

Negotiating the Assessment Criteria

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***Editors' Note:** A series of authors in the Rethinking Negotiation Teaching project have argued for greater autonomy and responsibility to be given to students, in a variety of ways. Lee takes this trend a step further, reviewing the history of student disbelief in the rightness or appropriateness of various evaluation criteria, and experimenting with making an explicit negotiation over those criteria a key part of the educational experience. The negotiation is conducted among the students themselves, with the instructor agreeing in advance to accept the chosen criteria, provided that a specified (and high) percentage of the students have agreed on it. But there is a twist, which we will not divulge here...and students' outraged responses to the twist have led to one of their best lessons of all.*

Introduction

One of the ways of assessing a student's progress in a negotiation workshop is by assessing some kind of practical exercise. This can take many forms, such as assessing an adventure learning assignment (see Press, Ebner, and Cohn, *Assessing the Adventure*, in this volume), or having students negotiate an issue with their teacher (see Ebner and Kovach 2010; Fuller, *Interviews as an Assessment Tool*, in this volume). The method I use at the faculty of law, National University of Singapore is for two students to conduct a negotiation simulation. I view that negotiation and assign a grade for this component, which makes up twenty-five percent of their grade for the entire workshop.

Observing student simulation, for the purposes of assessment is fairly common (see Williams and Geis 2000; Ebner, Efron, and Kovach, *Evaluating our Evaluation*, in this volume) and its conduct is fairly straightforward. So much so, in fact, that it is not the subject of this piece. This piece seeks to focus on the question: "What are the *criteria* by which one assesses the practical assessment?"

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This question initially arose as a result of disgruntled students taking issue with “the subjective nature of the assessment” or disagreeing with what the workshop assessor considered to be relevant criteria of competency. Being a post-modernist, this writer saw no profit in engaging in discussions of objectivity or reality. The problem presented is simply this: How does one construct a list of criteria by which to assess the students in negotiating which has the buy-in of the students, or, at the very least, their acquiescence? This buy-in is important as it allows the practical assessment to be more meaningful to the students and makes them less likely to object to the grades obtained in this particular component.

Parameters

A colleague of mine¹ came up with the idea of the “Assessment Criteria Negotiation.” The basic concept was for students to undertake, as a class, the task of negotiating the criteria upon which they would be assessed in the upcoming simulation. The essential parameters of the assessment criteria negotiation are:

- Students are given a list of draft criteria (see a sample list, which I have used, in Appendix A). The greatest care and effort are taken to ensure that these draft criteria are *ludicrous*, at least in the context of this particular workshop.²
- It is made clear to students that should agreement not be reached in this negotiation, the assessor may apply, but will not be limited to, the draft criteria.
- Students are given 150 minutes of class time to conduct this negotiation, and the process is entirely theirs to manage.
- A proposed set of criteria will be deemed to be agreed if a certain percentage of the class agrees to it. Over the years, this figure has ranged from eighty to eighty-five percent. Put another way, a simple majority will not do.
- Each registered student has one vote and no one may vote by proxy.
- Should agreement be reached, the assessor agrees to apply the criteria agreed upon, when students undergo the practical assessment.

Before looking at this method in further detail, it is important to note one important difference between this chapter and most of the other chapters in this volume. All the other pieces involve looking at a method that constitutes a direct form of assessment; e.g., marked journals or a quiz. The assessment criteria negotiation *indirectly* supports the direct form of practical assessment. While they started out

as separate exercises, this writer now sees the assessment criteria negotiation and the practical assessment as being intrinsically linked.

As mentioned, the initial goal of this exercise was to have a list of criteria to gauge negotiation competency in a practical assessment which has the buy-in of the students. This approach is consistent with the principles in designing adult education, where the push towards “student-centricity” of classroom processes encourages having students playing a role in designing their learning environments (see Manwaring, McAdoo, and Nelken 2009; Nelken 2009). This exercise simply extends this approach to the area of assessment.

Educational Benefits

Over the last decade of running the assessment criteria negotiation and debriefing it, I have found it to be valuable in conveying a number of other lessons.

First, I have found this exercise useful in shifting the perspective of students vis-à-vis the practical assessment. It causes them to shift into the shoes of the assessor to ask the question: “How does one assess what makes a good negotiator?” Students have to think about the skill set involved in negotiator competency and the distinction between setting out abstract criteria and identifying observable data to support the existence of competence. This role reversal allows them to identify specific behaviors that they feel a good negotiator should engage in – which then affects their negotiating behavior.

Secondly, the negotiation exercise involved in deciding the assessment criteria surfaces the differing interests and assumptions that students bring to class. Apart from the “abstract criteria” versus “observable data” tension discussed in the preceding paragraph, there are a number of other tensions in students’ interests that arise. These include:

- *Personal vs. group interests.* Some students come with the interest of wanting to make the assessment as easy as possible for themselves. As such, they would prefer the criteria to be as unchallenging as possible. Others want the assessment to be a fair gauge of what they have learned in the workshop.
- *Objectivity vs. subjectivity; Mind-numbing detail vs. big picture.* These two tensions can be discussed together. Some students feel the need to have criteria that are stated as objectively as possible. This of course usually means having to spell out criteria in such detail that there can be no doubt that any particular criterion has been met. Others prefer to keep their eye on the big picture, and are content with broad statements of criteria that are by definition subjective. This leads to the next tension.

- *Regulation vs. trust (of assessor)*. Part of the motivations for the two tensions discussed in the preceding paragraph are a result of the need some students feel to regulate and control the discretion of the assessor, versus another group who are happy to trust the assessor with a certain amount of judgment and discretion in interpreting and applying the criteria.
- *Outcome vs. process*. Some students see their measure of success in terms of what outcome they achieve. They may see themselves as “winning” if they get the better deal, regardless of *how* they got that deal. Others prefer a process-focused orientation to assessment, acknowledging that not all negotiations have a zone of possible agreement, and that success is not just about agreeing but also about disagreeing without being disagreeable.

Third, this exercise is essentially a group negotiation. As such, it provides the class with the opportunity to discuss the many issues revolving around group process. Students are exposed to:

- The importance of process management, especially with larger groups. How is the meeting to be run? Would there be a facilitator/chairperson to design and guide the process?
- The method of using the one-text procedure to come to consensus on a written document.
- The need to clarify to oneself the question of who are the parties to the negotiation. In this case: Is it only the students? What about the assessor? The faculty? The university?
- The distinctive roles people play in a group, both officially and unofficially. Were people appointed to play certain roles? Facilitator? Chairperson? Timekeeper? Scribe?
- The important role played by the notion of *legitimacy*: of the process, of roles and of how decisions were made. For example, how were facilitators or chairpersons selected? Was the process for this selection explicitly addressed? What decision-processes were used at different stages of the negotiation? Were these explicitly addressed?

Finally, this exercise provides an opportunity to examine group negotiation dynamics. How was the discussion managed? What role did the facilitator play? Was s/he a neutral party? Did s/he use the position to push a certain perspective? Were the stages of the discussion clearly separated? What attempts were made to engage people in the process? How were disagreements managed? How were minority interests managed?

Therefore, one can see that this exercise has gone beyond its initial limited purpose. It becomes a wealth of lessons that can be mined in a debrief (see generally Deason et al. 2012). There is one lesson that has not been mentioned yet, only because the opportunity to discuss

it does not always arise. But when it does, it makes a very important point, regarding negotiation as well as the practice of law and presents unique challenges to the teacher in conducting the assessment criteria negotiation.

This situation arises when there is a consensus in the group *to set the bar as low as possible*. In my years of running this exercise, this has (thankfully) happened only once. In all other years where a significant number in the group were tending towards this, others in the group have preserved my faith in human nature. When it did happen, one student had persuaded the group to simply set the criteria such that one would get an “A” simply for turning up.

Thinking that the assessor had no choice in the matter, they were quite proud of themselves for “acing the game.” And I must admit that the teaching team was initially flummoxed. Then, in a daring act of defiance, we informed them the next week that we were not going to comply with the agreement. To put it mildly, there was some unhappiness expressed with some students claiming this act constituted a unilateral breach of contract. Of course, the response to this was “sue me.”

When the shouting died down and we got into the debrief, we found that this situation provided rich material for discussing the reasons and motivations for parties to breach a contract. In this case, the assessor who was expected to comply with the agreement was faced with an agreement that met none of his interests, nor those of his constituents. There was therefore no reason for compliance. It highlighted the importance of seeing a negotiation from the perspective of all parties, including indirect or discounted parties whose compliance seems promised or whose objections – even if raised – might seem safe to ignore, and to ensure that a commitment has sustainability and compliance built into it (see generally Wade and Honeyman 2006).

It is unclear if this exercise will work as well in *all* cultural contexts. For example, in some cultures, it may seem quite odd to have students negotiating the criteria upon which they will be graded. Other cultures may find the draft criteria unobjectionable, or the response to immediately set the bar as low as possible to be acceptable. Still others may react negatively to a teacher reneging on a deal, no matter how one-sided.

However, I have run this exercise in Singapore in classes with a primarily Singaporean audience and also with a mixed audience of Singaporean and international exchange students. Furthermore, I have run this exercise for negotiation workshops in Denmark, where the class consisted of an international group of students. My experience indicates that the exercise does work well across cultural contexts, although admittedly some tweaking of the content and process of the exercise may be necessary to allow the lessons in this exercise to surface.

By way of completion, it is useful to highlight two matters. First, readers may be interested in how the negotiated criteria translate into the practical assessment. Students are essentially scheduled to negotiate in pairs for thirty minutes in front of the assessor. The assessor will then assign marks according to the criteria, which when totaled will comprise twenty-five percent of a student's final grade in the course.

Second, some readers may be troubled by the notion of having twenty-five percent of a student's grade for the course based on student-decided criteria. This writer does not see this as a problem. Students' practical assessments have to be based on *some* kind of criteria. Using a teacher's criteria does not make those criteria any more valid. Put another way, it is just as subjective as student-decided criteria. This writer feels that student-decided criteria may be more legitimate, as they are the product of a group of people turning their attention to what makes a good negotiator. As the adage goes, two (or more) heads are better than one. To prevent students from "playing the system," criteria that are too "off the wall" can in effect be "vetoed" by the teachers. Going back to the principles of adult learning, this is consistent with the ideas of students designing their own learning and being involved in the co-creation of knowledge.

Conclusion

At the end of the day, I have found this exercise to be a vital part of the negotiation workshop. It integrates with the workshop in such a way that it reinforces both its content and process goals. For those colleagues who would like to engage their students in thinking about measuring negotiator competence, I recommend this exercise wholeheartedly.

Notes

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² Having said that, it would not surprise this writer if some people, students and teachers alike, might consider the draft criteria entirely appropriate. You can decide for yourself when you look at the draft criteria in The Appendix. For reasons why it can be good to start with a bad idea, see Brown 2006: 412 (speculating "that the instruction to offer bad ideas stimulates creative thinking").

References

Brown, J. G. 2006. Creativity and problem-solving. In *The negotiator's fieldbook: The desk reference for the experienced negotiator*, edited by A. K. Schneider and C. Honeyman. Washington, DC: American Bar Association.

- Deason, E., S. Press, R. Howell, S. Kaufman, J. Lee, and Y. Efron. 2012. Debriefing the debrief. In *Educating negotiators for a connected world: Volume 4 in the rethinking negotiation teaching series*, edited by C. Honeyman, J. Coben, and A. W. Lee. St. Paul, MN: DRI Press.
- Ebner, N. and K. K. Kovach. 2010. Simulation 2.0: The resurrection. In *Venturing beyond the classroom: Volume 2 in the rethinking negotiation teaching series*, edited by C. Honeyman, J. Coben, and G. De Palo. St. Paul, MN: DRI Press.
- Nelken, M. L. 2009. Negotiating classroom process: Lessons from adult learning. *Negotiation Journal* 25(2): 181-193.
- Nelken, M. L., B. McAdoo, and M. Manwaring. 2009. Negotiating learning environments. In *Rethinking negotiation teaching: Innovations for context and culture*, edited by C. Honeyman, J. Coben, and G. De Palo. St. Paul, MN: DRI Press.
- Wade, J. H. and C. Honeyman. 2006. A lasting agreement. In *The negotiator's fieldbook: The desk reference for the experienced negotiator*, edited by A. K. Schneider and C. Honeyman. Washington, DC: American Bar Association.
- Williams, R. G. and J. M. Geis. 2000. Negotiation skills training in the law school curriculum. In *Teaching negotiation ideas and innovation*, edited by M. Wheeler. Cambridge, MA: PON Books.

Appendix: Draft Criteria Given to Students

Preparation – 25%

- Having at least 20 pages type-written preparation – 10%
- Dressing stylishly and formally – 5%
- Preparation in memorizing details – no reference to instructions, no material deviation from instructions – 10%

Performance – 30%

- Able to mercilessly extract interests of your opponent effectively – 10%
- Able to cunningly prevent opponent from extracting your interests – 10%
- Able to force opponent to give in to your demands – 10%

Post Negotiation Analysis – 25%

- Ability to suck up to assessors – 5%
- Ability to unfairly criticize your opponent – 10%
- Ability to make exaggerated positive statements about own performance – 10%

Quality of Agreement – 20%

- Agreement achieved meets all your initial demands – 10%
- Agreement achieved does not meet any of your opponents' interests/demands – 10%
- No Agreement – No marks

