

# Assessment, Collaboration, and Empowerment: Team-Based Learning

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## I. Introduction

*Learning is an experience. Everything else is just information.*

Albert Einstein

Law schools, while historically slow to change,<sup>1</sup> are increasingly turning to new teaching methodologies.<sup>2</sup> Faculty members are employing “flipped” techniques that require students to engage more deeply in instructional material outside the classroom, enabling professors to apply concepts and principles more actively in class.<sup>3</sup> Team-Based Learning (TBL) is a form of

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1. Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEG. EDUC. 376 (2018) (noting that the “decision of the American Bar Association to modify its Standards for Approval of Law Schools [] to focus on student learning outcomes is the most significant change in law school accreditation standards in decades.”)
2. See, e.g., Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 810 (2012).

In the last two decades, three major reports on legal education were published: the MacCrate Report, the Best Practices Report, and the Carnegie Report (collectively, the Reports). The Reports called for reform in the direction of more lawyering skills and greater emphasis on professionalism and the development of professional identity. Other commentary has criticized legal education as irrelevant to the actual practice of law, self-serving of law professors, esoteric arcane, inefficient, and lacking in value. Finally, commentary spanning from 1959 to 1992 advocated for greater emphasis on humanistic training in legal education.

*Id.* (citations omitted).

3. Katharine T. Schaffzin, *Learning Outcomes in a Flipped Classroom: A Comparison of Civil Procedure II Test Scores Between Students in a Traditional Class and a Flipped Class*, 46 U. MEM. L. REV. 661 (2016).

A flipped classroom inverts the traditional education model so that the content is delivered outside of class, while class time is spent on activities normally considered “homework.” For example, students may access instructional material through videos, podcasts or online tutorials before the class meeting. Then during class time, students work on activities which force them to apply what they have learned.

*Id.* at 664 (citations omitted).

flipped instruction that has been widely used in other disciplines, and it is now making its way into in legal education.<sup>4</sup> TBL differs from general group work and other types of flipped instruction in terms of its emphasis on permanent teams that proceed through sequenced phases of instruction. The TBL planning process begins with the strategic organization of teams that remain permanent for the course. TBL professors then divide the course content into units or modules. For each unit, the professor prepares a Readiness Assurance Process (RAP). During the RAP, students complete guided readings before class in preparation for in-class quizzes. Once the students complete the readings, they come to class to first complete the quizzes individually. They then take the same quiz as a team, receiving immediate feedback on their responses. After students have completed the group quiz, the professor concludes the RAP with a brief lecture. The RAP ensures that students have a firm understanding of key concepts that they then employ in application exercises. Students also engage in peer assessments. While all aspects of TBL have been effective in my first-year legal writing course, the RAP and application exercises have been particularly beneficial and would be well-suited to application in other doctrinal courses.

This essay provides an overview of primary components of TBL that I use in my legal writing course, including: preparing students to engage in this novel (at least in the law school classroom) pedagogy; forming permanent teams; creating materials for the RAP; developing application exercises; incorporating TBL into the grade structure of the course; and navigating peer assessment.<sup>5</sup> The essay endeavors to introduce and explain core components of the pedagogy and to encourage law professors to consider this pedagogy as a beneficial method of instruction. The method is particularly compelling in light of new accreditation standards requiring law schools to engage in assessment of student learning,<sup>6</sup> new approaches to fostering professional

4. See Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153 (2012).

5. Portions of this essay have been adapted from Melissa H. Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 LEGAL WRITING: J. LEG. WRITING INST. 49 (2014).

6. Relevant new ABA accreditation standards provide:

Standard 301. Objective of Program of Legal Education

(a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession. (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Standard 302. Learning Outcomes

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the

identity development,<sup>7</sup> and increasing need for law schools to foster collaboration and teamwork.<sup>8</sup>

## II. TBL Overview

TBL has been described as “a learner-centered teaching strategy designed to promote students’ true understanding of a subject.”<sup>9</sup> TBL is “designed to provide students with both conceptual and procedural knowledge,” with the primary learning objective “to go beyond simply ‘covering’ content and focus on ensuring that students have the opportunity to practice using course

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legal profession.

### Standard 314. Assessment of Student Learning

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

### Standard 315. Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

Interpretation 314-1 provides, “Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.”

To the extent the RAP process, when well-designed, provides efficient and effective formative assessment, TBL is a pedagogy well-suited to compliance with the new standards. See Anthony Niedwiecki, *Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum*, 64 CLEV. ST. L. REV. 661, 673 (2016) (noting “a law school is not evaluated on whether the school has satisfied its learning outcomes, but on the school’s efforts to ‘establish and assess student learning.’”)

7. See generally Neil Hamilton, *Internalizing a Fiduciary Mindset to Put the Client First*, 24 PROF. LAW. 8, 14 (2017). Studying the ethical-professional identity competencies that current employers seek in new employees, Hamilton notes that, among others, “respect for others and relationship skills including client relationship skills and teamwork” are essential.
8. Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013) (noting, “[d]espite demand in law firms for first-year associates who can work collaboratively, law schools continue to graduate students who are unfamiliar and uncomfortable with the concept of working in teams, particularly interdisciplinary teams.”); see also Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students’ Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162 (2012) [hereinafter Sparrow, *Work Well*]. Sparrow observes:

Working with others is an important legal skill; and as law practice increasingly relies on collaboration among lawyers, legal staff, clients, and other individuals, so have legal employers raised the demand for effective collaborative skills among law students and recent graduates.

*Id.* at 1162-63.
9. Sparrow & McCabe, *supra* note 4, at 156 (citing L. Dee Fink, *Beyond Small Groups: Harnessing the Extraordinary Power of Learning Teams*, in TEAM-BASED LEARNING: SMALL-GROUP LEARNING’S NEXT BIG STEP 4 (Larry K. Michaelsen et al. eds., 2008)).

concepts to solve problems.”<sup>10</sup> The TBL planning process begins with the organization of permanent teams.<sup>11</sup> Professors then divide the course content into units or modules, with a recommendation of five to seven per course.<sup>12</sup> For each unit, the professor prepares a RAP that includes guided readings that students complete outside class, followed by individual and group quizzes in class.<sup>13</sup> After students have completed the group quiz, the professor concludes the RAP with a brief lecture.<sup>14</sup> The students are then prepared to transition to application exercises that have been designed to practice the concepts addressed in the unit.<sup>15</sup>

TBL has been widely used in other disciplines, “including medicine, business, sciences, law, and the humanities.”<sup>16</sup> Addressing the issue of how to apply TBL in a doctrinal law school course,<sup>17</sup> Sophie Sparrow and Margaret McCabe argue that it “is an effective and transformative teaching strategy for law school courses, providing a sustainable, effective, and efficient way to teach important legal knowledge, skills, and values.”<sup>18</sup> By way of further encouragement, Sparrow and McCabe assert:

While Team-Based Learning’s requirements that students apply legal concepts, be accountable for their own learning, and engage in their legal education alone might inspire many

10. Larry K. Michaelsen & Michael Sweet, *The Essential Elements of Team-Based Learning*, 116 *NEW DIRECTIONS IN TEACHING & LEARNING* 7 (2008) [hereinafter Michaelsen & Sweet, *Essential Elements*].
11. *Id.* at 8. Michaelsen and Sweet recommend that teams be strategically formed. In my course, as I explain, teams are formed randomly. *See* section I.B *infra*.
12. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 8; *see also* section I.C.1 *infra*.
13. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 8. The authors note that the “RAP consists of a short test on the key ideas from the readings that students complete as individuals; then they take the same test again as a team, coming to consensus on team answers. Students receive immediate feedback on the team test and then have the opportunity to write evidence-based appeals if they feel they can make valid arguments for their answer to questions that they got wrong.” *Id.*; *see also* section I.C.2-3 *infra*.
14. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 8 (explaining that the “final step in the RAP is a lecture (usually very short and always very specific) to enable the instructor to clarify any misperceptions that become apparent during the team test and the appeals.”); *see also* section I.C.4 *infra*.
15. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 8 (citations omitted) (noting that “[o]nce the RAP is completed, the remainder (and the majority) of the learning unit is spent on in-class activities and assignments that require students to practice using the course content.”); *see also* section I.D *infra*.
16. Sparrow & McCabe, *supra* note 4, at 157.
17. *Id.* at 154. The authors acknowledge their experience using TBL in a writing course, but note that their article “focuses primarily on applying it to a doctrinal course.” *Id.* at 155 n.8.
18. *Id.* at 154 (recommending “that law professors try this approach if they seek to engage students in active and collaborative learning experiences, to have their students’ learning be the center of attention in the classroom, and to help their students’ learning improve”).

law professors to adopt the Team-Based Learning strategy, some might need more convincing evidence. Compellingly, Team-Based Learning's transformative power also addresses key reforms in legal education such as professors teaching specified learning outcomes in a transparent manner, helping students develop professional values, and engaging students in gaining real-world problem-solving skills.<sup>19</sup>

The primary components of team-based learning that I have incorporated in my legal writing course are: a) course policy materials to orient students to TBL; b) strategically formed, permanent teams; c) readiness assurance process materials; d) application exercises; e) TBL as a graded component of the course; and f) formative assessment, including peer evaluation. Each is illustrated more fully below.

#### *A. Course Policy Materials to Orient Students to TBL*

When I first converted my course to TBL, I understood from the relevant resources that it was important to introduce students to the concept of *team-based* learning as distinguished from other forms of group learning, the latter of which often gives rise to great resistance from students.<sup>20</sup> To that end, and to the extent that TBL is an example of the “flipped classroom,” experts in TBL recommend that students be provided an orientation to the pedagogy, particularly to address resistance or misunderstandings about how the technique differs from general group work.<sup>21</sup> I also sensed it was especially important to orient my students because TBL differs significantly from what law students are accustomed to in terms of instruction, particularly in the first

19. *Id.* at 161-62.

20. Weinstein, et al., *supra* note 8, at 36-37 (observing the following with regard to student impressions of team learning: “Law students have not had much experience with teamwork. Students will feel uncomfortable working with members of another profession. Students do not particularly enjoy being on a team or sharing a team grade.”).

21. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 15-16.

Because the roles of instructor and students are so fundamentally different from traditional instructional practice, it is critical that students understand both the rationale for using TBL and what that means about the way the class will be conducted. Educating students about TBL requires at a minimum providing them with an overview of the basic features of TBL, how TBL affects the role of the instructor and their role as students, and why they are likely to benefit from their experience in the course. This information should be printed in the course syllabus, presented orally, and demonstrated by one or more activities.

*Id.*; see also Sparrow, *Work Well*, *supra* note 8, at 1166. Sparrow similarly orients students in her doctrinal course to the efficacy of TBL: “I provide students with illustrations of the importance of effective collaboration in the workplace by referring to professional literature and stories from lawyers. I also inform them about the value of team learning, and how this approach has resulted in better learning in other disciplines.” *Id.* (citations omitted).

year.<sup>22</sup> For my course, I chose to include the following material, which has been prepared by TBL experts and which is available with other TBL resources on the Institute for Law Teaching and Learning website:<sup>23</sup>

### **Team-Based Learning (TBL)**

This course uses the strategy of team-based learning, which has been used for over 30 years and is implemented in [twenty-three] countries across a wide range of disciplines, including medicine, business, science, technology, and many others.

Teams mimic the professional environment and develop essential lawyering skills. In practice, you will work with others frequently to serve your clients effectively. You will work with lawyers, clients, consultants, court and agency staff, and assistants. Studies have shown that, across all disciplines, the ability to work well with others is as important to success as substantive expertise. Team-based learning develops the skills and values necessary to practice law, while also allowing you to apply class materials and get immediate feedback on your analysis.

In this course, you will be working in teams of [four to six] students; these teams will last the entire semester. Teams will be assigned during the first week of the semester. I expect each team to work together effectively and efficiently; each team member is responsible for achieving these goals.

Team-based learning has two major components: individual out-of-class preparation, and in-class teamwork focusing on applying the materials prepared out of class

22. See, e.g., Jeremiah A. Ho, *Law as Instrumentality*, 101 MARQ. L. REV. 131, 137 (2017) (noting that “despite all the crisis-talk and inward obsessions, the current subject matter of teaching of law students has a large body of technical insight and pedagogical discourse, but lacks any unifying sense of what modern law schools ought to look like beyond the nineteenth-century model promulgated by Christopher Langdell at Harvard Law School.”). See also Clifford S. Zimmerman, “*Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*,” 31 ARIZ. ST. L. J. 957, 966-67 (1999). Zimmerman recognized that, “[i]n the last several decades, the law school curriculum has evolved for the better. From pure Socraticism, to Langdell and the original case method, to the myriad pedagogies today, legal education now includes a wide variety of teaching methods.” He nonetheless asserts

legal education, as an institution, is not receptive to the use of collaborative or cooperative learning teaching pedagogies. The fundamental principles of both pedagogies - classroom equality, shared authority, and student-centered learning-are inherently at odds with the development and structure of traditional legal education. Thus, attempts to use collaborative and cooperative learning in legal education typically encounter barriers ranging from institutional constraints to outright hostile reactions.

*Id.* at 965-67 (citations omitted).

23. *Sample TBL Language for Course Syllabus: Team-Based Learning*, INST. FOR L. TEACHING & LEARNING, [http://lawteaching.org/wp-content/uploads/2015/12/ILTLSampleTBL\\_SyllabusLanguage201201.pdf](http://lawteaching.org/wp-content/uploads/2015/12/ILTLSampleTBL_SyllabusLanguage201201.pdf) (last visited May 5, 2018).

on exercises. You will form heterogeneous teams at the beginning of the course. Teams will develop and refine team contribution guidelines and assess how well each member of the team contributes at various points in the semester. Below [is an] answer[] to [a] common student question[] about team learning.

*What if I have a problem with my team?*

Try to work it out. The biggest reason that teams do not function effectively is that team members avoid conflict. Be aware that most teams take about [four to six] weeks to become truly effective. Be patient, keep the lines of communication open, and come talk to me if you have questions or concerns.

You may have addressed conflicts between teammates effectively in your previous work, service, academic, and extracurricular experiences. Address the issue with your team as you would in a professional office. Consider how you would want to hear the message if your behavior was a challenge for your teammates. If the problem is not resolved using the team contribution guidelines, talk to me, and I can suggest ways for you and your teammates to work through the problem. In the rare case of alleged student misconduct, I will likely intervene.

Finally, TBL represents [fifteen percent] of your grade. Though each teammate will assign points to his or her team members, I consistently monitor teams to observe professionalism. If there is evidence that a team member is using team points to lower a classmate's final grade without justification, I reserve the right to nullify the team points and award the professionalism grade. Awarding professionalism points is not a preferred option, as it indicates that the team was unable to work professionally.

To ensure that students understand this framework, I incorporate this course policy reading into an initial quiz students take during our first class. Students are specifically instructed that the quiz will address both the substantive readings and the course policies. They therefore read the course policies, including the explanation of TBL, very carefully. By using a question designed to reinforce the benefits of TBL, I am able to begin the semester knowing that students have a concrete introduction to TBL principles.

*B. Permanent Teams that Have Been Strategically Formed*

Another component of TBL is the use of strategically formed, diverse, and permanent teams. Diversity within groups is essential to avoid barriers to group cohesiveness, including the formation of coalitions within groups.<sup>24</sup> Coalitions within student groups can be formed based on pre-existing relationships, or based upon other attributes the students have in common. TBL pioneers Larry K. Michaelsen and Michael Sweet explain:

In newly formed groups, either a previously established relationship between a subset of members in the group (such as a boyfriend and girlfriend or fraternity brothers) or the potential for a cohesive subgroup based on background factors such as nationality, culture, or native language is likely to burden a group with insider-outsider tension that can plague the group throughout the term. Because it is human nature to seek out similar others, allowing students free rein in forming their own groups practically ensures the existence of potentially disruptive subgroups.<sup>25</sup>

Having permanent teams is also an important element of TBL, as the permanency may discourage members from becoming social loafers.<sup>26</sup> Social loafing, or the tendency of some group members to allow others to do the work, can “constrain[] the interaction necessary for a productive learning environment [and] . . . if left unchecked, . . . can prevent the development of the social fabric that is necessary for effectively functioning learning groups.”<sup>27</sup> Because “members of new and/or temporary groups are typically more concerned about their own personal image than that of the group and also see themselves as having little to lose if the group fails to perform effectively,”<sup>28</sup>

24. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 10 (noting, “[c]oalitions within a group are likely to threaten its overall development”).

25. *Id.*

26. Larry K. Michaelsen, L. Dee Fink, & Arletta Knight, *Designing Effective Group Activities: Lessons for Classroom Teaching and Faculty Development* 373, 375 (1997), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1384&context=podimproveacad>. The authors explain, “Under certain conditions, a high percentage of group members would prefer to sit back and let ‘someone else’ work on their behalf. This phenomenon, [is] known as ‘social loafing.’” *Id.*

27. *Id.* “More assertive members will inevitably ‘take charge’ and, by doing so, will both reduce the need for additional input and create a sort of a ‘caste’ system in which quieter members often feel that their ideas might not be welcomed.” *Id.*

28. *Id.* The authors identify six forces that contribute to social loafing:

First, some people are naturally resistant to participation (e.g., shy). Second, others prefer to dominate a discussion. Third, members who feel they lack content knowledge of the task at hand are usually reluctant to speak because they are concerned about being seen as incompetent. Two others are especially problematic in newly formed and/or temporary groups. These are that members of new and/or temporary groups are typically more concerned about their own personal image than that of the group and also see themselves as having little to lose if the group fails to perform effectively.



having permanent teams ensures that group members understand their commitment to the group.<sup>29</sup>

There are a variety of strategies for creating diverse groups, including the use of questionnaires to ensure ethnic, scholastic, and undergraduate degree diversity.<sup>30</sup> I tend to sort my student groups randomly, however, for a few reasons. First, my class consists of first-year law students, so academic level and interest is consistent. Second, I begin the semester with a quiz on the very first day and therefore have little opportunity to question the students regarding undergraduate degree, years of study, prior work experience, etc. The random grouping method has worked quite well, particularly because the students are placed in their groups on the first day of classes, reducing any resistance that may become present once student coalitions form.<sup>31</sup> The teams are permanent. My first-year course spans two semesters. Ideally, the students remain in permanent teams for group work over the course of the year.

### C. Readiness Assurance Process (RAP)

The RAP is systematically designed to address concerns related to student accountability.<sup>32</sup> These concerns may be particularly troubling for students who are new to TBL, and who have had prior unpleasant or unsuccessful

Finally, the group task promotes social loafing when it can be completed by one member working alone and/or doesn't require members to reach an agreement

*Id.*

29. See *id.* at 376 (explaining that “as groups become more cohesive, trust and understanding typically build to the point that even naturally quiet members are willing and able to engage in intense give-and-take interactions without having to worry about being offensive or misunderstood”).
30. An example of a questionnaire to address diversity in team composition is available at the Institute for Law Teaching and Learning website at <http://lawteaching.org/wp-content/uploads/2015/12/ILTLSampleTeamFormationSurvey201201.pdf> (last visited May 5, 2018).
31. Other legal writing professors have employed this random approach, for similar reasons. See e.g., Anne E. Mullins, *Team-Based Learning: Innovative Pedagogy in Legal Writing*, 49 U.S.F.L. REV. F. 53 (2015). With regard to considering admissions data to sort teams, for example, Mullins notes that
 

even if I had adequate time to review admissions data or survey results, I was not confident that the information would truly facilitate strategic choices. One thing I have learned in teaching legal writing is that it is impossible to predict with any level of certainty a student's potential abilities in legal writing: legal writing is a completely new skill to all of the students in the class.

*Id.* at 55.

32. Michaelsen et al., *supra* note 26, at 381 (noting, “the best activity available for building group cohesiveness and minimizing social loafing is the Readiness Assurance Process”).

experiences doing group work.<sup>33</sup> The RAP is, to my mind, the most beneficial<sup>34</sup> component of TBL. It is also the most labor-intensive modification for the professor; but once the materials are completed, they can be reused from semester to semester, making that preparation an efficient use of the professor's time.

To craft materials for the RAP, professors are advised to divide the course into units, or modules—no more than about six per semester.<sup>35</sup> For each module, students go through a RAP.<sup>36</sup> The process involves having students complete directed reading outside class, then having them come to class to take an individual readiness assurance quiz (iRAQ), which may also be referred to as an individual readiness assurances test (iRAT). The individual quiz is followed immediately by a group readiness assurance quiz (gRAQ), which may also be referred to as a group readiness assurance test (gRAT). Following the group quiz the professor conducts a lecture that wraps up discussion of the quiz material. Students are also given an opportunity to appeal questions on the quiz. Each of these elements is described below.

33. See, e.g., David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386 (1999). Dominguez studied cooperative learning strategies, but cautioned, “[I]t is important to address law students’ likely reservations, if not skepticism, about collaborative education. A learning community adds new roles. It does not place any less emphasis on sustained individual effort; it recognizes that the practice of law demands solitary discipline.” *Id.* at 387-88; see also Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 826 (2010). Herndon explains, “Many a driven student cringes at the thought of ‘group work,’ something students were not exposed to at an earlier point in their education or, alternatively, were exposed to with resulting negative feelings. As such, students approach the method with caution.” *Id.* at 826 (citations omitted).
34. By “beneficial,” I am referring to the two primary goals I had in mind when changing my course pedagogy: 1) to make the students work more diligently to learn the materials, and 2) to provide more effective and efficient feedback and instruction.
35. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 8 (noting that in “a TBL course, students are strategically organized into permanent groups for the term, and the course content is organized into major units—typically five to seven”).
36. Larry K. Michaelsen & Michael Sweet, *Team-Based Learning*, 128 NEW DIRECTIONS IN TEACHING AND LEARNING 41, 43 (2011) [hereinafter Michaelsen & Sweet, *TBL*]. The authors describe the readiness assurances phase as follows:
  1. Prereading by students outside of class. This includes podcasts and other forms of media.
  2. Individual readiness assurance test (iRAT). This is a short, basic, multiple-choice test about the preparation materials.
  3. Team readiness assurance test (tRAT). Once students turn in their individual tests, they then take the exact same test again, and must come to consensus on their team answers. Importantly, teams must get immediate feedback on their performance, currently best achieved using scratch-off forms in the immediate feedback assessment technique (IF-AT).
  4. Appeals. When teams feel they can make a case for their answers marked as incorrect, they can use their course materials to generate written appeals, which must consist of (a) a clear argumentative statement and (b) evidence cited from the preparation materials.

*Id.*

1. *Dividing the course into modules or units*

While identifying course units seems quite straightforward, this was a surprisingly challenging aspect of the TBL preparation for me. When I converted my instruction to TBL, I had been teaching this course for many years and never characterized the material in terms of “units.” However, TBL is a backward-design teaching methodology.<sup>37</sup> Professors start with what they absolutely want students to know at the end of the semester and then design backward with those learning objectives in mind. Michaelsen and Sweet explain:

Designing a TBL course requires instructors to “think backward.” What is meant by “think backward”? In most forms of higher education, teachers design their courses by asking themselves what they feel students need to know, then telling the students that information, and finally testing the students on how well they absorbed what they were told. In contrast, designing a TBL course requires instructors to “think backward”—backward because they are planned around what they want students to be able to do when they have finished the course; only then do instructors think about what students need to know.<sup>38</sup>

Before using TBL, I had employed a more traditional planning model. I typically reviewed a number of textbooks to come up with a syllabus with general course goals in mind. In converting the course to TBL, I did not significantly change my syllabus, but I thought more carefully and precisely about the units, or modules, and how those could be used to punctuate the progression of the course. This was a little challenging with my course, because the units in my syllabus are not symmetric—some are content-based and others address segments of a predictive memo (rule explanation and rule application paragraphs), and are therefore more skills-based.

37. Sparrow & McCabe, *supra* note 4, at 177. The authors explain: “Identifying objectives in advance, referred to as ‘backward design,’ is the reverse of how many of us may have designed our courses, where we may have reviewed legal texts’ tables of contents, pored over texts’ hundreds of pages, divided the number of topics by the number of classes, and allocated reading assignments accordingly.” *Id.* (citations omitted).
38. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 13. The authors note that the backward design method
  - enables the instructor to build a course that provides students both declarative and procedural knowledge (in other words, conceptual knowledge and the ability to use that knowledge in decision making). This is a useful distinction, but if you have taught only with conceptual familiarization as your goal, it can be surprisingly difficult to identify what exactly you want students to be able to do on completion of a course.

*Id.*

The following are what I ultimately identified as the units for my fall curriculum, which addresses predictive reasoning and memo preparation. I do not have students go through the readiness assurance cycle for each unit. Rather, I combine some units for some RAPs, as noted below. Moreover, for two of the units, I do not employ a RAP.<sup>39</sup>

**Unit 1:** Introduction to United States Court System (RAP)

**Unit 2:** Rule Structures (RAP—combined with Unit 3)

**Unit 3:** Evaluating Cases/Single Case Analysis (Pre-drafting Skills)  
(RAP—combined with Unit 2)

**Unit 4:** Overview and Thesis Paragraphs (RAP)

**Unit 5:** Rule Explanation/Rule Application (RAP)

**Unit 6:** Question Presented/Short Answer

**Unit 7:** Synthesis

**Unit 8:** Writing the Analysis for Multiple Cases (RAP)

### 2. Guided readings

In terms of helping students prepare for each unit, I prepared a study guide to direct their attention to the readings. My students have two required texts in the fall—a legal writing textbook and an ethics supplement. I use the study guides in the first semester to help students focus on key concepts that I incorporate on the quizzes.<sup>40</sup> In fact, I prepared the study guides as I prepared the related quizzes. This proved to be very beneficial, as I was able to ensure that the students were focused on aspects of the reading that would be emphasized in the quizzes. By the same token, I was able to reinforce the most pertinent concepts in the text.

### 3. *iRAQs/gRAQs*

Once the students complete readings outside of class, they are prepared to take a quiz. Most quiz examples I reviewed were multiple-choice and included ten to twenty questions.<sup>41</sup> Because I teach in a seventy-five-minute session, I use quizzes containing five to ten questions. Students first take the closed-book

39. The question-presented/short-answer unit appeared too straightforward to warrant the process, and the synthesis unit did not appear, at least initially, as well-suited to the RAP. The latter is challenging for students, so I maintained my prior instruction for that unit.
40. “Study guides used in a Team-Based Learning course can also identify which questions students should be able know and apply on a closed-book readiness assurance test, helping students focus on key principles they need to learn.” Sparrow & McCabe, *supra* note 4, at 23. As the authors explain, study guides may be particularly helpful for first-year students. *Id.* They also note that professors need not provide study guide materials for all course content. “Depending on the course and your students, professors may decide to provide study guide questions for important materials throughout the course, or choose to gradually limit the number of questions as students develop expertise and skill in legal reading and self-regulated learning.” *Id.*
41. Michaelsen recommends that multiple-choice quizzes contain eighteen to twenty questions. Larry K. Michaelsen, *Getting Started with Team-Based Learning*, in *TEAM-BASED LEARNING: SMALL-GROUP LEARNING’S NEXT BIG STEP* 31 (Larry K. Michaelsen et al. eds., 2008).

quiz individually and then proceed to take the identical quiz in their groups. During the group quiz, they use Immediate Feedback Assessment (IF-AT) sheets, or “scratch-off” sheets, prepared by Epstein Educational Enterprises,<sup>42</sup> to complete the group test.

The IF-AT sheets are purchased as prepared forms with answer keys corresponding to a code printed on a perforated section at the bottom of the form. The perforated section can be removed before giving the forms to students (but after the quiz has been keyed to the correct answer key). The correct response is revealed when the student scratches off the material over one of the possible responses and a star appears below the scratch-off material. The star moves within each correct answer box to ensure that students do not attempt to scratch at the margins to reveal the correct response.

While it is certainly possible to use electronic multiple-choice quizzes, Michaelsen and Sweet describe two primary advantages of using IF-AT sheets for group quizzes. The immediate feedback provided by the sheets “enables members to correct their misconceptions of the subject matter. Finding a star immediately after scratching the choice confirms the validity of it, and finding a blank box lets them know they have more work to do. Second, it promotes both the ability and the motivation for teams, with no input from the professor, to learn how to work together effectively.”<sup>43</sup> Michaelsen and Sweet assert that the impact of the IF-AT sheets cannot be overstated: “The impact of the IF-AT on team development is immediate, powerful, and extremely positive. In our judgment, using the IF-ATs with the tRATs is the most effective tool available for promoting both concept understanding and cohesiveness in learning teams. Anyone who does not use them will miss a sure-fire way to implement TBL successfully.”<sup>44</sup>

For the group quiz, students must continue to discuss the question and select from among the remaining choices until they arrive at the correct response. I instruct students that they must arrive at a consensus before they scratch the response, and that all students must weigh in on the correct response. I also instruct students that everyone has to participate, and that if one student has not spoken during group work, all others must remain silent until that person has spoken. While I recognize that some students are introverts, participation

42. EPSTEIN EDUCATIONAL ENTERPRISES, <http://www.epsteineducation.com/home/order/default.aspx>. Quiz cards are available in ten, twenty-five, or fifty questions, with either four or five possible responses.

43. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 18. As the authors further explain, the use of IF-AT forms facilitate positive group dynamics: “‘Pushy’ members are only one scratch away from embarrassing themselves, and quiet members are one scratch away from being validated as a valuable source of information and two scratches away from being told that they need to speak up.” *Id.*

44. *Id.*

is important for the group dynamic and it is therefore essential that everyone participate. Students are aware at the beginning of the semester that they will receive feedback and a score for their participation in group work, which assists in encouraging participation. My student teams have consistently impressed me with their ability to foster effective collaboration, an observation shared by Sparrow:

Teams often develop collaborative strategies and refine their guidelines in light of their greater understanding of their teammates. For example, a team of highly extroverted, energetic students agreed that interrupting each other was acceptable behavior, contrary to the guidelines for every other team in the course. Similarly, a team that included bright but very quiet, deferential students agreed to have the quieter students start every discussion because the quiet students were most likely to accurately analyze a problem and least likely to interject their views if their teammates engaged in flawed analysis.<sup>45</sup>

In fact, I have been quite pleased with the level of engagement, preparation, participation, and accountability during group quizzes.<sup>46</sup> My experience mimics that described by Michaelsen and Sweet in terms of how the group test situation ensured member participation:

The benefit of the IF[-]AT is that it provides many rounds of low-stakes, formative feedback in a very short period of time. What may be not so obvious is the extent to which the tRAT stimulates students to interact in much the same way as they would in a formal reciprocal teaching situation. In their search for correct answers, students invariably alternate in and out of a teacher's role by asking each other the kinds of questions that the teacher normally would ask. For example, on any given question, students might ask each other to make predictions, explain their rationales for those predictions, and clarify their different understandings of the material.<sup>47</sup>

45. Sparrow, *Work Well*, *supra* note 8, at 1170.

46. Other professors who use TBL experience similar levels of engagement in observing student interactions during the group quizzes. Anne Mullins notes:

In my experience, the IF-AT quizzes are pure magic! I have never seen students so immediately and actively engaged in in-class group work. Group work no longer took place in hushed tones with one or two students driving the discussion: instead, the class came alive! The students were excited to talk through the problems together.

Without any prompting from me, they pulled out their class texts to explain to each other why they reached a particular answer.

Mullins, *supra* note 31, at 56.

47. Michaelsen & Sweet, *TBL*, *supra* note 36, at 44.

Group scores are calculated based on how many attempts it takes to arrive at the correct answer. The students are aware of this and are able to score their own performance, as each quiz has a cover sheet explaining the scoring process. I use an example of the quiz cover sheet taken from the Institute for Law Teaching and Learning website.<sup>48</sup>

Drafting the quiz questions is not easy.<sup>49</sup> For me, this was especially true because the units addressed different types of material; some address content, such as hierarchy of authority and jurisdiction, while others address skills, such as drafting rule explanation paragraphs. I therefore chose somewhat different formats for the questions based upon the material in the unit. For example, content-based units have questions that require students to test their understanding of the underlying concepts, and skills-based units require students to evaluate examples of written work and select from among a number of appropriate critiques.

In addition to dealing with different types of material in the units, the professor must pose questions “challenging enough that students will need to show sufficient understanding to apply basic concepts, rather than recognize a right answer, but sufficiently achievable that most students will answer most of them accurately.”<sup>50</sup> Finally, Michaelsen recommends that questions be properly sequenced to help students develop understanding:

[U]sing related questions that require increasingly complex levels of understanding [is] particularly helpful for two reasons. First, if the questions are correctly chosen and sequenced, students can learn from the questions themselves while they are taking the [readiness assurance quiz]. For example, by asking one or two recognition-type questions followed by a question that requires synthesizing the concepts from the two earlier questions students are provided with the opportunity to develop a deeper understanding of the concepts themselves. Second, questions that require higher-level thinking skills are far more likely to stimulate the kind of discussion that promotes peer teaching.<sup>51</sup>

Notwithstanding these challenges, drafting the quiz questions has been an effective and efficient use of my time. Initially, I had my teaching colleagues and assistants evaluate the quizzes to determine whether I achieved

48. *Team-Based Learning*, *supra* note 23, at <http://lawteaching.org/wp-content/uploads/2015/12/ILTLSampleRAQInstructionCoversheet201201.pdf> (accessed May 5, 2018).

49. Sparrow & McCabe, *supra* note 4, at 186 (emphasizing that “[w]riting many of these kinds of effective multiple-choice questions is difficult and time-consuming, particularly for those who have limited experience drafting them”).

50. Sparrow & McCabe, *supra* note 4, at 185.

51. Larry K. Michaelsen, *Frequently Asked Questions about Team-Based Learning*, in *TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING*, 226 (Larry K. Michaelsen et al. eds., 2004).

the appropriate balance with regard to difficulty. Reviewing my students' performance over the course of the several semesters, I believe I have been able to accomplish that. During the first few semesters I employed TBL, I maintained spreadsheets reflecting individual and group performance on each question. This proved to be a helpful illustration of the power of TBL, as it reflected positive performance, particularly on group quizzes, thereby providing helpful feedback on my instructional resources. Reviewing student performance in this manner provides an illustration of the type of self-assessment professors can achieve by using these resources. It is also a form of assessment that reflects the emphasis of new ABA accreditation standards.<sup>52</sup>

Using TBL in a doctrinal law school class, Sophie Sparrow expresses similar positive consequences of using multiple-choice quizzes in the RAP. She explains, "Well-designed multiple-choice quizzes can help students in any size class learn foundational doctrine, provide feedback to teachers and students, develop students' interpersonal skills, and prepare students for the bar exam."<sup>53</sup> Moreover, developing the "questions" is an excellent investment: by collecting all tests at the end of that first class, professors can revise and reuse them the next time they teach that course."<sup>54</sup>

The quizzes solidify understanding of key foundational concepts, enabling students to successfully transition to application exercises. Sparrow notes

52. Assessment generally requires a faculty member to create learning outcomes, create assessment instruments, assess student performance in those outcomes, and then use assessment data to reevaluate these strategies and their impact on student learning ("closing the loop" of the assessment cycle). See, e.g., Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 313, 322 (2010). Using TBL as an assessment strategy and compiling and reviewing data such as that reflected on the spreadsheets described in section II. C. 3., *supra* may be one example of an assessment cycle of a student-learning outcome. *Id.* at 320 (distinguishing between institutional and student learning outcomes); see also Susan Hanley Duncan, *They're Back! The New Accreditation Standards Coming to a Law School Near You—A 2018 Update, Guide to Compliance, and Dean's Role in Implementing*, 67 J. LEGAL EDUC. 462 (2018) (noting that "[o]ne of the most important steps in the institutional assessment cycle involves using the findings of strengths and weaknesses from the assessments to continually improve the programs [and the] final step in the circle looks to what the professors are learning from these assessment findings and whether or not they are using that knowledge to inform their actions.").
53. Sophie M. Sparrow, *Using Individual and Group Multiple-Choice Quizzes to Deepen Students' Learning*, 3 ELON L. REV. 1 (2011) [hereinafter Sparrow, *Multiple-Choice Quizzes*]. She concludes, "I now value multiple-choice quizzes as an effective first step in preparing students to engage in solving complex legal problems. When used with other assessments as part of a comprehensive, coherent, and intentional overall course design, multiple-choice quizzes are effective in preparing law students for the deep learning necessary to practice law effectively." *Id.* (citations omitted).
54. Sparrow & McCabe *supra* note 4, at 186. The authors advise: "As with writing any kind of exam or assignment for which students will be graded, to improve the effectiveness of the questions, show them to colleagues, teaching assistants, and others to check for errors and areas of confusion. In addition, focus on the important learning objectives for the material in the unit; many professors have a fear of making tests too easy, and, as a result, make them more difficult than is effective, particularly at this point in the process." *Id.* at n.126.



that “[t]o develop the kind of expertise necessary to solve complex legal problems, law students must first understand foundational legal doctrine,” and that students “are more likely to develop knowledge if they have multiple opportunities to practice and get feedback on how well they are mastering their learning.”<sup>55</sup> “Taking several multiple-choice quizzes during a course allows students to study foundational doctrine, to apply that doctrine to new facts, to get feedback on how well they are mastering core principles, and to revise their learning based on that feedback.”<sup>56</sup> Finally, the IF-AT technique used during the group quiz, which obligates students to continue to strive to determine the correct answer and which provides rewards for doing so, fosters and encourages learning.<sup>57</sup>

#### 4. *Wrap-up lecture*

During the group quizzes, I take the opportunity to walk around the room to observe the questions that are most difficult or confusing to students. I have designed the responses to be challenging, even though my goal is for groups to generally select appropriate responses. Notwithstanding, students often have to distinguish among a number of correct responses to select the best answer, requiring careful reading. For example, the call of the question often asks students to “select the *most significant* criticism” or “the *best improvement*” to an example of written work. Once groups complete the quiz, and have a sense of the correct answer because of the immediate feedback sheets, I take a portion of class to go over the quiz. In this context I can emphasize details related to the substance of the questions, aspects of the reading, and the competing concerns related to responses. As Michaelsen and Sweet explain, these lectures are effective because “students have been *primed* by feedback on the RAP to listen actively and zero in on exactly the parts of the content they do not understand.”<sup>58</sup>

55. Sparrow, *Multiple-Choice Quizzes*, *supra* note 53, at 6.

56. *Id.* (citations omitted).

57. See Mullins, *supra* note 31, at 65-57. Mullins observes that, on a typical quiz, students would be rewarded only for determining the correct answer. In contrast, the IF-AT sheets offer “a sliding scale of rewards instead of a one-shot deal [which] keeps the students engaged in the learning process through the entirety of each question.” This encourages learning because, for law student who are encountering new conceptual frameworks and skills, “the underlying message of sliding-scale scoring is an important one: Not getting it right on the first try is not failure. Rather, with hard work and persistence, they can reach the right answer and reap some reward when they do reach it.” *Id.*

58. Michaelsen & Sweet, *TBL*, *supra* note 36, at 45 (noting, “After the RAP, the teacher is prepared to deliver, and students are eager to receive, a highly-targeted clarifying lecture”) (emphasis in original). Michaelsen and Sweet note that the format of these lectures can vary. “The ideal strategy is to conduct a class discussion in which teams that correctly answered challenging questions can explain their answers. The other strategy is that, when students’ explanations are inadequate, the teacher can deliver a straight-up corrective and/or explanatory lecture.” *Id.*

*5. Appeals*

Groups are given the opportunity to appeal if they believe that they had an appropriate response that did not correspond to my correct answer. The appeal process language is taken from sample forms on the Institute for Law Teaching and Learning website<sup>59</sup> and is described to students as follows:

As a team, you may appeal the answer. You may appeal **only** if the team got the answer wrong. Appeals are open-book, must be in writing, and submitted by the end of class (See Appeal Form). If a team appeals and is successful, only that team and any individuals of that team will receive full points for the accepted alternative answer. In the appeal, you must identify the correct answer your team chose, and *why* that answer is the best answer. If an individual gets the answer correct, and the team appeals, the individual still gets full points. Appeal results will be announced next class.<sup>60</sup>

As noted, I found the RAP to be the most beneficial improvement to my course associated with TBL, as it facilitates accountability in learning. The following chart, developed by Michaelsen and others,<sup>61</sup> is a helpful illustration of the powerful impact of each component of the RAP:

Impact of the Readiness Assurance Process:

Individual Accountability from:

Completing individual exam over assigned readings prior to group exam (counts toward the course grade).

Revealing/defending individual answers during the group exam.

Preparing written appeals to justify their point of view on questions on which they influenced the group to select an incorrect answer.

Intense Give-and-take Group Discussion from:

Having to agree on a group answer on each test question.

Agreeing on a rationale for written appeals justifying their point of view on questions incorrectly answered during the group test.

External [Meaningful] Performance Feedback from:

59. *Team-Based Learning*, *supra* note 23, at <http://lawteaching.org/wp-content/uploads/2015/12/ILTLReadinessAssuranceAppealsFormSample201201.pdf> (last visited May 5, 2018).
60. This language also appears on the cover sheet provided with each quiz. My sense is that this language is an empowering form of priming students to carefully consider the readings, reassured that they can challenge a response if they can demonstrate an alternative understanding of the reading.
61. Michaelsen, et al., *supra* note 26, at 382.

Immediate scoring of individual and group exams.

Posting group test scores to provide external comparisons.

Feedback and corrective input from instructor.

Rewards for Group Success from:

Group exam scores count toward course grade.

Public awareness of group exam scores.

#### *D. Application Exercises*

Once students have completed the readiness assurance phase, they are ready to proceed to application exercises. Application exercises should be designed to follow a four-S principle:

- (1) assignments should always be designed around a problem that is *significant to students*,
- (2) all of the students in the class should be working on the *same* problem,
- (3) students should be required to make a *specific choice*, and
- (4) groups should *simultaneously* report their choices.<sup>62</sup>

My students have traditionally completed “skills exercises.” These are ungraded exercises related to a particular hypothetical. The exercises mimic the work they are doing for their graded exercises, which relates to a different hypothetical fact pattern.<sup>63</sup> For example, one of their skills exercises is a pre-drafting worksheet designed to cull relevant information from a case addressing the skills hypothetical and related legal authority. We go over the case worksheet in class and students are encouraged to complete a similar worksheet for the case assigned for their graded memo.

Later, they begin to prepare portions of a closed memo for their skills hypothetical while they are simultaneously working on their graded closed-memo problem. For a skills assignments during this phase of instruction they might first prepare the overview and thesis paragraphs. The following week they prepare rule explanation and rule application paragraphs. As students progress through the semester, we add authorities to the skills exercise problem, requiring them to complete a pre-drafting worksheet that helps them synthesize material and, finally, revise the overview, thesis, rule explanation, and rule application assignments to result in an ungraded memo on the skills hypothetical problem. Again, they are simultaneously working on graded assignments that mimic these skills but involve a different fact pattern and different legal authorities.

62. Michaelsen & Sweet, *TBL*, *supra* note 36, at 45-6.

63. Students receive feedback on and credit for their skills exercises, but not a grade. In this setting, they are free to make mistakes with no real consequences, and to apply what they learn from those mistakes to the graded assignment they work on in tandem with the skills exercises.

Before converting to TBL, I would typically have a lecture/discussion relating to these skills, and I would mark their skills assignments to provide feedback. Of course, students were also encouraged, and in some instances required, to get feedback on their progress on the graded assignment as well. Now, using TBL, they prepare for the skills exercises primarily outside of class as they read and prepare for quizzes. I am able to *reinforce* principles in the quizzes to help focus their attention on particular concepts. They then prepare the skills exercises outside of class and we use class time to go over the application exercises, first in groups and then together as a class.

For example, when they complete the worksheet, they come to class and meet in groups to go over their responses together and to construct a model worksheet. I am able to walk around the classroom and answer questions as they work on the group project. They then submit the group model and I can provide feedback (either written or globally, in class) on that assignment, rather than individual assignments. For the drafting assignments (overview, thesis, rule explanation, rule application paragraphs), I can have groups peer-edit one another's work and then attempt to construct a model response.

Their final application exercise is one I have used for many years. I take a model example of their skills exercise memo and cut it into individual sentences. Each group is given a packet with these sentences, and students work together to place the sentences into categories (overview, thesis, rule explanation, rule application) and place them in order to recreate the memo. This has always worked well as a group activity, and I am able to tailor the RAP to ensure their success with this application exercise.<sup>64</sup>

I have incorporated one additional instructional component, however, to ensure success with the application exercises. I noticed that, during their first drafting exercise, several students have trouble constructing the analysis based solely on their reading of the text and instruction provided by the RAP. So I

64. I have colleagues who complete a similar "puzzle" exercise, having students recreate a memo by reorganizing the memo by *paragraph*. This certainly reinforces the deductive framework and large-scale organizational pattern of a predictive memo. By refining the exercise to sentence-level progression, I am able to reinforce not only large-scale organization, but also smaller-scale principles. As one example, I emphasize the importance of thesis, or framing, sentences to introduce synthesized rule explanation. I often use hypotheticals involving adverse possession to illustrate how elements of a rule are often less than intuitive to the reader. For an element like "open and notorious," our class discussions might focus on creating *bases for comparison*, or factor categories, to synthesize the key facts of underlying cases (e.g., harvesting, swimming, skiing, hunting, camping). We might therefore create factor categories such as "visible use or possession, seasonal occupation" to reflect the synthesized bases for comparing key facts related to open and notorious possession. I can therefore construct thesis sentences to frame particular aspects of the cases that illustrate these categories. Students should understand that the sentences featuring particular facts should appear within paragraphs that are framed by a sentence with the corresponding category. In my experience, the more detailed level of reconstruction, while challenging for students, is a powerful way to illustrate composition concepts that might be less clear with other forms of instruction. This is particularly significant because the students have written a memo using the same hypothetical and cases, so that recreating the memo often illustrates these organizational concepts in a revelatory manner.

returned to slides and other instructional materials I used in the past and I audio-annotated a PowerPoint presentation with illustrations and made that accessible to students. This is another example of the flipped classroom,<sup>65</sup> in which the professor “prepar[es] a series of online videos and online quizzes for her students—thereby conveying the information that she previously had taught in conventional lectures—and us[es] the newly available classroom time to interact more directly with her students by presenting them with interactive problem-solving activities, reviewing material they were finding especially difficult, and the like.”<sup>66</sup>

That feature seems to be particularly helpful for students who struggle and need additional instruction. However, I make it optional so that students who feel adequately prepared to complete the exercise based on their readiness assurance preparation are not required to review the material. Another advantage is that these lectures are done and can be recycled each year, making this an efficient use of my instructional time.

#### E. TBL as a Graded Component of the Course

Michaelsen and Sweet note, “[T]he grading system [for a TBL course should be] designed to reward the right things. An effective grading system for TBL must provide incentives for individual contributions and effective work by the teams, as well as address the equity concerns that naturally arise when group work is part of an individual’s grade.”<sup>67</sup> Many TBL professors allow students to suggest percentages for the graded component of the course.<sup>68</sup> Also, for many TBL classrooms, the portion of the grade allocated

65. See, e.g., Todd E. Pettys, *The Analytic Classroom*, 60 BUFF. L. REV. 1255, 1300-01 (2012).

66. *Id.* The author, citing flipped-classroom pioneer Daphne Koller, explains:  
Some argue that online education can’t teach creative problem-solving and critical-thinking skills. But to practice problem-solving, a student must first master certain concepts. By providing a cost-effective solution for this first step, we can focus precious classroom time on more interactive problem-solving activities that achieve deeper understanding—and foster creativity. In this format, which we call the flipped classroom, teachers have to interact with students, motivate them and challenge them.  
*Id.* (citing Daphne Koller, *Death Knell for the Lecture: Technology as a Passport to Personalized Education*, N.Y. Times, at D8 (Dec. 6, 2011)).

67. Michaelsen & Sweet, *Essential Elements*, *supra* note 10, at 15. The authors further explain:  
The primary concern here is typically borne from past group work situations in which students were saddled with free-riding team members and have resented it ever since. Students worry that they will be forced to choose between getting a low grade or carrying their less able or less motivated peers. Instructors worry that they will have to choose between grading rigorously and grading fairly.

*Id.*

68. *Id.* at 17. The authors note that professors may attempt to alleviate student concerns about group work by directly involving the students in the discussion on how to allocate the group work in the final grade. They explain that “teams negotiate with one another to reach a consensus (all of the representatives must agree) on a mutually acceptable set of weights for each of the grade components: individual performance, team performance, and each

to TBL is significant. During my first year using TBL, I had concerns about allocating too much of the grade to the team activities. However, I wanted the percentage to be weighty enough to ensure preparation and participation. I elected to allocate fifteen percent of the final grade to TBL. Five percent of students' final grade is now based on performance on individual quizzes, five percent on group quiz scores, and five percent on their peer evaluations. This has proved to be adequate to ensure performance.

I was also aware that allocating a portion of a student grade to group work might cause anxiety for students, especially if their past experience with group work had not been successful. I therefore tried to make it clear to students that components of TBL and my grading system were specifically designed to address the problem of free-riders.<sup>69</sup> Notably, because portions of students' grades are based on individual performance and peer evaluation, there is ample incentive for all students to be prepared.

#### *F. Formative Peer Assessment*

Another important aspect of TBL is formative peer assessment.<sup>70</sup> "Whereas members of a group feel mostly accountable to an outside authority, team members also feel accountable to each other, and peer evaluation is a mechanism by which the teacher can stimulate that experience in one's students."<sup>71</sup>

I have my students provide formative assessment to their team members at the midpoint of the semester. I use a form that closely tracks a model provided by Michaelsen and Sweet,<sup>72</sup> a sample of which can be located on the Institute for Law Teaching and Learning website.<sup>73</sup> As Michaelsen and Sweet describe,

member's contributions to the success of the team. After an agreement has been reached regarding the grade weight for each component, the standard applies for all groups for the remainder of the course." *Id.*

69. *Id.* at 16. The authors explain:

[S]tudent anxiety based on previous experience with divided-up group assignments largely evaporates as students come to understand two of the essential features of TBL. One is that two elements of the grading system create a high level of individual accountability for pre-class preparation, class attendance, and devoting time and energy to group assignments: counting individual scores on the readiness assurance tests and basing part of the grade on a peer evaluation. The other reassuring feature is that team assignments will be done in class and will be based on thinking, discussing, and deciding, so it is highly unlikely that one or two less-motivated teammates members (sic) can put the entire group at risk.

*Id.*

70. Michaelsen & Sweet, *TBL*, *supra* note 36, at 48. "Peer evaluation is the fourth and final practical element of TBL, providing students with both formative and summative feed-back from their teammates about their contributions to the team and its success."

71. *Id.*

72. *Id.* at 49.

73. *Team-Based Learning*, *supra* note 23, at <http://lawteaching.org/wp-content/uploads/2015/12/ILTLFormativeFeedbackForm201201.pdf>.

formative feedback instruments should encourage constructive feedback.<sup>74</sup> The peer assessment form therefore asks what students “appreciate” about team members as well as what they would like to “request” of team members.<sup>75</sup>

Once students complete the forms anonymously, they submit them electronically to me. I skim them to cull any nonconstructive material. Each student then receives his/ her peer evaluation and score from his/ her team members. The feedback has generally been quite good; students give one another encouragement to continue to contribute to the group.<sup>76</sup> Because the students are told that they have to justify providing the same score to all team members, they tend to be more critical in their scoring of teammates. Giving the formative assessment form halfway through the semester gives students an impression of how their team members perceive their contributions. It also provides an opportunity to improve, as students are aware that there is a final assessment that also contributes to the assessment portion of their TBL grade.

Many studies demonstrate the value of peer assessment in student learning.<sup>77</sup> As one professor explains:

Providing peer feedback enhances student engagement with assessment criteria and development of self-regulation skills in large part because it is a lot more challenging to produce feedback for others than to merely receive it or produce it for oneself. In addition, peer interactions have greater balance than those between student and professor and enable students to stimulate and scaffold [each other’s] learning. These experiences help students develop skills of metacognition as they negotiate meanings and share strategies to construct knowledge with their peers. They are able to have greater impartiality than when they review their own work (since they do not know what their peer meant to say, only what was said), plus the skills they develop as they comment on the work of their peers are

74. Michaelsen & Sweet, *TBL*, *supra* note 36, at 48 (noting, “[T]he format of feedback is important so that it is informative and not judgmental. Therefore, many TBL teachers have students fill out peer evaluation forms that ask them to express things they ‘appreciate’ about their teammates and things they ‘request.’”).
75. *Id.* (“This language is carefully chosen so as not to stimulate attacks or judgments but instead promote constructive peer feedback.”).
76. *Id.* Michaelsen and Sweet explain: “Because the teacher knows who said what to whom, the feedback tends to be civil and constructive. However, because students do not know the specific source of the comments they receive, team members are more likely to be honest in giving negative feedback when it is called for.” *Id.*
77. Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N.U. L. REV. 227, 245-46 (2015) (citations omitted).

transferred when they turn back to assessing their own work.<sup>78</sup>

Assessment, particularly when prompted constructively (e.g., what do I “appreciate” about this team member), can have a positive impact on teamwork. As Sparrow notes:

Some students are surprised that others want to hear from them more and want them to be more assertive. They work on developing confidence in expressing their thoughts during team discussions. Students who tend to be highly self-critical are relieved to hear that their teammates find them to be an asset.<sup>79</sup>

Of course, the feedback is not always initially well-received,<sup>80</sup> but this type of self-reflection can be valuable for students nonetheless if effectively processed.<sup>81</sup>

In sum, TBL has provided a foundational pedagogy to encourage student accountability and engagement.<sup>82</sup> The RAP, together with application exercises, enables me to provide additional powerful feedback on student learning and efficiently supplements the more time-consuming individualized feedback I continue to provide. Moreover, it evidences the type of formative and summative assessment envisioned by the new ABA accreditation standards<sup>83</sup> and may facilitate skills associated with professional identity development.<sup>84</sup> These advantages outweigh some of the challenges associated with the pedagogy.

### III. Challenges and Advantages

There are some significant advantages to TBL, and I have continued to use the pedagogy for several years. However, I would be remiss if I failed to point out some obstacles that, while easy to overcome, are worth highlighting.

78. *Id.* (citations omitted). Bloom explains: “Studies have shown significant correlation between the quality of peer feedback provided by students and the quality of those same students’ own final projects. It is through the process of engaging with the rubric to give the feedback that students learn to judge the quality of their own work and this activity fosters their improvement even more than the feedback they receive from the peer.” *Id.* at 246 (citations omitted).
79. Sparrow, *Work Well*, *supra* note 8, at 1172-73.
80. *Id.* at 1173 (observing, “[s]ome students become upset with the feedback they receive, particularly when it conflicts with their own assessment.”).
81. *Id.* (noting, “[a]fter they give and receive feedback, many teams develop and refine their strategies of working together.”).
82. See section II.B.1., *infra*.
83. See section II.B.2., *infra*.
84. See section II.B.iii., *infra*.



### A. Challenges

There were two primary obstacles associated with my use of TBL. I note each below and identify the strategy I used to address them.

#### 1. Administrative burdens

First, there are some administrative details associated with TBL. Because of my commitment to the methodology, I have to keep up to date with orders of the IF-AT sheets and ensure that each test was keyed to the appropriate sheet. I also have to ensure that the codes associated with the key are removed before I distribute quizzes to students. Because I plan to continue to use TBL, it is important that copies of the quizzes are not available for students to take with them after class. To that end, I must ensure that there are exactly enough individual quizzes and, if a student is absent, I need to pull extra copies from my distribution stack. Individual quizzes are turned in so that the students receive credit. Group quizzes are marked with the group name, and groups are instructed that they receive no credit for their group quiz if the quiz, together with the IF-AT form, is not returned in the group folder.

I also had to institute a procedure for makeup quizzes when students missed class. I require students to contact me before class if they are going to be absent. They then have to make arrangements with my administrative assistant to take the individual quiz. When this occurs and the student is absent from the group quiz, the student is instructed that s/he will receive the individual grade score for the group entry for that cycle.<sup>85</sup>

I am fortunate to have a wonderful administrative assistant who helped prepare individual group quizzes, group folders, and group quiz materials (quiz and IF-AT sheet) for each quiz day. She has also graded the individual quizzes and entered the scores for iRAQs, tRAQs, and peer assessment forms.

#### 2. Student skepticism

The other obstacle was getting students to understand and appreciate the pedagogy. TBL, as an example of the flipped classroom, is a pedagogy that relies on students' completing a great deal of work outside the classroom. Further, in contrast with traditional, Socratic and/or lecture-based instruction in the classroom, students are working on activities during class time. As a result, the professor is not viewed as the "sage on the stage," but rather as the "guide at the side."<sup>86</sup> Consequently, the professor is not establishing his or her

85. I subscribe to the TBL email discussion group and followed a conversation about how to handle student absences during quizzes. Several members of the conversation recommended that groups be given the opportunity to vote on whether the absent group member is eligible to receive the group score earned in the student's absence.

86. See Sparrow & McCabe, *supra* note 4, at 198 (citing L. Dee Fink, *Beyond Small Groups: Harnessing the Extraordinary Power of Learning Teams*, in *TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING* 28 (Larry K. Michaelsen et al. eds., 2008)) (cautioning that "the image of a 'guide on the side' is also more passive than most good teachers seem to be").

credibility in the traditional manner, and there may be resistance, skepticism, and frustration on the part of students.<sup>87</sup>

In fact, one consequence of flipping the classroom may be a complaint by students that the professor is not actually teaching. Sparrow and McCabe explain:

Because the focus in a Team-Based Learning course is about what the students are learning—all students spend the vast majority of class time engaging in team discussions and solving problems in their groups—to an outside observer of a Team-Based Learning class, the professor may appear not to be really “teaching.” This is deliberate; the focus of the class is not what the professor is saying but *what the students are doing*. The professor, however, has done significant work in advance to harness the power of student learning teams.<sup>88</sup>

I was aware of this phenomenon during the first semester I employed the pedagogy and was confident that I had spent an enormous amount of time creating an environment conducive to student learning. However, in a law school setting in which most first-year courses are taught using the Socratic method, there is a potential for skepticism on behalf of students, and professors should be aware that they are establishing credibility in a manner that likely differs from that of their colleagues.

### *B. Advantages*

#### *1. Engagement and student success*

Students are more engaged and prepared using this methodology. Also, classes are livelier, as students work together in teams. Students seem to genuinely enjoy the group dynamic, particularly during the quizzes. I observe a great deal of camaraderie as teams select the appropriate response. They also appear to have been highly engaged with the reading, trying to persuade one another of the correct response by reference back to the text.

87. See, e.g., Herndon, *supra* note 33. Herndon explains,

From a student’s perspective, cooperative learning, without emphasis on the necessary components, becomes merely “group work,” which many students abhor. This happens because “[s]imply placing individuals in groups and telling them to work together does not . . . promote higher achievement and greater productivity.” Possible side effects include (1) the “free-rider” effect, when certain members withhold their efforts relying on others to do the work; (2) the “sucker effect,” when members recognize they will have to expend more effort and stubbornly lessen their efforts to avoid doing all the work; and (3) the “rich-get-richer effect,” when students defer to those students with higher abilities who then jeopardize the key leadership roles. These behaviors can destroy a group’s functioning, ruining the cooperative learning experience.

*Id.* at 828-29 (citations omitted).

88. Sparrow & McCabe, *supra* note 4, at 157 (emphasis in original).

Some authors have asserted that positive team learning experiences improve students' interpersonal satisfaction.

Studies have found that participants who had team-building experiences had significantly higher levels of trust, social support, openness, and satisfaction. The findings from another study indicate that, when participating in a team project, students who had previously participated in team-building activities had better interactions with team members than those who had not.<sup>89</sup>

Other studies suggest that team or collaborative instruction may positively affect student learning.<sup>90</sup> Gerald Hess has observed that “[t]he research on cooperative learning makes a powerful case that working in small groups promotes students’ critical thinking, academic achievement, attitudes toward the course, and understanding of different viewpoints.”<sup>91</sup>

Focused on collaborative pedagogies, David Dominguez observed: “Good learning, like good work, is collaborative and social, not competitive and isolated. Working with others often increases involvement in learning. Sharing one’s own ideas and responding to others’ reactions improves thinking and deepens understanding.”<sup>92</sup> A collaborative learning pedagogy challenges students and enables them to experience learning from different perspectives:

As peer teachers and mentors, students compare and challenge perspectives, add insights, and strengthen their grasp on academic material. In the role of law firm partners and supervisors, they put pressure on each other to meet

89. Weinstein et al., *supra* note 8, at 38 (citing Melody Alexander, *Team-Building Skills: Value-Added Education*, in CLASSROOM STRATEGIES: THE METHODOLOGY OF BUSINESS EDUCATION, 34 NATIONAL BUSINESS EDUCATION YEARBOOK 164 (Heidi R. Perreault ed., 1996)).

90. *Id.* (noting, “Small group work promotes higher academic achievement.”); *see also* Herndon, *supra* note 33, at 825. Herndon asserts:

The benefits of collaborative learning are diverse. First, collaborative learning encourages academic excellence. Through the increased group interaction, students are challenged to compare perspectives, share insights, and, as a result, strengthen their own understanding of material. Collaborative learning provides a practical view to participating in a legal career: students, like real lawyers, push each other to produce excellent work, meet deadlines, be accountable, and be aware of their role in American culture as agents of social justice.

*Id.* (citations omitted). Herndon further emphasizes, “studies over the past one hundred years conclude higher achievement, better psychological health, and positive student relationships are all benefits of cooperative learning methods.” *Id.* at 827.

91. Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 UMKC L. REV. 343, 350 (1998) (citing James Cooper et al., *Cooperative Learning and College Instruction: Effective Use of Student Learning Teams* 1-5 (1990)).

92. Dominguez, *supra* note 33, at 386 (citing Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, AAHE Bull., Mar. 1987, at 3, 4) (emphasizing, “Learning is enhanced when it is more like a team effort than a solo race.”).

deadlines, to produce their best work, and to be accountable to affected third parties. Students realize that a learning community gives them the necessary practice to prove their academic talent in a variety of stressful situations.<sup>93</sup>

In a TBL classroom, this improved learning environment is attributable not only to the feedback of peers, but also the feedback provided to students in RAP, application exercises, and peer assessment. These efficient means of providing feedback and assessment to students are particularly beneficial in light of new accreditation standards, discussed more fully in the following section.

## *2. Assessment*

Using TBL and, specifically, the RAP, enables me to provide efficient formative and summative assessment. Students are given multiple opportunities in each unit to demonstrate their understanding of critical skills and content—on individual quizzes, on group quizzes, and on application exercises.<sup>94</sup> This is in addition to the writing they have always done. However, in a TBL classroom, strong students are given the opportunity to assist weaker students, strengthening their understanding. Also, weaker students have more feedback on their understanding of essential concepts, from me and from their peers. I therefore have a more thorough understanding, as early as the first class, of how well my students understand foundational material. Sophie Sparrow has similarly acknowledged this benefit from her use of TBL in a doctrinal course, noting:

Multiple-choice quizzes, administered five to seven times during a course, thus conform to recommendations from the Best Practices study and serve as both formative and summative assessments. The quizzes are formative because they provide students with feedback to help them learn foundational material; the quizzes are summative because students earn a grade for their performance. For students, this means that they know how well they are understanding the material—as assessed on a multiple-choice exam—as early as the first or second week of the semester.<sup>95</sup>

93. *Id.* at 387.

94. See Sparrow, *Multiple-Choice Quizzes*, *supra* note 53, at 9. Sparrow notes: Students are further engaged in learning foundational material by taking each graded multiple-choice quiz twice: first individually and then in a group. During the group quiz, students debate and analyze their various responses, arriving at a consensus answer. This helps them deepen their understanding by questioning each other, listening to their group members' responses, referring to the legal principles they recall from the reading, and applying those principles to the facts on the quiz. The group quiz, like the individual quiz, engages students in active learning.

95. *Id.* at 7-8 (citations omitted).

This type of feedback is particularly important in my course, as “first-year law students have typically not received any individualized feedback in their core ‘doctrinal’ classes other than their grades on final exams.”<sup>96</sup> Students have always received formative assessment in my course in the context of feedback and grades on both skills and graded writing assignments, but this type of feedback both augments the more labor-intensive commenting on writing assignments, and isolates some of the key concepts I want students to employ in their writing. Moreover, I sense that the more varied the feedback, the more likely it will inform student performance on analysis and communication.<sup>97</sup> In fact, in one study, researchers demonstrated “that individualized feedback in a single class during the first year of law school can improve law students’ exam quality in all their other classes.”<sup>98</sup>

In addition to solidifying understanding of foundational concepts, the use of multiple-choice questions regularly in class may help students prepare for the bar examination. Noting that students had not performed particularly well on multiple-choice exams, Sparrow concluded that her students’ work improved as a result of the consistent exposure to multiple-choice questions encountered in the RAP phase of TBL. She observed, “When I changed my course design to include several multiple-choice quizzes during the semester, students had significantly more practice, and many students who performed poorly on multiple-choice quizzes at the beginning of the semester improved significantly by the end of the course.”<sup>99</sup> While there are myriad criticisms of the bar exam and, specifically, entry to the profession based on multiple-choice questions, the reality is that students will be obligated to demonstrate competence in this capacity and more practice with these skills may therefore be warranted.<sup>100</sup>

96. Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 139 (2017).

97. *Id.* (noting that “students in sections that have previously or concurrently had a professor who provides individualized feedback consistently outperform students in sections that have not received any such feedback”).

98. *Id.* at 140. The researchers assert:  
 In light of the broader literature on the importance of formative feedback in effective teaching, these findings suggest that, at a minimum, law schools should systematically provide first-year law students with individualized feedback in at least one “core” doctrinal first-year class before final exams. Doing so would almost certainly have positive distributional consequences and improve the fairness of law school grades. It would also likely promote students’ acquisition of relevant legal skills. Finally, this reform would help implement the American Bar Association’s recent requirement that law schools utilize formative assessment methods in their curricula.

*Id.*

99. Sparrow, *Multiple-Choice Quizzes*, *supra* note 53, at 12-13.

100. See, e.g., Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 87 (2007). Trujillo acknowledges that

### 3. *Professional identity development*

Responsibility, accountability, and the ability to work effectively within a team appear to be core competencies of professional identity development. Neil Hamilton considered the new ABA accreditation standards requiring outcomes and assessment in the context of professional identity formation.<sup>101</sup> Hamilton argues:

With the shift in ABA accreditation standards to emphasize learning outcomes, all law schools will be slowly moving away from structure-and-process based legal education (exposure to specific content for specified periods of time, such as a four credit one semester contracts course) to competency-based legal education (focus on the ultimate competencies needed for excellent service to the clients and the legal system, such as competence in career-long professional development).<sup>102</sup>

Hamilton studied new learning outcomes at law schools, noting that many law schools are adopting what he terms “competency-based professional-formation or ethical-professional-identity learning outcomes.”<sup>103</sup> These outcomes tend to include relational values and skills, including aspects such as: teamwork/effective collaboration; self-awareness and cross-cultural competency to work with those of diverse backgrounds; judgment; active listening; leadership; respect for others; and initiative, strong work ethic, and diligence.<sup>104</sup>

Susan Swaim Daicoff similarly emphasizes relational skills in the context of lawyer effectiveness characteristics.<sup>105</sup> She asserts that:

“Bar exam critics point out that no lawyer ever encounters multiple-choice questions with four distinct answers.” Nonetheless,

Proponents respond that this has little to do with the administration of the bar exam where a multiple-choice question tests a critical legal skill: the ability to read a set of facts carefully and draw reasonable legal inferences from them. The bar exam is not designed to test legal skills as they are encountered in the real world, rather it is designed as a mechanism to determine whether a particular applicant possesses the skills required to succeed when confronted with real world problems. A multiple-choice question sets up a contained universe to test those skills while providing an efficient and objective way of scoring answers to those questions.

*Id.*

101. Neil Hamilton, *Off-the-Shelf Formative Assessments to Help Each Student Develop Toward a Professional Formation/Ethical Professional Identity Learning Outcome of an Internalized Commitment to the Student's Own Professional Development*, 68 *MERCER L. REV.* 687 (2017).

102. *Id.*

103. *Id.* at 688.

104. *Id.* at 690-91. Hamilton's recent piece focused primarily on “off-the-shelf” formative assessments (such as the Myers-Briggs Type Indicator) that are used to foster what Hamilton refers to as “understanding and integration of responsibility for continually self-evaluating the student's own professional development (self-directed learning) toward excellence at the competencies needed to serve clients and the legal system.” *Id.* at 732.

105. Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership*,

training in law school [should be] designed to encourage the development of the following lawyering skills: intrapersonal skills (such as honesty, integrity, maturity, reliability, judgment, passion, motivation, engagement, diligence, self-confidence, tolerance, patience, independence, adaptability, general mood, stress management, and continued professional and self-development); certain interpersonal skills (such as dealing effectively with others, understanding human behavior, empathy, listening, questioning, interviewing, counseling, influencing, advocating, instilling others' confidence in you, obtaining and keeping clients, developing relationships, and networking within the profession); conflict resolution (including mediation and negotiation); collaboration (including teamwork, working cooperatively with others, and managing and mentoring others); problem solving; and strategic planning.<sup>106</sup>

TBL is a learning strategy well-suited to the types of relational values and skills noted above. Several authors have addressed positive benefits of collaborative learning. Dominguez notes, "Learning law as a community offers a template for professional development."<sup>107</sup> Professors Neil Hamilton and Verna Monson evaluated pedagogies associated with the development of *moral implementation*, which involves "[t]ranslating [m]oral [i]ntentions to [b]ehavior and [r]esults" and includes "emotional intelligence, self-regulation, interpersonal skills, the ability to work in a team, counseling or coaching others, listening, persuasion, negotiation, mediation, and character."<sup>108</sup> They determined the "[f]ormal cooperative or group learning, group dynamics education, and team skills training are all pedagogies of moral implementation that have a strong empirical and theoretical foundation in social interdependence theory, cognitive-developmental theory, and social learning theory."<sup>109</sup> Further, with regard to professional identity development, Hamilton and Monson observe,

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*Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795 (2012).

106. *Id.* at 873-74 (citations omitted).

107. Dominguez, *supra* note 33, at 391 (asserting that "cooperative learning gives ample opportunity to practice lawyering skills").

108. Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325, 362 (2011) (explaining that "moral implementation . . . is defined as the capacities and skills necessary to carry out the individual's moral judgment in the real world").

109. *Id.* at 363 (observing that "[h]igh-performing teams or groups demonstrate positive social interdependence, defined as the condition that occurs when the 'outcomes of individuals are affected by their own and others' actions' and that "[p]ositive social interdependence or cooperation in groups is reflected throughout literature and history") (citations omitted).

“Recent research found a positive relationship between formal cooperative learning and moral development growth.”<sup>110</sup>

Hamilton and Monson emphasize the importance of formal group learning, in which “group members are responsible not only for their own productivity but for the productivity and performance of all group members.”<sup>111</sup> They reveal startling and encouraging statistics culled from general education studies:

In a recent meta-analysis that examined 148 studies involving more than 17,000 students, researchers found that positive interpersonal relationships with peers in cooperative learning groups accounted for thirty-three percent of the variance associated with academic achievement. In a meta-analysis comparing cooperative, competitive, and individualistic learning, instruction in interpersonal skills, combined with formal group learning, is shown to increase (1) academic achievement (effect size of .67 over competitive learning); (2) interpersonal attraction among group members (effect size of .67); (3) level of perceived social support in the classroom (effect size of .62 compared to competitive learning); (4) self-esteem (effect size of .58); (5) quality of reasoning (effect size of .93); and (6) perspective taking (effect size of .61).<sup>112</sup>

The authors advise that the collaborative pedagogy be well-conceived, noting that the “pedagogy of cooperative groups does not typically occur naturally but requires discipline and forethought on how to structure interdependence [and that] [c]ooperative learning works by bringing together the pedagogical elements of modeling, coaching, scaffolding, self-reflection, and formative assessment.”<sup>113</sup>

These pedagogical elements are reflected in TBL. For example, Hamilton and Monson stress the importance of formative assessment, suggesting that professors “facilitate group processing and reflection on positive social

110. *Id.* at 364. Hamilton and Monson emphasize that “[l]eaders in legal education view teamwork as an important emphasis for preparing students for practice” and that “most innovative law schools are coming to see the need to reform a portion of their curriculum to more closely resemble that found in MBA programs, with an emphasis on richly detailed case studies, strategic decision-making and teamwork solutions.” *Id.* at 364-65.

111. *Id.* at 365.

112. *Id.* at 367-68 (citations omitted) (noting that “[b]ecause the empirical literature on this pedagogy is sparse in legal education, we turn to a substantial body of research on the effectiveness of cooperative learning in general education.”).

113. *Id.* at 366 (explaining that “four conditions [are] necessary for formal cooperative learning, including (1) individual accountability and personal responsibility, (2) promotive interaction, (3) appropriate use of social skills, and (4) group processing”).



interdependence by requiring students to reflect on and self-assess their groups' effectiveness periodically,"<sup>114</sup> including the use of "mid-semester peer evaluation form[s] in which group members evaluate their own and others' performance and efforts,"<sup>115</sup> a core component of accountability in TBL pedagogy.<sup>116</sup> Formative assessment takes place informally in group work such as the RAP as well.<sup>117</sup> TBL components, such as direction on course policies,<sup>118</sup> instruction on group dynamics in the RAP,<sup>119</sup> and formative and summative peer assessment instruction<sup>120</sup> provide the type of instructional techniques recommended by Hamilton and Monson.<sup>121</sup> Moreover, the efficacy of this form

114. *Id.* at 368. The authors explain that this can be accomplished with checklists or surveys and recommend the following questions:

- (1) we used everyone as a resource; (2) we used our time effectively; (3) we made good use of the information available to us; (4) we adhered to our team meeting norms; (5) we stayed focused on our tasks; (6) we followed logical steps in conducting our discussions; (7) we listened to each other; (8) we resolved our differences in opinion positively; (9) our conversation was typically concrete; and (10) no person dominated the conversation.

*Id.* These questions are similar to those employed on the mid-semester TBL formative assessment instrument. *See, e.g.*, section I.F., *supra*; *see also* Heather D. Baum, *Inward Bound: An Exploration of Character Development in Law School*, 39 UALR L. REV. 25, 65 (2016). Baum notes that character development, including the components of responsibility, integrity, ability to get along/work with others, confidence, grit/perseverance, and intellectual curiosity, "is an important component of professional identity formation and should be explored by law schools," and that TBL may be a helpful pedagogy to facilitate responsibility and accountability. *Id.* at 52-64.

115. Hamilton & Monson, *supra* note 108, at 368.

116. Indeed, Hamilton and Monson recommend the same pedagogical framework reflected in the assessment component of TBL, which facilitates the ABA-required formative assessment reflected in the new 314 standard. The authors note:

The instructor can then use this data as a formative assessment, giving feedback to students on dysfunctional patterns of behavior that are evident in peers' feedback, and coach students to improve their group processes. Instructors can also use this assessment to detect dynamics that might warrant more frequent monitoring or intervention; cases in which a [member's] behavior appears to be symptomatic of mental health or substance abuse issues might warrant referrals to school counseling staff.

*Id.*

117. *Id.* (noting that "[a]ssessment also takes place informally and dynamically between students in working out roles and processes, and working under pressure to meet deadlines.").

118. *See, e.g.*, section I.A *supra* (emphasizing that teams "mimic the professional environment and develop essential lawyering skills").

119. *Id.* (noting specific language on course policies such as instructions for dealing with problems on team work.).

120. *See, e.g.*, section I.F., *supra*.

121. Hamilton & Monson, *supra* note 108, at 368-69. The authors explain:

Giving students the tools to conduct regular "group processing," in which the groups share constructive feedback and give positive reinforcement, supports their learning and builds group camaraderie. Through this process, students can reflect on the limitations of their own perspectives and build upon strengths as perceived by other

of group learning can be starkly contrasted with many other forms of legal education instruction,<sup>122</sup> as the authors assert that “[t]he capacity for ongoing self-reflection is likely enhanced when negative competition is replaced with positive social interdependence.”<sup>123</sup>

#### IV. Conclusion

I have used TBL for the past several years in my legal writing course and will continue to do so. I trust in the advice often given to law students about the power of learning in a community:

Your most important educational experience in law school will be with the other students. You will learn more from them than from your teachers. Relationships forged in law school are like those forged in war: what you share with these people is unlike any experience any of you have had before.<sup>124</sup>

In my experience, student preparation for class, and camaraderie in the class, has improved significantly. This is essential for a required and often underestimated course.<sup>125</sup> I do see improved team-building skills and have seen evidence of introverts receiving positive feedback to encourage participation,<sup>126</sup> and some overtly enthusiastic extroverts being professionally contained in

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group members.

*Id.*

122. See, e.g., Dominguez, *supra* note 33, at 386 (asserting “[c]ooperative learning enriches traditional law school education—a solitary pursuit of legal knowledge—with a culturally based, highly relational exploration of course material.”).
123. Hamilton & Monson, *supra* note 108, at 368-69.
124. Herndon, *supra* note 33, at 837 (citing Corinne Cooper, *Letter to a Young Law Student*, 35 TULSA L.J. 275, 278-79 (2000)).
125. For example, many students come to law school assuming they know how to write when in fact the legal writing curriculum introduces students to the skill of legal analysis and communication, something with which they are not likely familiar. See, e.g., Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology”: Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115, 130 (2002). Marlow-Shafer surveyed legal writing professors about teaching evaluations and course bias, eliciting the following response: “I think people come in thinking they know a lot about this already and that I can’t teach them much about it . . . When in fact, I think there’s a lot they don’t know and even if they’re accomplished writers, there’s always benefit to more reflection on the subject.” Students also may fail to discern the relationship between the legal writing course and their other podium courses. See Kristen Konrad Tiscione, *A Writing Revolution: Using Legal Writing’s “Hobble” to Solve Legal Education’s Problem*, 42 CAP. U. L. REV. 143, 162 (2014) (observing that “[t]oo often, first-year students fail to recognize the relationship between their subject-matter courses and their legal research and writing course.”).
126. While I understand and value introverts and the manner in which they choose to participate, teamwork is a reality of law practice. See Steven I. Friedland, *Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education*, 67 J. LEGAL EDUC. 592, 611 (2018) (noting “[w]hile some students prefer to work alone, the real world of law practice involves numerous forms of collaboration.”).

their tendency to dominate discussion, particularly in the first semester. The level of engagement during collaborative work may be enhanced by what Olympia Duhart refers to as the “*social brain*—a brain that benefits from social engagement.”<sup>127</sup> Duhart explains that certain forms of assessment, including collaboration, engage the social brain, resulting in improved learning,<sup>128</sup> motivation, and retention.<sup>129</sup> I believe teamwork, listening skills, empathy, and self-reflection are core attributes of professional identity development and I do think these are facilitated in the context of TBL pedagogy.

127. Olympia Duhart, *The ‘F’ Word: The Top Five Complaints (and Solutions) About Formative Assessment*, 67 J. LEGAL EDUC. 531, 538 (2018).

128. *Id.* at 539 (citations omitted) Duhart emphasizes that “[t]he data are clear that children learn better with they learn in order to teach someone else than when they learn in order to take a test.” *Id.* (citing Gareth Cook, *Why We are Wired to Connect*, *Scientist Matthew Lieberman Uncovers the Neuroscience of Human Connections--and the Broad Implications for How We Live Our Lives*, SCI AM. (Oct. 22, 2013), <https://www.scientificamerican.com/article/why-we-are-wired-to-connect/>).

129. *Id.* at 540 (“Students who worked in cooperative groups performed better on tests and were even more willing to ask questions (in class or through office visits) than those who did only individual work.”).