

A Law School Game Changer:(Trans)formative Feedback

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Ohio Northern University
Law Review

Articles

**A Law School Game Changer:
(Trans)formative Feedback**

ELIZABETH M. BLOOM*

ABSTRACT

Many law professors experience the frustration of spending hours providing feedback to students only to find that the students fail to read it and, even when they do, they are not able to use it to enhance their understanding of the law or legal analysis. Amidst current concerns about the real value of a legal education, this Article seeks to identify ways in which law professors can take steps to create formative assessment opportunities that will enable students to become successful, self-regulated learners. Drawing upon educational psychology principles guiding best practices of formative assessment, this Article focuses on cutting-edge strategies for providing feedback that is more likely to be used by students, yet takes less time for professors to create. It sets out innovative yet simple ways to give feedback that transfers the responsibility for learning to students and enables them to improve their performance in law school, all while cultivating the skills necessary for success as a lawyer.

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I. INTRODUCTION

Times are tough for legal education and our collective refusal to reshape the legal learning experience threatens to make them tougher still.¹ Law school applications have decreased significantly, due in part to a weakened economy, plummeting employment rates for law graduates, and numerous articles and websites devoted to denigrating the value of a law degree.² Although frequently anecdotal, many of these attacks are supported by empirical studies demonstrating that law students' analytical capabilities do not meaningfully develop during their time in law school.³ These studies raise concerns that law professors focus too heavily on teaching doctrine, rather than helping students "increase their analytic abilities in ways that transcend the particular doctrinal frameworks" law schools teach.⁴ To reverse this negative trend and safeguard the value of legal education, law schools must first tackle their collective failure to teach students how to

1. See Nancy B. Rapoport, *Rethinking U.S. Legal Education: No More "Same Old, Same Old"*, 45 CONN. L. REV. 1409, 1412-13 (2013).

2. Paula A. Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967, 969 (2013) (addressing common criticism that "law schools teach students how to think like a lawyer, but not how to be one"); Todd E. Pettys, *The Analytic Classroom*, 60 BUFF. L. REV. 1255, 1257-58, 1321 (2012); see also Rapoport, *supra* note 1, at 1412 (detailing how changes in law practice and roles lawyers must play create additional pressures on law schools); see e.g., Steven Davidoff Solomon, *Debating, Yet Again, the Worth of Law School*, N.Y. TIMES, Jul. 18, 2013, http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/?_r=0.

3. Pettys, *supra* note 2, at 1255.

4. *Id.* at 1276-91.

analyze the law properly—arguably the skill most directly related to a lawyer’s professional success or lack thereof.⁵

These failings are not unique to legal education. Students at all stages and disciplines fail to employ successful learning strategies.⁶ Indeed, many students are never even taught these strategies due to the “overwhelming assumption in our educational system that the most important thing to *deliver* to students is content.”⁷ The literature on teaching and learning instructs that “assessment is at the heart of the student experience,”⁸ and feedback is “one of the most powerful influences on learning,” with methods of assessment and feedback most significantly affecting how students choose to approach their learning of the material.⁹ This reality is pronounced in the law school setting, with its high emphasis on the importance of grades.¹⁰ Nonetheless, critiques of current legal education demonstrate how law schools fall short in assessing the learning of their students.¹¹

This failure can be explained, in part, by the fact that today’s millennial law school students—“[d]igital [n]atives”¹² who grew up in a world filled with technology—enter law school with weaker reading and reasoning skills due to the loss of time and efficiency that results from continual multitasking.¹³ “Millennial students ask for ‘self-directed learning, interactive environments, multiple forms of feedback, and assignment choices that use different resources to create personally meaningful learning

5. See Franzese, *supra* note 2, at 969-70.

6. John Dunlosky et al., *Improving Students’ Learning with Effective Learning Techniques: Promising Directions from Cognitive and Educational Psychology*, 14 PSYCHOLOGICAL SCI. PUB. INTEREST 4, 4, 46 (2013).

7. *Id.* at 46.

8. Chris Rust et al., *A Social Constructivist Assessment Process Model: How the Research Literature Shows Us This Could Be Best Practice*, 30 ASSESSMENT & EVALUATION IN HIGHER EDUC. 231, 231 (2005); but see Carole Leathwood, *Assessment Policy and Practice in Higher Education: Purpose, Standards and Equity*, 30 ASSESSMENT & EVALUATION IN HIGHER EDUC. 307, 320 (2005) (arguing assessment is used to legitimize unequal social relations of power and conversations about assessment should involve “[c]onsiderations of social justice rather than selectivity and the reconstruction of inequalities . . .”).

9. John Hattie & Helen Timperley, *The Power of Feedback*, 77 REV. OF EDUC. RESEARCH 81, 104 (2007).

10. Alex Steel et al., *Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students’ Engagement, Skills Development and Deep Learning*, 36 UNSW L.J. 30, 30 (2013).

11. Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 379-80 (2012); Emily Zimmerman, *What Do Law Students Want?: The Missing Piece of the Assessment Puzzle*, 42 RUTGERS L.J. 1, 1-3 (2010).

12. Franzese, *supra* note 2, at 972.

13. Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME L. REV. 163, 177-78 (2013). Studies have demonstrated that most people who think they are multitasking are actually “task switching” and even if it is possible to learn while multitasking, that learning is less flexible and more specialized and the information is less easily retrieved. *Id.*

experiences.”¹⁴ They “reject the ‘top down authoritative model’ of education,”¹⁵ yet the traditional law school classroom features professors as the “center of the classroom.”¹⁶ They prefer interactive learning opportunities that incorporate regular assessments with immediate feedback, although the conventional format of law school assessment is a single exam at the end of the semester, which is the basis of a student’s entire grade.¹⁷ In light of these realities, the assessment practices of law schools are failing to match the changing needs of our diverse student population.¹⁸

Educational psychology research instructs that helping students take responsibility for their own learning and encouraging the development of self-teaching skills are the most effective ways to help them succeed in law school.¹⁹ Self-regulated learning is “an active, constructive process whereby learners set goals for their learning and then attempt to monitor, regulate, and control their cognition.”²⁰ In the assessment context, self-

14. Emily A. Benfer & Colleen D. Shanahan, *Educating The Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 301, 310 (2013).

15. *Id.* at 311.

16. Julie M. Spanbauer, *Using a Cultural Lens in the Law School Classroom to Stimulate Self-Assessment*, 48 GONZ. L. REV. 365, 371 (2012) (noting these professors tend to have very different learning styles than their students).

17. Samantha A. Moppett, *Control-Alt Incomplete?: Using Technology to Assess “Digital Natives,”* 12 CHI-KENT J. INTELL. PROP. 77, 79 (2013); Charles A. Rees, *The “Non-Assessment” Assessment Project*, 57 J. LEGAL EDUC. 521, 528 (2007).

18. Benfer, *supra* note 14, at 313. The American Bar Association has also recognized the importance of assessment in law schools, assigning a committee the task of revising the Standards for Approval for Law Schools in a manner that would shift the emphasis from input measures (the material professors are providing to students) to outcome measures (what students have learned) and require assessment and feedback be provided to students throughout the semester to facilitate the learning process. Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947, 948-50 (2012); Vicenç Feliú & Helen Frazer, *Outcomes Assessment and Legal Research Pedagogy*, 31 LEGAL REFERENCE SERVICES Q. 184, 185 (2012). This shift to outcome measures was propelled by numerous publications proclaiming the importance of outcome measures in legal education to ensure law students are prepared for legal practice. *See, e.g.*, ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 108-109 (Clinical Legal Educ. Ass’n 2007) (suggesting that law school professors should rely on research about effective teaching to guide their teaching decisions); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 7-9 (2007).

19. MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 3, 19 (2d. ed. 2008); Elizabeth M. Bloom, *Teaching Law Students to Teach Themselves: Using Lessons from Educational Psychology to Shape Self-Regulated Learners*, 59 WAYNE L. REV. 311 (2011); New England Law | Boston Research Paper No. 13-05, available at <http://ssrn.com/abstract=2217713>; Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 151 (2012) (demonstrating importance of incorporating metacognitive instruction and training); *see also* Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 56 (2000) (educational psychologists are the experts on how to “anchor our teaching practices . . . in a solid theoretical foundation based on the scholarship of how people learn.”).

20. Ian Clark, *Formative Assessment is for Self-Regulated Learning*, 24 EDUC. PSYCHOL. REV. 205, 216 (2012).

regulated learners know how to engage with feedback from their professors, learn from it, and improve.²¹ In order to maximize the value of the law school education and prepare students for the practice of law, which requires the constant ability to self-assess performance, law professors should strive to create assessment opportunities that facilitate self-regulated learning.²²

This Article seeks to provide concrete suggestions to law professors who are looking for ways to create formative assessment opportunities that will enable their students to become successful, self-regulated learners.²³ Part II will discuss the benefits of formative assessment, focusing specifically on the importance of feedback, and demonstrating how effective feedback is consistent with social constructivist theory.²⁴ Part III will explore the reasons why students consistently fail to use the feedback they are given, suggesting that much of the problem stems from the passive role students play by merely receiving feedback rather than taking a participatory role in the feedback process.²⁵ Part IV will propose strategies professors can use to give feedback that is more likely to be used by students, yet takes less time for professors to create.²⁶ Using specific examples from the law school classroom, this section reinforces the importance of teaching students how to (1) understand what good performance looks like, (2) learn self-assessment skills, (3) receive high quality information about learning, (4) promote dialogue around learning, and (5) close the gap between actual and desired performance.²⁷ Rather than proposing one ideal methodology for delivering feedback, the Article suggests that the best approach is one that helps students engage with, and

21. *See id.*

22. Deirdre Burke, *Strategies for Using Feedback Students Bring to Higher Education*, 34 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 41, 49 (2009) (“supportive learning environments mean that skills are required not only of students but of lecturers and all who come into contact with students”); *see also* Mary A. Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 *U. TOL. L. REV.* 269, 270 (2010) (describing system for assessing learning outcomes of students); Paul T. Wangerin, *Teaching and Learning in Law School: An “Alternative” Bookshelf for Law School Teachers*, 1994 *GONZ. L. REV.* 49, 50 (1994) (suggesting that “law teachers can learn something of value by studying teaching and learning outside of law schools.”).

23. *See* Steven R. Winger & Antony D. Norman, *Teacher Candidates’ Exposure to Formative Assessment in Educational Psychology Textbooks: A Content Analysis*, 10 *EDUC. ASSESSMENT* 19, 20 (2005).

24. Rust, *supra* note 8, at 234.

25. *See* Anders Jonsson, *Facilitating Productive Use of Feedback in Higher Education*, 14 *ACTIVE LEARNING IN HIGHER EDUC.* 63, 64 (2012).

26. *See* Winger, *supra* note 23, at 22.

27. David J. Nicol & Debra Macfarlane-Dick, *Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback Practice*, 31 *STUDIES IN HIGHER EDUC.* 199, 205 (2006).

ultimately take control of the feedback process to empower self-regulated learning and mastery of material.²⁸

II. FORMATIVE ASSESSMENT, FEEDBACK, AND SOCIAL CONSTRUCTIVIST THEORY

Assessment comes in two basic forms: formative and summative.²⁹ The two different kinds of assessment are not labels that apply to the evaluative activities themselves but, rather, the purposes they serve.³⁰ “An assessment activity is formative if it can help learning by providing information to be used as feedback, by teachers and by their students, in assessing themselves and each other, to modify the teaching and learning activities in which they are engaged.”³¹ Contrary to summative uses of assessment, undertaken after learning has been completed for the purposes of judging the ultimate level of attainment, formative assessment includes feedback, which is occurring as learning is developing for the purpose of helping to improve a student’s capability.³² While summative assessment focuses on quality control (who did and did not learn the material taught), formative assessment emphasizes quality assurance (using assessment to adjust instruction while learning is still taking place to ensure student needs are being met).³³ Assessment is not formative unless the instructor obtains the information and uses it to adapt instruction to meet the needs of students.³⁴ In fact, “[w]hat makes formative assessment *formative* is that it is immediately used to make adjustments so as *to form* new learning.”³⁵

Numerous studies cite the benefits of formative assessment.³⁶ The literature is equally clear that feedback is the core component of formative

28. See Wininger, *supra* note 23, at 23.

29. See James W. Pellegrino & Susan R. Goldman, *Beyond Rhetoric*, in *THE FUTURE OF ASSESSMENT: SHAPING TEACHING AND LEARNING* 34-35 (Carol Anne Dwyer ed. 2008).

30. *Id.*

31. Paul Black et al., *Road Maps for Learning: A Guide to the Navigation of Learning Progressions*, 9 *MEASUREMENT* 71, 74 (2011).

32. Margaret Heritage, *Commentary on Road Maps for Learning: A Guide to the Navigation of Learning Progressions*, 9 *MEASUREMENT* 149, 150 (2011); Earl Hunt & James W. Pellegrino, *Issues, Examples, and Challenges in Formative Assessment*, 89 *NEW DIRECTIONS FOR TEACHING & LEARNING* 73, 75 (2002) (analogizing that formative assessment provides continuous inventory of students’ educational status while summative testing is equated with closing the store for inventory).

33. Siobhan Leahy et al., *Classroom Minute by Assessment Minute, Day by Day*, *EDUCATIONAL LEADERSHIP* 18, 21 (2005).

34. Clark, *supra* note 20, at 242.

35. Lorrie A. Shepard, *Formative Assessment: Caveat Emptor*, in *THE FUTURE OF ASSESSMENT: SHAPING TEACHING AND LEARNING* 279, 281 (Carol Anne Dwyer ed. 2008).

36. Paul Black & Dylan Wiliam, *Assessment and Classroom Learning*, 5 *ASSESSMENT IN EDUCATION* 7, 10-15 (1998) [hereinafter *Assessment*]; Dylan Wiliam et al., *Teachers Developing Assessment for Learning: Impact on Student Achievement*, 11 *ASSESSMENT IN EDUCATION* 49, 50 (2004) (increased use of formative assessment led to substantial learning gains as demonstrated by externally mandated examinations); Wininger, *supra* note 23, at 20; Liz McDowell et al., *Evaluating Assessment*

assessment because of its “potential to affect future learning and student achievement.”³⁷ One study reports that students who merely participated in formative assessment, regardless of the level of success they experienced, were successful in summative assessment, because the act of participating enabled them to receive feedback about their learning process, which propelled improvement.³⁸ The few studies conducted in the law school setting have also demonstrated that formative assessment opportunities improve ultimate performance for the majority of students. This is especially true where the format of the practice tests is similar to the summative assessment and students receive feedback and strategies to help them improve.³⁹

Providing feedback to students is an essential element of formative assessment,⁴⁰ described as “one of the more instructionally powerful and least understood features in instructional design.”⁴¹ Formative feedback is “information communicated to the learner that is intended to modify his or her thinking or behavior for the purpose of improving learning.”⁴² Successful feedback answers three questions: “[1] (What are the goals?). . . [2] (What progress is being made toward the goal?). . . [3] (What activities

Strategies Through Collaborative Evidence-Based Practice: Can One Tool Fit All?, 45 INNOVATIONS IN EDUC. TEACHING INT’L 143, 144 (2008) (advocating for action research approach to improve assessment practices and monitor the impacts).

37. Rust, *supra* note 8, at 234.

38. María T. Carrillo-de-la Peña et al., *Formative Assessment and Academic Achievement in Pre-graduate Students of Health Sciences*, 14 ADVANCES IN HEALTH SCIENCES EDUC. 61, 66 (2009) (detailing empirical study in which college students who participated in mid-term formative assessment experienced higher success in final summative assessment than students who chose not to participate).

39. Andrea A. Curcio et al., *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FLA. ST. U. L. REV. 271, 279-80 (2008) (multiple practice essays followed by annotated model answers given in a first-year Civil Procedure class improved the performance of students on final essay exam with most statistically significant results for those students above the median LSAT scores and GPAs due to their superior metacognitive abilities); Sargent, *supra* note 11, at 380, 394 (formative assessments improved final exam scores for a majority of law students in second-year Evidence class and helped some students with weak first-year grades catch up to their peers); Tanya M. Washington et al., *Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance*, 57 J. LEGAL EDUC. 195, 196-97, 201 (2007) (multiple practice essays combined with peer and self-assessment using annotated model answers positively affected first-year law students’ ability to break a legal rule into component parts and perform complex factual analysis on exam); see also Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 101 (2010).

40. Winger, *supra* note 23, at 22.

41. Valerie J. Shute, *Focus on Formative Feedback*, 78 REV. OF EDUC. RESEARCH 153, 153 (2008).

42. *Id.* at 154; Winger, *supra* note 23, at 22 (defining feedback as “information about the gap between the actual level and the reference level of a system parameter which is used to alter the gap in some way”).

need to be undertaken to make better progress?)”⁴³ In other words, the learner must understand what the goal is; one must compare her actual performance to the ideal performance, and must engage in actions to “close the gap between actual and ideal.”⁴⁴ Effective feedback engages students in active learning exercises that help them learn the concept, self-monitor by assessing their understanding, and build self-motivation.⁴⁵

One of the concerns about assessment is that it improperly focuses on final tests that judge what a student knows, despite the current trend across all educational disciplines toward constructivist learning theories in which students are encouraged to create their own meaning in the learning materials.⁴⁶ Educational psychologists propose that, “consistent with . . . social-constructivist pedagogy”,⁴⁷ best practices of formative assessment should enable the student to play an active role in a learning process that is “viewed as constructive, cumulative, self-regulated, goal-oriented, situated, collaborative and individually different.”⁴⁸ Thus, rather than passively reproducing the knowledge the teacher offers, the learner is empowered to actively construct her own knowledge.⁴⁹ Rather than focusing on figuring out the correct answer, students are encouraged to engage in the learning

43. Hattie, *supra* note 9, at 86; *see also* Concha Furnborough & Mike Truman, *Adult Beginner Distance Language Learner Perceptions and Use of Assignment Feedback*, 30 *DISTANCE EDUC.* 399, 400 (2009) (noting the distinction between retrospective and future gap-altering feedback with the difference being “the former is used to alter a gap demonstrated in a recently submitted assignment, whereas the latter looks forward by concentrating on helping learners to reduce or close gaps that would otherwise have recurred in their work.”).

44. Winger, *supra* note 23, at 22; *see also* Paul Black & Dylan Wiliam, *Developing the Theory of Formative Assessment*, 21 *EDUC. ASSESSMENT, EVAL. & ACCOUNTABILITY* 5, 7 (2009); Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 *CREIGHTON L. REV.* 699, 754 (2012) (learning is thought of as a “loop in which teachers facilitate students’ active learning, students perform, and teachers provide feedback that shows students how their learning and performance can be improved . . . so that they can complete the learning loop.”).

45. Winger, *supra* note 23, at 20-24.

46. Lorrie A. Shepard, *The Role of Assessment in a Learning Culture*, 29 *EDUC. RESEARCHER* 4,4 (2000) (“instruction (at least in its ideal form) is drawn from the emergent paradigm, while testing is held over from the past.”) [hereinafter *Learning Culture*]; Mantz Yorke, *Formative Assessment in Higher Education: Moves Towards Theory and the Enhancement of Pedagogic Practice*, 45 *HIGHER EDUC.* 477, 483 (2003); *see also* John Pryor & Barbara Crossouard, *A Socio-cultural Theorisation of Formative Assessment*, 34 *OXFORD REV. EDUC.* 1, 2 (2008).

47. Shepard, *supra* note 46, at 4.

48. Marlies Baeten, *Students’ Approaches to Learning and Assessment Preferences in a Portfolio-Based Learning Environment*, 36 *INSTRUCTIONAL SCI.* 359, 360 (2008); Rust, *supra* note 8, at 232 (“knowledge is shaped and evolves through increasing participation within different communities of practice”).

49. Erik Driessen & Cees Van Der Vleuten, *Matching Student Assessment to Problem-Based Learning: Lessons from Experience in a Law Faculty*, 22 *STUDIES IN CONTINUING EDUC.* 235, 235 (2000); *see also* Leathwood, *supra* note 8, at 312; Rust, *supra* note 8, at 232 (“many of the problems in current practice could be overcome and the student learning experience greatly enhanced if a social constructivist approach [were] applied to the assessment process”).

required to understand the subject matter.⁵⁰ The learner takes charge of the learning and the instructor merely helps facilitate the learning process.⁵¹

The social-constructivist view considers the feedback process as a partnership between professor and student, where instead of being a one-way communication from an expert teacher to a passive student, feedback involves dialogue between a facilitating teacher and an actively involved student.⁵² The collaborative process of dynamic assessment is an outgrowth of Lev Vygotsky's "zone of proximal development . . . the region between the student's existing problem-solving ability and the ability to solve more complex problems given guidance and support from a more skilled person"⁵³ in the "discourse community."⁵⁴ Using "dialogic teaching," effective formative feedback involves "the guided construction of knowledge,"⁵⁵ which "scaffolds further inquiry, . . . deepens cognitive processing,"⁵⁶ and promotes "conceptual thinking."⁵⁷ When determining the best way to have students use feedback, professors must keep the social constructivist perspective in mind: "Learners do not achieve well understood and actively used bodies of knowledge through rote learning. Rather, thoughtful learning rich with connection-making is needed for insight and for the lively and flexible use of knowledge."⁵⁸

50. John Pryor & Barbara Crossouard, *Challenging Formative Assessment: Disciplinary Spaces and Identities*, 35 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 265, 266 (2010) [hereinafter *Challenging*].

51. Marilla D. Svinicki, *Student Learning: From Teacher-Directed to Self-Regulation*, 123 *NEW DIRECTIONS FOR TEACHING AND LEARNING* 73, 74 (2010).

52. Black, *supra* note 44, at 7 ("in the language of partnership law, teachers and learners are jointly and severally liable"); Jonsson, *supra* note 25, at 69; Margaret Price et al., *Feedback: All that Effort but What is the Effect?*, 35 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 277, 280 (2010); Pryor, *supra* note 46, at 14-16; Thomas, *supra* note 19, at 124.

53. Yorke, *supra* note 46, at 478; *see also* Shepard, *supra* note 46, at 10.

54. Steel, *supra* note 10, at 37.

55. Neil Mercer et al., *Reasoning as a Scientist; Ways of Helping Children to Use Language to Learn Science*, 30 *BRITISH EDUC. RES. J.* 359, 361 (2004).

56. *See* Clark, *supra* note 20, at 211.

57. Franzese, *supra* note 2, at 971-73 (focusing on the more contextual "'right hemisphere'" abilities, "conceptual thinking is 'out of the box,' creative and integrative. It asks our students to 'think away from the page' to see, and then derive meaning from, the larger contexts of which the cases are a part."). Using a social constructivist approach in the legal classroom has also been explored as a way to enable law students to consider their own cultural perspective in the context of making sense of the law while increasing their self-assessment skills. Spanbauer, *supra* note 16, at 377; *see also* Steel, *supra* note 10, at 37 (this vision of learning within the school of social constructivism is "critical to practice as a lawyer where truth is contested and can vary for different parties").

58. Cathleen D. Rafferty & Linda K. Fleschner, *Concept Mapping: A Viable Alternative to Objective and Essay Exams*, 32 *READING RES. & INSTRUCTION* 25, 25 (1993).

III. FAILURE OF STUDENTS TO USE FEEDBACK

Feedback often has more impact on learning than the way a class is taught; yet students lack strategies to use the feedback they are given.⁵⁹ Teachers bemoan the amount of time it takes to provide feedback,⁶⁰ especially because students in the worst-case scenario are not even reading the feedback,⁶¹ and many of those who do read it are not able to understand it or use it to improve.⁶² Feedback requires interpretation, but most students lack the “assessment literacy” to interpret feedback effectively.⁶³ The “student view of assessment is a depressing one,”⁶⁴ and studies citing student dissatisfaction with feedback are disheartening.⁶⁵ Apart from the studies showing that students do not understand the feedback they are given, even more disturbing are those that show some do not even bother to collect their assignments in the first instance,⁶⁶ or, if they do, they merely look at the grade and then throw their work away.⁶⁷

Scholars have set forth various explanations for why students do not use the feedback they are given. These include: receiving insufficient feedback, receiving the feedback well after the course has ended so that it is no longer useful to the student⁶⁸, and most commonly, lacking proper strategies to use

59. Burke, *supra* note 22, at 49; Graham Gibbs, *How Assessment Frames Student Learning*, in INNOVATIVE ASSESSMENT IN HIGHER EDUCATION 23, 23 (Cordelia Bryan & Karen Clegg eds., 2006).

60. Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159, 161 (2009) (providing suggestions for incorporating more assessments while acknowledging amount of time and effort required by faculty juggling numerous commitments).

61. Graham Gibbs & Claire Simpson, *Conditions Under Which Assessment Supports Students' Learning*, 1 LEARNING AND TEACHING IN HIGHER EDUC. 3, 10 (2004); Rust, *supra* note 8, at 234.

62. Nicol, *supra* note 27, at 210; Simpson, *supra* note 61, at 10; Steel, *supra* note 10, at 43.

63. Price, *supra* note 52, at 277-79.

64. Effie Maclellan, *Assessment for Learning: the Differing Perceptions of Tutors and Students*, 26 ASSESSMENT & EVALUATION IN HIGHER EDUC. 307, 317 (2001) (showing despite the declared commitment of staff to engage in standards-based formative assessment, it was not successfully realized as demonstrated by a study finding students did not “exploit assessment to improve their learning and, furthermore, appear to have a very underdeveloped conception of what assessment is.”).

65. Deirdre Burke, *Engaging Students in Personal Development Planning: Profiles, Skills Development and Acting on Feedback*, 6 DISCOURSE 107, 123-24 (2010) (“researchers have identified feedback as the one aspect of the assessment process that is often overlooked or ignored.”); Burke, *supra* note 22, at 42; Charles Crook et al., *Assessment Relationships in Higher Education: The Tension of Process and Practice*, 32 BRITISH EDUC. RES. J. 95, 109 (2006) (“students’ experience was far from ideal”); Simpson, *supra* note 61, at 10; Jonsson, *supra* note 25, at 64; Ross B. MacDonald, *Developmental Students’ Processing of Teacher Feedback in Composition Instruction*, 8 RESEARCH IN DEVELOPMENTAL EDUC. 1, 1-2 (1991).

66. Hazel K. Sinclair & Jennifer A. Cleland, *Undergraduate Medical Students: Who Seeks Formative Feedback?*, 41 MEDICAL EDUC. 580, 581-82 (2007) (analyzing study in which less than half of undergraduate students collected formative feedback on essays).

67. Gibbs, *supra* note 59, at 26.

68. Carl Anthony Doige, *E-mail-Based Formative Assessment: A Chronicle of Research-Inspired Practice*, 41 J. OF C. SCI. TEACHING 32, 37 (2012); Rust, *supra* note 8, at 234.

feedback.⁶⁹ One study showed that an astonishing number of students at the university level had never been taught how to understand or use feedback, concluding that the “failure to inform and guide students explains the marginal status of feedback as a learning resource.”⁷⁰

In addition, many students fail to understand the “academic discourse,” which is a prerequisite to interpreting feedback accurately.⁷¹ One study noted that students’ ability to initiate useful dialogue about feedback was contingent on an understanding of expected standards and students who failed to grasp these standards were more likely to focus only on superficial features such as technical aspects of writing.⁷² This likely resulted from the difficulty of understanding the standards and requirements within a new academic discourse community since the “informal knowledge exchange networks” they are communicated through serve as barriers to newcomers.⁷³

Another drawback associated with feedback is “student dependency,” whereby students become overly dependent on the professor for the answer in their single-minded focus on getting a good grade.⁷⁴ In fact, many students are so busy trying to “game” law school to perform well on exams that they ignore the important information that actually might help them learn the subject matter.⁷⁵ They try to figure out what their professors are really after, a concept also known as the hidden curriculum.⁷⁶ Unsurprisingly, the students’ beliefs about what they must focus on to succeed are usually significantly different from the professor’s actual plans

69. Furnborough, *supra* note 43, at 400 (noting “dangers of overestimating students’ skills” in using feedback); Rust, *supra* note 8, at 234; Naomi Winstone & Lynne Millward, *Reframing Perceptions of the Lecture from Challenges to Opportunities: Embedding Active Learning and Formative Assessment into the Teaching of Large Classes*, 18 PSYCHOL. TEACHING REV. 31, 32 (2012) (effective feedback depends on “motive (students need it), means (students are able and willing to use it), and opportunity (students receive it in time to use it).”).

70. Burke, *supra* note 22, at 42 (“It appears that we currently have a blind spot in relation to strategies for students making effective use of feedback.”).

71. Jonsson, *supra* note 25, at 69-70; *see also* Sue Bloxham & Liz Campbell, *Generating Dialogue in Assessment Feedback: Exploring the Use of Interactive Cover Sheet*, 35 ASSESSMENT & EVALUATION IN HIGHER EDUC. 291, 292 (2010); Price, *supra* note 52, at 279 (“if the learner lacks the necessary understanding of the disciplinary context, comments such as ‘your style should be more academic’ are likely to have little meaning for the student.”); Rapoport, *supra* note 1, at 1419 (demonstrating how legal discourse community is hard for law students to enter. “No one goes around as a first-year law student saying ‘assumpsit’ in normal conversations” but that is how a famous case begins.).

72. Bloxham, *supra* note 71, at 297.

73. *Id.*

74. Niedwiecki, *supra* note 19, at 180-81.

75. Gibbs, *supra* note 59, at 23 (“Students are strategic as never before, and they allocate their time and focus their attention on what they believe will be assessed and what they believe will gain good grades.”).

76. Simpson, *supra* note 61, at 5 (describing how “cue seekers,” “cue conscious,” and “cue deaf” students have different levels of understanding regarding what is required by the assessment process).

for the class.⁷⁷ Given that students claim they want more and better feedback, it is important to think about ways to introduce formative assessment opportunities that will support the learning process without overly burdening professors.⁷⁸ And while it is important to incorporate assessment in a way that appeals to law students, a recurring issue emerging from studies comparing research on students' feedback preferences versus effective use of feedback is that there is an inherent conflict "between what students prefer and what is likely to contribute to productive learning."⁷⁹ For example, although students articulate that they would like a lot of specific, individualized feedback that tells them exactly what to do to improve, this type of feedback will not be as useful as less detailed feedback that requires them to engage actively to propel their own learning.⁸⁰

There is some urgency here, students who need the most help are the least apt to receive it.⁸¹ One study found that students with the lowest grades, who consequently one would expect to benefit the most from feedback, were less likely to seek it than the students with higher grades.⁸² Other studies demonstrate that lower-performing students tend to know when they did not do well on an exam but lack the ability to pinpoint which specific questions they got wrong.⁸³ Unlike stronger students, who know how to use feedback to help them ascertain what they are doing correctly so they can continue to do well, "poor students understand they are poor students but may not know where to target their efforts to improve."⁸⁴ Evidence shows that lower achieving at-risk students who are given transparent feedback and taught how to use it to monitor their learning can transform into motivated, self-regulated learners. This should drive law professors to get even the most resistant students on board with using feedback correctly.⁸⁵

When students do not understand the feedback they are given, they are not able to construct the required meaning and use it to regulate and adjust their performance. Studies in the law school setting have demonstrated that

77. Steel, *supra* note 10, at 45.

78. Friedland, *supra* note 18, at 970; Louis N. Schulze Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 32 (2012).

79. Jonsson, *supra* note 25, at 67.

80. *Id.* at 67-68.

81. Pettys, *supra* note 2, at 1270; *see also* MacDonald, *supra* note 65, at 4 ("less skilled writers may suffer the harshest consequences of the confusion between teacher feedback and student understanding in that those who may need to learn the most from teacher feedback may be learning the least.")

82. Sinclair, *supra* note 66, at 582.

83. John K. Nietfeld, *Metacognitive Monitoring Accuracy and Student Performance in the Postsecondary Classroom*, 74 J. OF EXPERIMENTAL EDUC. 7, 24 (2005).

84. *Id.*

85. Clark, *supra* note 20, at 232; Winger, *supra* note 23, at 23.

students who enter with lower LSAT scores and GPAs tend not to benefit from feedback as much as those with stronger academic records, because they lack the metacognitive skills required to use the feedback to improve.⁸⁶ Consequently, a comprehensive strategy in the law school setting must provide formative assessment opportunities and feedback in a manner that facilitates self-regulated learning by teaching students to “self-observe, self-judge, and self-remedy.”⁸⁷

IV. TEACHING STUDENTS TO USE FEEDBACK TO BECOME SELF-REGULATED LEARNERS

To reach today’s millennial law students, teachers’ feedback must shift from assessing pure content knowledge to helping students develop the skills necessary to become self-regulated learners.⁸⁸ Scholars across disciplines are in agreement that “[l]earning is best when students are self-regulating, engaged, and motivated learners, and when the learning process is active, experiential, collaborative, and reflective.”⁸⁹ Feedback leads students to conscious competence, enabling them to improve on the immediate task and develop their own assessment strategies in their ongoing quest to become successful lifetime learners.⁹⁰

Involving students in feedback-related tasks maximizes the value of assessment by enabling the process of student self-regulation.⁹¹ In fact, it has been shown that “students’ ability to use feedback effectively appears to be related to their confidence and persistence, their capacity to learn and, in the long term, their potential for achieving self-regulation.”⁹² Some argue

86. Sargent, *supra* note 11, at 395-96.

87. *Id.* at 385; *see also* Burke, *supra* note 22, at 49 (stating the need to “address this gap between the expectations . . . that students know what to do with feedback and the reality of student ignorance of appropriate strategies to use feedback effectively.”); Nietfeld, *supra* note 83, at 22 (“increasing students’ metacognitive skills will require a more consistent, intensive, and explicit attempt that will require practice, feedback, and strategies on a distributed basis”).

88. Barbara De La Harpe & Alex Radloff, *Informed Teachers and Learners: The Importance of Assessing the Characteristics Needed for Lifelong Learning*, 22 *STUDIES IN CONTINUING EDUC.* 169, 169 (2000); Maclellan, *supra* note 64, at 316 (“if students are not actually monitoring and regulating the quality of their own learning, feedback of itself, regardless of its degree of detail, will not cause improvement in learning”); David Nicol, *Assessment for Learner Self-Regulation: Enhancing Achievement in the First Year Using Learning Technologies*, 34 *ASSESSMENT & EVALUATION IN HIGHER EDUC.* 335, 336 (2009) [hereinafter *Learner Self-Regulation*].

89. Timothy W. Floyd, *Beyond Chalk and Talk: The Law School Classroom of the Future*, 38 *OHIO N.U.L. REV.* 257, 266 (2011).

90. David Boud, *Sustainable Assessment: Rethinking Assessment for the Learning Society*, 22 *STUDIES IN CONTINUING EDUC.* 151, 151-52 (2000).

91. Clark, *supra* note 20, at 205 (drawing upon “199 sources on assessment, learning and motivation” to show how formative feedback “actualizes and reinforces self-regulated learning (SRL) strategies among students”); Gantt, *supra* note 44, at 755; Lasso, *supra* note 39, at 93; Niedwiecki, *supra* note 19, at 152.

92. Furnborough, *supra* note 43, at 413.

against assessment, stating that receiving unfavorable feedback is discouraging and makes students believe that they do not have the ability to succeed.⁹³ Professors can address this concern by emphasizing that even negative feedback leads to important learning.⁹⁴ They can work with students to understand that laboring through setbacks leads to success “given failure’s ability to teach important lessons.”⁹⁵ This is especially pertinent preparation for the legal profession, where lawyers constantly encounter negative feedback from colleagues, opposing counsel, and judges, and the most successful lawyers have figured out how to use that feedback to improve.⁹⁶

For students to engage in self-regulated learning, they must have ultimate control over the feedback process.⁹⁷ David Nicol and Debra Macfarlane-Dick propose that in order to empower self-regulated learning, successful feedback:

1. [H]elps clarify what good performance is (goals, criteria, expected standards);
2. [F]acilitates the development of self-assessment (reflection) in learning;
3. [D]elivers high quality information to students about their learning;
4. [E]ncourages teacher and peer dialogue around learning . . . ; and
5. [P]rovides opportunities to close the gap between current and desired performance.⁹⁸

Using this framework as a guide, this Article next explores a variety of ways in which law professors can teach their students to use feedback to become successful self-regulated learners.

93. Zimmerman, *supra* note 11, at 13.

94. See *Engaging Students*, *supra* note 65, at 132.

95. *Id.*

96. Richard W. Painter, *Rules Lawyers Play By*, 76 N.Y.U. L. REV. 665, 738-39 (2001).

97. Svinicki, *supra* note 51, at 80.

98. Nicol, *supra* note 27, at 205 (also stating that good feedback practice “encourages positive motivational beliefs and self-esteem,” and “provides information to teachers that can be used to help shape teaching”); see also *Learner Self-Regulation*, *supra* note 88, at 338.

A. Clarifying Good Performance: Rubrics and Model Answers

A common problem shared by underperforming students is a failure to understand assessment requirements.⁹⁹ To surmount this obstacle, professors must be clear and precise in communicating expectations and specific goals for each assignment.¹⁰⁰ Helping students understand standards can be difficult because traditionally professors do not make those standards obvious; rather, they expect students to intuit the tacit standards.¹⁰¹ Unlike explicit knowledge that can be clearly spelled out, “tacit knowledge is highly personal and hard to formaliz[e].”¹⁰² Thus, rubrics that clearly state expectations of what students are to know and precisely how their responses measured up to the ideal are the most important aspect of formative assessment.¹⁰³ Rubrics should be consistent with a standards model in which feedback is criterion-referenced (focusing on personal improvement in the context of different levels of learning achievement) rather than norm-referenced (focusing on competition between different students), which has been shown to lead to decreases in performance.¹⁰⁴

By making expectations transparent, rubrics give students a better idea of the requirements, which also helps to reduce anxiety.¹⁰⁵ By reviewing feedback in conjunction with the rubric, the students understand the feedback better, simultaneously improving self-efficacy and self-regulation skills.¹⁰⁶ In fact, some studies show that students “actually internalize the

99. David Nicol, *E-Assessment by Design: Using Multiple-Choice Tests to Good Effect*, 31 J. FURTHER HIGHER EDUC. 53, 55 (2007).

100. Clark, *supra* note 20, at 210.

101. Margaret Price, *Assessment Standards: The Role of Communities of Practice and the Scholarship of Assessment*, 30 ASSESSMENT & EVALUATION IN HIGHER EDUC. 215, 218 (2005) (“Tacit knowledge is defined variously as that which is learnt experientially or in terms of its incommunicability, ‘we know more than we can tell’”); *see also* Clark, *supra* note 20, at 209-10 (unlike “hard data”, tacit knowledge needs to be made explicit through “discussion, reflection, experience,” and “creation of a knowledge culture”).

102. Margaret Price & Berry O’Donovan, *Improving Performance Through Enhancing Student Understanding of Criteria and Feedback*, in INNOVATIVE ASSESSMENT IN HIGHER EDUC. 100, 103 (Cordelia Bryan & Karen Clegg eds., 2006).

103. Clark, *supra* note 20, at 210; *see also* Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6 (2004) (noting educators in other disciplines have discovered that “students learn more effectively when their teachers provide them with the criteria by which they are evaluated”); Ernesto Panadero & Anders Jonsson, *The Use of Scoring Rubrics for Formative Assessment Purposes Revisited: A Review*, 9 EDUC. RESEARCH REV. 129, 130 (2013).

104. Boud, *supra* note 90, at 156; Maclellan, *supra* note 64, at 317; Wininger, *supra* note 23, at 23; *see also* Price, *supra* note 101, at 219 (despite the preference for criterion-referencing, many professors either explicitly or implicitly use norm referencing because “markers find measurement far easier using a ranking procedure rather than measuring against an absolute standard”).

105. Panadero, *supra* note 103, at 138.

106. *Id.* at 138-39.

criteria in the rubric, making them their own, and use them while self-assessing.”¹⁰⁷ The goal is for the assessment information to be transparent enough to enable the students to understand precisely how they performed on the assignment.¹⁰⁸ Rubrics and model answers also help familiarize students with the academic discourse.¹⁰⁹ Actually engaging with the language and standards being used to assess the work (criteria) and examples of what successful work using the criteria looks like (exemplars and model answers) helps students to develop a better understanding of the terms and criteria professors reference in class, which in turn helps them understand more precisely the objectives they are aiming to achieve.¹¹⁰

Although rubrics are important, by no means are they a silver bullet. By themselves, they are usually insufficient to help students grasp the full meaning of the subject matter.¹¹¹ Thus, in addition to providing clearly defined assessment criteria, professors should also provide exemplars that constitute the ideals of performance.¹¹² Giving students model answers not only shows them what their work should have looked like but it confirms for them that the assignment was achievable by showing a classmate’s successful exam.¹¹³

Providing a model answer alone is not enough to ensure students will engage actively with feedback.¹¹⁴ This strategy works best when combined with exercises that encourage students to engage with the criteria and exemplars before attempting to apply them to their own work.¹¹⁵ For example, a professor could assign small groups of students to review different examples of a written piece of work (such as a good and a weak essay) and discuss what makes each succeed or fail, using the rubrics to help make the judgment.¹¹⁶ Through a class interaction facilitated by the professor or an online discussion board, the students are then in a better position to use the criteria more effectively to assess their own work and that of their peers.¹¹⁷

107. *Id.* at 130.

108. Clark, *supra* note 20, at 240.

109. See Jonsson, *supra* note 25, at 69-70.

110. *Id.*

111. Nicol, *supra* note 27, at 206.

112. Susanne P. Lajoie, *Transitions and Trajectories for Studies of Expertise*, 32 EDUC. RESEARCHER 21, 23 (2003).

113. Roberto L. Corrada, *Formative Assessment in Doctrinal Classes: Rethinking Grade Appeals*, 63 J. LEGAL EDUC. 317, 328 (2013).

114. Rust, *supra* note 8, at 233.

115. David Nicol & Colin Milligan, *Rethinking Technology-Supported Assessment Practices in Relation to the Seven Principles of Good Feedback Practice*, in INNOVATIVE ASSESSMENT IN HIGHER EDUC. 64, 66 (Cordelia Bryan & Karen Clegg eds., 2006).

116. *Id.*

117. Steel, *supra* note 10, at 42.

I use rubrics and model answers to help my first-year law students deconstruct their Torts exams after they have received their fall semester grades. I hand out anonymized samples of the strongest and weakest answers to the essays along with the actual rubrics that their professors used to grade the essays. My initial goal is to help the students identify how the strongest essays correctly analyzed the issues provided in the rubric. They are also able to identify how the strong answers used successful strategies for legal analysis, such as arguing both sides, using specific facts to guide analysis, and keeping discussion of different legal issues separate.

Next, we repeat the process with the weaker examples, and again, ask the students to identify how these answers stray from the rubric. The rubric helps them think about substantive issues such as missing or incorrect law, and common problems in legal analysis, such as engaging in one-sided analysis, ignoring the call of the question, and being overly conclusory. With this interactive exercise ensuring that they understand the rubrics and are able to identify the strengths and weaknesses in the sample answers, the next step is to review their own exams.

B. Facilitating Reflection in Learning: Self-Assessment and Peer-Assessment

Self-assessment skills are especially important in the area of law, because “throughout an attorney’s professional life after law school, her success in practice will depend on the ability to self-assess professional performance, behavior, and attitudes.”¹¹⁸ By becoming partners in the process of assessment, students are able to master the material to a greater degree than when their teachers solely evaluate their progress or lack thereof.¹¹⁹ Providing feedback positively affects students’ learning only when it goes hand in hand with their own self-assessment.¹²⁰ Accordingly, the goal of formative assessment should be to provide students with the skills to evaluate their own work just as effectively as the teacher is able to.¹²¹ Engaging students in scrutinizing their own work requires them to take charge of the assessment process.¹²² Research demonstrates substantial improvements in attainment of learning resulting from appropriate self-assessment activities.¹²³

118. Spanbauer, *supra* note 16, at 378.

119. Bloxham, *supra* note 71, at 291; Gibbs, *supra* note 59, at 27.

120. Boud, *supra* note 90, at 157.

121. Milligan, *supra* note 115, at 66.

122. *Learning Culture*, *supra* note 46, at 12.

123. Burke, *supra* note 22, at 48 (appropriate self-assessment activities enable students to develop the required “element of objectivity, the ability to stand back from one’s own work and see it from another’s perspective”); Nicol & Macfarlane-Dick, *supra* note 27, at 207; Niedwiecki, *supra* note 19, at 183-84; Rust et al., *supra* note 8, at 233 (engaging students in a grading exercise where they used

Students who evaluate their own work become more interested in understanding the criteria and linking it to the substantive feedback than in just receiving a grade.¹²⁴ Which brings me back to the exercise my students engage in after they receive their Fall Torts grades; once they have deciphered the rubrics used to grade the exams, it is time to self-assess their own exams. One challenge is addressing the ubiquitous initial reaction—a student’s certainty that her own exam, which did not receive the grade she expected, had exactly the same content as the model strong exam. To overcome this difficulty, I have created a self-assessment form, which allows my students to compare their exams to the model answer. Students work issue by issue. First, I have them outline precisely how the strong answer handled the analysis and then have them spell out in the next column how they handled the issue. Viewing the differences side by side helps them to see where they might have missed the legal issue completely or, even if they identified it correctly, where they might have failed to use specific facts from the hypothetical to give their analysis substance.

Once they have worked their way through the process of comparing their answer to the sample answer in this mechanical fashion, they must identify and write out three strengths of their answer—areas where their answer was similar to the strong answer, quoting the exact language they used. They then must identify three specific weaknesses in their answer and suggest a fix for each. Once they understand precisely where their answer missed the mark, they are able to articulate questions and identify specific areas where they need help from me. Students who are able to use self-assessment to self-regulate recognize when they need to pursue feedback from the professor.¹²⁵ With the data from this self-assessment exercise providing crucial background information, we are able to move forward together in an efficient manner.

Another successful exercise is having students engage in self-assessment just before the return of work so that teacher feedback immediately reinforces their self-evaluation.¹²⁶ Self-assessing before receiving instructor feedback requires students to be aware of their knowledge of cognition, monitor their learning, and make appropriate adjustments to improve.¹²⁷ Self-assessment surveys allow students to

explicit criteria to mark work and then discussed results led to “statistically significant improvement in the students’ subsequent work”).

124. *Learning Culture*, *supra* note 46, at 12.

125. Hattie, *supra* note 9, at 94 (“Self-assessment is a self-regulatory proficiency that is powerful in selecting and interpreting information in ways that provide feedback.”).

126. Rust, *supra* note 8, at 235.

127. Hillary Burgess, *Deepening the Discourse Using the Legal Mind’s Eye: Lessons from Neuroscience and Psychology that Optimize Law School Learning*, 29 QUINNIPAC L. REV. 1, 53 (2011);

practice self-assessment and receive feedback to enhance skills, while providing professors with important information to help guide their teaching.¹²⁸

I lead regular exercises of this nature in a Legal Analysis class I teach for students in their second year of law school. For each of the graded writing assignments, my students are required to self-assess their performance using a model answer and a checklist in which they must determine whether they have met the requirements of the assignment and identify where they have done so. For example, if they were required to use analogy-based reasoning, they must identify whether they did use analogy-based reasoning and compare their case analogy to that of the model answer to determine whether they did so effectively. Listening to student reflections on learning helps me understand where they are having trouble and prompts me to suggest specific strategies to help improve their self-monitoring.¹²⁹ As their self-evaluation skills improve over the course of the semester, they are thrilled to discover how their own self-assessments track my comments in a more precise fashion.¹³⁰ The realization that they are learning to help themselves is empowering and fuels further improvement.

In addition to the benefits of self-assessment, numerous studies demonstrate the value of peer assessment for student learning.¹³¹ 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.¹³² In addition, peer interactions have greater balance than those between student and professor and enable students to stimulate and scaffold each others learning.¹³³ These experiences help students develop skills of metacognition as they negotiate meanings and share strategies to construct knowledge with their peers.¹³⁴ They are able to have

Niedwiecki, *supra* note 19, at 183-84 (“it allows the students to focus keenly on the feedback and use it to improve learning”).

128. Niedwiecki, *supra* note 19, at 184-93 (describing four basic types of self-assessment tools that can be used at different points in the learning process); Floyd, *supra* note 89, at 301-03 (providing examples of self-assessment and peer-assessment worksheets).

129. Nietfeld, *supra* note 83, at 26.

130. Students can also build metacognitive capacity by writing reflectively about their learning experiences in logs or journals. De La Harpe, *supra* note 88, at 177; Driessen, *supra* note 49, at 241 (writing in portfolios helps with “stimulating reflectiveness”).

131. See, e.g., Lan Li et al., *Assessor or Assessee: How Student Learning Improves by Giving and Receiving Peer Feedback*, 41 BRITISH J. OF EDUC. TECH. 525, 526 (2010) (noting cognitive benefits for assessors and assessees that included “constructive reflection, increased time on task, attention on crucial elements of quality work and greater sense of accountability and responsibility”).

132. Jonsson, *supra* note 25, at 71.

133. Mercer, *supra* note 55, at 361; see also *Learner Self-Regulation*, *supra* note 88, at 343.

134. George Engelhard, Jr. & Rubye K. Sullivan, *An Ecological Perspective on Learning Progressions as Road Maps for Learning*, 9 MEASUREMENT 138, 139 (2011).

greater impartiality than when they review their own work (since they do not know what their peer meant to say, only what was said),¹³⁵ plus the skills they develop as they comment on the work of their peers are transferred when they turn back to assessing their own work.¹³⁶

Studies have shown significant correlation between the quality of peer feedback provided by students and the quality of those same students' own final projects.¹³⁷ 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.¹³⁸ Thus, those who criticize self- and peer-assessment by arguing that students cannot give the same high quality information that professors provide are missing the point:

The value of self- and peer-assessment is that students internaliz[e] academic standards and are subsequently able to supervise themselves as they study and write and solve problems, in relation to those standards. It is the act of students making judgment against standards that brings educational benefits, not the act of receiving a grade from a peer.¹³⁹

In classes where I lead self-assessment exercises, I also give students the opportunity to engage in peer-assessment exercises. I use checklists to ensure students are giving feedback in a manner that takes account of the importance of rubrics and standards to the writing process, and guarantees that students have insight into how I will be evaluating the assignment.¹⁴⁰ I also ensure the quality of the peer feedback by assigning students articles on providing peer feedback, providing examples of successful and unsuccessful peer editing exercises and by practicing a step-by-step sample peer review with the students.¹⁴¹ Working with peers helps with motivation, encouraging students to persist, and successful information transfer because students are often able to explain newly learned concepts to each other in a

135. Moppett, *supra* note 17, at 95.

136. *Learner Self-Regulation*, *supra* note 88, at 336; Black, *supra* note 31, at 75.

137. Stuart Hepplestone et al., *Using Technology to Encourage Student Engagement with Feedback: A Literature Review*, 19 RESEARCH IN LEARNING TECH. 117, 122 (2011); Lan Li et al., *supra* note 132, at 532.

138. Hepplestone, *supra* note 137, at 123; Li, *supra* note 131, at 532 (noting this finding is congruent with "assertions in the literature that active involvement in the peer assessment process improves learning, and studies reporting student perceptions that reviewing peers' work facilitated their learning").

139. Gibbs, *supra* note 59, at 27.

140. Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667, 689 (2011).

141. *Id.* at 698-99.

way that is simpler and more comprehensible than how their professor might explain it.¹⁴² The numerous benefits to students resulting from providing and receiving feedback on their own work and the work of their peers, along with the obvious benefit to professors of spending less time on grading, demonstrates that transferring the responsibility to students in this manner is a win-win proposition.

C. Delivering High-Quality Information: Building Self-Esteem

Quality feedback causes students to think for themselves.¹⁴³ Factors such as the specific characteristics of the assessment measure,¹⁴⁴ specific skill being assessed,¹⁴⁵ skill level and personal values of the assessor,¹⁴⁶ instructional context of the classroom,¹⁴⁷ and diversity of student backgrounds and expectations¹⁴⁸ affect the quality of feedback and the degree to which students are able to engage successfully with feedback.¹⁴⁹ This section focuses specifically on how to provide feedback in a way that empowers self-regulation.

Returning to the exercise my students engage in after they receive their Fall Torts grades, once they have decoded the rubrics and studied and self-assessed using the sample answers, the next step is for me to weigh in by providing my own feedback to the student. What is critical here is that I focus my comments on the student's self-assessment rather than on the actual work product itself. By giving the student a chance to articulate her

142. Nicol, *supra* note 27, at 211.

143. Paul Black & Dylan Wiliam, 'In Praise of Educational Research': *Formative Assessment*, 29 BRITISH EDUC. RES. J. 623, 631 (2003) (coining the phrase "good feedback causes thinking") [hereinafter *In Praise*].

144. *Id.* at 627 ("assessments must emphasise the skills, knowledge and attitudes regarded as most important, not just those that are easy to assess"); Driessen, *supra* note 49, at 242.

145. Amanda M. Marcotte & John M. Hintze, *Incremental and Predictive Utility of Formative Assessment Methods of Reading Comprehension*, 47 J. SCH. PSYCH. 315, 316-17 (2009) (exploring different strategies for assessing reading comprehension skills).

146. Catherine Edwards, *Assessing What We Value and Valuing What We Assess?: Constraints and Opportunities for Promoting Lifelong Learning with Postgraduate Professionals*, 22 STUD. IN CONTINUING EDUC. 201, 210 (2000) ("What we choose to assess and how shows quite starkly what we value."); *Assessment Standards*, *supra* note 101, at 215 (exploring difficulties surrounding subjectivity of assessment process and need for "standards discourse within communities" to make assessment standards more consistent); Winger, *supra* note 23, at 34.

147. Julianne C. Turner & Debra K. Meyer, *Studying and Understanding the Instructional Contexts of Classrooms: Using our Past to Forge our Future*, 35 EDUC. PSYCHOLOGIST 69, 70 (2000).

148. Mary Scott, *Student Writing, Assessment, and the Motivated Sign: Finding a Theory for the Times*, 30 ASSESSMENT & EVALUATION IN HIGHER EDUC. 297, 298 (2005).

149. Yorke, *supra* note 46, at 478-81 (pointing out correlation between amount of work teacher puts in to feedback on draft and subsequent degree of student improvement). Since feedback is the largest single influence on student performance, many articles focus on how to deliver feedback. *See generally Assessment*, *supra* note 36; Niedwiecki, *supra* note 19, at 177-81; Shute, *supra* note 41 (providing extensive review of research on formative feedback and providing specific guidelines for using feedback to enhance learning); Winger, *supra* note 23, at 22.

specific thoughts regarding her performance on the exam and how it measures up to the sample answers, I am able to understand where she is falling short. This helps me to work with the student to come up with strategies to help her to develop her self-regulation skills so that she will be able to recognize the weaknesses on her own the next time around. If a student has failed to provide sufficient analysis on her exam and has not noted this on her self-assessment, it is just as important to help the student understand why she was not able to identify her insufficient analysis, as it is to focus on the flaws in analysis.

I have also learned that the degree to which students will choose to use professors' comments to help themselves improve is significantly affected by the manner in which professors convey the information.¹⁵⁰ Feedback can positively or negatively affect self-esteem and motivation, which directly influence the decisions students make about what and how to learn.¹⁵¹ It is important to frame feedback in a way that demonstrates respect for the student.¹⁵² Assessors should avoid the use of "final vocabulary" and "excessively judgmental language."¹⁵³ Feedback of this type is overly controlling, provides little information of value, and has been shown to "lower student motivation, discourage persistence, and contribute to" law student psychological distress.¹⁵⁴ Students hear a very different message when controlling words such as "must," "should," and "do not" are used than when they hear supportive words or phrases such as "consider" or "you might want to try."¹⁵⁵ In an exam where the student mistakenly focused on battery rather than negligence, writing the word "No!" is more psychologically damaging and less helpful than "Would negligence have been a more appropriate claim here than battery to pursue? Since the skier was clearly out of control, could she have formed the intent to knock over the plaintiff?" By giving specific information on how to fix the problems, in this case telling the student to think about negligence instead of battery, the student receives a constructive suggestion as opposed to a destructive

150. See Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 226-28 (2013) (explaining that "[W]hen [controlling and non-informational] feedback is delivered, . . . [it] can lower student motivation, discourage persistence, and contribute to the decline in well-being experienced by many law students.").

151. Milligan, *supra* note 115, at 71; see also Manning, *supra* note 150, at 227-28.

152. Boud, *supra* note 90, at 156 ("Unless staff have expectations that students will succeed, it is difficult for students to believe in themselves. Students must always be treated as if they will succeed. This involves a respect for all students, not putting them down or implying that they might be anything but successful in one's course.").

153. *Id.* at 162.

154. Manning, *supra* note 150, at 227-28 (examining impact of using self-determination theory and positive psychology to guide feedback practices in an effort to improve law student motivation, well-being, and learning outcomes).

155. *Id.* at 257.

judgment.¹⁵⁶ Thus, rather than just pinpointing weaknesses, I provide ideas of how to fix problems while prioritizing areas for improvement.¹⁵⁷

By asking pointed questions and highlighting the choices I am making about what is most important to focus on when giving feedback, I attempt to model for the students how to engage in the evaluative process on their own.¹⁵⁸ My goal is to help the students develop the requisite evaluation skills so that they will be able to do this in a more self-directed manner for their next exam.¹⁵⁹ One way I ensure that I provide feedback in sufficient detail is to convey to my student how I interpreted their writing. For example, “when I read your analysis of false imprisonment, you seemed to be missing analysis on the elements of whether plaintiff was aware of the confinement.” This enables the student to see the differences in how she intended to convey the information and what she actually wrote.¹⁶⁰ The student must then determine whether she substantively understood how to analyze awareness of confinement and failed to do it correctly, in which case it was a structural difficulty, or whether there was a hole in her substantive understanding of the law. Once we answer this question, we can travel down the correct path toward future improvement.

Crucial to affirming for the student that she is developing competency is finding areas where she was spot-on in her self-assessment and pointing them out with specific examples of correct assessment.¹⁶¹ So, in a scenario where the student was providing insufficient analysis but has identified the shortcoming correctly, I affirm for her that she was able to identify the problem and then take it the next step by encouraging her to fill in where precisely she could have expanded.¹⁶² By creating dialogue that feels like a conversation, my feedback operates more clearly in a social constructivist framework and is appropriately divergent (“establishing what the learners knew, understood or could do”) as opposed to convergent (determining “if the learners knew, understood or could do a predetermined thing”).¹⁶³

Framing feedback in a way that helps students reflect on the process of learning as opposed to the final product also helps motivate the student to master the requisite skills and subject matter instead of focusing solely on

156. *See id.*

157. *See Nicol, supra note 27, at 200.*

158. *See id.* (emphasizing the relationship between the transmission of information from the student and self-regulation).

159. *See Franzese, supra note 2, at 973.*

160. Milligan, *supra note 115, at 69.*

161. *See Manning, supra note 150, at 253.*

162. *Id.* at 257.

163. Pryor, *supra note 46, at 3-4; see also Challenging, supra note 50, at 272.*

performance goals (“passing the test, looking good”).¹⁶⁴ This, in turn, prompts students to take a deep rather than a “surface approach” to learning.¹⁶⁵ Mastery-oriented learners use “quality learning strategies and [have] greater motivation, whereas performance goal orientation is more associated with . . . ‘shallow learning’ and tenuous motivation.”¹⁶⁶ Studies have shown that students who take a “deep approach to learning” prefer feedback that reinforces understanding.¹⁶⁷

My goal is to teach students how to use feedback to improve performance on their subsequent learning activities.¹⁶⁸ I am careful to be “forward-looking” and focus on students’ next assignments even when we are deconstructing exams for a class they have completed.¹⁶⁹ In fact, I work to persuade my students that it is even more useful to spend our time isolating weaknesses in a subject area where their learning is complete. Free of the dangers of being stuck on substance they are no longer studying, we are able to pinpoint structural problems that will be applicable for success in all of their classes and in the practice of law. The takeaway is that although it may no longer matter whether they can correctly recite the elements of false imprisonment, it will always be necessary to analyze all of the elements of a cause of action.

D. Encouraging Teacher and Peer Dialogue: Classroom Exercises

For those professors who are off put by the prospect of providing individual feedback to a large group of students, there are unique opportunities to provide feedback in the law school classroom that encourages rich teacher- and peer-dialogue around learning.¹⁷⁰ Feedback should be associated with multiple low-stakes opportunities beginning early in the course.¹⁷¹ This familiarizes students with standards early on and ensures that they will manage their time well by learning the material as it is

164. Nicol, *supra* note 27, at 211; *see also* M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 140-41 (2001).

165. Gibbs, *supra* note 59, at 29.

166. Svinicki, *supra* note 51, at 77.

167. Baeten, *supra* note 48, at 362; Wininger, *supra* note 23, at 22 (studies also denote benefits of “correct-answer-and-explanation feedback” as opposed to “right-or-wrong feedback”).

168. Nicol, *supra* note 27, at 210; Winstone, *supra* note 69, at 32; Yorke, *supra* note 46, at 479 (detailing positive results of formative assessment activity in which students were required to grade peers’ work an hour after submission).

169. *See* Simpson, *supra* note 61, at 25.

170. *See In Praise*, *supra* note 143, at 630; Mark Priestley & Daniela Sime, *Formative Assessment for All: A Whole-School Approach to Pedagogic Change*, 16 THE CURRICULUM J. 475, 483 (2005); Winstone, *supra* note 69, at 31 (“active learning and formative assessment can be successfully embedded into the teaching of large groups” because of the unique opportunities presented to promote dialogue).

171. Gibbs, *supra* note 59, at 33.

taught, rather than cramming at the end.¹⁷² This recommendation is supported by research showing that multiple practice exercises enhance learning, with “distributed practice” (spacing learning over time)¹⁷³ benefitting long-term retention and leading to more permanent learning.¹⁷⁴ Central to classroom feedback is the power of dialogue, and feedback can be formative when the teacher challenges students to “clarify, compare, challenge and defend their various views to one another”¹⁷⁵ to help shape an accurate understanding of the legal concepts while building the oral advocacy skills which are so central to the practice of law.¹⁷⁶

Returning to the fall Torts exercise, in this exercise there are various ways in which the students work together to generate feedback. When I hand out the strong sample answer, I first have the students independently write down what they think worked well on the strong essay, using the categories we have discussed consistently such as arguing both sides, not jumping to conclusions, using specific facts, and keeping issues separate. When we come back together as a group, I use digital technology to enhance the dialogue.¹⁷⁷ I project the sample strong answer on a document camera and then walk the class through the process of evaluating the answer, writing in comments, and generating dialogue to help students understand the components of a successful response. As the students volunteer information about what worked well in the sample answer, I use different color pens to diagram IRAC, highlight areas where different tools for analysis, such as rule-based, analogy-based, and policy-based have been used, and note structural strengths, such as using specific facts and keeping issues separate. At the end of this exercise, I am confident that the students not only have seen a sample of a strong response to the question, but that they understand the specific reasons for why the answer was successful.

When we turn to the sample weak answer, I begin by providing the students with a worksheet that lists many of the common weaknesses I have identified in the Torts exams. Examples might include being overly conclusory, not analyzing rules in the context of the provided facts, one-sided analysis, failing to recognize the arguments the other side will make,

172. *Id.*

173. Dunlosky, *supra* note 6, at 35.

174. Henry L. Roediger, III, *Applying Cognitive Psychology to Education: Translational Educational Science* 14(1) PSYCHOL. SCI. IN THE PUB. INT. 1, 3 (2013).

175. Black, *supra* note 31, at 74.

176. Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218, 230 (1974).

177. W. Warren H. Binford, *Envisioning a Twenty-First Century Legal Education*, 41 WASH. U. J.L. POL'Y 157, 186 (2013) (“law school faculties should view the Digital Age as an opportunity to embrace and harness powerful technologies that will help [law school faculties] develop . . . pedagogical tools” that are meaningful, relevant, and effective); Benfer, *supra* note 14, at 324.

failure to keep issues separate, jumping from one topic to another and back without any roadmap, and incorrect or missing law. For each weakness, I require that they identify an example of this weakness in the sample answer, quoting exact words from the answer, and a proposed fix. As they work together in small groups to complete the worksheet, I walk around the classroom to provide assistance and to get a sense of which groups are coming up with suitable examples in each of the categories. Then we come back together as a class to discuss. As students share examples, I have them come up and place their responses on the document camera, which projects them to the class. When students volunteer something spontaneously that their group did not write on the worksheet, I invite that student to come up to the podium to write the example onto the blank worksheet. For students who have chosen to use their personal computers to fill out the worksheet, I can have them email it to me and immediately pull it up on the classroom computer and project it to the class. What emerges is a lively student-led class discussion that I can tightly control by calling on students whose examples I have already vetted for accuracy.

This exercise ensures that I receive enough information back from the students to determine whether they are making appropriate progress or whether I must make either synchronous or asynchronous adjustments to my instruction and/or materials to achieve my teaching goals.¹⁷⁸ Synchronous moments, also called “just-in-time teaching,” are when teachers adjust lessons based on the immediate impression of the students’ level of understanding.¹⁷⁹ These are the shortest feedback loops, with teacher responses occurring in real time.¹⁸⁰ An example of this would be realizing that my students are not identifying common weaknesses that I expected them to understand. Rather than continuing to have them lead the conversation, in this scenario I might jump back in and provide some of my own examples to get them back on track. Asynchronous moments comprise lengthier feedback loops, which use data from formative assessment exercises to plan subsequent lessons.¹⁸¹ For example, if the students fail to identify weaknesses in the weak sample answer, I might decide to plan a future lesson in which we review a different example and try again to identify weaknesses in analysis.

Providing feedback to groups by leading these types of structured cooperative learning exercises has demonstrated benefits. This is especially

178. Black, *supra* note 36, at 10; *see also* Thomas, *supra* note 19, at 96-97.

179. *Learner Self-Regulation*, *supra* note 88, at 345.

180. Dylan Wiliam & Marnie Thompson, *Integrating Assessment with Learning: What Will it Take to Make it Work?*, in *THE FUTURE OF ASSESSMENT: SHAPING TEACHING AND LEARNING* 70 (Carol Anne Dwyer ed., 2008).

181. *Assessment*, *supra* note 36, at 10.

true when teachers focus on supervising and scaffolding to help students develop the skills necessary for successful group interactions.¹⁸² The idea of scaffolding learning involves providing tips and thoughtful instruction as opposed to exact answers to ensure that the students are the ones guiding the conversation and resolving the challenges.¹⁸³ In addition to preparing them for the realities of law practice, teaching law students to work collaboratively helps students become more interested in what they are learning, take responsibility for their own learning, and become critical thinkers.¹⁸⁴ Studies demonstrate that students who work in groups learn better and retain the knowledge longer than learners who work on their own.¹⁸⁵ Accordingly, creating a class dynamic in which the students are leading the class conversation (and even standing at the lectern to impart information to their peers) empowers the students and embodies the essence of self-regulated learning.¹⁸⁶

Professors can use numerous strategies to acquire the best information to adapt their teaching most effectively.¹⁸⁷ Questioning techniques that incorporate feedback can also have a great effect on the success of classroom dialogue.¹⁸⁸ One successful methodology is asking students a question on specific class material immediately after the material is covered and giving them one minute to plan how they would go about answering the question on an exam, discuss it with a peer or small group, and then open it up to the class for discussion.¹⁸⁹ A professor may combine peer feedback on the response depending on time allocated and the sense the professor has of the degree to which the class understands the concept.¹⁹⁰ Other strategies include providing informal feedback within the normal flow of classroom

182. Paul Blatchford & Ed Baines, *The Effect of a New Approach to Group Work on Pupil-Pupil and Teacher-Pupil Interactions*, 98 J. OF EDUC. PSYCH. 750, 751 (2006); see also Thomas, *supra* note 19, at 96; Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 143-46 (2009).

183. Bloom, *supra* note 19, at 343.

184. Floyd, *supra* note 89, at 269; see also Cristina D Lockwood, *Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice*, 20 CLINICAL L. REV. 95, 97-98 (2013) (advocating for formation of “communities of practice,” which are groups of law students working together to aid better learning and preparation for realities of practice of law).

185. Floyd, *supra* note 75, at 269; see also Thyfault, *supra* note 182, at 137 (“collaborative and cooperative learning prepares law students to successfully meet the challenges of a diverse and changing profession”).

186. See *Learner Self-Regulation*, *supra* note 88, at 349.

187. Priestley, *supra* note 170, at 480.

188. Bloxham, *supra* note 71, at 292.

189. Winstone, *supra* note 69, at 34-35.

190. *Id.*; Wiliam, *supra* note 36, at 55 (detailing another successful technique in which the professor starts the lesson with a specific question that provides a focus for the class, asks the question in a more open way, and allows students more time to answer).

conversation to ensure that students are meeting their learning objectives¹⁹¹ and asking students to write down what they thought were the three critical points at the end of class.¹⁹²

When examining specific topics, students across the class had trouble understanding, professors can hone in on specific areas that need re-teaching or clarification and provide feedback to the class as a whole at the next teaching session so that teachers and students are passing information back and forth to one another.¹⁹³ This enables professors to highlight common strengths and mistakes and then challenge students to use that data to review their own work and assess accordingly.¹⁹⁴ In this scenario, students still receive feedback on collective strengths and weaknesses yet professors do not need to take the time to generate feedback to each student individually.¹⁹⁵ Enabling this kind of productive classroom conversation about feedback also ensures that when professors meet subsequently with students to rework individual strategies, they will be able to use the time more effectively since they will already have covered much of the substance.¹⁹⁶

Professors can also use technology to enhance dialogue and create opportunities to assess what students understand by playing games that reinforce learning.¹⁹⁷ In one of my final Legal Analysis classes of the semester, we play Legal Analysis Jeopardy. I place the students in groups to play a game that tests their understanding of the evidentiary concepts we have studied over the semester. In addition to reinforcing learning, I am able to help my students think about different strategies for memorizing the information. For example, one of the questions is: “This is one of the permissible grounds to admit Prior Bad Act evidence under FRE 404(b).” The answer is “What is Motive, Intent, Mistake (lack of), Identity, Knowledge, Preparation, Opportunity, and Plan?” In the PowerPoint answer slide, I include the abbreviation MIMIK POP as a mnemonic for learning the law and pause the game to discuss with the students how simple tricks can ensure that they hit on relevant issues on an exam. The students

191. Priestley, *supra* note 170, at 480; Yorke, *supra* note 46, at 481; Black, *supra* note 31, at 74; see also Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See if it Makes a Difference: Can Law Schools Do It Better?*, 27 QUINNIPIAC L. REV. 899, 899 (2009) (proposing ideas for assessing myriad of skills law students must master to practice law competently); Winstone, *supra* note 69, at 39.

192. Winstone, *supra* note 69, at 35.

193. Rust, *supra* note 8, at 235.

194. *Id.*

195. *Id.*

196. *Learner Self-Regulation*, *supra* note 88, at 347; Milligan, *supra* note 115, at 74.

197. Moppett, *supra* note 17, at 107-08; but see Franzese, *supra* note 1, at 48 (writing on the board is more effective than using PowerPoint because when forced to generate material in “real time,” professors are able to model the act of creating).

walk away from the exercise with a better grasp on whether they understood the rule sufficiently and with additional strategies to help them think about how they would approach an exam.¹⁹⁸ Although “fun” is a relative concept in law school, students consistently seem to enjoy this exercise. At the same time, it helps give me a better understanding of areas that require additional clarification and demonstrates to my students that they can use similar self-testing techniques to navigate the learning process on their own.¹⁹⁹

E. Providing Opportunities to Close the Gap: Reacting to Feedback

Unless students use the feedback they are given to bridge the gap between their current and desired performance, the feedback is just “dangling data.”²⁰⁰ In order to close the gap, feedback should be a continuous, collaborative partnership between professor and student.²⁰¹ To gauge whether this partnership is successful, students must react to the feedback to test their understanding of it.²⁰² “Unless students are able to use the feedback to produce improved work . . . neither they nor those giving feedback will know that it has been effective.”²⁰³ One reason why students do not use feedback appropriately is that once they have completed an assignment, they have little incentive to review feedback.²⁰⁴ Students often ignore professor comments when there is no requirement that students act on the feedback.²⁰⁵ In situations where revision is required, however, studies have shown that students are successful in incorporating teachers’ comments into future revisions.²⁰⁶ One way to test whether students understand feedback is to have them rework and resubmit the assignments.²⁰⁷

In my writing-intensive Legal Analysis class, I structure each of the assignments so that students have a chance to incorporate my feedback into

198. Lajoie, *supra* note 112, at 22 (these different opportunities for on-the-spot feedback are compatible with the notion of dynamic assessment, defined as “moment-by-moment assessment of learners during problem solving so that feedback can be provided in the context of the activity”).

199. *Id.* at 23.

200. Jonsson, *supra* note 25, at 64; *see also* Simpson, *supra* note 61, at 24-25.

201. Rust, *supra* note 8, at 234.

202. Roberto Corrada describes an incentive he uses to get students to react to his feedback. He added a midterm exam into his curriculum and encourages his students to appeal their grades on his midterm, having found that “appeals create an incentive for close review and critical analysis.” Corrada, *supra* note 113, at 325. Added benefits of the appeals process are that it helps students become self-regulated learners that take responsibility for their learning and enhances their advocacy skills, which will be key in their law careers. *Id.* at 325-28.

203. Boud, *supra* note 90, at 158.

204. Price, *supra* note 52, at 280.

205. Yorke, *supra* note 46, at 484.

206. Jonsson, *supra* note 25, at 67.

207. Milligan, *supra* note 115, at 73.

a rewrite before the subsequent draft is graded.²⁰⁸ I provide feedback in the form of written comments, digitally voice recorded comments, and individual conferences. When providing written comments, I provide comments only on the initial draft and a grade only on the rewrite. Feedback without grades leads to better learning than just giving grades or even giving grades and feedback together.²⁰⁹ Marks and grades focus on performance instead of learning, which inevitably “detracts from learning.”²¹⁰ Grades damage self-efficacy and act as a “barrier to student understanding.” Thus, clear and simple written comments are more effective.²¹¹ I also find that students read my feedback more carefully when it is not accompanied by a grade, because it is the only information given to them to help guide their learning.²¹² Furthermore, providing comments without grades encourages positive motivational beliefs and helps improve student self-esteem.²¹³

The digital voice recorder allows me to share more detailed information in a way that is more accessible to the student than written comments, yet less time consuming to create.²¹⁴ I instruct the students to listen to my comments with their memos in front of them and to take specific notes on what I am saying. By recording my comments, I can be extremely thorough and provide feedback in a more informal, conversational tone that removes judgment and reinforces the notion that we are partners in the feedback process. Students often use my comments to stimulate subsequent dialogue.²¹⁵ To help steer the dialogue, I have them react to a few comments either by interpreting in their own words what I meant, how specifically it helped them, or what they did not understand.²¹⁶ When we meet, we can then formulate goals for the next assignment based on their

208. A compromise position between giving grades with comments and giving comments alone might be using “adaptive” grading, where professors provide comments and encourage students to develop action plans for acting on the feedback, “only revealing the grade once the student had completed a task to indicate that they had read, considered and sought the opportunity to use the feedback in their future learning.” Hepplestone, *supra* note 137, at 121. Another version of this practice is returning work to students with comments only, asking students to react to the comments and predict the appropriate grade, and then subsequently informing them of the grade. Rust, *supra* note 8, at 235.

209. Gibbs, *supra* note 59, at 27; Hattie, *supra* note 9, at 92; Hepplestone, *supra* note 137, at 121.

210. Gibbs, *supra* note 59, at 27.

211. *In Praise*, *supra* note 143, at 630; Boud, *supra* note 90, at 157; MacDonald, *supra* note 65, at 4 (“evaluation of a student’s work should be separated from personalized instruction”).

212. Simpson, *supra* note 61, at 11.

213. Nicol, *supra* note 27, at 212; Shute, *supra* note 41, at 156 (to that end, professors should avoid providing grades or scores that indicate students’ standing relative to their peers as this practice has been shown to detract from learning).

214. Manning, *supra* note 150, at 355; Jonsson, *supra* note 25, at 70; Hepplestone, *supra* note 138, at 121.

215. Bloxham, *supra* note 71, at 292.

216. See Nicol, *supra* note 27, at 211.

understanding of the feedback received.²¹⁷ This dynamic reinforces the power of personal connections to enable student progress.²¹⁸

On certain assignments, I conference individually with each student, and then after our conversation, they are given the opportunity to resubmit the assignment for a grade. To help my students take more ownership over the feedback process, I require them to come to the conference with specific questions about the draft, and having flagged what they believe to be their own strengths and weaknesses. By removing the “passive and powerless role” students often play in the feedback process, I encourage each student to lead our conference and enable them to “prompt dialogue” on specific issues.²¹⁹ The students who are the most prepared for our conference, regardless of the quality of their initial drafts, consistently turn in the best final products, demonstrating the powerful effects of self-regulation.²²⁰ In a similar vein, one higher education study used “interactive cover sheets” to encourage dialogue between the providers and receivers of feedback on written work and to enable feedback comments to be targeted more effectively to help students understand and thus be able to self-regulate performance.²²¹ Results demonstrated the positive impact this had both in terms of saving time for evaluators, focusing time productively on student needs, and finding that the feedback was indeed useful to students.²²²

In another initiative to support student transition to higher education, professors provided students with a “Using Feedback Effectively” form. This form required students to make sense of the feedback by breaking it down into what they did well, where they needed to improve, what they did and did not understand, and the specific actions they intended to take in the revising process.²²³ In addition to serving as useful prompts for subsequent dialogue, these kinds of activities empower students to take control of their own learning while helping teachers devise specific strategies for following up with the students who demonstrate lack of understanding.²²⁴ In the law school setting, they can be used in a variety of ways to maximize the value of one-on-one meetings.

Although resubmissions such as the ones I have detailed require students to respond to feedback, I recognize that it is not realistic to expect doctrinal professors to give feedback to all of their students multiple times on the same piece of work. However, they can give the students

217. MacDonald, *supra* note 65, at 3.

218. Crook, *supra* note 65, at 112.

219. Bloxham, *supra* note 71, at 292-93.

220. *Id.* at 292.

221. *Id.* at 292-93.

222. *Id.* at 298.

223. *Engaging Students*, *supra* note 65, at 123-28.

224. Wiliam, *supra* note 36, at 55.

opportunities to apply what they have learned to a future learning task by modeling strategies for using specific feedback to close the gap.²²⁵ Returning to the exercise my students engage in after they receive their fall Torts grades, once they have worked to decode the rubrics, analyze the sample strong and weak answers, and self-assess and peer-assess their own exams, it is important for students to determine whether they have taken away the appropriate lessons from the learning activities. I help them test their understanding by requiring them to outline and write an essay for an unfamiliar Torts exam question. Projecting PowerPoint slides that remind them of our approach to essay questions protocol²²⁶ and what we call our cardinal rules of legal analysis,²²⁷ the students work together to organize and outline their analyses by framing arguments, counterarguments, and rebuttals for each of the legal issues. When we come back together as a class to debrief, I project successful student examples on the document camera to demonstrate how they have been able to internalize the feedback to produce excellent work.

Once this exercise is completed, I call attention to the fact that we have now drawn on the material they mastered last semester to critique strong and weak exam essays and practice how to approach and structure arguments for exam essays. I tell them that they now have the ability to take everything they have learned and use it to write essays for their current doctrinal classes. Explicitly explaining to students how they can use feedback to improve is a crucial component of the learning process, and sharing evidence of its effectiveness helps them become more self-aware about how assessment can help learning.²²⁸

V. CONCLUSION

Providing formative assessment opportunities and feedback is most beneficial when law students know how to use the feedback strategically

225. Nicol, *supra* note 27, at 213.

226. 1. Read the call of the question first. 2. Take time to make sense of the facts. 3. Where are we in our “issue spotter” outline? 4. Organize first! Write second. How can we organize our thought processes and structure our answers?

227. Argue Both Sides, Don’t Jump To Conclusions/Spell it out, Use Specific Facts, Keep Issues Separate, Start Analysis With The Text Of The Rule; Then Use Cases (as applicable); Then Use Policy (as appropriate). My former colleague Louis Schulze developed the idea of packaging the essential principles of legal analysis as “cardinal rules” to make legal analysis more manageable to students. *See generally* Schulze, *supra* note 78.

228. *Learning Culture*, *supra* note 46, at 11; *see also* Benfer, *supra* note 14, at 32 (“The millennial student needs to know the ‘why’ behind any assignment, policy and practice. It is important to set clear expectations throughout the semester by communicating the ultimate outcome, the purpose of their work and how it fits into the larger goal.”); Hill, *supra* note 140, at 691 (“The right pitch by the professor and training for students makes all the difference in the exercise’s success.”).

and choose to use it to augment their learning.²²⁹ We should endeavor to cultivate in students not just a substantive understanding of specific legal doctrine, but rather the ability to identify specific areas of weakness and devise strategies for improvement.²³⁰ Following the social constructivist model, law professors should work alongside their students to foster independent learning and transform feedback into a team effort with the student at the helm.²³¹ This will ensure that students not only participate but actively partner in their legal education.²³² Incorporating best practices of educational psychology, this approach will appeal to the learning preferences of millennial students but, more importantly, it will prepare them for the rigors of legal practice.²³³

229. Rust, *supra* note 8, at 233.

230. *See supra* Part IV.A.

231. *See supra* Part II.

232. *See supra* Part IV.B.

233. *See supra* Part IV.