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A REPLY TO PROFESSOR JACOBS: RIGHT ANSWER, WRONG QUESTION

Norman Redlich* and Steve Friedland**

[M]ost thinking, scientific or philosophical, proceeds on assumptions and presuppositions . . . of which it is often unaware, and which it is, in its own discourse, incapable of explicating or grounding.¹

INTRODUCTION

In *Law School Examinations and Churchillian Democracy: A Reply to Professors Redlich and Friedland*,² Professor Michael S. Jacobs³ offers a spirited argument on behalf of the traditional law school essay examination. He essentially contends that essay exams should not be “scuttled”⁴ in favor of alternative testing forms, namely objective questions.⁵

Unfortunately, that issue was not the one we raised.⁶ Our Essay does not in any way suggest that the essay test form should be eliminated from the law school examination process. In fact, we do not even argue that the essay form should be retired as the centerpiece of that process. Instead, we simply propose that the law school examination process would be better served if objective test questions, particularly “multiple-choice,”⁷ were added as a supplement to the

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1. J.N. Mohanty, *Understanding Husserl's Transcendental Phenomenology*, in 2 A PRIORI AND WORLD 1,3 (William McKenna et al. eds., 1981).

2. Michael S. Jacobs, *Law School Examinations and Churchillian Democracy: A Reply to Professors Redlich and Friedland*, 41 DEPAUL L. REV. 159 (1991).

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4. Jacobs, *supra* note 2, at 172 (“[E]ach of [the procedural criticisms against the essay form] can be remedied without scuttling the essay exam.”).

5. *Id.* at 173-74.

6. We essentially suggest that the aging essay examination, while still viable and worthy of most-favored-test-form status, would benefit from the addition of an alternative test form. See Norman Redlich & Steve Friedland, *Challenging Tradition: Using Objective Questions in Law School Examinations*, 41 DEPAUL L. REV. 143, 144 (1991); see also *infra* text accompanying notes 64-65 (concluding that objective questions should supplement traditional essay format).

7. See Redlich & Friedland, *supra* note 6, at 157-58. Other forms of objective questions, particularly “true-false,” are more susceptible to guessing and would be less reliable indicators of any

traditional pure essay final examination.⁸

Thus, since we agree with Professor Jacobs that the essay exam should not be "scutt[ed]"⁹ in favor of a completely objective test, it is tempting to end this reply forthwith. Further response, however, is warranted for several reasons. Additional rejoinder permits further illumination of why the essay examination has held such an exalted position in legal education to date and why the pure essay form should not continue to be viewed with such reverence. We will address some of the points Professor Jacobs emphasizes in his Essay in greater detail below.

I. DESPITE PROFESSOR JACOBS' STRONG DEFENSE, THE ESSAY IS A FLAWED TESTING TOOL

The traditional essay test form may rightfully continue to serve as the focal point of law school examinations. Yet, like many other pillars of early twentieth-century education, its value must be reappraised in light of the aging process. Clinical education, feminist issues, and critical legal thought are revamping the landscape of legal education. Should the dominant essay examination process be changing as well? We think so. The unbending "essay or nothing" approach, perpetuated by teachers who benefitted from and excelled in such a process, does not satisfy the increasing diversity of goals and methods used in legal education today. Like a house that needs a new roof, the essay examination suffers from significant defects.¹⁰ These defects are wide-ranging and include: arbitrariness in the grading process; uncertain and variable examination objectives; distortions in accurate measurements resulting from time pressure; a lack of immediate—or even temporally close—feedback to students; and an excessive amount of time consumed in the grading of exams.

These problems with the essay form will not simply go away. Instead, the problems raise serious doubts about the essay as a reliable—and valid—testing tool.¹¹ The reliability and validity of the test instrument is extremely important to the legitimacy of the examination process.¹² Without reliability, the use of examinations by students, faculty, and employers to determine class rank, admission to law review and graduate law programs, and access to employment opportunities, among other things, would be unfounded.

of the skills tested. *Id.* at 153.

8. While complete replacement may be a viable option, it is not the one we prefer. Instead, because of the deficiencies of essay examinations and the attributes of objective test questions, our Essay suggests that the examination process would be enhanced through the use of objective multiple-choice questions as a supplement to the time honored essay exam.

9. See *supra* note 4 and accompanying text.

10. Such defects were discussed in our initial article. See Redlich & Friedland, *supra* note 6, at 5-12 for an elaboration of these defects.

11. See Redlich & Friedland, *supra* note 6, at 145-49.

12. See 1 MICHAEL JOSEPHSON, *LEARNING AND EVALUATION IN LAW SCHOOL* 6, (submitted to the Association of American Law Schools Annual Meeting, Jan. 1984) (positing that the three major prerequisites to a "good" law exam are validity, reliability, and fairness).

To be reliable, a test must yield consistent results.¹³ Professor Jacobs concedes that essay exams "frequently seem arbitrary in application."¹⁴ No explanation is offered, however, as to how essays provide the necessary consistency to make such tests reliable. Such an explanation, if offered, must contend with malleable point totals, the allocation of various weights to different components of the exam, and the awarding of discretionary "quality" points for style and presentation, all of which contribute to the arbitrariness of the essay examination.¹⁵

We recognize that when test-takers have the opportunity to explain their conclusions, students' writing abilities, thought processes, and organizational skills can be revealed. A byproduct of test-taker explication, however, is the correlative creation of "administrability" problems in the examination's evaluation. One must assume that professors can wade through variables such as handwriting style, presentation quirks,¹⁶ and time pressure¹⁷ to discern which test-takers truly understand the concepts, which have memorized the material, and which are just guessing. Yet this assumption has no support. Instead, the current system must rely on the beneficent grader, who "knows it when she sees it."¹⁸

The validity of the pure essay examination, an important aspect of any test, is also questionable. To be valid, a test must evaluate and measure relevant skills.¹⁹ Thus, validity is a relative proposition, dependent on the objectives of the particular examination. The important question to ask, therefore, is what are the objectives of the examination.²⁰ This question presents a foundational problem for legal education, since the pedagogical goals of the law school examination process have not been clearly articulated.²¹

13. 2 *id.*

14. Jacobs, *supra* note 2, at 159.

15. The result is a lack of assurance that the essay examination was fairly constructed. Such arbitrariness is generally ignored.

16. Such quirks may include writing with all capital letters, failing to use paragraphs, and using poor grammar. None of these quirks reflects a student's knowledge of the subject matter.

17. The success of a student's performance, and the degree to which exam results are reliable, are often greatly affected by time pressure. Professor Jacobs recognizes that time pressure creates an "artificially heightened sense of urgency." See Jacobs, *supra* note 2, at 159. This artificial flavoring obviously distorts the skills being measured—whatever they may be—unless it is believed that the three- to four-hour "ready, set, go" examination is an accurate reflection of real world law practice. Since Professor Jacobs does not make that argument, it is unclear how such "artificial" constraints further the goals of the examination process.

18. This paraphrases a famous quote from *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (stating that, although obscenity is difficult to define, "I know it when I see it").

19. See generally Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433 (1989) (offering a critical analysis of the traditional "blue book" exam).

20. Professor Jacobs never specifically makes clear what the goals of the educational process are.

21. See generally Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990) (distinguishing between the intended and effective message transmitted by the

If the goals of the testing process are diverse, as we would suggest,²² and, perhaps more importantly, are disputed, then the validity of one particular test form over another becomes less apparent. If it is conceded, as we think it must be in the 1990s, that the essay form does not "do it all"—that is, the essay does not test all of the skills or material desired—then the validity of the essay test form decreases.

Professor Jacobs implies that recognizable criteria exist for performing successfully on a final essay examination.²³ Yet it is not apparent what those criteria might be. Essay exams are often reputed to measure the ability of test-takers to "think like a lawyer" or to engage in "effective legal analysis." These exceedingly vague and ambiguous concepts, however, are multi-faceted and perhaps even so diffuse as to be indeterminate.²⁴

One seemingly uncontroversial objective of the examination process is to provide students with feedback about their performance.²⁵ It is generally accepted that timely feedback is preferable to untimely feedback.²⁶ Professor Jacobs suggests that faculty members who grade essay examinations are not "prevented" from offering timely feedback to students.²⁷ We agree. Yet, we would point out that the essay examination process as currently conceived does not appear to *promote* any feedback, let alone timely feedback. Even at Professor Jacob's own school, a "traditional" institution, where it can be assumed that the essay test is the test form of choice, grades are commonly given to students approximately six weeks after the administration of examinations.²⁸ Such a time delay, likely occurring after a new semester has commenced, di-

law school curriculum).

22. The myriad goals of a law school examination may include coverage of the major substantive areas in the course, and an evaluation of students' understanding of the rules, writing ability, issue spotting, and legal analysis. See Redlich & Friedland, *supra* note 6, at 146-47.

23. See Jacobs, *supra* note 2, at 172.

24. For an interesting discussion of indeterminateness, see generally Joseph W. Singer, *The Player and The Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1 (1984). Professor Jacobs supports the vague goals of the essay, however, by suggesting that "[i]n professional life, the problems of one's client do not rise in the form of true-false or multiple-choice questions." Jacobs, *supra* note 2, at 170. He is correct. But neither do legal problems come packaged in three-hour, time pressured issue spotters involving one particular subject area at a time, like torts.

25. See generally Steve H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411, 426-38 (1977) (suggesting that law school examinations should be re-evaluated in light of educational and psychological findings and innovations in the evaluation of law students).

26. *Id.* at 480. Professor Jacobs contends that the problem regarding lack of feedback is not attributable to the essay format but rather results from a lack of communication between faculty and students as to what constitutes applicable evaluation criteria. See Jacobs, *supra* note 2, at 172.

27. See Jacobs, *supra* note 2, at 172.

28. Professors at DePaul are given four to five weeks after the administration of examinations in which to turn in their grades. After Student Affairs receives all final grades, they are sent to the registrar's office, which disseminates grades after two weeks. Telephone Interview with Diana C. Olson, Dean of Students, DePaul University College of Law (Sept. 23, 1991).

minishes the effectiveness of the feedback. While essay examinations could be graded on an expedited basis, this simply does not occur as a matter of practice.

In essence, the defects in the traditional essay examination process have not been resolved in all of the years that pure essay examinations have remained the methodology of choice. The argument that the essay examination "nevertheless remains, like the Churchillian view of democracy, preferable to its next best alternative,"²⁹ simply does not respond to these problems and does not make them any less troublesome.³⁰

If the goals of law school examinations are several and include covering material and evaluating students' understanding of legal rules and principles, issue spotting, problem solving, clarity of articulation, and more, then an examination with a variety of question types is needed to address the different pedagogical goals.³¹ One of the many alternative testing forms is multiple-choice questions.

II. OBJECTIVE MULTIPLE-CHOICE QUESTIONS ARE A USEFUL SUPPLEMENT TO THE LAW SCHOOL EXAMINATION PROCESS

Why use objective multiple-choice questions as a supplement to the essay? Objective test questions can add both breadth and depth to the current essay examination process. Unlike the essay form, objective questions can be easily tested for reliability, or consistency, using statistical analysis.³² Specifically, it is easy to determine if a question is unfair by discerning whether the otherwise better test-takers answered the question correctly.³³ If the majority of students

29. The complete quote is as follows:

Many forms of government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time

Speech by Winston Churchill, Parliament Bill, Speech Before the House of Commons (Nov. 11, 1947), in 7 WINSTON S. CHURCHILL: HIS COMPLETE SPEECHES 1897-1963, at 7463, 7566 (Robert R. James ed., 1974); see Jacobs, *supra* note 2, at 159.

It is worth pausing to discuss the significance of the quote by Churchill used to open Professor Jacobs' piece. The ideological vision held by Professor Jacobs about the role of law school exams may explain why he chose Churchill's oft-used quote to cast the major thesis of his argument. The allegory is most illuminating. The history of law school and law school examinations is anything but democratic. The pure essay exam was conceived and refined during the hey-day of the Langelian "law is science" approach to legal education. But legal education has changed since then and continues to change drastically in the 1990s.

30. See Jacobs, *supra* note 2, at 161.

31. Consequently, alternative testing forms, at least to supplement essay examinations, are appropriate.

32. Lawrence W. Ross, Jr., Comment, *The Construction and Selection of Objective Business Law Examination Questions*, 17 AM. BUS. L.J. 547, 559-60 (1980) (describing several techniques that may be utilized to increase examination reliability and validity).

33. Statistical analysis can be readily utilized. See, e.g., Howard J. Gensler, *Valid Objective Test Construction*, 60 ST. JOHN'S L. REV. 288, 294-97 (1986) (describing the objective test as a valuable instrument for measuring a student's mastery of substantive knowledge).

answered the test question incorrectly, the problem lies with the question and not the students.

If one goal of an examination is to test the students' knowledge of a significant percentage of the subject matter covered in a course, then objective questions can serve to increase the scope of an essay examination quickly and efficiently. Objective multiple-choice questions also can be used to pinpoint and examine diverse issues arising in different areas of a course in immediate succession. Essay questions are not similarly suited for such a task, unless the thread of an essay question is permitted to become disjointed.

A considerable body of evidence supports the use of objective test questions. The "hard evidence"³⁴ of the validity and reliability of objective questions lies, in part, in precedent. Many diverse graduate schools, colleges, and universities across the country recognize and rely on objective questions to test the students' knowledge about a wide variety of subject matter.³⁵ The multiple-choice test question, in fact, lies at the core of intelligence tests, many school entrance examinations (including the Law School Admissions Test—the LSAT), and even the multistate portion of the bar examination.

If this extensive reliance on objective test questions is not considered sufficient "evidence" of reliability, academic inquiry into the reliability of objective multiple-choice questions further supports their use.³⁶ Even research methods for ensuring the efficacy of objective multiple-choice questions exist.³⁷

In addition to being reliable, the objective-question test form, particularly multiple-choice, validly tests relevant lawyering skills. Professor Jacobs suggests that objective test questions cannot test analytical thought processes because the professor "cannot know the basis for any of a student's answers."³⁸ This need not be the case. Much like an essay question in which a student must traverse several sequential mental steps to reach different levels of analysis, an objective question can be designed so that those who make errors in the analytical thought process will choose an incorrect answer. For example, in testing whether students understand the dormant commerce clause (and the *Cooley* doctrine³⁹ in particular), a question can be created asking students whether a state legislature has acted properly under certain specified circumstances. The four or five responses would not simply provide for "yes" or "no" answers but instead offer four different analyses of one or several conclusions. Only one of the analytical frameworks offered as responses could be construed

34. See Jacobs, *supra* note 2, at 162 (criticizing the perceived lack of "hard evidence" in support of our conclusions about faculty and student attitudes concerning the law school examination process).

35. See ASSOCIATION OF AMERICAN LAW SCHOOLS, 1945 HANDBOOK REPORT OF THE COMMITTEE ON TEACHING AND EXAMINATION METHODS 147 (1945).

36. See, e.g., Ross, *supra* note 32, at 548 n.6.

37. See *A Suggested Research Method for Effective Multiple Choice Law Questions*, 7 Legal Res. J., issue 2, at 3 (1983) (suggesting that it may be necessary for professors to ask students essay questions in order to formulate effective multiple choice questions).

38. Jacobs, *supra* note 2, at 172.

39. See *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299 (1851).

as correct in light of the pertinent facts; the other choices could be superficially appealing but less correct in their analyses. Thus, while some explanation of the test-taker's answers in essay examinations would indeed serve to illuminate the thought process—and would be useful to determine whether the test-taker “thinks clearly and precisely” while writing—the time honored essay is not the only way to test analytical ability.

III. THE DEPAUL SURVEYS

Professor Jacobs offers in defense of the essay examination his own surveys of DePaul law students and faculty.⁴⁰ We wish to make several points about these tools.

The first point involves irony. After expending considerable time and effort defending the essay form and its efficacy in comparison to objective questions, Professor Jacobs uses and relies exclusively on an *objective* survey⁴¹ to support the continued use of pure essay examinations.

In addition to its ironic objective form, the survey suffers from several salient deficiencies. The survey is problematic in both its construction and interpretation. These defects shall be discussed below.

Regarding the ever-present foundational issues of reliability and validity, there is no indication of what steps Professor Jacobs took to ensure the reliability and validity of his own survey.⁴² For example, it is not clear under what circumstances people were asked to answer the questions (such as whether the questionnaires were left in a general common area for only voluntary responses), whether the group that did in fact respond was representative of the student or faculty body, and whether the students or faculty had previous experience with multiple-choice law school examinations at the time they responded.

Other problems exist. One significant defect is the polarized, black-or-white⁴³ nature of the choices offered as responses to the questions asked. For example, many of his questions often force the respondent to choose between either the objective form or essay form, without any discretion to compromise.⁴⁴ As we noted above, this kind of choice is not germane to the issue we raise.⁴⁵ A further example is the question which asks whether students would

40. See Jacobs, *supra* note 2, at 162. The survey and its results are appended to Professor Jacobs' reply. *Id.* at 176-81.

41. See *id.* at 162.

42. In fact, Professor Jacobs notes that he has “no experience” in conducting surveys. *Id.* at 162 n.14.

43. For example, Professor Jacobs asks students whether they “prefer an examination format that leaves the professor with *no* discretion in determining whether my answer was right or wrong.” *Id.* at 166 n.37 (emphasis added). This question does not account for the fact that many degrees of discretion exist. Law generally involves just such questions of fact, degree, and value.

44. For example, one question asks which test form is “more fair” without allowing for explanation of how both forms might be fair. *Id.* at 163 n.18.

45. See *supra* text accompanying notes 1-8 (describing our proposed use of objective questions as a supplement to and not a replacement of essay exam questions).

want an examination that simply gets them the grade back as soon as possible.⁴⁶ That question states: "I would prefer whichever examination format resulted in my receiving my final grade as soon as possible after the exam."⁴⁷ It can be expected that the answer would be "yes," but only if students believed that a speedy evaluation would not interfere with the opportunity to receive a higher grade, as this question would imply.⁴⁸

The suggestive nature of the surveys extends to other questions as well.⁴⁹ Question Four of the student survey asks whether students would prefer allowing "the professor to read and consider the explanation for my answer as well as the answer itself."⁵⁰ Who would not want a perceived extra opportunity to score points on an examination? If the question added that any explanation could result in a lowered grade, the attitude of the students might be different.⁵¹ Student response favoring the existence of some discretion in the grading process does not undermine the validity of objective questions, as Professor Jacobs implies, but simply suggests that students feel comfortable answering essay questions, perhaps because they have had experience in answering them. Answers favoring grader discretion indicate that essays may be favored by students, not because essays are considered to accurately assess students' knowledge, but because they provide a maximum opportunity to receive partial credit for answers.

Despite the inferences that can be drawn from the surveys, an objective question is not simply a question that "leaves the professor with no discretion in determining whether [an] answer was right or wrong."⁵² Objective questions need not test for an absolute right answer; in fact, most objective multiple-choice questions often ask the test-taker to choose the *best answer* of those given. Thus, the discretion occurs both when the question is created—the professor determines what is the preferable analysis and response—and when the student evaluates the relative merits of each answer. Furthermore, objective questions are sufficiently flexible to permit students to explain their choices, if this variation of the testing format is desired.

46. In light of the way this question is framed, it is not surprising that the respondents' answers would not be helpful.

47. Jacobs, *supra* note 2, at 167 n.39.

48. *See id.*

49. Professor Jacobs' evidence about faculty attitudes also is based on polarized questioning. *See id.* at 176-78. As Jacobs concedes, we suggested that teachers and students *increasingly* find fault with the traditional essay examination. *Id.* at 161. Professor Jacobs states simply that the increasing dissatisfaction could not be tested by his survey. *Id.* at 163 n.15. Why not? The point of our essay is based on relativism: the legal education process is changing in the 1990s and the examination process should similarly change. These changes may not occur overnight, and may be gradual, but because of the plethora of new influences on legal education, the entire traditional process should be examined more critically. Professor Jacobs' dismissal does not deal with the difficult questions at hand. *See Redlich & Friedland, supra* note 6, at 143-44.

50. Jacobs, *supra* note 2, at 166 n.38.

51. Indeed, students who request that their exams be reviewed are often much more hesitant when informed that their grade may be lowered as a result.

52. *See Jacobs, supra* note 2, at 166 n.37.

Other survey questions have structural weaknesses.⁵³ Question Two of the faculty survey asks whether the respondents believe that objective examinations are "more fair to the student than essay examinations."⁵⁴ This is vague. The answer depends on such variables as whether the goal of the exam is to measure "thinking like a lawyer" or on how much of the course material is being tested.⁵⁵

Significantly, the surveys fail to ask some of the more important questions. For example, on the issue of excessive time required to grade pure essay examinations, the real question is whether the extra hours required to grade a pure essay examination are worthwhile. That is, do the extra hours spent grading essays contribute to the accuracy of the grade and the pedagogical value of the process? Are there other beneficial side effects? These questions are neither asked nor answered in the surveys.

The deficiencies in the surveys also extend to the interpretation of their results. In the question that asks students whether they prefer an examination format depriving the grader of all discretion, 72% preferred that the professor have some discretion.⁵⁶ In explaining these results, Professor Jacobs states that "[72%] of all students *disapproved* of an examination format that leaves the professor with no discretion in determining whether an examination answer is right or wrong."⁵⁷ There is no indication that students *disapprove* of that format, simply that students *prefer* that the professor be accorded *some* discretion.⁵⁸ Students may still desire objective questions, but either to a lesser extent or as a supplement. These subtle, but important, distinctions were not made.

Despite its flaws, the DePaul student survey actually supports the use of objective questions as a supplement in the law school examination process. Of 289 student respondents, 58% preferred a combination of essay and objective questions, and 10% preferred a purely objective examination.⁵⁹ It appears that

53. For example, Question One asks whether students would prefer a final examination that is: "a) an objective exam; b) an essay exam; [or] c) a combination of the two." *Id.* at 165 n.33. Because the question does not spell out in detail what each of these choices means, the question is of little use. The term "objective exam," moreover, connotes not only multiple-choice but also true-false questions. We are not advocating any such additions. Furthermore, the notation of a "combination of the two" is vague. Does this mean 50% multiple-choice questions and 50% essays? Does this mean there should be 25% true-false, 25% multiple-choice, 25% general policy-oriented essay questions and 25% issue-spotting questions?

54. *Id.* at 176.

55. These and other numerous defects in the construction of the DePaul survey questions, however, illustrate an important point. Multiple-choice questions must be constructed carefully and precisely to serve their intended function. Carefully crafted questions will be able to fairly test legal analysis and reasoning. But this requires practice and patience.

56. See Jacobs, *supra* note 2, at 178.

57. *Id.* at 166 (emphasis added).

58. The failure of Professor Jacobs to consider the possibility of supplementing essay examinations with objective questions is reflected in survey questions such as this.

59. See Jacobs, *supra* note 2, at 165.

only 32%, less than one-third, preferred the traditional pure essay examination.⁶⁰

Furthermore, when students were asked whether an objective exam, an essay exam, or a combination of the two "best tests a student's knowledge and understanding of course material,"⁶¹ 64% of the students chose a combination of the two while 9% chose the objective examination. Only 27% chose a pure essay exam.⁶² This result suggests that students are less than satisfied with the traditional pure essay examination.

CONCLUSION

The law school examination process appears to serve several constituencies and objectives within the legal education system. For too long now it has been allowed to slumber. It rumbles on in an unquestioned traditional essay format, despite the fact that the pure essay examination has significant flaws. These flaws, ranging from time pressure distortions to reliability in grading to even the validity of the test itself—the issue of what exactly the test is measuring—are not so easy to accept in the changing legal education environment of the 1990s.

Given the flaws in the essay test form and the availability of other test forms, a modification in the examination process is warranted. Objective test questions, particularly multiple-choice, have been used successfully in many other educational contexts, and have attributes found in a pure essay format.

In Professor Jacobs' attempt to support the continued reliance on the essay examination, he misses the true question, which involves shades of gray. The issue is not whether law school essay examinations should be "scuttl[ed],"⁶³ but whether the addition of objective questions would fortify and improve the traditional process.⁶⁴

Professor Jacobs' arguments as to the value of essay examinations are not subject to dispute, and even his survey reflects that essay exams are perceived as having continued validity. Yet, his own survey also suggests that the use of objective questions would be a welcome addition to the examination process.

We think the time has come to begin this change. While Professor Jacobs uses the words of "Churchillian Democracy" to defend his position, the traditional essay examination is in reality the last bastion of professorial turf untouched by social science studies, the complaints of students, and the presence of objective questions in bar examinations, law school admissions tests, and

60. *Id.* The student survey provides the primary support. Notably, in answer to the same inquiry, a large majority of the faculty voted to perpetuate the test form on which it had succeeded—essay examinations. *Id.* at 163. If anything, these results confirm the entrenched bias of law school faculty.

61. *Id.* at 166.

62. *Id.* at 166 n.36.

63. *Id.* at 172.

64. Perhaps objective questions could be used on part of the examination; perhaps they could be used to give bonus points.

just about every other area of educational testing. Perhaps Churchill should share the limelight with Walt Whitman, who said, "I am as bad as the worst, but thank God, I am as good as the best."⁶⁵ Objective questions may not be panacea for the ills of the law school examination process, and standing alone may make the system worse. But their inclusion as a supplement to the time honored essay format would certainly improve the existing system, if not "as good as the best."

65. BARNES & NOBLE, BOOK OF QUOTATIONS 322 (1987 ed.).

