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LAW SCHOOL EXAMINATIONS AND CHURCHILLIAN DEMOCRACY: A REPLY TO PROFESSORS REDLICH AND FRIEDLAND

Michael S. Jacobs*

INTRODUCTION

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 . . . .

For me and for many of my colleagues, Winston Churchill's famous statement about democracy describes perfectly our own feelings about law school essay examinations. Essay exams are difficult to draft and tedious to grade. The lines of distinction between letter grades, real enough in fact (90 is an "A"; 89 is a "B+"), frequently seem arbitrary in application. The three-hour time limit within which exams must be written imposes an artificially heightened sense of urgency upon a process that would not lack for urgency without it. And the results, the actual grades themselves and the ranking that comes from them, fail to instill in me, at least, a confidence in my own ability to separate perfectly the best students from the good ones.

Misgivings on the part of law school professors about the examination process in general and about the essay examination in particular are not new. In the mid-1920s Professor Ben D. Wood of the Columbia University Law School published a series of three articles examining and criticizing the type of essay exam in use at Columbia, and proposing a new type of objective examination to replace it. Professor Wood's articles, though not the first to criticize essay

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2. The mathematics of the grading process are daunting. In the Fall Semester, for example, I teach two courses with a total enrollment of approximately 125 students. If I spend one hour reading each student's final examination, and if, during my Christmas vacation, I wish to work for no more than six hours a day, then I am faced with the prospect of spending at least 21 days actually grading exams. In fact I will probably spend more than 21 days reading exams since I will need to read some exams more than once to construct a curve for each course, and to enter the final grades on a grade roster.

examinations or to advocate objective tests at law schools, were certainly the most comprehensive, and they touched off in the academic community a simmering debate that comes to a boil every ten or fifteen years. The most recent addition to that debate is an essay by Professors Norman Redlich and Steve Friedland, Challenging Tradition: Using Objective Questions In Law School Examinations. Because of my own doubts about the fairness and efficacy of essay examinations, I was hopeful that the Essay by Professors Redlich and Friedland might contain new data about the various testing methods or propose a fresh approach towards determining which of those methods is best.

To my disappointment, however, the Redlich and Friedland Essay contains nothing new. Instead of fueling the debate with novel data about examination methodology or adding depth or sophistication to the comparison of objective and essay exams, it offers up old arguments and worn perspectives woven together in a set of weak and self-contradictory theses. Its arguments differ in no significant way from those of the prior scholarship on this topic. The well-known shortcomings of essay exams are restated at length; the old claims about the alleged superiority of objective tests are repeated; and the traditional assumptions about faculty and student attitudes toward the examination process are reiterated, all without a critical or fresh perspective. The article makes no attempt to view the examination and grading process as a part of the

law exams should consist of a combination of two-thirds objective and one-third essay type questions; Ben D. Wood, The Measurement of Law School Work II, 25 COLUM. L. REV. 316 (1925) (advocating that law school exams should consist of half essay and half objective questions); Ben D. Wood, The Measurement of Law School Work III, 27 COLUM. L. REV. 784 (1927) (discussing the results of Professor Wood's studies on law school exams).

4. See, e.g., Albert Kocourek, Objective Law Examinations, 16 ILL. L. REV. 304 (1921) (describing his use of a “dogmatic”—“yes-no” or “true-false”—type of examination and praising its accuracy and the speed and ease with which it could be graded).

5. In 1942, for example, the Committee on Teaching and Examination Methods of the Association of American Law Schools (“AALS”) endorsed the use of objective examination questions. In 1945, that same committee determined that objective exam questions were superior to essay questions and recommended that “every effort ... be made” to bring “objective type law questions” into use. ASSOCIATION OF AMERICAN LAW SCHOOLS, 1945 REPORT OF THE COMMITTEE ON TEACHING AND EXAMINATION METHODS 147, 148 (1945). In 1977, Professor Steve H. Nickles reported and analyzed the results of his own survey about grading practices in American law schools in a well-argued and comprehensive article that again urged the universal adoption of objective exams. Steve H. Nickles, Examining and Grading in American Law Schools, 30 ARK. L. REV. 411 (1977). And in 1984, a lengthy report submitted to the Teaching Methods Sections at the Annual Meeting of the AALS supplemented some of the earlier research on testing practices and renewed the call for objective testing. 2 MICHAEL JOSEPHSON, LEARNING AND EVALUATION IN LAW SCHOOL (submitted to the AALS annual meeting, Jan. 1984).


larger program of legal education and training, nor does it endeavor to analyze the relative merits of objective and essay examinations in terms of that larger program. Rather, it leaves the more important questions about the examination process unasked and unanswered and leaves me secure in the belief that while the typical law school essay examination has serious flaws, it nevertheless remains, like the Churchillian view of democracy, preferable to its next best alternative.

According to Redlich and Friedland, law school faculty “increasingly” find fault with the essay exam, primarily because of the “many boring hours” they spend grading those exams, and secondarily because they do not perceive that this substantial investment of time correlates either with greater accuracy in grading or with greater pedagogical benefit to the student. As for law students, Redlich and Friedland argue that they also dislike the essay exam because it fails to test them fully on their knowledge of course material; fails to provide them with the opportunity “to learn the specific strengths and weaknesses of their performance”; and, given the length of time necessary to grade essay exams and the resultant delay in the posting of grades, “irritat[es]” them and makes them cynical about “the professional standards of the faculty.” Finally, Redlich and Friedland point to the “proven track record” of objective tests, describe again certain well-known failings of essay exams, and claim that the objective law school exam is methodologically superior to the essay variety.

In the following sections of this Essay, I shall deal in turn with the various assumptions, arguments, and criticisms raised by Professors Redlich and Friedland. Their theses, and the traditional arguments in favor of objective testing that they mirror, are not persuasive. The existing empirical data on the matter—data that has not changed significantly in the past fifteen years—is inconclusive at best. When examined empirically, the assumptions about faculty and student perspectives broadly described by Redlich and Friedland appear to be atypical. And more importantly, without a clear sense of the role that examinations are to play in the larger process of law school education—a process not really discussed by Redlich and Friedland—there can be no clear mandate either for replacing the essay examination with an objective one or for adding an objective component to every essay exam.

I. THE FACULTY PERSPECTIVE

Redlich and Friedland assert that “[b]oth teachers and students increasingly find fault with the traditional essay examination,” a broad assertion that is central to their main argument. If teachers and students do not find fault, or do not “increasingly” find fault, with the traditional essay exam,

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9. Id. at 143.
10. Id. at 143-44.
11. Id. at 149-51.
12. Id. at 143.
there might then be little reason and, perhaps more importantly, little impetus to replace or modify it. That central assertion, however, comes to us as a matter of faith, because Redlich and Friedland provide us with no data to support it. Instead, they rest this critical assertion on the opinion of one law school professor who is careful to characterize that opinion as a personal one.18 No other law school faculty member is cited in support of the asserted faculty perspective and no law students at all are cited in support of the asserted student perspective. Anyone who has spent an hour inside of a law school cannot help but observe that there is a great deal of faculty and student opinion about the examination process. And, as Redlich and Friedland correctly suggest, this body of opinion should have a substantial bearing on the questions of whether and how that process should be changed. Redlich and Friedland, however, make no effort actually to discover that opinion but instead simply assume that they know it intuitively. I disagree with that approach. The failure of Redlich and Friedland to buttress with hard evidence their intuitive assumptions about faculty and student attitudes toward essay examinations caused me to question the validity of those assumptions. In order to answer my questions on that score, I conducted a survey in February 1991 of the faculty and students at the DePaul University College of Law ("DePaul"), where I teach.14

Judged by their responses to that survey, the faculty at DePaul do not share the core assumption of Professors Redlich and Friedland about the traditional essay examination.18 Asked which type of final examination they prefer,18

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13. The opinion is that of Philip C. Kissam, Professor of Law at the University of Kansas, who has written often and well on this and related issues. See, e.g., Philip C. Kissam, Seminar Papers, 40 J. LEGAL EDUC. 339 (1990) (suggesting a theory of teaching and evaluating students in law school "seminar" classes); Philip C. Kissam, Law School Examinations, 42 VAND. L. REV. 433 (1989) [hereinafter Kissam, Law School Examinations] (advocating a change from the traditional "blue book" form of testing); Philip C. Kissam, The Evaluation of Legal Scholarship, 63 WASH. L. REV. 221 (1988) (questioning the traditional assumptions about the values, purposes and methods of legal scholarship); Philip C. Kissam, Thinking (By Writing) About Legal Writing, 40 VAND. L. REV. 135 (1987) (focusing on the process of legal writing); Philip C. Kissam, The Decline of Law School Professionalism, 134 U. PA. L. REV. 251 (1986) (exploring the nature and consequences of the changing social structures of the contemporary American law school).

Professors Redlich and Friedland, however, cite Kissam for the general faculty and student attitudes about essay exams quoted in the text above, when Kissam in fact said only, "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." Kissam, Law School Examinations, supra, at 493 (emphasis added).

14. The students were given one set of survey questions and the faculty were given another. The two sets of survey questions were identical in many respects, but differed from one another in certain minor ways. Copies of both sets of questions are appended to this Essay. Infra pp. 176-81. Two hundred ninety students responded to the survey, as did 36 faculty members. Students and faculty were both asked to respond anonymously to the survey, but students were asked to indicate their year in school and whether they were members of the Law Review.

I should, of course, issue all of the standard and the not so standard disclaimers about my own training and experience as a pollster. They can be stated simply. I have no training in this field; and prior to conducting this survey, I had no experience in it.

15. Or at least they do not share that part of the assumption that purports to describe current
twenty-nine of the thirty-six faculty responding indicated their preference for an essay exam, and seven for a combination essay-objective test. None preferred an objective examination. More significantly perhaps, when asked whether they believe that objective examinations are more fair to students than essay exams, thirty-two of the thirty-four respondents said "no" and only two said "yes." Asked which examination format best tests a student's knowledge and understanding of course material, twenty-four of thirty-three respondents chose the essay format, nine chose the combination format, and none chose the objective exam.

Based upon their answers to these survey questions, it appears clear that in a number of important ways the DePaul faculty prefer the essay examination, flaws and all, to the objective exam. It cannot be fairly said that they have increasingly found fault with the essay exam, or that they wish to replace the essay test with an objective one. As to them, Redlich and Friedland's assumption does not apply.

Redlich and Friedland make a second assumption about faculty attitudes toward the examination process. This second assumption is embedded in what Redlich and Friedland call the "efficiency" argument. The gist of the "efficiency" argument is that faculty time is too valuable to be spent on grading exams. Administering objective exams will require much less faculty time.

16. "QUESTION ONE: I prefer a final examination that is
   a) an objective exam
   b) an essay exam
   c) a combination of the two."

17. The results of the survey, and each response to it, are on file in the offices of the DePaul Law Review.

18. "QUESTION TWO: Regardless of my answer to Question One, I believe that objective examinations are more fair to the student than essay examinations.
   a) agree
   b) disagree."

19. Two of the 36 faculty returning the survey form did not answer this question.

20. "QUESTION NINE: The examination format that best tests a student's knowledge and understanding of course material is
   a) an objective exam
   b) an essay exam
   c) a combination of the two."

21. Three of the faculty respondents did not answer this question.

22. The faculty also seems not to find fault with the grading system used at DePaul. Asked whether that school's grading system is fair, 27 of the 32 respondents replied affirmatively, while only five answered negatively. See the Appendix, infra p. 177, for the full text of Question 12 of the Faculty Survey.

23. "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." Redlich & Friedland, supra note 8, at 149.
than grading essays, say the authors indisputably, because “[o]bjective multiple-choice questions can be graded by machine” and the grading of other types of objective exams can be supervised by teaching assistants.\(^\text{24}\) The assumption contained within that argument is that faculty begrudge the time spent grading essay exams and regard it as somehow either unnecessary or unavoidable.\(^\text{25}\)

The faculty at DePaul do not appear to share this assumption. Asked whether they would prefer an examination format that would result in their spending the least amount of time grading exams,\(^\text{26}\) thirty of thirty-five responding faculty said “no,” while only five said “yes.”\(^\text{27}\) One should not, I believe, interpret that response as an indication either that the faculty at DePaul are pleased that essay exams take so much time to grade or that they are generally unmindful of the many flaws in the essay examination and grading process. They are not. But one should, I think, interpret it to mean that, however much faculty may wish to shorten the grading process, they are not willing for that reason alone to switch from essay to objective exams.

Based on the DePaul survey, it would appear that the two central and intuitive assumptions used by Redlich and Friedland to describe the attitudes of law faculty towards essay exams do not apply to the faculty at DePaul. Contrary to the untested view of those authors, a decisive majority of the faculty at DePaul prefers essay examinations to any other format, and almost all of the faculty seems to believe that objective exams are no more fair to students than essay exams. It does not appear to be a faculty “increasingly find[ing] fault with the traditional essay examination” but rather one that finds the existing grading system to be fair. Moreover, unlike the hypothetical faculty members of Redlich and Friedland, the faculty at DePaul do not seem to have become so critical of the time expenditure necessary to grade essay exams that they are prepared to abandon the essay format simply to save time.\(^\text{28}\)

\(^{24}\) Id.

\(^{25}\) That assumption is made explicit in the Introduction to the Redlich and Friedland Essay. Immediately after claiming that faculty and students “increasingly find fault” with the essay exam, a claim attacked elsewhere in this article, infra notes 26-28, 33-39 and accompanying text, Redlich and Friedland state that, “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 accuracy or increased benefits to the test taker.” Redlich & Friedland, supra note 8, at 143 (footnote omitted).

\(^{26}\) “QUESTION FIVE: I would prefer whichever examination format resulted in my spending the least amount of time grading the exams.

a) agree

b) disagree.”

\(^{27}\) One of the 36 faculty respondents to the survey did not answer this question. See also supra note 22 (describing the affirmative answer of 27 of the 32 faculty responding to the survey question asking whether they thought the grading system at DePaul was fair).

\(^{28}\) Redlich and Friedland’s overarching emphasis on the time necessary to grade essay examinations eventually comes to seem like a collective obsession. They claim that the time factor is the primary faculty grievance with the essay exam, Redlich & Friedland, supra note 8, at 143, a claim that they then reiterate, id. at 144. Later, after discussing some of the well-known flaws
II. THE STUDENT PERSPECTIVE

Redlich and Friedland also purport to describe a student perspective about the examination process. As was the case, however, with their treatment of law faculty, Redlich and Friedland fail to marshall any empirical support for their claims about student attitudes.28

Students, too, are said "increasingly" to "find fault" with the traditional essay examination,30 to question its validity,31 and to have been made irritable and cynical by the delays in the posting of their grades, delays the authors attribute to the essay exam.32 But the "students" whose attitudes Redlich and Friedland describe, like the "faculty" they described, are intuitive constructs, not real people.

The results of the DePaul survey cast considerable doubt on the personal assumptions of Redlich and Friedland about the views of law students. For example, an overwhelming majority of DePaul law students prefers either an essay examination or a combination essay-objective exam to a purely objective examination.33 Of 289 student respondents, 30 (or approximately 10%) preferred a purely objective examination, 94 (32%) preferred an essay examination, and 165 (58%) preferred a combination of the two.34 Regardless of their

with essay tests, they state that "the most striking deficiency" of the essay exam, and the one that "tilts the scale in favor of modifying the process" is "the significant amount of time required to grade such examinations effectively." Id. at 147. Then, again, they argue that "the most practical and appealing reason" for law school faculty to adopt the objective exam is that "the grading of objective questions takes a fraction of the time required to evaluate essay examinations." Id. at 149. And finally, in discussing "the politics of implementation" of a change in the examination format, Redlich and Friedland (after noting that objective examinations are not forbidden by the relevant standard of the American Bar Association) argue first that change should come because "[o]bjective examinations can be graded quickly, even by machine ... [and] can save teachers many hours." Id. at 155.

29. I assume that their opinions about student attitudes come from their personal teaching experiences and from their conversations with students about these issues. I have no choice but to make this assumption because the article never indicates any source for its claims regarding student opinion.

30. Redlich & Friedland, supra note 8, at 143.

31. Id.

32. Id. at 143-44.

33. As noted earlier, supra note 14, the survey questions posed to students differed slightly from those asked of the faculty. Question One of the student survey asked:

"Given the choice, I would prefer that my final examination be

a) an objective exam

b) an essay exam

c) a combination of the two."

34. The breakdown by year in school and membership on the Law Review is as follows: of the first-year students responding to the survey (n = 127), 15 (11%) favored an objective exam, 38 (30%) an essay exam, and 74 (59%) a combination; of the second-year students (n = 76), six (8%) preferred an objective exam, 24 (32%) an essay, and 46 (60%) a combination; of the third-year students (n = 60), six (10%) preferred an objective exam, 21 (35%) an essay, and 33 (55%) a combination; and of the members of the Law Review, a group not differentiated according to one's year in school (n = 26), three (10%) favored an objective exam, 11 (43%) an essay, and 12 (47%) a combination.
personal preferences regarding examination format, only 38% of the surveyed students believed that objective exams are more fair to students than essay examinations; and only 10% of those students chose the objective exam as the examination format that best tests a student's knowledge and understanding of course material. Seventy-two percent 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. And 87% of all students preferred an examination format that allows professors to read and consider explanations for answers as well as the answers themselves. Finally, rather

35. "QUESTION TWO: Regardless of my answer to Question One [see infra p. 178 in the Appendix for the full text of Question One], I believe that objective examinations are more fair to the student than essay examinations.

   a) agree
   b) disagree."

Two hundred eighty-seven students responded to this question. One hundred eight agreed and 179 disagreed. The breakdown by year in school and membership on the Law Review is as follows: of the 126 first-year respondents, 38 agreed and 88 disagreed; of the 76 second-year respondents, 35 agreed and 41 did not; of the 59 third-year respondents, 29 agreed, 30 disagreed; and of the 26 Law Review member respondents, 6 agreed and 20 did not.

36. "QUESTION NINE: The examination format that best tests a student's knowledge and understanding of course material is

   a) an objective exam
   b) an essay exam
   c) a combination of the two."

Two hundred eighty-six students answered this question. The breakdown by year in school and Law Review membership is as follows: first-year (n = 127), 12 (9%) chose the objective exam, 34 (27%) chose the essay exam, and 81 (64%) chose a combination; second-year (n = 75), 6 (8%) chose the objective exam, 17 (23%) chose the essay, and 52 (69%) chose a combination; third-year (n = 58), 5 (9%) chose the objective exam, 20 (36%) chose the essay, and 33 (55%) chose a combination; and Law Review (n = 26), two (8%) chose the objective exam, nine (36%) chose the essay, and 15 (56%) chose a combination.

37. "QUESTION THREE: Regardless of my answer to Question One, I prefer an examination format that leaves the professor with no discretion in determining whether my answer was right or wrong.

   a) agree
   b) disagree."

Two hundred eighty-seven students answered this question, 82 of whom agreed with the quoted statement and 205 of whom disagreed with it. The breakdown by year in school and Law Review membership is as follows: first-year students (n = 125), 32 agreed, 93 disagreed; second-year students (n = 76), 19 agreed, 57 disagreed; third-year students (n = 60), 24 agreed, 36 disagreed; Law Review members (n = 26), 7 agreed, 19 disagreed.

38. "QUESTION FOUR: Regardless of my answer to Question One, I prefer an examination format that allows the professor to read and consider the explanation for my answer as well as the answer itself.

   a) agree
   b) disagree."

Two hundred eighty-eight students answered this question: 251 agreed; 37 disagreed. The breakdown by year in school and Law Review membership is as follows: first-year students (n = 126), 109 agreed, 17 did not; second-year students (n = 77), 68 agreed, 9 did not; third-year students (n = 59), 51 agreed, 8 did not; and Law Review members (n = 26), 23 agreed, 3 did not.
than having been made "irritable" or "cynical" by delays in the reporting of grades attendant upon the essay exam process, a large majority of DePaul students did not agree that the better type of examination is the one that would provide them with their final grades faster.\footnote{39}

The DePaul student survey largely refutes the unsupported assumptions about student attitudes made by Professors Redlich and Friedland. Only a small minority of students preferred to be tested by the purely objective method. More than 60% appear to believe that the essay exam is as fair or more fair to them than the objective test. Almost 90% of the students believe that an exam format with an essay component provides the best test of course comprehension. A large majority appears unwilling to part with certain important features of the essay examination process—namely, faculty discretion in grading and the opportunity for a student to explain his or her answer. And 75% appear unwilling to encourage the adoption of an exam methodology simply because it would result in a faster distribution of final grades.

It would certainly be wrong to conclude from the DePaul survey that law students are perfectly pleased with the examination and grading process. All of us who have taught at law school know that many students are dissatisfied with that process, and for many reasons. Some of those reasons may have to do with the type of exams used in law school; some may have to do less with the type of examination and more with particular exams given to particular students; some may concern perceived unfairness in the grading process; some may reflect personal disillusionment about the law or one's future in it; and some may reflect a generalized displeasure with law school. As discussed above, law school faculty are also critical of the examination process. But complaining about a process and desiring to replace it with something else are vastly different exercises. For Redlich and Friedland to infer from their own anecdotal evidence, and nothing more, that students generally fall into the "replace it" camp runs counter not only to my anecdotal evidence, but also more importantly to the empirical evidence furnished by the DePaul survey.

III. THE PEDAGOGICAL PERSPECTIVE

Maybe it doesn't matter that Redlich and Friedland are wrong about the faculty and student attitudes that they describe in their Essay. And maybe the DePaul survey, even if it does describe the attitudes of faculty and students at one school, has discovered an atypical set of attitudes not shared by faculty and students generally. Opinion about the examination and grading process is, 39. "QUESTION FIVE: I would prefer whichever examination format resulted in my receiving my final grade as soon as possible after the exam.
   a) agree
   b) disagree."

Of the 283 students replying to this question, 71 (25%) agreed and 212 (75%) disagreed. By year in school and Law Review membership, the responses were as follows: first-year (n = 127), 32 agreed and 95 disagreed; second-year (n = 72), 18 agreed and 54 disagreed; third-year (n = 59), 19 agreed and 40 did not; and Law Review (n = 25), 2 agreed and 23 did not.
after all, necessarily contingent. Faculty opinion at DePaul must depend in part upon the feedback that faculty there receive from students, administration, and other faculty about the perceived efficacy and fairness of their tests, and must also depend in part on their recollections of their own experiences as law students. Student opinion must also depend heavily upon personal experience. If a student has never taken an objective exam, or has taken only especially rigorous ones, he or she might develop opinions about that examination format quite different from those of another student who has taken well-conceived objective examinations or poorly conceived essay exams.

The pedagogical perspective, though, is determinate and therefore is arguably the only one that matters. If Redlich and Friedland have that perspective right, then we can disregard their flawed assumptions about faculty and student attitudes and allow the pedagogical imperative the primacy that it deserves. In my opinion, however, Redlich and Friedland do not have it right.

Redlich and Friedland's approach to the pedagogical questions raised by the choice of an examination format is two-pronged. The first prong recites again the well-rehearsed inadequacies of the essay exam, while the second prong advances the thesis that objective tests will solve many of the problems posed by essays. Neither prong is especially convincing.

A. The Alleged Shortcomings of the Essay Exam

According to Redlich and Friedland, the shortcomings of the essay exam are many and varied. The validity\(^4\) of essay exams, they say, is suspect. Essay exams may be poorly created and contain ambiguous questions; student performance may be skewed by time pressure; and faculty evaluation may be distorted by such immeasurable variables as the student's handwriting, organization, and word choice.\(^4\) More importantly, they claim, the essay exam "is highly questionable either as a measure of good lawyering skills or as an accurate predictor of future competence."\(^4\)

None of these criticisms is telling and some seem downright strange. Certainly essay exams can be poorly conceived and ambiguous. So can objective exams. It is possible, most of us realize, to do almost anything poorly. But one would think that, in an article comparing the relative merits of the essay and objective examination formats, the authors might ask which type of test is more amenable to being well-drafted more often; and, assuming well-drafted tests, which type is more likely to permit faculty to measure the relevant per-

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40. Redlich and Friedland do not define "validity" but state simply that validity is "determined by whether those who have the tested skills answer the questions better than those who do not." Redlich & Friedland, supra note 8, at 146. This description creates more problems than it solves: apart from the testing process itself, we have no way of identifying "those who have the tested skills," no grid that lists the truly intelligent. Consequently, finding "validity" in the law school testing process, even assuming that one had tested for the correct skills, whatever they are (more about this later), is hopeless.

41. Id.

42. Id.
 student performance on essay exams may be skewed by time pressure. So might it be on objective exams. Again, a comparison would be useful, as would some discussion of whether the imposition of any time pressure is fair and, if it is, how much of that pressure is acceptable pedagogically. Neither the faculty nor the students at DePaul believe that the time pressure imposed by the traditional three-hour essay exam is so great as to warrant a switch to objective tests. The faculty share that belief unanimously, as do the students by a ratio of almost three-to-one.

Of course grading may be affected by the student’s organization and word choice, but there are, I would think, many faculty who believe that those are relevant grading criteria. And yes, it is questionable whether the essay exam

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43. Some of the most intriguing and complex questions arising out of a study of the examination and grading process are questions not raised by Professors Redlich and Friedland. Consider, for example, the matter of examination performance criteria in law school. Should they revolve around learning a certain quantum of knowledge, a certain way of thinking, or a certain way of expressing oneself and organizing one’s thoughts? Should they include one, some, or all of those factors? If more than one factor should be considered, should the relevant factors be given equal weight in the grading process?

Consider also the question of who should be responsible for establishing the relevant criteria. Should it be the large law firms who employ many of the law school graduates and have a very direct interest in assuring that their future applicants for employment possess certain defined skills and knowledge? Should it be the law school administration, who might wish to send a clear message to those firms, or to its own current and prospective students, that it teaches and measures the skills most relevant to future employability? Should it be individual faculty members, each potentially with his or her unique view of the relevant criteria and the appropriate mix of those criteria? Should the students have a role?

These questions in turn raise even broader questions about the agenda and purposes of the contemporary law school: what they should be and who should decide upon them.

44. It seems practically impossible to square Redlich and Friedland’s concerns with the pedagogical problems undeniably posed by such things as time pressure and poor handwriting with their overriding interest in reducing the amount of time that faculty spend grading essay exams. Thus, while it might seem that Redlich and Friedland might approve, pedagogically speaking, of a take home exam with no time limitation— it allows in theory for the kind of thoughtful reflection and unpressured drafting desired by them, and could be typed by the student instead of handwritten—the increase in the time needed to grade such an exam would doubtless cause them, practically speaking, to disapprove of it, even if they thought it the soundest of all options.

45. See the Appendix, infra p. 177 for the full text of Question Ten of the Faculty Survey and the responses to that question.

46. “Question Ten: The time pressure imposed by the customary three-hour essay exam is so great that I believe that objective exams are preferable.

   a) agree
   b) disagree.”

Two hundred seventy-seven students answered this question: 77 (28%) agreed; 200 (72%) did not. For a fuller breakdown of the student response, see the bracketed data set forth below Question Ten of the Student Survey, reproduced infra p. 180 in the Appendix to this Essay.

47. Question Seven of the Faculty Survey asked faculty whether they agreed or disagreed with the following: “In grading essay examinations, professors must necessarily consider (either consciously or subconsciously) such things as students’ handwriting, spelling, and paragraph organization; and all of these things should be irrelevant to one’s final grade.”

Sixteen of the 33 faculty respondents agreed with that statement while 17 disagreed.
is a "measure of good lawyering skills" or "an accurate predictor of future competence." A world of other variables, not amenable to faculty control or influence, stands between any student testing process and the eventual attainment of professional skills and competence. But at least good essay exams graded fairly can measure one's thought processes and problem-solving skills, the ability to work under pressure, and the ability to organize and communicate material clearly and effectively. Those are lawyering skills, and none of them seems easily measurable by an objective test.

In professional life, the problems of one's client do not arise in the form of true-false or multiple-choice questions. Instead they come in narrative form, and the narratives do not display, there for the choosing, the "correct" answers to those problems. Real legal problems, in other words, resemble essay questions much more closely than they resemble objective ones. And because real legal problems do not come equipped with their own right answers, the method of resolving them—identifying the relevant issues, deciding upon a viable legal theory, and analyzing the facts and issues in light of that theory—bears a close and useful resemblance to the method best used to answer essay questions. Objective examinations, by comparison, have little practical value.

Redlich and Friedland repeat a number of other time-honored criticisms of the essay examination. It is too short. It is too long. It is not comprehensive. And it does not produce a reliable rank-ordering of student results. The first two criticisms seem effectively to cancel each other, but the third and fourth merit some discussion. Assuming that faculty could agree on the meaning of "comprehensiveness" in the examination context, it is doubtful that they could also agree on the value of comprehensiveness as a grading criterion. Viewed as a quantitative measure of course content, "comprehensiveness" is pedagogically controversial. Thus, while some faculty might believe that every aspect of the content of their courses is of equal and high importance, others might think that the process of recognizing and analyzing problems is all that

48. Objective tests, of course, presuppose the existence of one correct answer for each question, a notion that many law faculty go to great lengths to dispel.
49. I thank my colleague Wayne Lewis for this insight.
50. Redlich and Friedland do not make these two conflicting criticisms back to back, of course. First they say that the combination of the time limit and the "overly long" essay question has the effect of "emphasizing the quality of pressured responsiveness at the expense of deliberation and thoughtful reflection." Redlich & Friedland, supra note 8, at 146. Then they remark that the length of the essay examination, "often four hours," contributes to the "cumbersome nature of the grading process," and that "[t]here is no evidence that a four-hour essay examination ... accomplishes more ... than a three-hour essay examination." Id. at 147-48.
51. Id. at 148.
52. Id. at 146-47.
53. I assume that an exam that tests on five aspects of a course, for example, is more comprehensive than one that tests on four; but I cannot move from that comparative assumption about comprehensiveness to a more absolute one. Is an exam "comprehensive," for example, if it tests on 50% of the material covered? On the "most important" material? On all of the material? No single answer seems obvious.
matters. Still others might feel it best to learn a combination of process and content. Criticizing the essay exam for being insufficiently comprehensive is easy if you ignore, as Redlich and Friedland do, the core question of whether "comprehensiveness" (acceptably defined) is an important pedagogical value.

I have already confessed to my own difficulties in distinguishing for grading purposes between essay exams that straddle the grading borders. I cannot fault Redlich and Friedland for reminding us of that problem. I do fault them, however, for not giving any consideration to the possibility that the same problem might exist with respect to objective examinations and might be even more acute. In volume 2 of Michael Josephson's report to the Association of American Law Schools,64 relied on heavily by Professors Redlich and Friedland,65 John Garfinkel, a consultant to the California Committee of Bar Examiners writes that

objective testing . . . will work well if the test is intended and designed primarily to eliminate incompetents. There is substantial disagreement about the efficacy or [sic] objective testing for selecting the most highly qualified, and many of the writers in the field doubt if it will work at all for that purpose.66

54. 2 JOSEPHSON, supra note 5.
55. See Redlich & Friedland, supra note 8, passim.

As with the larger questions that arise from a discussion of relevant grading criteria, see supra note 43, the issue of whether law schools should engage at all in the rank-ordering of their students raises basic questions about the nature of law school. Consider, for example, the question of who benefits from class rankings. Is it the majority of the students themselves? Or is it only a small minority of them? Some might argue that class rankings create important incentives (positive and negative) for continued hard work. Others might say that they help the "better" students find good jobs, though at an obvious cost to the "worse" students. Are the large law firms and other prospective employers the major beneficiaries of class rankings? If so, should they have a more direct role in determining the content and evaluation methods of law school courses? Or should they, instead, create their own testing methods, separate from the law schools, and more precisely tailored to their own specific needs? If the system of class ranking does exist, at least in part, for the benefit of prospective employers, is it the most effective way of predicting for them the professional skills and prospects of law students?

Or is the class ranking system adopted for the benefit of the schools themselves? Some might contend, for example, that those schools without impressive national or local reputations want and need to show employers that some of their "best" students are capable of working at a high level of competence and thus need to distinguish among them in order to create a more highly employable elite. And what of the faculty? Do class rankings benefit them by arming them with a weapon (or a reward) to be used to persuade the tired, the unhappy, and the bored among their students to continue to try to work hard?

Class rankings are not inevitable. Law schools could conceivably grade on a pass/fail basis and could agree to require graduating students to take a national examination (but what kind of examination?) in order to receive their diplomas. Under such a regime, law firms and other employers could shape the national examination into a uniform standard of student measurement and could, at least in theory, avoid trying to compare the best students from one school with the good ones from another. Not that I advocate such a system. But in hypothesizing it, I can well imagine the first critical response: "One test, even a 'comprehensive' national examination administered to
It is admittedly hard to resolve the ambiguities and the inevitable close-calls that arise in the process of grading essay exams. But it is even harder, I would think, to feel confident that objective exams, which by definition permit students no initiative, art, subtlety, or explanation in their answers, will allow the best students to emerge from the pack.

Finally, Redlich and Friedland parade before us some of the procedural criticisms of essay examinations that have marched previously in other generations of scholarship. Students, they say, receive insufficient feedback from faculty beleaguered by the time necessary to finish the Herculean task of grading. The delay in grading occasioned by the essay exam works to the pedagogical detriment of the student, because if feedback about exam performance is provided it inevitably comes too late to be useful. Faculty criteria for successful performance on their examinations are unpredictable because they are unknown to the student.

Many of these procedural criticisms are valid. But none of them is the inevitable consequence of the essay examination process, and each of them can be remedied without scuttling the essay exam. Faculty are not prevented by the essay format from providing useful and timely feedback to students. Giving a short mid-term exam (real or practice), especially to first-year students, would permit faculty to indicate to students in advance of the all-important final exam whether or not they are on the right track. Conducting a class to discuss and review one semester's final exam at the very beginning of the next semester, even if every examination paper has not yet been graded, would serve the same useful end. And announcing in class the criteria for successful performance on the final examination is both feasible and easy.

Objective examinations do not seem to allow for any useful feedback. Since the student cannot explain his or her response, or demonstrate any of the thought processes that led to it, the objective exam tells the faculty member nothing about the student, apart from the number of correct answers given. In order for the student to benefit from any post-exam discussion, he or she must be able to recreate from memory, weeks after the fact, the chain of reasoning that prompted a particular response. And, because they cannot know the basis for any of a student's answers to an objective test, faculty are unable to reassure the incorrect responder who analyzed the question properly, or to warn—or even to recognize—the correct responder who analyzed the question improperly. In my opinion, this is a major pedagogical problem, a structural defect in objective examinations that is irremediable and that, compared to the

all under the same conditions, would not tell employers all that they need to know about students; they would need a writing sample, a memorandum, a brief." Exactly. And that is one reason why I favor essay exams.

58. Redlich & Friedland, supra note 8, at 147.
59. Id.
60. Id.
correctable procedural drawbacks of the essay exam, seems enormous. But
Redlich and Friedland, once again, fail to discuss it.

B. The Alleged Advantages of the Objective Exam

According to Redlich and Friedland, the major benefit of the objective ex-
amination is that it saves a great deal of faculty time.\footnote{Id. at 143, 147.} That, however, is not
its only asserted advantage. The objective exam is also said to increase the
scope of the subject matter tested,\footnote{Id. at 150. This argument is the flip side of the contention that essay exams are insuffi-
ciently "comprehensive." See supra note 53 and accompanying text for a discussion of the possible
meanings of comprehensibility.} which in turn is claimed to "enhance the
perceived fairness" of the examination process;\footnote{As noted earlier, the assertion that objective exams are actually perceived to be more fair
than essays is unsupported by any data and seems to run counter to the perceptions of the DePaul
students who responded to the DePaul survey. See supra notes 33-34 and accompanying text.} to have the "ability to test
legal reasoning and analytical thinking;"\footnote{Redlich & Friedland, supra note 8, at 151.} and to "permit students to familiar-
ize themselves with the type of questions they will face on the Multistate Bar
Exam."\footnote{Bar examiners must grade hundreds or thousands of examinations. The sheer volume of this
burden, coupled with the absence of any need to discriminate between or among qualified appli-
cants, might justify the adoption of entirely objective exams. The fact that most states, however,
continue to ask essay questions on their bar exams attests to the unique importance of this type of
question.}

It may well be that certain objective examinations are capable of testing
legal reasoning and analytical thinking. Redlich and Friedland correctly point
to good evidence indicating that "it is now possible to test highly sophisticated
mental processes through the use of well-conceived objective questions."\footnote{Law journals have begun to publish articles that instruct law faculty on the composition of
objective questions that will test validly for reasoning and analytical skills. See, e.g., Howard J.
Gensler, Valid Objective Test Construction, 60 ST. JOHN'S L. REV. 288 (1986) (considering the
objective law school test as a valuable tool to evaluate law students).} But
there are two big problems with this evidence. The first is that much of it
comes from a testing context—bar examinations—whose goals differ signifi-
cantly from those of most law school exams\footnote{See Garfinkel, supra note 56, at 388a (noting that the objective exam, while useful to elimi-
nate incompetents, may be of little value in selecting the most qualified students).} and in which the test, as noted
earlier, is intended and designed primarily to eliminate incompetents.\footnote{See supra note 8, at 151 (quoting John A. Winterbottom, Objective Ex-
the second is that, while it may be possible for objective exams to test for
reasoning and analytical skills, it seems impossible to know whether a correct

61. Id. at 143, 147.
62. Id. at 150. This argument is the flip side of the contention that essay exams are insuffi-
ciently "comprehensive." See supra note 53 and accompanying text for a discussion of the possible
meanings of comprehensibility.
63. As noted earlier, the assertion that objective exams are actually perceived to be more fair
than essays is unsupported by any data and seems to run counter to the perceptions of the DePaul
students who responded to the DePaul survey. See supra notes 33-34 and accompanying text.
64. Redlich & Friedland, supra note 8, at 151.
65. Id. The Multistate Bar Exam is used by 48 states and the District of Columbia. Even the
bar exam has been questioned as an inappropriate measure of a person's qualifications to be a
lawyer. See, e.g., Questioning the Bar Exams, TIME, Feb. 25, 1980, at 44.
66. Redlich & Friedland, supra note 8, at 151 (quoting John A. Winterbottom, Objective Ex-
answer to an objective question (or a good grade on an objective test) demonstrates mastery of those skills and, more importantly, whether an incorrect answer (or a poor grade) demonstrates the failure to have mastered them.

Redlich and Friedland’s contention that objective exams are either useful or desirable because they permit students to prepare themselves in some way for the Multistate Bar Examination\(^6\) rests on yet another set of untested assumptions about student and faculty opinion. At DePaul, faculty and students disagree about whether law school examinations should contain objective questions simply to help students prepare for the bar examination. Asked if they agree that law school exams should always have “an objective component” because bar exams do,\(^7\) thirty-five of thirty-six faculty respondents (97%) said “no,” and only one said “yes.” Asked the same question,\(^7\) 166 of 285 student respondents (58%) said “yes,” while 119 (42%) said “no.”\(^7\)

Aware of the substantial resistance within most law school faculties to any move away from the essay examination, Redlich and Friedland ultimately propose a compromise. Introduce objective questions, they urge, not as a replacement for essay exams but as a supplement to them.\(^7\) After all, they admit, “[t]he essay examination permits more in-depth analysis and, of course, an explanation of a student's conclusions”;\(^7\) allows faculty to give partial credit and to obtain “many gradations of answers”;\(^7\) and is the best measure of “the skills of organizing ideas, and expressing them in writing.”\(^7\) But if essay examinations provide us with these substantial benefits, and I firmly believe that they do, then why adulterate them with objective questions that lack those benefits? For Redlich and Friedland the answer lies, once again, in the supposed virtues of saving faculty time and of testing more comprehensively,\(^7\) neither of which, for reasons I have discussed earlier,\(^7\) seems particularly virtuous to me.

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69. Redlich and Friedland admit that this reason for using objective questions is “not decisive.” Redlich & Friedland, supra note 8, at 151.

70. “QUESTION EIGHT: There should always be an objective component to law school exams because there is an objective component to the bar examination.
   a) agree
   b) disagree.”

71. Question Nine of the student survey was identical to Question Nine of the faculty survey.

72. The breakdown of student responses by year in school and Law Review membership is as follows: first-year (n = 127), 81 (64%) agreed, 46 (36%) disagreed; second-year (n = 74), 43 (58%) agreed, 31 (42%) did not; third-year (n = 59), 34 (58%) agreed, 25 (42%) did not; Law Review (n = 26), 9 (35%) agreed, 17 (65%) did not.

73. Redlich & Friedland, supra note 8, at 157-58.

74. Id. at 157.

75. Id.

76. Id. In light of all that precedes it, this admission borders on the astonishing.

77. Id.

Conclusion

In some respects, the law school resembles an ecosystem. The students, faculty, and administration (along with the world of potential employers lurking just beyond) have evolved a *modus vivendi* that is certainly not perfect but which seems to work to the general satisfaction of most of the population. The particular courses offered, the teaching methodology developed for them, the various study techniques adopted by law students, the examination and grading process, and the reliance placed by prospective employers on the student's law school transcript are all closely interrelated. While it might be tempting, for the sake of discussion, to isolate one component of this system and single it out for change, it is more important to recognize that altering even one of these components will necessarily result in a significant modification of the entire system.

Economists have described this phenomenon. They call it the problem of the second-best. Briefly put, this problem counsels against trying to fix one part of a multi-part system, unless it is clear that the parts not being fixed are working perfectly. Two wrongs, in other words, may make a right if the system in which they operate has learned to make sense of them and if, by "fixing" only one of them, you destroy the equilibrium of that system.

If the examination and grading process in use in most American law schools is a problem that can be "fixed," the law school that fixes it in the manner suggested by Professors Redlich and Friedland will unleash for itself a host of problems that seem currently to be more or less under control. How will (or should) courses be taught under this new system? Should the same courses continue to be offered? How will the students' selection of courses and their methods of study change? What will prospective employers make of student evaluations based largely or entirely on objective examinations? As I have tried to suggest above, one of the major failings of the Redlich and Friedland approach is that it looks at the examination grading process in isolation, without the benefit either of data or of a systematic perspective.

"Everybody talks about the weather," declared Charles Dudley Warner, "but nobody does anything about it." In my opinion, we should do the same thing about the examination process.

79. For people who have attended law school, the type of ecosystem that probably comes to mind first is a swamp.
80. "Fixing a bad bearing that drags a car in one direction would worsen the situation if there is another uncorrected (or uncorrectable) flaw dragging the car in the opposite direction. If the best solution of correcting both flaws is not available, the second-best approach may be to leave the bad bearing uncorrected." *Philip Areeda & Louis Kaplow, Antitrust Analysis* 41 (4th ed. 1988).
81. And not, as is commonly thought, Mark Twain. See John Bartlett, *Familiar Quotations* 733b n.1 (14th ed. 1968).
82. *Id.* at 733b (quoting Charles D. Warner, "Editorial, The Hartford Courant, (August 24, 1897)).
APPENDIX

A. The DePaul Faculty Survey

A Survey of Student and Faculty Opinion About the Examination Process

Instructions: Please do not write your name on this form. Please do, however, indicate whether you are a first, second, or third-year student, by writing "1", "2", or "3" on the top right hand corner of this page. [Faculty participants were asked to mark the survey with an "F."]. Thanks.

DEFINITIONS: For purposes of this survey, please consider an "objective examination" to consist of multiple choice or true-false questions that can be answered by marking a space on an answer sheet and that can be graded by a Scantron or other automatic grading device; and please consider an "essay examination" to consist of questions whose answers require written essays that can not be graded automatically.

QUESTION ONE: I prefer a final examination that is

a) an objective exam
b) an essay exam
c) a combination of the two

[The faculty response to this question was as follows: No faculty chose "a," 29 chose "b," 7 chose "c." ]

QUESTION TWO: Regardless of my answer to Question One, I believe that objective examinations are more fair to the student than essay examinations.

a) agree
b) disagree

[2 faculty agreed; 32 disagreed.]

QUESTION THREE: Regardless of my answer to Question One, I prefer an examination format that leaves me with no discretion in determining whether an answer is right or wrong.

a) agree
b) disagree

[3 faculty agreed; 32 disagreed.]

QUESTION FOUR: Regardless of my answer to Question One, I prefer an examination format that allows me to read and consider the explanation for an answer as well as the answer itself.

a) agree
b) disagree

[35 faculty agreed; 1 disagreed.]
QUESTION FIVE: I would prefer whichever examination format resulted in my spending the least amount of time grading the exams.

a) agree
b) disagree

[5 faculty agreed; 30 disagreed.]

QUESTION SIX: I would prefer an examination format that would allow me to review the graded exam with my students in order to suggest how they might improve their performance on exams generally and how they might add to their understanding of the course.

a) agree
b) disagree

[29 faculty agreed; 5 disagreed.]

QUESTION SEVEN: In grading essay examinations, professors must necessarily consider (either consciously or subconsciously) such things as students' handwriting, spelling and paragraph organization; and all of these things should be irrelevant to one's final grade.

a) agree
b) disagree

[16 faculty agreed; 17 disagreed.]

QUESTION EIGHT: There should always be an objective component to law school exams because there is an objective component to the bar examination.

a) agree
b) disagree

[1 faculty member agreed; 35 disagreed.]

QUESTION NINE: The examination format that best tests a student's knowledge and understanding of course material is

a) an objective exam
b) an essay exam
c) a combination of the two

[No faculty chose "a," 24 chose "b," 9 chose "c."]

QUESTION TEN: The time pressure imposed by the customary three-hour essay exam is so great that I believe that objective exams are preferable.

a) agree
b) disagree

[no faculty agreed; 35 disagreed.]

QUESTION ELEVEN: The standards used by the various members of the faculty to grade examinations should be the same.

a) agree
b) disagree

[13 faculty agreed; 21 disagreed.]
QUESTION TWELVE: The grading system used by this law school is fair.

a) agree
b) disagree

[27 faculty agreed; 5 disagreed.]

QUESTION THIRTEEN: Law school places too much emphasis on achieving high grades.

a) agree
b) disagree

[21 faculty agreed; 12 disagreed.]

QUESTION FOURTEEN: In my experience, the people who receive the best grades in law school exams truly deserve them, by virtue of superior intelligence, hard work, or both.

a) agree
b) disagree

[24 faculty agreed; 10 disagreed.]

B. The DePaul Student Survey

[The title, instructions, and definitions of this survey are identical to those of the Faculty Survey. See supra p. 176.]

QUESTION ONE: Given the choice, I would prefer that my final examination be

a) an objective exam
b) an essay exam
c) a combination of the two

[The responses, by year in school and by membership on Law Review, are as follows: of the first-year students, 15 chose “a,” 38 chose “b,” 74 chose “c”; of second-year students, 6 chose “a,” 24 chose “b,” 46 chose “c”; of third-year students, 6 chose “a,” 21 chose “b,” 33 chose “c”; of the members of Law Review, 3 chose “a,” 11 chose “b,” 12 chose “c.”]

QUESTION TWO: Regardless of my answer to Question One, I believe that objective examinations are more fair to the student than essay examinations.

a) agree
b) disagree

[Of the first-year students, 38 agreed and 88 disagreed; of the second-years, 35 agreed and 41 disagreed; of the third-years, 29 agreed and 30 disagreed; and of the Law Review members, 6 agreed and 20 disagreed.]
QUESTION THREE: Regardless of my answer to Question One, I prefer an examination format that leaves the professor with no discretion in determining whether my answer was right or wrong.

   a) agree
   b) disagree

   [Of the first-year students, 32 agreed and 93 disagreed; of the second-years, 19 agreed and 57 disagreed; of the third-year students, 24 agreed and 36 disagreed; and of the Law Review members, 7 agreed and 19 disagreed.]

QUESTION FOUR: Regardless of my answer to Question One, I prefer an examination format that allows the professor to read and consider the explanation for my answer as well as the answer itself.

   a) agree
   b) disagree

   [Of the first-year students, 109 agreed and 17 disagreed; of the second-years, 68 agreed and 9 disagreed; of the third-years, 51 agreed and 8 disagreed; and of the Law Review members, 23 agreed and 3 disagreed.]

QUESTION FIVE: I would prefer whichever examination format resulted in my receiving my final grade as soon as possible after the exam.

   a) agree
   b) disagree

   [Of the first-year students, 32 agreed and 95 disagreed; of the second-years, 18 agreed and 54 disagreed; of the third-years, 19 agreed and 40 disagreed; and of the Law Review members, 2 agreed and 23 disagreed.]

QUESTION SIX: I would prefer an examination format that would allow me to review my graded exam with my professor in order to learn how to improve my performance on exams generally or my understanding of the particular course in question.

   a) agree
   b) disagree

   [Of the first-year students, 119 agreed and 6 disagreed; of the second-years, 69 agreed and 7 disagreed; of the third-years, 53 agreed and 4 disagreed; and of the Law Review members, 24 agreed and 1 disagreed.]
QUESTION SEVEN: In grading examinations, professors must necessarily consider (either consciously or subconsciously) such things as students' handwriting, spelling and paragraph organization; and all of these things should be irrelevant to one's final grade.

a) agree
b) disagree

[Of the first-year students, 75 agreed and 52 disagreed; of the second-years, 56 agreed and 19 disagreed; of the third-year students, 41 agreed and 18 disagreed; and of the Law Review members, 14 agreed and 12 disagreed.]

QUESTION EIGHT: There should always be an objective component to law school exams because there is an objective component to the bar examination.

a) agree
b) disagree

[Of the first-year students, 81 agreed and 46 disagreed; of the second-years, 43 agreed and 31 disagreed; of the third-years, 34 agreed and 25 disagreed; and of the Law Review members, 9 agreed and 17 disagreed.]

QUESTION NINE: The examination format that best tests a student's knowledge and understanding of course material is

a) an objective exam
b) an essay exam
c) a combination of the two

[Of the first-year students, 12 chose "a," 34 chose "b," and 81 chose "c"; of the second-years, 6 chose "a," 17 chose "b," and 52 chose "c"; of the third-years, 5 chose "a," 20 chose "b," and 33 chose "c"; and of the Law Review members, 2 chose "a," 9 chose "b," and 15 chose "c."]

QUESTION TEN: The time pressure imposed by the customary three-hour essay exam is so great that I believe that objective exams are preferable.

a) agree
b) disagree

[Of the first-year students, 33 agreed and 91 disagreed; of the second-years, 26 agreed and 44 disagreed; of the third-years, 15 agreed and 42 disagreed; and of the Law Review members, 3 agreed and 23 disagreed.]

QUESTION ELEVEN: The standards used by the various members of the faculty to grade examinations should be the same.

a) agree
b) disagree

[Of the first-year students, 89 agreed and 38 disagreed; of the second-years, 56 agreed and 19 disagreed; of the third-years, 46 agreed and 12 disagreed; and of the Law Review members, 20 agreed and 6 disagreed.]
QUESTION TWELVE: The grading system used by this law school is fair.
   a) agree  
   b) disagree

[Of the first-year students, 59 agreed and 61 disagreed; of the second-years, 37 agreed and 38 disagreed; of the third-years, 24 agreed and 34 disagreed; and of the Law Review members, 14 agreed and 10 disagreed.]

QUESTION THIRTEEN: Law school places too much emphasis on achieving high grades.
   a) agree  
   b) disagree

[Of the first-year students, 96 agreed and 31 disagreed; of the second-years, 62 agreed and 13 disagreed; of the third-years, 49 agreed and 10 disagreed; and of the Law Review members, 20 agreed and 5 disagreed.]

QUESTION FOURTEEN: In my experience, the people who receive the best grades in law school truly deserve them, by virtue of superior intelligence, hard work, or both.
   a) agree  
   b) disagree

[Of the first-year students, 48 agreed and 77 disagreed; of the second-years, 23 agreed and 49 disagreed; of the third-years, 13 agreed and 44 disagreed; and of the Law Review members, 7 agreed and 17 disagreed.]