The 30% Rule

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The Challenge of Orchestrating Meaningful Class Discussion

Elicitating and managing meaningful class discussion is consistently one of the most difficult challenges in law teaching, especially in 1L classes. In this essay I share the 30% rule—a technique I’ve found useful and welcomed by students.

Different teaching methods and different classes require and enable varied kinds and amounts of class participation. Most professors seek to facilitate class discussions that serve two objectives: (1) they involve a large and a diverse selection of students and (2) they are helpful for teaching the material. Sometimes, these objectives are in tension because more participation is not always conducive to covering the desired material. For example, I teach a four-unit Property law course that is loaded with complex doctrines. I explain my theory of education in the first class meeting (and in my syllabus): I believe students learn by active questioning, wondering, and puzzling over problems and issues. Accordingly, I try to create a classroom environment which invites questions, even when a student feels confused and uncertain. However, while I don’t sacrifice understanding for coverage, I do need to move the class along at a reasonable pace.

Traditional Socratic-method-induced-fear might get students to “stand and deliver” when called upon, but it rarely evokes much voluntary participation. Some techniques will tend to increase participation generally. One can award participation credit or promise partial grade bumps as an incentive. But these techniques may only further encourage “gunners” and those who would participate anyway. They also can have the unfortunate consequence of increasing questions and comments with only a tangential relationship to the case or issue being discussed as students attempt to rack up participation points.

Grading for both quantity and quality of participation can be burdensome. The “step back, step up” maxim encourages extroverts to exercise self-control while prompting those less likely to participate to jump in. This maxim hopes to balance and to broaden participation, but, without some awkward interventions by the professor, relies exclusively on students’ self-assessment and self-control. None of these techniques effectively encourage more participation while also promoting the right kinds of participation.

What is the 30% Rule?
The 30% rule means that, before a student raises her hand to ask a question or make a comment during class, she should briefly consider whether she thinks at least 30% of her classmates would be interested in hearing my answer to her question or response to her comment. If she thinks her question meets the threshold, she asks it. If she thinks it does not, she knows she can talk with me about it at the break, after class, or during my office hours. Assume the student asks the question. I make a quick, private judgment about whether the standard is met. If so, without any delay, I directly address the question. If not, I briefly invite the student to talk to me outside class about it, and carry on with whatever I planned to say next. Sometimes I quickly scan the class to read students’ level of engagement to make my determination. However, I never let the class take the decision.

The 30% rule is geared to increasing quality participation during class while not squelching any question or comment a student might want to make. The 30% rule asks every student to assess the likely relevance that her question has for her classmates at that moment. It promotes both self-knowledge and awareness of others. Surprisingly, when challenged to reflect in this way, most students are very good judges of their classmates’ interests and the appropriateness of their comments. Students whose questions or comments have triggered the application of the rule have learned and reformed their conduct to ask more relevant questions. Also, by channeling some questions away from class time, this rule has increased student traffic outside of class, including in my office hours, as otherwise shy students now have a “reason” to talk with me.

The 30% Rule in Practice

I introduce the 30% rule after the first or second class in the course, before patterns of participation have formed and solidified. I carefully explain what the rule is meant to do and how. I emphasize that I am interested in answering ANY and ALL questions and entertaining any comments or hypothetical that a student wants to pose, but I will strive to ensure that our limited class time together is useful for everyone.

Like the “step back, step up” suggestion, the 30% rule relies on students to self-assess and to exercise some self-discipline. However, the intervention can be simple, candid, and even humorous: “Sorry, Bob, your hypo about the dog eating the grant to Blackacre just doesn’t meet the 30% rule. But I’d be glad to discuss it with you at the break or after class. I’ve got a dog myself and I need to think about that.” The times I’ve enforced the 30% rule, we’ve returned to the material without skipping a beat.

It’s also a flexible rule. Thirty-percent is my normal rule, but if I simply must get through some material in a particular class meeting, I will sometimes announce that it’s now the 50% rule—so a student should consider whether half the class would be interested in my answer to his question before raising his hand.

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Have you ever reacted with silent skepticism to a student’s claim that, “I just don’t test well?” Most law professors tested very well as students and may conclude that a claim that one can know the material well and then bomb the test is an unlikely scenario. It is just this scenario that is explored in Choke: What the Secrets of the Brain Reveal About Getting It Right When You Have To by Sian Beilock, Ph.D., who is an associate professor in the Department of Psychology at the University of Chicago. Her field is human performance, and she focuses her research on what she describes as “the science behind the intangible: creativity, intelligence, choking under pressure.” Beilock not only explores the brain science behind why people “choke” in academics, sports and business but also proposes remedies.

Before Beilock presents her research on the phenomenon of choking, she explains the interplay of several types of memory: explicit memory, procedural memory and working memory. Some activities, such as reasoning and recall, rely more on explicit memory, while physical tasks, such as executing a well-practiced golf swing or a free-throw shot, rely on procedural memory. Working memory, which Beilock calls our “cognitive horsepower,” is housed in the prefrontal cortex and reflects our ability to readily access information in the short term while engaged in something else at the same time.

If a student is dealing with an “internal monologue of worries” during an exam, this preoccupation can diminish the amount of working memory available to support explicit memory, thereby impairing recall, reasoning, and problem-solving. By contrast, in sports, an internal monologue of worries acts not to diminish working memory but to cause working memory to interfere with procedural memory. Worry causes athletes to try to control aspects of their performance that should be automatic. Beilock calls this “paralysis by analysis.” Choking in business performances can share some aspects of both choking in academics and in sports.

The presentation of empirical research on the brain science of choking during academic performance is extensive and persuasive. Just as a star goalkeeper can choke during a soccer shootout, choking can be a tragic reality for very able students. Faculty likely will be surprised to learn that it is not the less able students who are more likely to choke but those students with higher levels of working memory. Students with higher levels of working memory tend to employ complicated problem-solving strategies that begin to fail when worry impairs working memory. These same students often take testing experiences quite seriously and worry about their physiological symptoms of stress. In some instances choking is triggered by stereotype threat, which causes students to fear that their performance may perpetuate negative stereotypes attached to their gender, race or ethnicity.

Beilock does not leave her readers without a remedy; she also presents research on successful strategies to avoid or reduce the effects of choking. For students who choke during academic performance, engaging in simple writing exercises before an exam has been proven to diminish the effects of stress and worry.

While at first, faculty may not be as interested in those sections of the book that deal with sports and business, those sections are relevant to other aspects of the law student experience such as performance in clinics, competitions and job interviews. The book would be valuable to anyone who works with students in the high stakes environment of law school—from admissions officers to faculty to career services counselors—because it provides useful insights into how pressure can undermine human performance.

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