

Undergraduate Moot Court: Student Expectations and Perspectives

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ABSTRACT

Moot court is a common practice in law schools and growing in popularity at the undergraduate level. As part of the move to incorporate more active learning elements, instructors in a variety of courses include moot court elements in their syllabi. Courses, however, are not the only place where undergraduate students encounter moot court. Increasingly, students compete in moot court at the intercollegiate level. This paper examines those students who compete in moot court tournaments sponsored by the American Moot Court Association to determine what motivates these students and what benefits these students believe they receive from their participation. Survey results show that students are motivated to participate in moot court for academic reasons, that they believe their critical thinking and public speaking skills improve, and that, despite its heavy workload and difficulty, moot court is also fun.

Role playing, either through games or simulations, is a common form of instruction in political science courses (Asal and Blake 2006; Baranowski and Weir 2015; Hensley 1993). Role playing has been used to study everything from legislative behavior, international negotiation, law, elections, and many other topics. In a course, simulations can encourage student engagement, enhance learning, and provide students with a practical understanding of the real-world application of often abstract course material and concepts (McCarthy 2014; Shellman and Turan 2006). Active learning may also help students who do not always respond well to more traditional lecture style teaching. Simulations are both active and problem-focused, which encourages critical thinking and synthesis of ideas rather than requiring students to absorb information from a lecture (Archer and Miller 2011; Shellman and Turan 2006). Baranowski and Weir (2015) provide a meta-analysis of several studies of simulations published in the *Journal of Political Science Education*. While they acknowledge a need for more data, they do conclude that simulations have some utility across both student engagement and student learning.

The classroom is not, however, the only opportunity for students to engage in this type of hands-on learning. Intercollegiate competitions offer an additional opportunity for students to enhance their education and explore a topic in detail. Like in-class simulations, these competitions take a variety of forms. This paper examines intercollegiate moot court, focusing on

the perceptions of the students who participate in it. The main research questions that this paper seeks to answer are:

1. What types of students participate in undergraduate moot court?
2. How do the participants in undergraduate moot court view their experience?

To answer this, I conducted a web-based survey of students who competed in at least one regional tournament sponsored by the American Moot Court Association. Before turning to the results of the survey, I briefly describe moot court and discuss the literature about it.

MOOT COURT: WHAT IS IT?

A moot court is a simulated appellate argument. This is different than the more widely known mock trial (Ringel 2004). In mock trial, teams of lawyers and witnesses conduct a simulated trial, using witnesses to enter evidence with the goal of proving guilt or liability. Moot court, in contrast, does not have testimony. There is no evidence. Oral argument is focused, instead, on how the facts in the record are applied to the law. Instead of persuading the fact-finder of the story, competitors argue for their interpretation of precedent and its application to the current case. Moot courts vary in specific rules and requirements, but do have many similarities. In general, students argue a mock appellate case before judges to test their ability to interpret legal rules while thinking on their feet. Moot court is a common activity in law schools across the United States, and is growing at the undergraduate and high school levels.

Knerr and Sommerman (2004) describe two basic forms of moot court: the in-class moot court and the intercollegiate tournament.

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Much of the research on moot court has focused on the in-class version. The classroom version of moot court has significant variation (Knerr, Sommerman, and Rogers 2001; Ringel 2004). The types of classes, requirements, grading, issues, and many other factors change depending on the professor and the educational goals of the course. Ringel (2004) provides a structure for developing an in-class moot court. Other research has focused on specific examples of moot court, design elements, or small studies showing some benefit from incorporating moot court into a specific course (Baker 1994; Bentley 1996; Cooper 1979; Hensley 1993). Some have critiqued moot court and questioned its utility, largely focusing on the disconnect between law school moot court and the practice of law (Gates 2013, 2; Kozinski 1997). However, most studies present moot court in positive terms.

Less attention has been paid to intercollegiate moot court competitions or extracurricular moot court. Collins and Rogoff (1991) utilize an intercollegiate moot court in their international law class. They assert that the intercollegiate aspect of moot court is beneficial in enhancing student motivation. This is in part from the desire to do well in front of outside judges and to beat the other team. They also suggest that placing the professor as an “ally” in the competition rather than “judge” in the class helps increase learning by changing the pedagogical dynamic. Competitions, however, need not be linked to individual courses. Intercollegiate competition offers students an opportunity to argue before legal professionals, often local attorneys. This gives the students an opportunity to get feedback from someone other than their professor or classmates and can add value to the experience.

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Knerr, Sommerman, and Rogers (2001) found that only “a small percentage” of participants in intercollegiate competitions received academic credit, “usually one credit on a pass/fail basis.” They also found that a mix of intercollegiate and intramural undergraduate moot court competitions were held regularly. This was the most systematic review of moot court found, but it was conducted before the recent growth of the American Moot Court Association.

King, Ringel, and Weizer (2009) provide an overview of the American Moot Court Association, the largest intercollegiate moot court tournament in the country. There are 10 regional competitions held each fall semester; nationals are in January. For the 2014–2015 AMCA competition, approximately 380 teams competed from across the country. The number of teams competing has been rapidly increasing since the founding of AMCA in 2001. While they conclude that moot court, particularly intercollegiate moot court, has value, more research remains to be done on these competitions. Of note, no contemporary studies describe the student participant’s perspective. This paper addresses that need by examining the types of students who choose to participate in intercollegiate moot court and their perceptions of the experience.

METHODOLOGY

Participants were recruited based on their college or university’s past participation in intercollegiate moot court tournaments.

To compile the initial list of contact information, I reviewed the list of schools participating in recent American Moot Court Association sanctioned tournaments. The Association’s website lists every school that competed in each tournament. From there, I attempted to determine coach contact information for each team using university websites. Not every school had contact information readily available, thus reducing the ability to get participants from that school. I was able to find contact information for 41 schools and sent emails to either the coach or the student organization that led the moot court competition at each of those schools. Of these, 10 coaches (myself included) agreed to forward the survey information to their students. Everyone who responded to the email request agreed to forward the email to their team.

To help reach students at the other schools, including those for which contact information was not available, I sent emails to the regional tournament directors and requested that they forward the information to the students or coaches competing in their region. Many agreed to do so. The Director of the largest regional tournament—Northeast Regional Tournament held at Fitchburg State University in Massachusetts—also agreed to have an announcement read at the tournament directing students’ attention to the research project and encouraging them to complete the survey. The recruitment email that the students received asked the students to send the survey information along to their teammates and other competitors they knew, thus increasing the potential sample size. This recruitment process yielded 66 responses, although not all respondents answered all questions. The completed responses came from 16 schools.

The survey itself consisted of three types of questions. I asked general background questions, including university attended, class year, and majors pursued. I also asked students about their participation in moot court. These questions gathered information about the number of competitions that students competed in, the type of coaching they received, size of the moot court program, whether their program carries academic credit, and the relative time commitment of moot court. Finally, I asked students why they participate in moot court and what benefits they perceive themselves gaining from their participation.

In analyzing the data, I treated certain majors as equivalent for purposes of analysis and to protect respondent privacy. Many majors were only listed once or twice. Reporting this could have allowed student identity to be determined and would not have added significantly to the analysis. In grouping majors together, I did my best to preserve as much specificity as possible. Some of these groups are unsurprising. If a student indicated Government as their major, I recoded that as Political Science. Criminology was recoded and grouped with Criminal Justice. If students indicated a concentration or subfield in their major—for example, Political Theory—I removed the concentration and grouped those students with their broader field. I did this with the various majors normally found in Business Schools. Since each field of business—finance, accounting, marketing, management—were

reported infrequently, combing all of the business programs into a single "Business" major made the most sense. All foreign language majors were grouped into the single Foreign Language category. I also combined students who responded with Legal Studies and Law & Society into Legal Studies. Other infrequent responses in the broad area of liberal arts were condensed into a general Liberal Arts & Sciences category.

I similarly grouped responses to other open ended questions. Students were asked to provide the "academic skill" that they felt had improved the most because of their participation in moot court. I chose to ask this question in an open-ended style to capture any potential responses students might have rather than limit their responses to the skills I felt most likely to be relevant. I did provide examples of academic skills in the question which could have biased the results. The examples provided were critical thinking, writing, and reading comprehension. These answers did show up in the responses, as noted below. Other response themes included public speaking and communication skills, logical reasoning, and preparing strong arguments. I grouped the responses into these six themes. Most respondents only provided one answer, as the question indicated. Others provided two or three. When a respondent provided multiple answers, I used the first response in frequency analysis, but kept the other answers to use in the broader thematic discussion of the results.

The last survey question was an open ended question that asked respondents to share any additional comments they had, either about the survey itself or about moot court. Several respondents provided answers. Other than an overwhelmingly positive viewpoint, these responses were not easy to group for analysis. Instead, I reference them in thematic discussion section when relevant.

RESULTS AND DISCUSSION

Survey respondents came from 16 different universities across all parts of the country. Schools included public universities, private institutions, and religiously affiliated schools. The largest group of respondents—45.5%—were first time competitors at the regional level. An additional 24.2% had competed twice, 12.1% had com-

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peted three times, and 7.5% had competed four or more times. Nine percent of the respondents were preparing for the first competition season but had yet to compete. At the national level, 18.2% of the respondents had competed least once and 19.7% had competed more than once. Most respondents—60.6%—had never competed at the national level.

The majority of respondents had or were pursuing majors in the liberal arts, most notably from Political Science (47%). The next largest group was Criminal Justice (16.7%). Other majors included History, Economics, Philosophy, and Business. The physical and natural sciences were the least represented, with only two respondents indicating a major in these fields. One third of respondents indicated that they were pre-law, with an additional 25.4% stating that, while not pre-law students, they were considering going to law school. Nineteen percent were either

already in law school or had already graduated from law school. One fifth of respondents indicated no interest in law school at all. When comparing major and interest in law school, political science and criminal justice students were the most interested in law school. However, moot court appeals to a relatively large number of students outside of political science and who have no interest in going to law school.

Most students (78%) indicated that they received academic credit for participating in moot court at some point in their academic career. An additional 13% said it was possible to receive credit, but that they did not. One respondent, in the comment section on this question, noted that moot court was required for a constitutional law class. Four respondents said that it was not possible to get credit at their universities, but this was contradicted by others from the same school. One such respondent said that it was not possible to receive credit, but 16 other students from the same college said that credit was possible. While this was the starkest difference, the conflicting reporting around the availability of credit occurred at three other schools. To clarify this situation, I examined the individual schools' websites to determine whether credit was available. For each, it appeared that credit was possible to at least some subset of students. For example, at one college, there is a constitutional law course available that incorporates the moot court problem and requires participation on the moot court team. But the course is not required for everyone on the team. Situations like this could have created the confusion regarding credit availability. It appears that credit is available at nearly all the schools represented in the survey. Of the students who receive credit, 68.9% reported receiving the same amount of credit as other academic courses while another 9.8% reported receiving more credit. Only 21.3% reported earning less credit than a standard course. This suggests a change from Knerr, Sommerman, and Rogers' (2001) finding that few students receive credit. Intercollegiate moot court appears integrated into the course curriculum at the institutions represented in this study. Course integration would also explain why all teams in this survey reported that faculty were involved in coaching the team.

Respondents also answered questions about their experiences participating in moot court. The most frequent responses for "academic skills" that moot court helped develop were critical thinking (42.4%) and public speaking (27.3%). Reading comprehension (12.1%) and argumentation skills (6.1%) were also mentioned repeatedly. Many respondents did not limit themselves to one response. I only counted the first response in the frequency counts for this question, but I did retain the other information for discussion purposes. One student responded that "few activities require putting two or more arguments or texts directly in conversation with one another to synthesize arguments like moot court does." This fits in with the research on moot court and the requirements to read and synthesize several court opinions to derive a rule of law and apply it to new facts. Another student said that his or her public speaking and demeanor improved in

“unquantifiable ways.” A third said that it was not just critical thinking that improved, but “critical thinking under pressure.” Because of the ongoing back-and-forth dialogue with judges during competition rounds, the ability to think quickly and critically is important. Several of the students who responded with public speaking also noted the time pressure element. But because critical thinking was listed as an example in this question, it is possible that this is the result of social bias.

I also asked students to provide the top three reasons why they participate in moot court. The question provided students with a series of predetermined responses as well as an open-ended field to list other reasons. Unfortunately, an error in survey design did not limit respondents to three options and several instead checked more responses, complicating the analysis. The most common response (65%) was “Increased Knowledge of Legal Argument.” The next most frequent responses were: to improve public speaking (55%), fun (53%), to get an early start preparing for law school (50%), and increased knowledge of specific legal issues (50%). Under 20% of students reported that credit toward a major, minor, or other certificate was one of their top reasons for participating in moot court. Some respondents indicated that one of their top reasons for participating was because moot court looks good on a law school application (36%) or a resume (30%). Only two respondents provided a free response, both noting the importance of community while one also noted the “otherwise unattainable experience” that moot court provides. The motivations for participation in moot court seem to be more academically oriented. While some students did report that their motivation involved improving their resume or law school application, the majority of respondents focused on improving academic skills or performance. This suggests that students are actively seeking extracurricular opportunities to enhance the knowledge and skills offered in their courses.

Respondents also answered questions that sought to compare moot court to other extracurricular activities, both law and non-law related. For most students (60.6%), however, moot court is the only law-related extracurricular activity they participate in. Smaller numbers of students did report participation in mock trial, model United Nations, speech and debate, law journal, and pre-law society. Respondents ranked moot court as “significantly more” or “somewhat more” demanding and beneficial than other extracurricular activities. Seventy-one percent rated moot court as having “significantly more” educational benefit, with another 19.7% reported “somewhat more” benefit. Moot court also required more time (50.0% significantly more, 28.8% somewhat more) and workload (51.5% significantly more, 31.8% somewhat more) than other activities. These results should be treated with caution. Given the fact that 75.8% of respondents report taking a course specific to moot court, it is not clear whether the added work and time are course-related or extracurricular. At the same time, since less than 20% of respondents reported academic credit as one of the top three factors in their decision to participate in moot court, this may not be a significant complication. Moreover, despite the commitment required, respondents felt moot court was more fun than other activities, with 43.9% reporting significantly more fun and 27.3% reporting somewhat more fun.

Some respondents (18%) were already in law school or were law school alumni. Universally, these respondents said moot court was beneficial to their law school experience; one in fact said it was the “most beneficial” thing in terms of law school preparation. Some further explained that moot court has continued to

benefit them in practice. This unanimity reflects the utility of moot court in teaching students to read and analyze cases, a skill which forms the basis of the law school curriculum. Further research, ideally using long-range data, should develop this finding to measure the actual benefits that moot court provides in law school, graduate school, and other career paths.

CONCLUSION

Moot Court was highly regarded by those who completed this survey. Their responses show a variety of motivations for participating in this activity and a number perceived benefits. These reported benefits of moot court match the benefits asserted by literature on the subject. In addition, the findings suggest that this experience reinforces skills that prepare undergraduates for both graduate school and the workforce. Students who participate specifically report enhanced public speaking skills, critical thinking, and argument structure. This information is useful in confirming the value of moot court and can be used to encourage students to participate in this rewarding extracurricular activity.

Despite the effort required, students continue to participate in intercollegiate moot court. They choose this activity for the educational benefits, not simply to earn credit or improve their resumes. And they are enjoying the experience. Moot court is growing and should continue to grow, both for political science students and many others. ■

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