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Class Participation: Random Calling and Anonymous Grading

John M. Rogers

My perception is that opposition has been growing to law teachers' demanding student participation in class. At least one new teacher recently suggested to me that no good reason supports calling on students who have not volunteered. Many teachers, not to mention students, find something like an invasion of the student's dignity in that practice. Other teachers worry about the pitfalls of calling on or not calling on members of ethnic or gender groups, so they simply lecture or call only on volunteers. On another, indirectly related issue, my perception is that students often do not trust the anonymity of final examination grading, especially in those classes where the teacher evaluates student participation as a component of the final grade. What follows is a defense of calling on nonvolunteers in class, and of taking class participation into account in determining final grades. Both defenses are made on important policy grounds, and I present them with suggestions for avoiding what otherwise would be some undesirable baggage.

Why Require Participation

I start from the axiom that the purpose of class is to maximize student learning of what the teacher intends to teach. Let us assume further that what a law teacher intends to teach is not only legal doctrine but the analytic techniques used to ascertain and apply doctrine, and the ability to express that analysis persuasively. Other goals might include an overall appreciation of how the system works (or doesn't), and some teachers may even try to impart techniques for undermining the system. For all such goals, and for others differently stated, learning is going to occur most effectively *in class*, rather than before or after class.

The same point could be made using three possible models. In the first, students are expected to do most of the learning before class, presumably by reading, and the class serves as a check and an incentive. If the student has not learned well before class, the student will be embarrassed, or perhaps corrected, in class. After class the student uses notes to fine-tune, or commit to memory, the preclass learning.

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I appreciate comments from my colleague Paul Salamanca, and from those reviewers to whom the editors submitted this essay.

In the second model, students are expected to do most of the learning after class. Students read enough before class to be able to take accurate notes in class. Most of the learning comes when students go over their notes after class.

In the third model, students prepare to learn in class by reading before class to get the basic building blocks. They do most of their learning in class, using those building blocks. After class they do the fine-tuning and work out difficulties.

The third model will appeal to the teacher who wants to be an integral part of students' learning processes. It will also appeal to the teacher who wants to insure that students understand in the same way that the teacher understands. Since these are excusable—even commendable—traits for teachers, the third model is at least an acceptable basis for evaluating classroom techniques.

Let us assume then that a legitimate goal is to have students doing most (or at least a great deal) of their learning during class. It is almost a truism, then, that active participation by students is good—for many obvious reasons. It is easier for students to pay attention to a colloquy than to one person speaking. Also, students must follow a discussion if they are going to take part in it at some point. For these reasons, class participation by some students increases understanding by all the students.

In addition, active and widespread class participation moderates the pace of teaching in a valuable way. If the teacher is covering material at a rate that exceeds many students' ability to absorb it, then participation from a reasonable cross-section of the class will slow the teacher down. This of course is a desirable outcome, given our working assumption that the teacher wants to have most of the students learn most of what they are going to learn *in class*. Or the teacher may be covering material too slowly for most of the class. If so, students' class participation can make this clear and can encourage the teacher to address more difficult problems, or unconsidered issues. The less desirable alternative is for the hypothetical average students who are insufficiently challenged to try to enrich their learning after class, without the teacher's guidance.

These then are the good reasons for demanding class participation by students: promotion of active learning by students in class, and gearing the pace and depth of coverage to the students' abilities.¹

There are two traditional (arguably coercive) ways that law teachers can encourage active student participation in class: calling on students who have

1. These purposes are independent of, and sometimes contrary to, other purposes for demanding student participation.

Some teachers may try to establish pedagogical authority by engaging in a debate-like game that the teacher wins. That can be discouraging rather than stimulating, and it may engender an adversary relation that gets in the way of the students' learning what the teacher has to teach.

Other teachers may try to increase preclass preparation by "testing" students during class. That sends the wrong messages. It suggests that the student should have done the learning outside of class, and that there is a right answer to the teacher's questions, which the student should have derived from the reading. It induces in the student a sense of getting ready *to be examined* (a passive function, with adversarial overtones), rather than the more desirable sense of getting ready *to learn* (an active function, with positive overtones).

not volunteered to speak, and taking class participation into account in the final grade. Both are eminently defensible, although they may involve undesirable side effects. Here I defend the value of each, and then demonstrate how to avoid just about all the undesirable side effects.

Calling on Students

Calling on students by name is a direct and effective way of getting students to participate in class. The alternative—waiting for volunteers—is much less satisfactory. Students do not want to volunteer for a lot of reasons that have little to do with how much the class would benefit from their participation. One big reason students don't want to volunteer is their reluctance to "show off." All the teacher needs to further the underlying goals of class participation is for the student to send the message *Here is what I think a tentative response might be*. But the student who volunteers to answer a question posed generally to a class sends several other messages, including *I think I know the answer*, and *I want the teacher to call on me*. Students sometimes think they are also saying: *I know more than the others in the class*, or *I am quite sure of the answer*, or *I'm a pretty smart person*. Students don't want to make these other statements, but such statements are often inherent in raising one's hand.

These concerns deter volunteering in class even by the best students, but they especially work to deter volunteering by students who are having difficulty with the material. If one of the goals of class participation is to help the teacher adjust to the majority of the class, and if only the best students participate, this purpose is simply not achieved. It is possible to engage in a discussion with two or three bright or particularly confident students and leave the other students lost—feeling uncomfortable, and resolving to learn not from the teacher, but from out-of-class sources. To avoid this, class participation should include a broad cross-section of the class, and that is impossible if the teacher relies on volunteers.

Some may argue that it somehow infringes on a student's dignity to be required to participate in class. Such an argument might have some weight in a different academic context, but it has no weight at all in a law school. Part of what we are teaching in law school is how to express legal analysis persuasively to others. This is a skill that a lawyer must have, and people who voluntarily enroll in law school should expect that they will have to practice that skill as part of their legal education. To say that a law student has a "dignitary entitlement" not to be called on to participate in class is equivalent to a piano student's not being asked to play, or a medical student's not being asked to diagnose, or a language student's not being asked to translate. The very idea is silly.

Some teachers reason, finally, that calling on students slows down the class too much. This assumes that the quality of learning is independent of the speed of coverage. In fact, a ten-minute lecture will not sink in nearly as well as a twenty-minute give-and-take. For a student who is grasping things, shall we say, slowly, the same idea may take thirty or forty minutes. Is the extra ten to thirty minutes wasted? Only if the goal is greater coverage, with the corollary that the students will accomplish most of their mastery out of class, or that the

students will get only a fleeting familiarity with the issues. If the goal is students' learning *in class*, then the extra time is not wasted, but valuable. And if the goal is learning in class by the bulk of the students in the class, then taking longer for slower-learning students on a representationally proportionate basis is valuable.

But there are some dangers to calling on students who have not volunteered. Most of these dangers inhere in deciding which student to call on. Law students are notoriously sensitive, and may see in their being called upon any one of the following tacit messages: *You look like you know the answer*, or *You look like you don't know the answer*; *You look bright*, or *You look stupid*; *You look prepared*, or *You look unprepared*. If the perceived message is negative, students may resent being called on. If the perceived message is positive, students may resent *not* being called on. Sometimes a teacher gets the worst of both worlds: some students resent not being called on, inferring that the teacher thinks them incapable, while other students resent being called on too frequently, inferring that the teacher is picking on them. In addition, students may think that a teacher is calling on them (or not calling on them) because of their race, gender, political persuasion, dress, or other irrelevant factor.

Finally, students tend to assume that a teacher will not call on a student who has recently been called on, and that students are off the hook if they have recently spoken. Sometimes this leads to students' preemptive volunteering on the theory that a teacher will never surprise someone who volunteers frequently.

All these problems can easily be avoided by adopting a transparent system of random calling. My own method is to put each student's name on a regular playing card, shuffle the deck in class just before the bell rings, and take cards from the top of the deck to call on students. Of course I also take questions and recognize volunteers (the whole idea, after all, is to encourage discussion), but all students know that they may be called on every day. It is objectively obvious that I am not influenced by gender, race, dress, or any other such factors. Students do not sit in the back or on the side, or constantly avoid eye contact, to lower the chances of being called on. It is true that the pace of a class may be determined by the luck of the draw, since some students take longer than others to grasp ideas, but overall the pace averages to that most appropriate for the class as a whole. And the tacit message to the students is now a positive one: it is important to the teacher that each student master the material.

One might ask how the teacher should cope when the random selection method matches the most challenging question with the least talented student. I usually start each case or major point with a new student, and build up from easy to hard questions. At some point a student may be stymied, and if no volunteer helps out, it is up to me to raise questions in a different way to get the point across. An alternative is to draw another card, saying, "Let's get the advice of cocounsel on this." If the second student has not tracked up to that point (or is considerably less "talented" than the first), it then becomes necessary to take a few steps back and proceed slowly, step by step, to reach the difficult point presented, making sure the second student is tracking each step

of the way. This of course takes time, but many in the class will appreciate such an orienting review. Naturally the teacher will have to exercise some judgment as to whether the review is made necessary by some students' poor preparation rather than by the difficulty of the subject matter.

Here are some rules and practices that I have developed over the years.

1. Permit students to cut the cards before class. This confirms that the teacher hasn't stacked the deck. (Students are very suspicious, especially since the cards do such a good job of selecting students!)

2. Reshuffle all cards before each class hour. This prevents students from thinking that they are "free" for a week or two after being called on. If a student's name comes up several days in a row, go with what the cards say. For the most part it will even out in the end, and the less the teacher tampers with the system, the better.

3. Draw a card when starting a new case, problem, issue, or group of ideas, and generally whenever discussion requires the voice of an additional student, but continue to encourage volunteers, through eye contact, body language, and positive reinforcement. Indeed, once discussion gets started, hands go up and there is usually no need to draw a card until you start the next case or problem.

4. Permit first-year students who want the experience of being called on (this sometimes actually happens) to volunteer to be called on.

5. Resist any temptation to take someone's card out of the deck. This will be taken as insulting if discovered. If you tamper with the cards, the students will sense it. Sometimes students whose names have not yet been called will come up after class to make sure their cards are in the deck.²

6. Without notice, have one or two "wild card" days late in the semester to call on those students whose card has never come up, and who have never volunteered in class.

The system works remarkably well, both in large and small classes, and in first-year as well as upper-level courses. The only drawback is that it may be perceived as gimmicky or hokey. But a little lightness never hurt a serious class, especially when there is sound pedagogical policy behind the hokum. The important thing, though, is not the particular method; any system that is obviously random and blind³ should eliminate the pitfalls commonly associated with calling on students who have not volunteered in class. And the tensions that can result from arbitrary calling on whichever student jumps to the teacher's mind are not problems inherent in calling on nonvolunteers, but simply problems with nonrandom, nonblind calling practices.

2. If a student has a good excuse for not being prepared, the teacher can simply agree ahead of time to move on to someone else should that student's card come up. On the rare occasion when a student's card does come up after such an agreement, I quickly explain that the (unnamed) student has talked with me before class, and I draw another card. No one has ever complained.
3. I once used a random number generator on a calculator to determine which students to call on. The problem was that many students thought I was just punching the calculator and then calling on whomever I wanted.

At this point many teachers will say that there is a viable middle position: designating ahead of time which student or students will be called on in class, or “going down the row.”⁴ In some ways this is better than taking only volunteers. Students who otherwise would remain silent will take part at least at some point. You avoid the discomfort of waiting for volunteers. You avoid the boredom induced in a class period by having only one voice heard, that of the teacher. But you lose some of the most important advantages of demanding class participation. Students who are not on deck that day will prepare as if for a lecture—that is, for a passive experience. Those students who don’t expect to speak will not only prepare less rigorously, but also will probably be less focused in class. And you lose the pedagogical benefit derived from gearing the pace and depth of coverage to the bulk of the students if the only students called on are those who have prepared especially well.

In other words, a method that lets students know in advance who will be called on suffers from many of the disadvantages of not calling on students at all. Each student is assured of not being called on during most of the class hours. Students who will not be called on are presumably less well prepared, or there is no reason for going down the row instead of calling at random. The students who are less well prepared are doing less learning in the classroom, where the teacher has the greatest influence on what is being learned. Going down the row, then, avoids some of the problems of deciding arbitrarily whom to call on, but at the cost of losing most of the benefits of calling on nonvolunteers. Since the problems associated with arbitrary calling can be avoided by a blind system like the deck of cards, there is little pedagogical value to giving students advance notice that they will be called on—again, assuming that the goal is to have most of the students do most of their learning in class.

How do students react to such a random-calling technique? My impression is that they feel more pressure to remain alert, but they also feel that the system is fair. Sometimes students don’t like the particular results that the random system generates—for instance, that certain students get called on more than others. But most students simply accept the system as an integral part of my class.

Giving Credit for Class Participation

In addition to calling on students, a second way to increase across-the-board class participation is to give credit for it. This practice is eminently warranted as an evaluative technique, even beyond its effectiveness as an incentive to participate in class, but it potentially undermines some of the value of anonymous grading. There are techniques, however, to preserve almost all of the benefits of anonymous grading, while still giving credit for class participation.

It is hard to tell whether grading partly on the basis of class participation increases participation or not. It seems logical that it would. At least we can

4. A colleague of mine defends going down the row on the grounds that it encourages precisely the type of minute preparation performed by attorneys before motion sessions or oral argument.

assume that it does not decrease class participation. It may occasionally cause students to speak when they have little of substance to contribute, but a teacher who knows how to keep discussion on track can deal with that. One can also advise students that credit for class participation depends on quality, not quantity.

A second advantage of factoring class participation into the grade is that it likely results in more accurate grading. If a grade is supposed to reflect what was learned in class, and if most of the learning was supposed to occur in class, it makes sense that the quality of class participation will say something about how much the student learned. Of course, class participation should not be the primary grade determinant, because students should not feel that they are being examined when the teacher calls on them. But when most of a law school grade is based on a single exam that may have nested issues, and that may include multiple-choice questions on which a lucky guesser may occasionally do well, an additional component for determining a grade probably increases fairness.

The problem with taking class participation into account in grading is that the evaluation is necessarily subjective and—a related problem—it potentially undermines the value of anonymous grading. Making final examinations anonymous does not always make grading strictly objective and free of all irrelevant considerations. Tone, phrasing, handwriting, and spelling may affect a teacher's evaluation either consciously or subconsciously. And evaluation may be affected by a teacher's mood or energy level at the time of grading. But anonymous grading at least strips out a large number of possible extraneous factors, such as race, gender, and whether the student is attractive or likeable. Even trying to correct for such student personality factors, a teacher may overcorrect in an unfair way. And even if such factors do not at all affect a teacher's grading, anonymous grading has the tremendous advantage of preventing any perception that they might have been operating.

Unfortunately, using class participation to affect a student's grade potentially undermines these advantages. Once class participation becomes a factor in the grading, a student's personality may affect the evaluation, whether or not the teacher is conscious of it. And if the teacher takes class participation into account, students have difficulty understanding how the grading process is anonymous.

One can deal with these concerns, first, by simply limiting the extent to which class participation may affect the anonymously determined grade. For instance, participation might affect a student's grade no more than two notches (e.g., B- to B+). Thus students who participate well on the whole will do better than those who don't, but a quiet student can still get an A.

The more difficult problem is with the perception that anonymous grading is not really anonymous. How can grading be anonymous if the same teacher who assigns the raw grade adjusts it on the basis of class participation? Of course a teacher acting in good faith may grade bluebooks anonymously, then find out who got what raw score, and then adjust grades according to class participation. But if part of the reason for anonymous grading is to assure the student that personality factors are not operating, a better system would work

class participation into the grade without the teacher's knowing how well particular students did on the written exam.

This is not so hard to accomplish. For instance, I simply curve my raw scores several times, according to class participation. Outstanding class participants will have their raw scores assigned letter grades based, for instance, on a curve with an average of 3.0. Good to excellent class participants will have their raw scores assigned letter grades based, for instance, on a 2.8 curve. Then a 2.6 "standard" curve can be applied for students with limited or no participation. (It's better not to refer to "raising" a student's grade, but instead to "applying a different curve," which has a much less subjective connotation.) The raw scores, along with the various curves and a list of which students should have which curve, can be turned in to the registrar to determine the final grade ministerially. This allows the teacher to avoid any knowledge of students' grades until the students themselves are notified. Any *possible* perception that a teacher's personal prejudice affected a grade is limited to consideration of which curve was applied.

Here is an illustration of the ease with which student class participation can be taken into account while maintaining strict anonymity with respect to bluebook scores. Let us assume a 4.0 grading system in which a B+ gets 3.3 and a B- gets a 2.7. Suppose the raw scores in a class of 17 students are as listed in Table 1.

The average raw score in this example is 106.7, and the median raw score is 107. If the desired average for students with minimal class participation is 2.6, then the grade for the median/average score (here, 107) should be approximately a high C+. The higher and lower grades can be roughed in, in proportion to the distance above or below the average/median. The result might look like Table 2.

A quick calculation will show that the grade average for this curve is 2.58, which rounds to 2.6. Curves that are roughly .2 and .4 higher can easily be created, respectively, for average class participants and for outstanding class participants. See Table 3.

The teacher can simply give (1) the anonymously determined raw scores, (2) the chart, and (3) the names of the students divided into the three categories, along with (4) a smiling explanation, to the person in the dean's office who enters grades.

This system avoids time spent agonizing over fine lines, close calls, inadequate clumps in the curve, and so on. If a raw grade is very close to the next higher letter grade on one curve, then class participation may put that student into the next higher grade. On the other hand, if a student is at the margin as to which class-participation curve is appropriate, such a call will change a student's grade only slightly more than half the time.

Another happy effect of this system is that the teacher does not need to learn the students' grades until the students are notified. When a student asks about the exams or the grades before the grades are posted, the teacher can truthfully respond: "I don't know how particular students did; I hope you did well."

169
160
140
136
121
120
116
113
107
107
105
102
100
92
89
85
60

Table 1

169	A
160	A
140	B+
136	B+
121	B-
120	B-
116	B-
113	B-
107	C+
107	C+
105	C+
102	C+
100	C+
92	C
89	C
85	C
60	D

Table 2

	2.6	2.8	3.0
169	A	A	A
160	A	A	A
140	B+	B+	A-
136	B+	B+	A-
121	B-	B	B+
120	B-	B	B+
116	B-	B	B
113	B-	B	B
107	C+	B-	B
107	C+	B-	B
105	C+	B-	B-
102	C+	B-	B-
100	C+	B-	B-
92	C	C+	C+
89	C	C+	C+
85	C	C	C+
60	D	D+	C-

Table 3

This method of determining and assigning grades is easily conformed to a school requirement that the average grade fall within a certain range. The teacher need only use a set of curves where the higher curve(s) have an average higher than the middle of the requirement, and the lower curve(s) have an average lower than the middle of the requirement. A weighted average can be used to check this.⁵ If the school requires a teacher to have not only a certain average grade, but also a certain shape of bell curve, the results may have to be examined to insure compliance. In theory, the system I have described for taking class participation into account should flatten a bell curve somewhat (on the theory that good class participants are more likely to be good test takers, and poor class participants not), but in practice raw scores are sufficiently bell-shaped to produce final grades that also resemble a bell.

* * * * *

In this or some similar way a teacher can maintain the benefits of anonymous grading while encouraging class participation—and grading more accurately—by using class participation as a component in grading. Moreover, demanding class participation on a random, blind basis furthers sound pedagogical goals while avoiding the possibility of descending into an adversarial relationship with students. Both techniques are eminently defensible to increase the participation of students in class, and thereby increase the proportion of overall learning in class.

5. The weighted average of the three curves in the example in the text would be: ((number of students on the first curve x 2.6) plus (number of students on the second curve x 2.8) plus (number of students on the third curve x 3.0)) divided by the total number of students.