective for students at Keele, but compulsory for students from the Beijing Foreign Studies University (BFSU) with whom Keele has signed a partnership to deliver a joint undergraduate degree. As stands, the assessment is 100% examination (24-hour online open book), comprising two equally weighted parts – in the first part, students are asked to write a legal memo on the international law issues raised in a fictitious scenario and, in the second part, they are asked to answer several short knowledge-based questions on various aspects of international law. While not inauthentic, particularly the legal memo, I submit that mooting would be a more authentic and as such preferential assessment practice. This finds support in the literature. Wild and Berger (2015) have reported a direct and positive correlation between exposure to authentic assessment techniques, including mooting, and improved law degree academic performance. It is therefore worth trialling in future academic years. To briefly outline my suggestion for the amended assessment, this is as follows:

1. Two memorials researched and prepared as a team, arguing both sides of a fictitious international law dispute (55% of total mark);
2. Individual performance in a moot (10% of total mark); and

3. An individual reflective portfolio, comprising two parts – the first part will detail the process of research and preparation of the memorials and the second part will reflect upon the nature of the moot itself, involving self-appraisal of the student's performance (35% of total mark).

In determining the 'authenticity rating' of this assessment, Ashford-Rowe, Herrington and Brown (2014) have identified eight essential characteristics or critical elements – the more of which are fulfilled, the more authentic an assessment may be regarded to be. These characteristics, formulated here as questions, are as follows:

1. Does the assessment activity challenge the student?
2. Is a performance or product required as a final assessment outcome?
3. Does the assessment activity require the transfer of learning has occurred by means of demonstration of skill?
4. Does the assessment activity require that metacognition is demonstrated by means of critical reflection, self-assessment or evaluation?
5. Does the assessment require a product or performance that could be recognised as accurate by a client or stakeholder?
6. Is fidelity required in the assessment environment and the assessment tools?
7. Does the assessment activity require discussion and feedback?
8. Does the assessment activity require that students collaborate?

Hopefully, it is possible to see how many of these characteristics are fulfilled by my suggested assessment. There is a clear element of challenge and a crafted outcome is produced in the form of the two memorials and moot. The skills in research, communication, critical thinking and teamwork that are demonstrated can be applied by the students in other areas, thus evidencing the transfer of learning, and metacognition is demonstrated by the reflective portfolio, comprising the two distinct parts. Since many universities profess that mooting is a vital part of every law student's education because it gives a taste of 'real life' as a lawyer, the assessment is likely to be recognised as accurate by a legal professional and, rather than taking place in a featureless classroom, inauthentic to the settings encountered in practice, Keele Law School benefits from a bespoke moot court. This means that it should also be possible to ensure a high level of fidelity in the environment within which the assessment occurs. Students will complete work towards the assessment over the course of the module meaning formative feedback can be provided along the way to shape their development and collaboration has been incorporated in recognition of the fact that getting students to investigate in groups as well as individually, and then to present their findings, can be very beneficial to them. As much as this assessment method seems to tick quite a few boxes on paper, however, I do have a few concerns.

The group work element – while a key aspect of mooting that gives students an opportunity to engage (Biggs and Tang, 2011) – holds a number of potential challenges. A particular challenge is ensuring that all students contribute rather than the more active members of each group doing all of the work. One way to try and overcome this is to take the opportunity at the start of the module, together with the students, to discuss the standards of behaviour that are expected to ensure a respectful and collaborative environment (Advance HE, 2013a). Just because expectations are developed and agreed, however, does not mean that they will be

heeded. Gordon (2010) suggests that students should be required to apply them through self and peer assessment. A tool which provides a way to automate this process is WebPA (2008). This provides an interface for students to anonymously mark themselves and their peers within their group against defined criteria. These marks provide a weighting that is used to attribute to each individual student an adjusted version of the overall group mark.

Another concern with group work, looking at things specifically from an inclusivity perspective, is that students may be inclined to work with others from a similar background rather than people who are different from themselves (Advance HE, 2013a; Advance HE, 2013b). This is a particular worry with the Introduction to Public International Law module. I sense that BFSU students will choose to work with other BFSU students and Keele students will choose to work with others from Keele. To try and remedy this, I will consider allocating teams for group work rather than allowing self-selection (Advance HE, 2013a; Advance HE, 2013b). This could actually be a way that I can add further to the authenticity of the environment by mimicking the diversity and lack of choice that students are likely to encounter in the workplace and I will share this with them. I will also consider asking them to reflect on how they have worked with difference in their portfolios, encouraging them to think about the impact diversity has had on what they have produced (Advance HE, 2013a; Advance HE, 2013b).

A final, more general concern is that, while many students see mooting as 'fun', it can also be extremely daunting and some may be afraid of the public speaking element, especially as it carries here the additional burdens of having to advocate, remember the etiquette and respond to direct questioning which are not found in many other forms of student presentation (Gillespie, 2009). This makes me wonder whether, or at least how, the moot itself should be assessed, specifically whether this element should feed into formative rather than summative assessment. The reason I am disinclined to take this approach to things is that students best enhance their communication skills by expressing their learning in different forms to different audiences and, if they do not receive formal marks for their moot performance, they may be less motivated to properly throw themselves into this assessment task (Fung, 2017). Moreover, particularly for those students seeking to become barristers, verbal communication is perhaps the most vital element of the job.

In terms of evaluating the proposed change once implemented, I will collate student responses to questionnaires completed upon conclusion of the module and also student performance data which I will compare with previous years. My findings will hopefully be similar to those of Wild and Berger (2015) who, as already noted, reported a direct and positive correlation between exposure to authentic assessment techniques, including mooting, and improved law degree academic performance. The main difference between the two studies is that they focused on the use of mooting in extra and co-curricular activities while I am looking at using mooting within the curriculum as a learning and assessment tool. It has been noted by Gillespie (2009) that the potential of mooting as a learning and assessment tool is often not fully appreciated and I think this is a real shame. Mooting clearly helps students to develop important skills, but it is also a useful way of encouraging them to think about and apply the law. With this in mind, and by way of conclusion, I hope that I have provided here inspiration as to how mooting can be used as a method of

assessment which could be adapted to suit a variety of law modules both within and beyond Keele.

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