2004

Making Workshops Work

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The internal faculty workshop is a staple of the modern law school environment. It serves both social and intellectual functions within the faculty community. Socially, workshops are among the few occasions when large numbers of faculty assemble in the same room to do anything other than argue about appointments or the academic calendar. They are also often the primary—or even the only—way in which faculty learn what their colleagues in different fields are doing.[1] Intellectually, workshops are intended to improve the work product of the presenters and to sharpen or expand the thinking of the audience members.

In practice, however, workshops are often intellectual disappointments. This is not at all surprising. There is a powerful tension between the social and intellectual functions of workshops: the features of workshops that make them useful social events often prevent them from being useful intellectual events, and vice versa. And in workshops as they currently exist, the social function tends to dominate at the expense of the intellectual.

The social function of workshops is important, to be sure. But one ought to think long and hard before deciding, either deliberately or by default, that it ought to take precedence over the function of helping to produce the best possible scholarly output. Accordingly, it is worth some effort to explore why workshops so frequently fail to fulfill their intellectual mission and how those failings can be avoided.

I.

The real wonder is that workshops function as well as they do. They are virtually destined to fail as intellectual events. Typically many members of the workshop audience (whom I will sometimes call "participants") have not read the paper, or at best have only read it quickly. Given the volume of reading entailed by a year's worth of workshops, that is neither surprising nor deserving of much criticism. It is especially difficult to criticize a reluctance to read all workshop papers carefully if one believes, as I do, that faculty have a

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I have greatly benefited from comments by the participants at a workshop at the Boston University School of Law. I am also grateful to the many people from whom I have stolen most of the ideas in this article over the years, most notably Cynthia Bowman, Charlotte Crane, and Anthony D'Amato.

1. One can always circulate reprints of published works, but the readership rate for those reprints is, I surmise, considerably lower than the readership rate for workshop papers.

paramount obligation to familiarize themselves in significant depth with the scholarship of all candidates for appointments. To impose that burden along with the burden of reading a steady stream of workshop papers, both internal and external, is a bit much. Because everyone is aware of the constraints facing the audience, workshop presenters traditionally spend a good part of their designated hour, both in their presentations and in their answers to questions, describing their papers rather than exploring potential problems, extensions, or improvements. Furthermore, because of the increasing specialization and use of interdisciplinary analytical tools in legal scholarship, even those who read the paper carefully may not be able to absorb much of it. So a good portion of the remaining workshop time must often be devoted to providing methodological or substantive background to the lay audience.

The participants, as we all know, are not always good judges of their own limitations. *Ignorance of the law is no excuse—or at least is no excuse for silence at workshops* appears to be a very powerful norm in the legal academy. Participants who really are not in a position to offer serious help to the presenter's enterprise—and in an era of specialization there is no loss of honor in being unable to contribute to everyone else's enterprise—often consume the major portion of what little time remains in the workshop with discussions of matters that are at best tangentially related to the workshop topic or the presenter's research agenda.

Of course, some participants will have read the paper carefully enough and will have enough expertise to offer useful comments. Even these exchanges, however, are not likely to be of much benefit to the presenter. First, preparation and knowledge on the part of workshop participants are not, by themselves, enough to ensure that comments contribute to the production of the best possible scholarly product. The workshop participants also need to have an appreciation of and sensitivity for the goals and agenda of the presenter, and the presenter's goals and agenda may be radically different from those of any participant. To be useful to the presenter, questions and comments must work within the context of his project, and that kind of intellectual empathy all too often appears to be sorely lacking. Second, the knowledgeable participants who have the most to contribute to the workshop will probably already have provided comments, or be about to provide comments soon after the workshop, in writing or in one-on-one conversations. If not, they probably should do so, because those other forms are far better vehicles for the transmission of comments than are the unwieldy, unstructured conversations that characterize workshops. If you really want colleagues to help you with a paper in a serious way, you should hand them the paper and buy them lunch after they have read it; it makes little sense to invite them to a workshop and stick them in the middle of a facultywide audience.

The presentation format of workshops also often contributes to a lack of intellectual success. Workshops are generally structured around the model of thesis defense. Presenters generally (not always, of course, but generally) come with a finished or near-finished paper, sometimes one that has already been accepted for publication. They then defend their well-developed argument against the best efforts of colleagues to find holes, weak spots, or

ambiguities. As I discuss below, this format can work very well in many contexts, but it does not suit everyone or every occasion. Many people, both presenters and participants, find the resulting confrontational tone of this kind of workshop off-putting. Moreover, because papers often come to workshops with a high degree of polish, the workshop is unlikely to identify major defects in the paper—or at least defects that do not in some way involve the utility (or perceived lack thereof) of the author's basic scholarly approach. And if major defects are detected, it is probably too late to do anything about them. Workshops can therefore involve a fair amount of nitpicking, which could be done more efficiently by e-mail, one-on-one conversation, or editing by law review staff.

Of course, matters are not nearly as bad as I have just made them sound. I have unquestionably accentuated the negative by describing things that can go wrong at a workshop. Many times, things go right instead. When that happens, workshops can be energetic, productive, and enjoyable to presenters and participants alike. There is, however, a nontrivial segment of the workshop universe that does not realize its potential for intellectual exchange. As long as that is true, it is worthwhile to reflect on the problems.

To some extent, many of the problems facing workshops are inherent in the enterprise. In a community of highly specialized scholars, there are likely to be very few people who can actually offer useful suggestions on any given paper. Constitutional theorists and experts on criminal procedure are not likely to have much to say about, for example, the merits of stand-alone tax allowances for regulated natural gas pipeline utilities.[2] Nor is the author of a paper on stand-alone tax allowances likely to be much concerned if her colleagues don't understand the paper; those colleagues do not represent the target audience. Moreover, the sheer size of a facultywide workshop makes constructive dialog difficult. With so many quarters to hear from, it is hard to keep continuity when a particularly probing line of discussion has been found. Pluralism can lead to Babel.

Of course, these intellectual weaknesses of workshops may well strengthen the workshops' social function. If one of the goals of a workshop is for faculty to learn what their colleagues do, it makes sense to have much of the workshop time devoted to description, and it makes sense for presenters to distribute highly polished drafts so that colleagues can get a good sense for their scholarship. And if workshops are largely social events, it makes sense to have broad-based audience participation, even if the exchange of ideas would be much sharper and more productive if three or four people talked and everyone else listened. Indeed, perhaps one should just treat workshops as social events and leave it at that. But that may be too hasty a surrender. If workshops have problems performing a useful intellectual function, as I think they do, it is worth at least a bit of effort to try to deal with those problems.

The most obvious solution to the problems facing workshops would seem to be to hold smaller, more focused workshops. Instead of dragging the entire

2. Lest the reader wonder: I know that such a thing as a stand-alone tax allowance exists only because as a law clerk I worked on a case involving one.

faculty in to hear about, for example, the Seventh Amendment and administrative adjudication, why not just gather together those with specific interests in public law? Not only will the workshop have a more manageable number of people, but the participants' common backgrounds will allow the discussion to proceed at a much higher level of sophistication. Furthermore, the self-selected group of participants at a focused workshop will be more likely to have read the paper carefully and will represent the audience that is most likely to contribute to the author's enterprise. The presenter will not need to spend (waste?) time describing the paper; the discussion can begin at once in earnest. The widespread emergence of specialized workshop series is good evidence that this kind of workshop offers large benefits.

But while there is an important role for such smaller workshops, and I enthusiastically support them, it would be a shame to see the traditional facultywide workshop die out completely. Despite its problems, the faculty workshop does serve social functions that are not valueless and that are hard to duplicate through other means. More to the point, specialized workshops have significant intellectual costs as well as benefits. It is not clear that the trend towards specialization in legal scholarship is an unambiguous good. Even if the law is not a seamless web, there may nonetheless be connections across subjects and disciplines that can greatly enrich a research project. Perhaps the primary substantive purpose of the facultywide workshop is to bring together all of the dispersed knowledge of the intellectual community, so that a problem can be analyzed from many different angles and perspectives, especially angles and perspectives that would never occur to the author or to others in the author's special fields of interest. Small focus groups can and should supplement these larger workshop experiences, but they can't and shouldn't totally replace them. The trick is to find ways to improve the traditional facultywide workshop, not to eliminate it altogether.

II.

It is a simple fact that workshops are generally more useful intellectually when they are held at an earlier rather than a later stage of an idea's development. This means rejecting thesis defense as the primary model for workshops. That model seems appropriate when a presenter already has a well-formed project and is simply looking to spruce it up for publication or submission. At that advanced stage of development, the presenter is probably looking for ambiguities that need clarification, for some additional sources, for identification of specific arguments that may not make sense, and for some indication of what arguments in the paper seem strongest and weakest to an outside reader. The traditional workshop looks like the best available workshop format for sharpening and tightening an already structured argument in this fashion.

The traditional model, however, is badly suited to a would-be presenter who does not yet have a well-formed argument but is trying to structure one. And it is precisely the presenter with a not-fully-formed argument who can benefit most from the collective knowledge of a large faculty group. The diverse input of a full faculty would seem to be of most use not at the editing

stage of the article, but at the *planning* stage, where the direction, methodology, and structure of the presenter's argument have not yet hardened. The bull session, rather than the thesis defense, is the appropriate model for many workshops. But one must have a way of structuring the bull session. The prospect of filling a room with law teachers and turning them loose on a raw idea does not conjure up pleasant images.

One possible structure for an early-stage workshop would be for a presenter to circulate in advance a very short (perhaps just a few pages) description of a topic or idea and his preliminary thoughts on it. His colleagues (one hopes) will then give the matter a bit of thought before they show up to the bull session, where people can discuss what avenues of investigation are likely to prove useful. This provides input from colleagues at a stage where it can do the most good, gives the presenter access to materials and perspectives that he might otherwise never think of, and could possibly spare him from going down some blind alleys. It is even possible that some other members of the faculty will get ideas from the workshop that they can develop into research projects of their own.

Nothing, of course, currently stops presenters from conducting such early-stage, developmental workshops. On occasion, one even sees them. But one sees them far less frequently than one would expect if the goal of the enterprise is to produce the best possible intellectual product. From an intellectual standpoint, the early-stage—and perhaps even pre-draft—workshop probably should be the norm rather than the exception.

So why don't people conduct more early-stage workshops? I frankly don't know, but one thought has occurred to me. Some people, not to put too fine a point on this, are more sensitive than others. Some of us (and I am emphatically in this group) do not mind, and even revel in, the best efforts of colleagues to make us look like fools.[3] Others are disturbed by comments that the commenter may regard as nothing more than helpful probing. It would not be surprising if people who are sensitive to criticism, whether real or perceived, were also especially reluctant to present papers at early stages of development, where opportunities for uncomfortable criticism abound. When junior faculty are the presenters, they may also worry that anything less than a stellar performance at a workshop will affect their tenure prospects. A person who has any of these concerns might prefer to wait until she is quite secure about the paper's basic structure and content. If those concerns in fact reduce the degree to which workshop presenters come forward at the optimal time, it is a substantive problem that is worth addressing. And I have a modest proposal to mitigate it.

Computer and video games typically offer users a choice of playing levels; the higher the level, the more obstacles the game places in your path. A similar tactic might be valuable for workshops. Workshop presenters should be able to label their presentations in advance to indicate the degree of audience aggressiveness, or confrontation, that they would prefer. One could identify the

3. Whether this attitude is best attributed to justified arrogance, unjustified arrogance, or a clinical personality disorder is a topic for another day.

appropriate tone of the workshop in any fashion that fits the personality of the presenter. As a football fan, I might define my scale (from most intense to least intense) as something like: (1) NFL playoffs, (2) NCAA Division III, (3) two-hand touch, (4) that game where you try to push the folded piece of paper close to but not over the edge of the desk. Persons with less frivolous personalities may prefer a simple 1-to-4 scale of intensity. However the scale is defined, each presenter would be allowed to try to calibrate the tone of the discussion in a way that suits her own needs. For example, a presenter with a polished product who is looking to sharpen the edges might want to encourage an all-out attack to ferret out any weak spots, while someone who is cautiously putting out feelers on an idea might prefer a more conversational tone. Of course, a presenter with a polished paper might well prefer a less aggressive workshop simply because he doesn't think that confrontational workshops are helpful. In any event, the label would give important information to workshop participants about the preferences of presenters.

Of course, it is one thing to identify a tone; it is quite another thing to get law teachers to sing in key with it. To give presenters any kind of effective control over their presentations, workshop moderators would have to stand ready to enforce a presenter's preferences, which might include telling their colleagues on occasion to shut up and go sit in the corner. But that should probably happen more often than it does in any event.

A more serious problem concerns the possibility that their colleagues might judge presenters based on their format choices. Nontenured presenters might understandably be especially sensitive to this possibility. The concern is not hypothetical. I specifically recall a discussion more than a decade ago when a colleague of mine commented (quite reasonably, it struck me at the time) that she found the frequently confrontational tone at workshops to be unsettling and unhelpful. Her comment was treated by some other faculty who were present with open derision—mild derision, to be sure, but derision nonetheless. No doubt there are going to be some faculty, and perhaps a significant number of them, who will view any choice of tone other than the most intense as a sign of intellectual weakness. (There may also be some people, though I suspect a smaller number, who will view the selection of an intense tone as a sign of intellectual arrogance.) If this looks like a serious risk in the context of a particular institution, it might be wise to limit the choice of workshop formats only to senior faculty and to prescribe a uniform format for junior workshops.[4] Of course, if such measures are necessary at particular institutions, what that says about those institutions would be something useful to know.

Setting the tone of the workshop, however, is only part of the story. Workshop participants also need to know the kind and level of comments that

4. If given a choice, would most senior presenters choose something loose and conversational to try to avoid embarrassing questions? My own sense, which I think has substantial empirical grounding, is that ego will induce exactly the opposite reaction: the majority of workshop presenters will indicate a preference for a relatively intense experience, either because they actually prefer it or because they consider it a way to show off.

will be most useful to the presenter. A comment may be highly appropriate for a rough draft but useless for a polished product. If the paper appears to be somewhere in between these extremes, participants may have a problem calibrating their comments to the presenter's needs.

The simple answer is for each workshop presenter clearly to identify, in advance, the level of development of his project and the kind of comments that are appropriate. This identification needs to go well beyond the perfunctory references to "work in progress" or "in early stage of development" that one often sees. There should be a more precise, direct, and forceful way to convey to the audience what kind of workshop will be of most use to the presenter.

Some years ago, members of the Yale Law School faculty came up with a scheme of more-or-less formalized bull sessions known as The Half-Baked Lunch. A group of self-selected faculty would sit around at lunch and informally hash over an idea put forward by one of the group. In theory, the lunch topic would be the core of a potential paper, but there would not be a paper prepared for or circulated to the group. As I understand it, the process eventually degenerated into an even less structured form that came to be known as The Raw Lunch, in which the topic was not necessarily even circulated in advance. Such gatherings are valuable for those who enjoy them, but they are too primitive to serve as a model for a regular faculty workshop.

The appropriate spectrum of material for a workshop probably runs from a short written statement of an idea and some preliminary observations to a manuscript that has been accepted for publication but has not yet gone through a final edit. (By the time a final edit is performed, it is extremely unlikely that a workshop can perform any useful intellectual function, though such finished products may be the best possible papers for workshops with primarily social functions.) Accordingly, I propose that presenters identify in advance the degree of development of their workshop papers along the following scale: raw (think sushi), rare, medium rare, medium, and well done. A "raw," sushi-like paper would be something very preliminary, probably not even rising to the level of a draft, such as a few pages sketching out a rough idea. A "rare" paper could be a first draft where the essential ideas are coherent enough to reduce to writing but the argument is not fully formed. A "medium rare" paper might be a draft that has a well-defined (even if still tentative) core of ideas and argument, but whose author is still open to significant changes in direction and perspective. A "medium" paper would have the author fairly deeply wedded to the ideas, the methodology, and the overall structure of the paper, and the goal of the workshop would be to introduce additional perspectives that might be helpful or to identify serious ambiguities or obvious errors. A "well done" paper would have a high degree of polish, and the author would be looking, at most, for additional supporting material, suggestions for deletions of extraneous or questionable arguments, and the like. Obviously, these are just examples offered as guidance; authors could slot their products any place they saw fit.

The purpose of identifying the character of the paper, of course, is to instruct audience members about how to tailor their comments. If the author presents a "rare" paper, it would be inappropriate to spend workshop time on essentially technical points: the goal should be to help shape the overall project in the most productive fashion, which requires focus on methodology, substance, and structure. By the same token, if the author identifies a paper as "well done," it would be unhelpful to suggest that the author's overall methodological approach is misguided (unless the commenter is prepared openly to tell the author to withdraw the piece from publication or submission).

This suggestion may seem simple, and even simple-minded, but I ask the reader to reflect on the frequency with which workshop papers and workshop discussions seem grossly mismatched. Of course, no classification system can dictate the way in which workshops are actually conducted; if workshop participants are bound and determined to focus on technical issues when presented with a rough draft or to criticize the basic approach of a paper that is about to be published, there isn't a lot that one can do about it. But perhaps the concreteness of a labeling system can focus attention on the need for self-discipline. If putting labels on papers can help channel discussion in the appropriate direction and to the appropriate level, workshops will do a better job of helping to produce good papers.

III.

Setting the proper tone and direction for workshops is important, but it is not enough to make a workshop successful. The format of the workshop also has to serve the goal of producing the best possible product. The standard workshop format does this across a range of cases, but the workshop process needs to be more flexible in order to be an intellectual success.

The standard format for a workshop has the presenter speak for about twenty minutes—typically to explain the motivation behind and background for the project and briefly to summarize the argument. Then the process is opened up to questions from the audience, generally on a first-come, first-served basis. If that is the format with which the presenter feels most comfortable, fine. But there is a wide range of alternative formats that are also worth considering.

One obvious alternative is to dispense with the initial presentation altogether and go straight to questions. If the paper's author thinks that an hour of questions will be more useful than twenty minutes of talk and forty minutes of questions, it is hard to imagine why that option should not be available. This process obviously reduces to some degree the extent to which workshops communicate what faculty are doing, at least to those audience members who have not read the paper, but the intellectual gains may well be worth it.

Another possibility is to split the presentation time between the author and a preselected commenter. That is, the author speaks for perhaps ten or fifteen minutes, and then the designated commenter offers a prepared five-to-ten-minute response. This has the advantage of focusing the discussion immedi-

ately on core ideas, based on the insights of someone who (one hopes) has been selected as commenter because she is especially interested in and knowledgeable about the subject of the paper. If all works well, this format may reduce the extent to which ensuing discussions focus on dead ends or trivial matters. In practice, my own experience is that this friendly-commenter format (from which, of course, anyone can opt out if they prefer something different) is extremely successful.[5]

Yet another variation, which has also been successful, uses a friendly commenter but reverses the order of presentation. That is, the friendly commenter goes first, for ten or fifteen minutes, followed by reaction from the author. The twist is that the friendly commenter's responsibility includes, without having consulted in advance with the author, summarizing the argument of the paper as well as reacting to it. The idea is to see how an informed reader other than the author perceives the central thesis and argument of the paper. Authors are often quite surprised by what they hear in these presentations—which is extremely valuable information for them. If the summary of the paper offered by the commenter differs in some dramatic fashion from what the author intended, one can then find out how the rest of the audience understood the paper, and in that way some major problems might be avoided. My own sense is that this is the ideal format for papers that are medium rare or medium.

There can, of course, be many variations on these formats, and no doubt there are many other formats that have never occurred to me. The point is not to find the best possible format in the abstract. The point, rather, is to foster a culture in which workshop formats are flexible rather than fixed, so that presenters can operate in the environment that will be most productive. In principle, there need not be any such thing as a "workshop format" at all; presenters could simply organize the proceedings in any way they see fit. In practice, it is useful to have a defined menu of options from which presenters can choose (and from which they can deviate to customize their own formats). I would suggest the following menu as a starting point: all questions with no presentation, short presentation, twenty-minute presentation, presentation with a friendly commentator, presentation with a friendly commentator who summarizes the paper.

Putting all of the prior suggestions together, presenters would be allowed to select from menus that would determine the level, tone, and format of their presentation. To facilitate this process, a week or so in advance each workshop presenter should be given a cover sheet to go with her paper, with the various

5. I made it the default format for workshops, with good success and wide faculty support, when I administered the internal workshop program at Northwestern in the mid-1990s. I stole the idea from Anthony D'Amato, who had used it during an earlier tenure as workshop chair before I began teaching. He in turn claimed to have heard, subsequent to his adoption of the idea, of its earlier use at the University of Southern California. I have since heard the format's origin identified as New York University. If USC and NYU want to fight over credit for the idea, they should leave me out it.

options presented in check-off form.[6] Perhaps in practice everyone will simply check off the familiar default processes and nothing will change. But one never knows until one tries.

IV.

The preceding discussion assumes that the principal goal of a workshop should be to help produce the best possible scholarly product. Oftentimes, achieving that goal will require that less time be spent communicating to the audience the background and general content of the paper. More attention to the goal of development of a scholarly project can thus mean less attention to the goal of exposing faculty to ideas from fields about which they may hear almost nothing except through workshops.

That informational function should not be dismissed lightly. Not only is it an important social practice, but it also serves important scholarly ends by exposing faculty to insights from a range of fields and disciplines. It is virtually

6. Here is a sample cover sheet.

1. How important to you (1–5, least to most) are the following objectives for this workshop?
   A. Improving my scholarly project _____
   B. Informing my colleagues about my research interests and work product _____
   C. Informing my colleagues about the subject matter of my workshop _____
   D. Promoting collegiality _____
   E. Telling the author of this questionnaire to shove off _____
2. What best describes the state of development of this project? (Circle one.)
   A. Sushi
   B. Rare
   C. Medium rare
   D. Medium
   E. Well done
3. What level of audience aggressiveness would you prefer (from most to least aggressive)? (Circle one.)
   A. NFL playoffs
   B. NCAA Division III
   C. Two-hand touch
   D. That game where you try to push the folded piece of paper close to but not over the edge of the desk
4. Do you have any advice for colleagues on the kind of comments that you would find most helpful?

5. What format will you employ? (Circle one.)
   A. No presentation
   B. Short presentation
   C. 20-minute presentation
   D. Short presentation with friendly commentator
   E. Presentation by friendly commentator
   F. Other _____

impossible to be a generalist in the current scholarly environment. The world of law, with the countless disciplines that are melded onto the law, is so vast that no one can stay atop more than a small fraction of it. It is hard enough just keeping abreast of the developments in specialized fields. It is not so clear, however, that specialization is an unadorned intellectual good. *Specialization* can easily become a euphemism for *insularity*. And insularity can make it difficult for scholarship to benefit from insights from fields that may not, at first glance, seem relevant to particular projects. Such wide exposure to fields and disciplines can benefit everyone. Workshop presenters, of course, can gain from the perspectives of colleagues in other fields, but audience members might also find that insights from the presenters' fields can add to, or even inspire, their own projects. Too heavy or narrow a focus on using workshops to improve papers might lessen the opportunities for cross-fertilization offered by a facultywide gathering. How does one manage the tradeoff between producing better papers and providing more information to colleagues?

The answer is that some workshops should have as their sole function keeping colleagues informed about other disciplines. Such workshops would not need to—and perhaps should not—have a paper as their focus. Instead, they would be vehicles by which faculty could provide their colleagues with a current-issues-and-developments update in various fields.[7] The idea would be to generate a kind of Continuing Legal Education program among faculty within the law school community. This could both foster internal communication and decrease the tendencies towards insularity that pervade modern legal scholarship. Just by listening to colleagues discuss developments in their fields, faculty might discover threads that run through their own subjects of concern. It might even be fun.

Obviously, for such a CLE workshop series to take place on any significant scale, it would have to be developed outside the traditional workshop program, if only because of time constraints. There aren't enough weeks in the year to accommodate both kinds of workshops. But an "informational" workshop or two could be incorporated within the traditional program, at least on a trial basis, to gauge faculty interest and explore the success of various formats for such workshops. At the very least, it would be interesting to have someone try it.

In the final analysis, of course, the critical ingredient for good workshops is a good faculty that is committed to the collaborative scholarly enterprise. No tricks with labels and formats can turn a bad intellectual environment into a good one, and a good intellectual environment will make itself felt regardless of the format. But even the best chefs benefit from good utensils.

7. I believe that I have stolen this idea from Charlotte Crane, who I dimly recall suggesting to me some years ago at Northwestern the potential value of a "current issues" workshop series.