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CHALLENGING TRADITION: USING OBJECTIVE QUESTIONS IN LAW SCHOOL EXAMINATIONS

Norman Redlich and Steve Friedland***

INTRODUCTION

One of the most durable features in the American law school experience has been the traditional "blue book" essay examination.¹ This tradition has been passed down from one generation of law teachers to the next. The dominance of the "issue-spotter" type essay has been virtually unchallenged.

If the dominant "issue spotter" essay examination process rested on a sound methodology without significant defects, its dominance in the current process would be warranted. This, however, is not the case. Both teachers and students increasingly find fault with the traditional essay examination.² Professors endure many boring hours grading blue book after blue book at the end of each semester, with little perception that the time spent correlates with an enhanced level of grading accuracy³ or increased benefits to the test-taker. This unproductive block of time could be devoted to research and writing, committee assignments, meeting with students, or fulfilling other institutional obligations.

Students question the validity of the essay examination as well. The essay test often does not appear to reflect accurately their perceived level of understanding of the subject matter. Even when an exam serves to identify the skill level of the test-taker, students often fail to learn the specific strengths and weaknesses of their performance. The delay in the posting of grades is a major source of student irritation and cynicism about the professional standards of

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1. Examinations are administered only at the conclusion of each term and contain questions calling for essay responses. Even the types of essay questions within the exams have become firmly embedded traditions. "In the law school . . . the sole means by which the law teacher measures the achievement of the law student traditionally is a single examination in each course." Steve H. Nickles, *Examining and Grading In American Law Schools*, 30 *ARK. L. REV.* 411, 414 (1977).

2. Professor Kissam, for instance, has stated, "In my view, the alleged benefits [of the written essay examination process] are greatly overstated and, significantly, can be obtained by alternative techniques that allow for better educational practices. Thus, the disadvantages of Blue Book exams substantially outweigh their alleged benefits." Philip C. Kissam, *Law School Examinations*, 42 *VAND. L. REV.* 433, 493 (1989).

3. A grade has been defined as "a symbol of evaluation of a pupil by a teacher." Gaylord H. Farwell, *Pressures Behind the Grade*, 38 *CLEARINGHOUSE REV.* 462, 462 (1964).

the faculty. Consequently, the numerous hours spent by teachers and students in the essay examination process fail to translate into an effective pedagogical experience.

In light of these deficiencies, the absence of alternative techniques is not readily explained. Alternative examination techniques, after all, have a proven track record. Studies of several different kinds of evaluation methods show them to be reliable and valid.⁴ Alternative evaluation methods also have been widely and successfully used in other areas of American graduate education.⁵

One alternative method that has been widely used in other contexts is the objective test question, particularly the form labeled "multiple choice."⁶ This method is highly regarded in college exams, graduate school admission tests, and professional qualification exams, among other examination situations. That law schools would eschew the objective examination is particularly puzzling since most law students gain admission to college, law school, and the bar based in large part on their ability to do well on objective tests.

This Essay suggests that the existing examination process would be improved considerably by supplementing the traditional essay examination with a component that includes objective test questions. Although the barriers to the adoption of objective questions are formidable, law professors should be more receptive to the idea and at least be willing to experiment in a limited way with an examination process that offers such potential benefits to faculty and students alike at little cost to either.

I. BACKGROUND

A. Describing the Different Forms of Test Questions

The time-honored essay examination⁷ generally includes at least one "issue

4. See James R. McMillan, *Myths of Testing Cause Missed Classroom Opportunities*, MARKETING NEWS, Aug. 29, 1986, at 8.

5. 2 MICHAEL JOSEPHSON, *LEARNING AND EVALUATION IN LAW SCHOOL* 324 (submitted to the Association of American Law Schools Annual Meeting, Jan. 1984).

6. In a study performed in the early 1970s, 29% of law school examinations were completely essay, 64% were predominantly essay with some objective questions, and 7% had a balance between objective questions and essays. Nickles, *supra* note 1, at 434 n.71.

7. Essay law examination questions can be classified into three generic types: (1) the issue spotting-problem solving questions (where a question is "based on a hypothetical factual situation raising any number of legal or factual issues"); (2) the judgment question (where the question requires the writer to evaluate and construe a judicial opinion, statute, quotation, or other similar material); and (3) the synthesis question (where the question requires the writer to categorize concepts presented in the course). 2 JOSEPHSON, *supra* note 5, at 386.

In addition, one commentator has divided essay question answers into five different types: (1) the "key sentence" type (where the writer correctly describes the relevance of the question's given facts and correctly describes the applicable law); (2) the fact omission type (where the writer reaches a conclusion without setting forth the relevant facts); (3) the law omission type (where the writer reaches a conclusion without setting forth the applicable law); (4) the mere conclusion type (where the writer reaches the correct conclusion, but fails to address either the applicable law or the relevant facts); and (5) the irrelevant collateral theme type (where the writer fails to grasp the substance of the question, either in terms of the facts or the law). Lawrence L. Vold, *Types of*

spotter," a form of question that asks students to explain and evaluate the legal implications of a set of hypothetical facts.⁸ In answering an issue-spotter question, the student "is expected to recognize and isolate these issues, apply the applicable rules of law, and using both the facts and applicable rules of law organize a decision that exhibits the ability to justify the decision reached from other possible choices in a clear, rational fashion."⁹ Almost always, the test-taker must respond to an issue-spotter question in essay form within a fixed, relatively brief period of time.

By comparison, the term "objective test question" generally refers to any question that asks the test-taker to select the correct or best answer from a small number of choices.¹⁰ The most common forms of objective questions include "true-false," "short-answer," and "multiple-choice" questions.¹¹ True-false questions ask whether a proposition is either true or false. Short-answer questions require the test-taker to fill in a brief response to a specifically devised question that has a pre-established correct response. Multiple-choice questions require students to select the best or correct answer from a finite number of choices, usually four or five. Such questions may begin with a short fact pattern or simply a legal rule or principle.

B. *Why Exams Composed Solely of Essays Are Inadequate*

Critics of the essay examination are often confronted by the anecdotal observation that students who earn higher grades based on essay examinations generally have superior analytical ability and writing skills than students with lower grades. Generations of hiring partners who achieved professional success partly because high law school grades helped get them their first jobs look askance at any suggestion that the method by which they were evaluated might be flawed. Yet the hard data, as well as a groundswell of perception, indicates that the essay exam has numerous flaws. These flaws lie in both the test-taking and the evaluation—or grading—phases of the examination.

Essay Law Examinations: Answers—Good and Bad, 3 HASTINGS L.J. 85, 85-90 (1951).

8. The "issue spotter" has been called a "classic" essay question. See Kissam, *supra* note 2, at 438. Professor Kissam stated, "The first of these examination functions is issue spotting or, more precisely, perceiving analogies between the stated facts of an examination problem and professionally recognized legal issues, standards, and precedents." *Id.* at 440.

9. Derrick A. Bell, Jr., *Law School Exams and Minority-Group Students*, 7 BLACK L.J. 304, 305 (1981). The written examination tests

(1) the student's knowledge of the subject; (2) the accuracy of the student's recall of the knowledge and his understanding of it; (3) how effectively and accurately this knowledge can be communicated; (4) how skillfully and efficiently this knowledge can be applied to particular circumstances; and (5) how rapidly these functions can be accomplished in an exam situation.

Id.

10. These objective questions can be divided into various types. For example, multiple-choice questions alone include "choose the best answer," "choose the worst answer," "choose the applicable rule," and "choose the proper analysis" types.

11. Objective questions may also appear in the form of "fill-in-the-blanks."

A major criticism of the test-taking process involves the validity of the essay as a testing technique.¹² Validity is determined by whether those who have the tested skills answer the questions better than those who do not. Doubt is cast on the validity of essay questions in large part because of the many variables that affect the essay examination process. An essay examination, for example, may be poorly created, resulting in ambiguous test questions that unnecessarily confuse the test-taker and undermine the measuring or evaluating process. Other variables that skew essay measurements include time pressures;¹³ the test-taker's handwriting;¹⁴ the test-taker's organization; and the test-taker's word choice; which may be influenced by cultural background or prior training.

The validity of the essay examination, moreover, is highly questionable either as a measure of good lawyering skills or as an accurate predictor of future competence.¹⁵ To illustrate, timed essay questions promote neither brevity nor coherence in responses,¹⁶ skills extolled throughout the legal profession. Rather, open-ended essay exams encourage answers that expand to meet the time allotted, since students nervously believe that additional responses may result in increased scores—"more is better." The time limit becomes an implicit imprimatur of approval to write for the entire time period, thus serving to dilute, if not obfuscate, the measurement of lawyering skills. Conversely, an ill-conceived, overly long essay question has the opposite and equally troublesome effect of emphasizing the quality of pressured responsiveness at the expense of deliberation and thoughtful reflection.

The rank-ordering or reliability produced by an essay exam is also suspect. In particular, an essay question often does not assist the teacher in distinguishing between somewhat similar papers. The essay form allows variables such as style of presentation and handwriting to influence grading. Furthermore, there is insufficient predictability in the grading of essay questions as to the relative weight accorded to doctrinal understanding versus presentation skills such as

12. Variables in the grading and test-taking processes affect accurate grading. Teachers may approach grading in two divergent ways. Teachers can use "check lists" and simply look for substantive content, generally ignoring the form or presentation by the student. On the other hand, a teacher can give credit based on the presentation, as well as the substantive content. The problem of extraneous factors in the evaluation is increased, however, when this latter impressionistic approach is taken. Such an approach further subjectivizes the evaluation process and diminishes the likelihood of constructive feedback. The content-based approach, however, is not without flaws; it excludes factors that are relevant to distinguishing between well reasoned answers and less coherent, scattered responses.

13. Furthermore, the intense time pressure may also produce rushed and jumbled answers from students more concerned with spotting the issue than with developing quality legal analysis. The examination experience becomes a defensive one, in which students worry about incomplete or missed answers. Overall, the time-rushed essay answer often obscures the true abilities of the test-taker.

14. Nickles, *supra* note 1, at 445 n.109.

15. Indeed, there is no consensus within the legal profession on what the law school essay exam actually measures.

16. Kissam, *supra* note 2, at 453.

clarity of writing and organization.

Reliability may be further distorted by students' interpretations of ambiguities inherent in the examination. Students can misinterpret or reshape a question to their own advantage, resulting in a wide variety of responses that will affect the validity and reliability of the grade.¹⁷

In fact, the written essay exam has been found by "overwhelming evidence" to be highly unreliable.¹⁸ This evidence, compiled from "nearly a century of research and writing,"¹⁹ suggests that "scoring unreliability is almost inevitable."²⁰ The unreliability stems from several sources:

Unreliability of essay tests results from scorers having different conceptions of which elements are important in answers and from contrary opinions on whether students' answers adequately have touched upon and dealt with those elements. An equally serious objection to the use of the essay is unreliability in grading by an individual teacher as he progresses through a single set of the bluebooks.²¹

Perhaps the most striking deficiency of the written essay examination that tilts the scale in favor of modifying the process is the significant amount of time required to grade such examinations effectively. If an instructor teaches two classes with an average of eighty students per semester, it may easily take two full weeks (and probably more) to read and grade the written essay exams. This time expenditure might be justified if it corresponded with the amount and quality of feedback given to students or constituted the minimum time to evaluate student performance adequately. There appears, however, to be no such correlation or necessity. No firm evidence exists to indicate that an expanded grading process improves the quality of evaluation.

As teachers spend more time in evaluating exams, there is a correspondingly greater delay in providing test-takers with feedback about their performances. One study found that the average time between administering an examination and reporting the test scores is five weeks.²² Thus, even when a modicum of feedback is provided, its value is diminished by the delay in grading. Furthermore, that same study showed that only sixty-five percent of the law schools studied encouraged students to discuss individually the results with their teachers, and "as a general practice the professors do not conduct post-mortems during which examinations are discussed."²³ When combined with the long delay in feedback, a lack of a thorough exam review diminishes the value of the examination to the students as a learning tool.

The length of the essay examination, often four hours, contributes to the cumbersome nature of the grading process. After a certain point, the length of

17. 2 JOSEPHSON, *supra* note 5, at 324.

18. Nickles, *supra* note 1, at 444.

19. *Id.*

20. 2 JOSEPHSON, *supra* note 5, at 323.

21. Nickles, *supra* note 1, at 444-45.

22. *Id.* at 426.

23. *Id.* at 438.

the exam ceases to have additional independent value, such as increasing the validity of the results. There is no evidence that a four-hour essay examination, for example, accomplishes more—that is, reveals more of the student's understanding of the concepts or of the student's thinking process—than a three-hour essay examination, or that the best test is necessarily as long as the number of credit hours students receive for completing a course.

Even a four-hour essay examination often fails to provide comprehensive coverage of the course material. The failure to provide coverage of a majority of the course materials in an essay examination is a function of the nature of an issue spotter and of the law school tradition of relying on only one end-of-the-term examination.²⁴ Especially in the context of legal education, essay questions call for analysis and explication of specific problems, not a general recitation of all information pertaining to an area of a course. Thus, coverage on essay exams is almost destined to be deficient.²⁵

Along with actual deficiencies in the current testing process, perceived deficiencies also take their toll. Student cynicism about the entire testing process results from a belief that their hard work has gone unrewarded because of the nature of the exam. Students might be even more cynical if they realized that their complaints have reverberated for years within the legal academic community. The late Professor Ben D. Wood of the Columbia University School of Law, who conducted a significant study of the law school evaluation process in the 1920s, concluded in part that the unreliability of a single essay examination renders it "inadequate for the requirements of modern educational administration."²⁶

In essence, because of the time required to grade essay exams, the lack of specific feedback, and the time associated with reviewing exams,²⁷ the educational value of the current process is often minimal. In addition, the process' reliability is suspect. Yet, the case for the diminished use of essay tests need not be made in terms of their unreliability as a means of evaluating the comparative abilities of the test-takers. Students are probably good or bad test-takers, regardless of the form of the test. Moreover, tests, in whatever form, may have a limited value in terms of measuring the skills required to be a lawyer, as distinct from the skills required to do well on first-year law exams. Still, if a method of examination has serious defects in the process of grading, instills a lack of confidence in the test-takers concerning its reliability, fails to measure adequately the skills it purports to measure, places a premium on skills that are not considered important in the evaluation of students, and by its nature can encompass only a limited range of the subject matter it purports to cover, it is time to consider alternatives. A form of test that addresses these problems, even if the exam grades will not show significant differences in how

24. 2 JOSEPHSON, *supra* note 5, at 324.

25. Nickles, *supra* note 1, at 445 n.109.

26. Ben D. Wood, *Measurement of Law School Work*, 24 COLUM. L. REV. 224, 225-26 (1924).

27. Reviewing exams requires considerable time for teachers and is often uncomfortable when a student believes the grade is not warranted.

students are ranked, is preferable.²⁸

II. WHY ADDING OBJECTIVE TEST QUESTIONS WILL IMPROVE THE LAW SCHOOL TESTING PROCESS

In light of the various deficiencies associated with a single essay examination, legal educators should look for alternatives. One obvious change is to augment the essay exam with objective test questions. The addition of objective questions would streamline the grading process and likely improve the educational value of exams, with little, if any, risk of harm.

A. *The Benefits of Supplemental Objective Test Questions*

The most practical and appealing reason for law teachers to adopt objective questions as a part of the evaluation process in legal education is efficiency. Simply put, the grading of objective questions takes a fraction of the time required to evaluate essay examinations.²⁹ Objective multiple-choice questions can be graded by machine because such questions yield a single correct response.³⁰ Since the answers are predetermined, teaching assistants can supervise the grading, thus freeing up teachers completely from a process to which they traditionally devote weeks of their time. The efficiency of the objective-type question further permits short tests to be administered during the semester to gauge the students' grasp of the subject matter, even if no grades are assigned.

While the objective question test is essentially "front loading," taking more thought and care to create than counterpart essay questions, the initial "investment" saves considerable overall time when compared to the much lengthier grading process of essay questions. As noted by a subcommittee of the Association of American Law Schools, which was appointed to study this issue:

[B]y eliminating the drudgery and variability in grading inevitably involved with the essay-type examination, the objective-type test brings within the range of feasibility the administration, to groups large enough for the results obtained to be pedagogically significant, of examinations that would otherwise not seem practicable.³¹

The investment in time could be reduced by cooperation among faculty members who teach different sections of the same course. This cooperation is less

28. See Nazma Yeasmen & Donald G. Barker, *A Half Century of Research of Essay Testing*, 21 IMPROVING C. & U. TEACHING. 24, 24-25 (1973).

29. Howard J. Gensler, *Valid Objective Test Construction*, 60 ST. JOHN'S L. REV. 288, 294 ("A great advantage of the objective test is that it is mechanically easy to score."); 2 JOSEPHSON, *supra* note 5, at 324.

30. See Gensler, *supra* note 29, at 294.

31. 2 JOSEPHSON, *supra* note 5, at 321 (quoting ASSOCIATION OF AMERICAN LAW SCHOOLS, 1945 HANDBOOK REPORT OF THE COMMITTEE ON TEACHING AND EXAMINATION METHODS 147, 148 (1945)).

likely in essay exams, which produce considerable pride of authorship. Such cooperation, moreover, could help eliminate the perceived unfairness that results when professors teaching different sections of the same course have sharply different grading patterns.

Supplemental objective questions also enhance the educational value of the process as well as its efficacy. One means by which objective questions enhance educational value is through an increase in the scope of the subject matter tested.³² Because objective questions can be answered in a relatively short time period, numerous questions on a wide variety of course topics can be posed within the limitations of a timed examination. The use of objective questions is not limited by the nature of the subject matter. For example, Professor Louis Loss's securities regulation examination in 1974 included questions containing a short set of facts preceding objective test questions. Examples of his objective questions are:

3. The H stock had to be registered under the Blue Sky Law of . . .
 - (a) New York only . . .
 - (b) every state in which there was a key stockholder . . .
 - (c) most likely very few states even if P stock was held all over the country . . .
 - (d) Delaware only.
4. The exchange offer was subject [to] . . .
 - (a) the 1934 Act, §14C if no proxy state was filed.
 - (b) the 1934 Act, §14E . . .
 - (c) the 1935 Act . . .
 - (d) the 1939 Act.³³

The broader examination coverage resulting from the use of objective questions enhances the perceived fairness of the examination and "contribute[s] materially to the reliability of the testing and hence of the evaluation based upon it."³⁴ Extensive exam coverage, moreover, is consistent with the modern law school tradition of broad doctrinal coverage in the classroom component of a course.³⁵ The extensive coverage can be achieved by questions that do not relate to each other, but instead consecutively cover diverse areas of law.³⁶

The premises underlying the essay examination, which tests such skills as spotting issues, specifying rules, and applying rules,³⁷ are compatible with the

32. "The greatest strength of an objective examination is its ability to test a great number of narrow areas." Gensler, *supra* note 29, at 289.

33. Louis Loss, Securities Regulation Examination (Jan. 15, 1974) (on file with the *DePaul Law Review*).

34. 2 JOSEPHSON, *supra* note 5, at 321 (citing ASSOCIATION OF AMERICAN LAW SCHOOLS, 1945 HANDBOOK REPORT OF THE COMMITTEE ON TEACHING AND EXAMINATION METHODS 147, 148 (1945)).

35. Kissam, *supra* note 2, at 499. Professor Kissam noted, "[S]hort answer Blue Book exams are better suited for comprehensive testing of the many doctrinal rules that modern professors encourage their students to learn." *Id.*

36. Gensler, *supra* note 29, at 290.

37. *Id.* at 499.

rationales underlying objective-question examinations. One underlying premise of the objective question is that correct answers do exist—or at least that some answers are better than others.³⁸ This concept is really not foreign to the traditional legal examination process, since in written essay examinations there is often a correct or better answer than others.³⁹ With this commonality as a central premise, it is understandable that law professors can and often do formulate answer keys to an essay test.

A central premise of the essay examination, moreover, is that such an exam evaluates the test-taker's reasoning process or analytical thinking.⁴⁰ Yet the ability to test legal reasoning and analytical thinking exists in objective tests as well. The evidence indicates that "it is now possible to test highly sophisticated mental processes through the use of well conceived objective questions."⁴¹ Objective questions thus can be formulated to reward the test-taker for applying the correct reasoning process, and not simply for memorizing certain legal rules or principles.⁴² If the objective questions are framed in this manner, an objective examination may be as rigorous and require as much analytical effort as any essay examination.⁴³

An additional, although not decisive, reason for utilizing objective questions in law school exams is to permit students to familiarize themselves with the types of questions they will face on the Multistate Bar Examination,⁴⁴ now used in 48 states and the District of Columbia. The Multistate Bar Examination consists of two hundred multiple-choice questions, and the Multistate Professional Responsibility Examination (used in 40 states) contains 50 multiple-choice questions.⁴⁵ While preparation for a bar exam alone does not justify the inclusion of objective questions on a law school examination, there is no reason to penalize students by purposely excluding from the law school experience objective questions of the type that may appear on the bar examination.

B. Test Construction Concerns

1. The Validity of Objective Questions

While objective questions may not initially appear to be versatile testing tools, such questions can be constructed to test many different types of law school learning skills. A multiple-choice question, for example, can measure the knowledge, comprehension, application, analysis, synthesis, and evalua-

38. *Id.* at 444.

39. *Id.*

40. 2 JOSEPHSON, *supra* note 5, at 323.

41. John A. Winterbottom, *Objective Examining Techniques in Bar Examinations—A Report of a Discussion with the Committee of Bar Examiners from the State of California*, reprinted in THE BAR EXAMINERS HANDBOOK 225, 226 (Stuart Duhl ed., 2d ed. 1980).

42. See Gensler, *supra* note 29, at 289.

43. See *id.*

44. See *Questioning the Bar Exams*, TIME, Feb. 25, 1980, at 44.

45. Gensler, *supra* note 29, at 288.

tion⁴⁶ skills of a test-taker. A multiple-choice question can utilize a fact pattern much like an issue spotter, and can focus on a particular analytical interpretation of a rule of law so that the correct answer to the question involves the analysis or application of a rule of law, and not the rule itself. One testing professional has noted:

It is sometimes erroneously assumed that, because objective questions are often relatively short and because they require little by way of complex overt behavior from the candidate (he simply records responses on an answer sheet), they do not measure complex mental processes.⁴⁷

Perhaps the most significant support for the validity of objective test questions lies in their widespread and successful use in other educational contexts. Multiple-choice examinations in other educational contexts are so widespread that one observer of the student evaluation process has noted that "the primary mode of mental measurement in the United States is the multiple-choice item."⁴⁸ Multiple-choice questions, along with other forms of objective questions, have been employed in college entrance examinations,⁴⁹ professional examinations,⁵⁰ and even in some law-related contexts, most notably the Law School Admissions Test—the LSAT. The LSAT is now required as a prerequisite to admission in all American Bar Association-approved law schools. Ironically, the essay portion of the LSAT does not count towards the test-taker's score. And, as indicated above, objective questions play a critical role in the bar admissions process in most states through the multi-state portion of the bar exam.⁵¹

Objective questions are widely asked on admissions tests in fields other than law.⁵² The National Association of State Boards of Accountancy has approved a proposal to reduce the number of essay questions while increasing the number of objective questions on its examination of certified public accountants.⁵³ The Association took this action "in response to suggestions to make the exam

46. Lawrence W. Ross, Jr., Comment, *The Construction and Selection of Objective Business Law Examination Questions*, 17 AM. BUS. L.J. 547, 549 (1980).

47. Winterbottom, *supra* note 41, at 226.

48. McMillan, *supra* note 4, at 8.

49. Because of scoring problems on essay exams, the College Entrance Examination Board replaced them with objective questions. Ross, *supra* note 46, at 548-49. "For most situations, any understanding or ability that can be tested by means of another test form also can be tested by multiple-choice items." McMillan, *supra* note 4, at 8.

50. See *Alterations Recommended On Exam for Accountants*, WALL ST. J., May 2, 1989, at B8.

51. Ross, *supra* note 46, at 549; see also *Questioning the Bar Exams*, *supra* note 44, at 44 ("In virtually all states, applicants spend six hours on one day trying to answer 200 tricky multiple-choice questions."). The District of Columbia and 48 states use the Multistate Bar Examination, and 40 use the Multistate Professional Responsibility Examination.

52. Fred R. Savitz, *Effects of Essay Examination Questions Placed at the Beginning of Science Multiple Choice Examinations*, 12 J. INSTRUCTIONAL PSYCHOL. 6, 6 (1985).

53. *Alterations Recommended On Exams for Accountants*, *supra* note 50, at B8.

more uniform and easier to grade."⁵⁴

Particularly in high schools and colleges, multiple-choice and other objective-type questions are standard fare on examinations. Sometimes, this type of question comprises the entire test. The continued use of objective questions in all of these contexts, and the studies done about objective questions, support their overall validity and efficacy.

2. *The Reliability of Objective Test Questions*

Objective test questions suffer deficiencies of their own, however. The true-false questions are the most problematic because they do not sufficiently protect against guessing and are more likely to yield unreliable results. Short-answer questions can, if not properly restricted, turn into an open-ended essay. Multiple-choice questions permit guessing and have a greater potential for ambiguity. Even so, the multiple-choice or short-answer questions are the preferred forms of objective questions because they can readily be constructed to serve as reliable and valid evaluators.⁵⁵

Guessing—the inherent deficiency in objective-type questions—arises from the accessibility of the correct answer. This deficiency, however, can be remedied.⁵⁶ One of the best methods for minimizing guessing is to offer test-takers the choice of incorrect alternative answers, called “distractors.” There should be several distractors in each multiple-choice question. Increasing to a certain point the number choices decreases the odds of a student simply guessing the correct answer.⁵⁷

A distractor is viable if it appeals only to the weaker test-takers.⁵⁸ This means that for an objective question to be properly constructed, it should be answered correctly by those who understand the subject matter but not by those who simply guess. To determine if this distinction has occurred, overall student performance on a question can be reviewed to observe whether the distractors consistently misled otherwise good test-takers.⁵⁹ A second method of minimizing guessing involves deducting points for incorrect answers.⁶⁰ A discriminating examination, one that distinguishes between different achievement levels among students, utilizes questions that can be answered correctly by approximately one-half of the test-takers.⁶¹ An “easy” question will be an-

54. *Id.* The number of essay questions have been reduced from 40% on the entire exam to “at least 20% on three of the exam’s four sections.” *Id.*

55. Winterbottom, *supra* note 41, at 226.

56. *See* Gensler, *supra* note 29, at 290-91.

57. *See id.*

58. While creating viable distractors may prove to be a difficult task, the validity of the question is not tied to the total numbers of distractors. The odds of guessing the correct answer improve only by 8%, for example, if the number of total items to choose from is increased from four to six. Thus, the key to ensuring reliability is to create distractors that are not obviously incorrect but which still are less appropriate choices than the one correct answer. *See id.*

59. *See id.* at 294.

60. *Id.* at 291.

61. Ross, *supra* note 46, at 552.

swered correctly by approximately seventy percent of the students and a difficult question by approximately thirty percent.⁶² Thus, a valid question is not necessarily difficult,⁶³ but should distinguish between the better and less proficient students.⁶⁴ If created properly, short-answer objective questions offer more consistency in the grading process than do essay tests standing alone.⁶⁵

One commentator suggested the following approach to maximizing exam reliability:

First, score all the exams; next, rank order the exams from highest to lowest and separate them into four quarters; finally, tally the number of correct responses to each question by quarters. A good test item will have more correct responses in the higher quarters than in the lower quarters. A good item does not mean that only a few students answered it correctly. A good item is an item that was answered correctly more often by the better students (higher quarter) than the poorer students (lower quarter). An ambiguous or flawed question will have a random response pattern (since it cannot be correctly answered because of the flaw), which will result in a lack of an appreciable difference between the quarters. In other words, poor students will do as well as good students because the answer does not depend on understanding the material.⁶⁶

3. *Creating Appropriate Test Questions*

As the previous discussion suggests, the most difficult task facing a law teacher using objective questions likely will be creating them.⁶⁷ Law teachers presumably have no experience in creating fair objective questions.⁶⁸ Even if teachers have such experience, this still may not guarantee proficiency. Teachers also may lack expertise in designing fair essay questions,⁶⁹ since familiarity does not necessarily breed competence. Teachers can maximize fairness in an objective examination, however, by actually answering, under examination conditions, the objective questions they have formulated. Professors also can ask their colleagues to review the objective questions and to provide feedback. Questions may be formulated so that students are asked to choose the "best" answer, not necessarily the "correct" answer. Furthermore, "[o]bjective questions lend themselves more readily than do essay questions to various types of

62. *Id.* at 555-56.

63. *Id.* at 556. "It is easy enough to construct questions that less than 30% of the examinees can answer correctly. The challenge is to construct questions that will, when answered, correctly reflect achievement rather than chance." *Id.*

64. *Id.* at 558. "The reliability coefficient of an exam can often be supplied by college test scoring services using *internal consistency* techniques." *Id.* at 560 (emphasis in original).

65. See Wood, *supra* note 26, at 259. Professor Wood, in a study at Columbia University School of Law, showed that this type of question could provide a more effective pedagogical examination process. *Id.* at 264.

66. Gensler, *supra* note 29, at 294-95.

67. See Winterbottom, *supra* note 41, at 227.

68. See Kissam, *supra* note 2, at 450-51.

69. *Id.* at 499.

statistical analysis which can be very useful in improving the quality of the examination."⁷⁰ Even after an examination has been administered, teachers can detect and exclude defective questions. In evaluating an exam, the instructor can observe whether students selected a particular incorrect answer in large numbers. If the percentage is sufficiently high, it is the question and not the answer that is most likely flawed.⁷¹ Finally, improvement in the formulation of objective examination questions can occur from practice and experience.

If law teachers prefer not to spend time on statistical evaluations and the like, outside help is probably available to assist them in evaluating the reliability of the tests they have created. It is highly likely, in this age of computer literacy, that law students or school support staff would be available to develop programs for this purpose. One can think of far less useful tasks that student research assistants are presently being asked to perform.

III. THE POLITICS OF IMPLEMENTATION

A. *Why Not Change?*

There are many appealing reasons to replace the current essay examinations with predominantly objective tests. There is no legal impediment, because ABA Standard 304(b)(b-1), which requires "written" examinations, does not specify the form of writing.⁷² Furthermore, the virtues of multiple-choice type questions are many. Objective examinations can be graded quickly, even by machine. They can save teachers many hours in post-examination explanations of the grading process. They can eliminate anxiety created among law students by the use of the single essay exam at the end of the semester. In light of this broad appeal, it is not immediately apparent why objective examinations have received little support in the legal education community.

It is not as though the legal education community has been unaware of the value of objective questions. In 1945, a committee on teaching and examining methods of the Association of American Law Schools suggested that "every effort should be made to bring into realization, to the fullest extent, objective type law questions."⁷³ Yet law professors continue to ignore this advice. The reasons for the continued preference for essay exams⁷⁴ probably lie partly in the nature of objective questions, which do not require the test-takers to communicate why they chose the answer they did, and in the politics of reforming the exam process.⁷⁵

70. Winterbottom, *supra* note 41, at 226.

71. Gensler, *supra* note 29, at 295-96.

72. See STANDARDS FOR APPROVAL OF LAW SCHOOLS & INTERPRETATIONS § 304(b)(b-1) (1986).

73. Nickles, *supra* note 1, at 448.

74. The essay test has been called the "predominant testing method in law schools." 2 JOSEPHSON, *supra* note 5, at 321.

75. Proponents of objective tests often use an argument that contains a strong endorsement of essay examinations, namely that comparisons of bar examination grades indicate an almost per-

Political intransigence may be promoted by the history and tradition of essay exams, as well as the continuing belief that essay examinations⁷⁶ test the skill of "thinking like a lawyer."⁷⁷ Historically, written examinations took root in the early 20th century.⁷⁸ Even before the 20th century, however, such well known scholars as Professor Christopher Columbus Langdell of the Harvard University Law School used the written essay examination as an evaluation tool.⁷⁹ By the 1920s, the tradition of the written essay examination was firmly in place.⁸⁰ The effect of this tradition was to create an "unmitigated dependence upon the traditional three-hour written examination given at the end of the course."⁸¹

Furthermore, the reliance on written essay examinations is perpetuated by the continued belief that "[t]he essay is the type of examination most favored by both faculty and students to test the abilities and qualities which law schools seek to develop."⁸² The essay examination focuses on the reasoning process more than the results of the analysis,⁸³ and it is this elusive reasoning process⁸⁴ that many believe is the essence of legal training.⁸⁵ As one commen-

fect correlation between the essay and the objective (multistate) portions of the exam. If the objective test is justified on the basis of its having produced comparative results that are not significantly different from a written examination, it is difficult to argue that the essay exam is unreliable. Conversely, however, it is equally difficult to reject the introduction of objective tests into the law school grading process.

76. The fact that the examination process is primarily written—as compared to oral—may primarily be due to American Bar Association Standard 304, which provides in pertinent part that, as part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as Moot Court, practice court, legal writing and drafting and seminars and individual research projects.

STANDARDS FOR APPROVAL OF LAW SCHOOLS & INTERPRETATIONS, § 304(b)(b-1) (1986).

77. Professor Weihofen stated:

[I]n a general way, all law teachers are agreed that law schools aim to do two essentially different things. One is to impart a certain amount of legal information. The second, and what I have considered the more important part of legal education, is to teach students to "think like lawyers."

Henry Weihofen, *Panel: What Examination Techniques Best Test Legal Capabilities—Types of Questions*, 23 ROCKY MTN. L. REV. 110, 111 (1950).

78. See ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 356-57 (1921). Professor Asabel Stearns of Harvard University Law School may have given some of the first written law school examinations in 1826. Professor Christopher Columbus Langdell of Harvard Law School also offered written annual examinations commencing in 1871. *Id.* at 357.

79. *Id.*

80. See Wood, *supra* note 26, at 224.

81. *Id.* at 225.

82. Nickles, *supra* note 1, at 433 nn.69-70.

83. 2 JOSEPHSON, *supra* note 5, at 323.

84. See generally Weihofen, *supra* note 77, at 111 (critiquing the alleged subcomponents of legal reasoning).

85. Even on bar examinations, essay-type questions are considered the best test of lawyering competency. As one member of the Colorado Supreme Court Law Committee, which composes and evaluates bar examinations in the State of Colorado, noted, "[T]he results [of essay ques-

tator has noted, "Other professors continue to believe . . . that the essay exam is necessary to test for complex kinds of issue spotting and imaginative rule applications."⁸⁶ In addition, the essay examination purports to offer a better simulation of what lawyers do in practice than do other forms of examination.⁸⁷ These widely held assumptions, regardless of their veracity, encourage law teachers to continue testing students in the same manner in which they themselves were tested.

A more cynical view suggests that the continued use of the essay examination is also due to the relative ease with which it can be created.⁸⁸ Indeed, a three- or four-hour examination in a major substantive course may be drawn up using only three or four fact patterns covering only some of the issues discussed in the course. This "simplicity of construction"⁸⁹ provides an instant appeal to time-crunched law teachers,⁹⁰ who tend to forget the tediousness of, and time consumed in, grading essay examinations.

Despite efforts to understand the reasoning behind the strong endurance of the current examination system, the adherence to the present process ultimately may be attributed to no reason at all. As one commentator noted, continued reliance on essay examinations may "be explained only by the forces of inertia and lack of time for, skill at, or interest in learning to construct effective [alternatives]."⁹¹

B. Using Objective Questions As a Supplement to Essay Questions

If their tradition, perceived veracity, and ease of preparation are indeed the explanations for the persistence of essay exams, radical change is unlikely and probably undesirable. Objective questions, consequently, can best be used as a supplement to—and not as a replacement of—the written essay question.⁹² In fact, essay and objective test questions complement each other nicely. The essay examination permits more in-depth analysis and, of course, an explanation of a student's conclusions. Partial credit can be given on such a question, and many gradations of answers can be obtained.

Furthermore, the skills of organizing ideas and expressing them in writing are best measured by an essay exam,⁹³ and not at all by objective questions. Yet, the various benefits of objective questions, from the efficiency in the grad-

tions], it is believed, are as fair as can be reasonably attained." Jean S. Breitsenstein, *Panel: What Examination Techniques Best Test Legal Capabilities—Selection of Bar Examination Questions*, 23 ROCKY MTN. L. REV. 107, 108 (1950).

86. Kissam, *supra* note 2, at 451 n.55.

87. 2 JOSEPHSON, *supra* note 5, at 323.

88. *See 2 id.*

89. Nickles, *supra* note 1, at 449 n.126 (citing Martin Wong, *Scoring Guide for Improving Essay Reliability*, 21 IMPROVING C. & U. TEACHING 26 (1973)).

90. As Professor Nickles argued, however, this is no more a valid reason to use essays as it would be a valid reason for teachers not to prepare for class. Nickles, *supra* note 1, at 450.

91. Kissam, *supra* note 2, at 450.

92. Winterbottom, *supra* note 41, at 228.

93. *Id.* at 225.

ing process to the increased breadth of examination coverage, can be used to supplement rather than detract from the advantages of essay-style questions.

Because of their widespread acceptance elsewhere, the appropriateness of objective questions in law school exams should not spark controversy. Undoubtedly, however, they will, given the long and entrenched history of essay questions. Combining objective and essay questions should soften the blow for skeptical teachers.

The coordination of essay and objective questions may be implemented in several fashions. Written multiple-choice questions, for example, could precede an essay question on an examination. The multiple-choice questions may be fifteen to twenty in number, depending upon the subject matter and the length of the examination, and could either be linked to the essay questions or formulated on a completely independent basis. If the objective questions are linked to the contents of the essay, then the questions could be used to follow up on the legal issues contained in the essay, or to serve as a check on whether students understand the subtleties of the particular area of law tested in the essay.

CONCLUSION

Objective questions can and should be used as a part of the examination process in law school. Objective questions provide efficiency, greater coverage, and other benefits not found in an essay question. The principal obstacle to this change is the intransigence of the legal education community, rather than the comparative virtues of the essay examination or the infeasibility of adding objective questions. It is time for the legal education community to discover what other areas of academia have known about objective test questions for a long time.