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One of the many privileges of being the Editor of the Digest is that normally, after the researchers have completed their part of the task of digesting the selected articles, it is the Editor who has the first sight of these articles now in their digested form. There is a sense of excitement in reading on a regular basis accounts of innovation, experimentation, successes and sometimes even failures (but heroic failures!) of law academics who have attempted to stimulate their students and make their classes, whether lectures, seminars and tutorials, more interesting. It is always encouraging to know that the majority of law lecturers are constantly striving to enhance their students' learning experience. It is also the hope of the Digest editorial staff that we are able to convey this enthusiasm by the authors of the digested articles to our readership.

The book selected for review in this edition is a reflection of the current discussions in many jurisdictions as to whether legal research should be a component of the core curriculum. Concise Legal Research, now jointly authored by Robert Watt, the original author, and Francis Johns, is into its 6th edition. The book review reflects on the dramatic changes brought about by electronic methods of legal research during the sixteen years which have passed since the publication of the 1st edition in 1993.

The first article by Sonsteng, Ward, Bruce and Petersen digested under the appropriate subject heading of Changes focuses on the need for a legal education renaissance. The authors argue that if their recommended reforms are not implemented, then other external forces, over which legal educators will have no control, will bring about change anyway. They recognise that whilst there are many limiting factors on reform such as tenure, academic freedom and certain vested interests, the primary responsibility is on the Deans of Faculty to give a lead to ensure that these necessary changes are brought about. Note: For the information of subscribers, this is the first part of a long article which has been divided into two parts. The second part is digested under the heading History (see below).

Cooperative Education incorporates the concerns of Fines relating to those aspects of legal education which the author regards as imposing unnecessary difficulties for the student in a contemporary law school environment. However whilst the article recognises the advances which have been made by the creation of two new significant Association of American Law School Sections, those of Academic Support and Balance in Legal Education, in creating a supportive environment for students, it censures the ongoing failure by many faculty members to abandon an overt competitive ethos.

There are two articles under the heading of Curriculum. In the first Kift, a highly regarded Australian legal educator, considers the varying demands made on legal education brought about by dynamic changes in modern legal practice. Whilst the article has an Australian focus there is a comparative element which, whilst commending a reorientation of the traditional approaches to legal education, regrets the lack of a positive approach to curriculum transformation. As with the Sonsteng et al article above, her conclusion contains a call for leadership to implement a new vision for a liberal legal education. Also within the category of Curriculum, Merlino, Richardson, Chamberlain and Springer review the necessity for law schools to adapt to the changing needs of their students, particularly within the area of science and technology. The article contains the outcomes of a survey on science education opportunities and a list of those Law Institutions which offer courses in science education.

Under Future Chesterman asks the question as to whether a law degree should be regarded as a technical qualification or a serious field of intellectual inquiry. The author recognises that how this question is answered will have a major implication on the way one teaches in a law school. The author's view is that changes in legal education are increasingly driven by the demands of the legal profession, the mobility of the student population and a changing intellectual shift by those studying law.

History is a topic which is enjoying a resurgence within legal education and the article by Sonsteng, Ward, Bruce and Petersen not only contains a review of the History of American Legal Education, but places it directly within the context of legal education as taught in the United States today.

The often artificial distinction as to under which particular heading an article should be placed does sometimes create a dilemma for the staff of the Digest. The categorisation of the article relating to the juxtaposition of academic integrity education within a business law course by McGill caused such a question to be asked. However the view was that it belonged under Individual Subjects. The author advances the premise that there are few topics in a business law course which cannot be adapted to include academic integrity. However the article does not argue that this premise should be followed in the teaching of a business law course but rather that two additional legal topics should be selected in such a program, with one comprising a procedural academic misconduct enforcement component and the other being an emphasis on a substantive academic misconduct code of conduct.
Legal Ethics is deemed appropriate for another article relating to business law courses. In this article by Leib and Weber it is argued that there is a unique responsibility placed on business schools as to their duty towards ensuring that their students’ ethical awareness and ethical reasoning skills are integrated with their understanding of core ethical principles. The authors believe that the challenge for enshrining these principles in business law courses is discovering which tools and techniques are available to encourage the student to move from passivity to active learning.

Minority Groups forms the basis for the Digest breaking its rule of stating the title of an article in its editorial. There is no doubt that Sommerlad’s ‘What are you doing here? You should be working in a hair salon or something’ draws the attention of the reader to the deeply entrenched traditionalism of the solicitors’ profession within England and Wales. The attempts to remedy this form of discrimination are described in the article particularly with regard to the outcomes of a Training Framework Review conducted among students and trainee solicitors.

The recognition of the growing importance of legislation and its integration within the Harvard Law School’s first year curricula reform process as a freestanding ‘Legislation and Regulation’ course is described by Leib under Subjects. The justification for this reform to the curriculum includes Guido Clabresi’s argument for ‘stratutorification’ of American law and the instilling of respect for methodological pluralism about law. Also under this heading is Tan’s appeal for the acknowledgement of the value of a good philosophy course in enabling the law student not only to examine the value of law and the ideals of the legal system but to also question its legitimacy.

Teaching Methods and Media is the final heading in this edition and includes two articles. The first by Horan and Taylor-Sands describes the problems of engaging students in mediation as a vital part of the process of civil litigation. The article contains a description of the various methods of visual and verbal learning styles to communicate with students, including a multimedia project entitled ‘Litigation in Action’ described by the authors as an attempt to bridge the gap between formal learning and the court/mediation room environment. As a direct contrast to the various learning methods examined in this article, Wilson returns to the basics of the tutorial as the main forum whereby students are able to engage and interact with their tutors and he reviews the various ways in which tutors approach their conduct of their tutorials. This is an invaluable examination of tutorials which still constitute the major form of teaching used by law schools in the teaching and learning process.

Emeritus Professor David Barker AM
Editor
A legal education renaissance

J O Sonsteng, D Ward, C Bruce & M Petersen

It is time for a legal education renaissance. This proposed model provides a plan, goals, and a process to get legal education from its present state to where it should be. The model addresses the criticisms of the current system, uses available tools, keeps what works well while discarding what does not, is flexible enough to incorporate new and creative ideas, recognises the needs of a diverse adult learning population, is cost effective, and lives up to its promise to train lawyers for the practice of law.

The ability and enthusiasm of law school faculty to initiate and implement significant change is limited by many factors, including tenure, a desire for individual autonomy, academic freedom, the inevitable variety of opinions and interests concerning the school’s mission and use of resources, and the complex relationship among faculty, deans, and the governing board.

The primary responsibility for leadership lies with the deans, just as it did in Langdell’s time. The role of the law school dean has become more complex, but it is through the dean’s strong leadership and the collaborative support of other actors within the system that change can occur.

If law schools do not take a proactive position on legal education reform, then outside forces and the needs of the profession will eventually cause the system to change. While it is interesting to consider making systemic change in one bold move, it is not a realistic approach. Even in earlier times, change occurred slowly.

The 17 year plan provides an illustrative timeline for achieving a legal education renaissance. It anticipates considerable discussion and debate and involves all the legal education constituents.

Year One — Informal Discussion. In the first year, the leaders initiate a series of discussions to respond to the ‘buzz’ concerning reform and innovation and covering the following areas: curriculum, student life, teaching, faculty, management, staff, facility, and financial considerations. This is a year of informal discussion among the constituents of a law school: faculty, staff, alumni, students, administration, the board of directors, the ABA, AALS, educators, business leaders, education reformers, and the bench and bar.

Year Two — Formal Meetings. In the second year, leaders organise groups of constituents to begin formal discussions. The meetings focus on developing a consensus. At the end of this process, if the constituents decide that the institution should not initiate change, the process ends. If a consensus is reached that the school should move forward with reform, the leaders can appoint a design team with members from each constituency to develop a detailed educational model.

Years Three and Four — The Design Phase. In years three and four, the team considers what courses should be taught, how students should be taught, what practice experience opportunities should be provided, how educational experiences should be organised, how teaching and learning objectives should be defined and evaluated, how the reforms will be initiated, and the most effective use of resources.

The design team starts with no preconceptions so that it may develop an ideal plan without hindrance from existing practices, financial restraints, faculty resources, and other limitations. The plan includes curriculum, students, teaching, faculty, management, staff, facility, and financial considerations. The plan serves as the basis for discussion and debate among the constituents during year five.

Year Five — The Debate. For the second time, leaders organise formal groups of constituents to discuss the model plan. At the end of year five, these groups prepare written reports to the design team critiquing the design team’s model and providing suggestions.

Year Six — Revisions and Adoption of Plan. In year six, the design team, in consultation with the administration, the board of directors and the constituents, prepares the final plan for the institution’s adoption at the end of year six.

Years Seven through 17 — Implementation and Revisions. The curriculum and new faculty structure are phased in over 10 years so that first-year classes begin in year seven under the new plan, and by year 17 the entire educational plan is fully operational. The plan will be continually revised, evaluated, and improved.

A new legal education model may be divided into three modules, assuming students will have the necessary pre-law school training: Module I: The Fundamentals, Module II: Substance and Fundamental Legal Practice Skills, and Module III: Transition from Student to Lawyer.

Each module builds on the skills learned in the previous module. Students must reach an established level of competency in each module before being permitted to advance.

Each of the three modules and all of the courses within a particular module have clearly-stated objectives; provide assessment, feedback, and reinforcement; provide a positive learning environment; incorporate active classrooms; address multiple learning styles; and include lesson cycles.
overreaching goal is that all graduates attain an established level of competency before being admitted to the practice of law.

Module I consists of one semester covering 14 weeks, with students taking 14 credits of Basic Concepts, Legal Research, and Writing. By the end of this basic training period the student should understand basic concepts and terminology; understand the legal system; learn to write clearly and succinctly; learn to read, understand, and apply judicial opinions, statutes, and regulations; master effective note taking in class; develop effective study techniques; learn how to understand and brief a case; understand legal research and the sources of law; know how to navigate and use a law library and technology in legal research; understand the demands of the legal profession; acquire basic legal reasoning skills; understand basic problem solving methods; understand basic ethical theory and theories of justice; understand basic problem solving methods; understand basic ethical theory and theories of justice; know how to solve legal problems and analyse client-based issues; comprehend the legislative process; know how to balance work and study with a healthy lifestyle; be motivated and energised to study law; have the opportunity to explore an area of interest in depth.

The focus of Module I is fundamental knowledge and skill building rather than in-depth study of substantive materials.

Module II consists of three semesters covering forty-two weeks, with students taking 42 credits of Substantive Courses and Fundamental Legal Practice Skills. It focuses on required substantive courses and fundamental legal practice skills. It also provides an opportunity for in-depth exploration of complex legal areas along with ethical, social, and political issues. Students build on their understanding of the fundamentals from Module I and learn to problem solve by applying theory to real and simulated legal problems. Substantive courses include, but are not limited to Contacts, Civil Procedure, Torts, Property, Constitutional Law, and Criminal Law.

Fundamental legal practice skills include, but are not limited to: the ability to diagnose and plan for legal problems; the ability in legal analysis and legal reasoning; drafting legal documents; knowledge of substantive law; library legal research; computer legal research; fact gathering; oral communication; written communication; counselling; instilling others’ confidence in the attorney; negotiation; knowledge of procedural law; understanding and conducting litigation; organisation and management of legal work; the ability to obtain and keep clients; and sensitivity to professional and ethical concerns.

Module III consists of two semesters covering 28 weeks, with students taking 28 credits of Transition Courses. It continues the learning cycle process of reinforcement, feedback, analysis, and self-evaluation that students have mastered through Modules I and II.

Transition courses build on previous learning, require students to be responsible for their learning, and encourage reflection on legal ethics, professionalism, and what they learned. The subject matter, organisation, content and, methods of transition courses reflect real-world framing, and integration of doctrine, skills, theory and different areas of law. They can cover legal and related non-legal disciplines (eg. medicine, psychology, engineering, etc), domestic and international law, advanced legal research, law practice management skills, advanced writing, teamwork, leadership, and discovery. Transition courses are rigorous and require students to produce manifestations of their learning, including written briefs, contracts, papers, or a videotaped trial or negotiation.

Unlike less advanced courses of study, transition courses require a student to commit substantial time to a course and may be offered for a greater number of credits. Students learn to handle complex matters that are crucial for the transition to practice. Students learn to synthesise the fundamental knowledge gained in Module I with the substantive law mastered in Module II.

Legal education renaissance requires a new education protocol including various teaching methods, education tools, and resources directed toward student success and development. Every aspect of the curriculum clearly articulates learning objectives with activities designed to measure success of instruction and student learning. Learning objectives, measurable activities, and frequent assessment and feedback provide opportunities to practice, identify areas for improvement, and reinforce learning.

Most students are not able to learn in a large-group format, but until recently, that format was the best method to provide uniform coverage. However, modified lecture formats can inspire and assist in developing a sense of community. Discussions and Socratic dialogue can be used in small group settings with experienced teachers.

The new learning and teaching protocol recognises that well designed and implemented distance learning experiences are effective for most students. New distance learning tools create valuable learning opportunities outside face-to-face classroom sessions.

Course designers, as members of the law school’s design team, must determine learning objectives and the manner in which the school will evaluate academic competence. If the institution’s mission is to train students to be able to practice law competently upon leaving law school, the learning objectives
will be different than if the mission is to train students to think like law professors or take bluebook exams.

Learning objectives may be achieved in a variety of ways. For example, students may be required to do the following: (1) Write a memorandum that provides an analysis based on the facts and legal research. The memorandum demonstrates the student's level of understanding of the theory of a case, the elements necessary for a party to prevail, an understanding of the weaknesses and strengths of the party's case, and an understanding of appropriate remedies; (2) Provide short answers to a series of questions or complete a multiple choice assessment; (3) Meet individually with a faculty member or field questions through an individual Socratic dialogue in defense of a thesis or paper; (4) Demonstrate ability to spot issues in a case, communicate basic legal principles and theories, or articulate the legal framework of a case; (5) Write sophisticated answers in a time-based examination, or answer complex multiple choice or short answer questions.

Multiple assessment formats allow students to develop and understand where they need to improve. More frequent assessment provides professors an opportunity to adjust their curriculum and teaching techniques according to particular student needs.

Reflective learning is an essential component of any successful teaching protocol. Writing reflections will help bring clarity to this process. The reflective evaluations give students a platform for communicating what they learned and how it might be applied to their careers. Students use different formats and styles which best represent their thoughts about the course and their experience.

In the new teaching and learning system every course incorporates three-step cycles of learning that include: an initial learning step that takes place before the in-class experience; a face-to-face session with faculty and other students; and learning that continues beyond the face-to-face sessions.

The cycle occurs each time a new lesson or skill is introduced. Step one, Faculty Supervised Study (FSS-I), is pre-classroom work. The Intensive Residential Practicum (IRP) is the second step and involves face-to-face classroom interaction. The third step is the post-classroom work, Faculty Supervised Study II (FSS-II).

When designing FSS-I for a course, the education design team must ask the following questions: What are the learning objectives? What information will the students have coming into the course? What preparations are required? What are the sources of the information to be taught? What type of interaction will occur between the faculty and the student during this training block? What is the length of each Faculty Supervised Study?

Students obtain their information from a variety of sources including books, casebooks, hornbooks, black letter law training materials, webcasts, and prepared teaching materials delivered on-line or by CDs and DVDs. Students can receive the same information in FSS-I that was previously provided through class lectures in the traditional law school format.

In each course, FSS-I will occur as many times as necessary to cover the substantive knowledge and skill sets. Because in-class lectures are no longer the only teaching and learning option, the face-to-face or IRP can be used to serve a higher purpose and enhance learning. Students can be expected to come to the IRP with an understanding of the necessary knowledge and skills.

Before moving on to an IRP, students must demonstrate a minimum standard of learning. Students may demonstrate the basic competencies and meet the minimum standards of learning through a variety of assessment and feedback formats including short papers, essays, multiple choice questions, and oral examinations. The system recognizes the success of early achievers by allowing only a 'pass' result for repeat testers. This system maintains a degree of fairness for students by rewarding and encouraging those who demonstrate competence during the first assessment opportunity.

The IRP is the core component of the new teaching system. Because the students have demonstrated a required level of competence, the face-to-face sessions operate on a high level. The IRP addresses skill sets and learning objectives in an intense, immersion-style format. Students are challenged to analyze a hypothetical legal problem entitled 'Practicum Exercise' and use legal doctrine and legal theory to resolve it.

Ideally, the IRP should meet for at least three hours to provide sufficient time for intensive and thorough discussion and debate, and to eliminate wasted time currently experienced during the beginning and end of shorter class periods. The professor may give short lectures on certain aspects of the material to add sophisticated insight and help focus student learning. Students break into small groups for collaborative learning and work through hypothetical Practicum Exercises. Within each group there is a student leader who leads the group through the problems, a recorder who takes notes of group answers, and a reporter who reports the answers to the larger class on behalf of the small group. Students rotate among the positions so that all students have an opportunity to develop a variety of leadership and communication skills.
The tutorials may be presented live, by streaming video over the Internet, and through other technology. Expert tutorials are interactive, allowing students to submit questions using available technology.

IRPs can be used in any substantive area such as torts, contracts, and civil procedure, as well as for skills training in areas such as trials, depositions, arbitrations, negotiations, mediations, and oral arguments. IRPs may be of any length, depending on the learning objectives determined by the teacher.

The FSS-II is the study and assessment phase to which students move after completing the IRP. The students must combine the knowledge and skills they learned in the IRP, with the theory they learned in the FSS-I.

In advance of the FSS-II, at the end of an IRP session, students may be assigned a practicum-style problem on which they must write a memo, prepare answers to questions, or discuss solutions with a teacher.

A teaching and learning system that delivers an education that enables students to competently practice law requires a substantial increase in the time currently devoted to teaching.

Instead of changing the rules, at least three ways exist to provide additional faculty resources within the rules: for 1000 students with forty tenure-track faculty, hire approximately one hundred additional adjunct faculty, each teaching about ten hours a week. This supervised adjunct teaching faculty conduct all FSS sessions and IRPs, and advise students. Phase out half of the tenure-track faculty over time, replacing them with a long-term contract teaching faculty. The amount of time dedicated to teaching is tripled. Although the number of people writing and conducting scholarly research may be fewer and the number of publications reduced, the significant benefit to student learning outweighs the reduction in academic scholarship.

In a combined teaching system, the tenure-track faculty are divided into two departments, Research and Writing and Education and Teaching. The Research and Writing Department consists of traditional tenure-track faculty who engage in scholarly research publication, conduct advanced seminars, lecture as needed, and participate in the preparation of advanced teaching materials. The Education and Teaching Department consists of a small group of tenure-track faculty who are responsible for oversight and quality control, and serve as directors of the education modules. They also act as a design team developing curriculum, courses, and assessment and feedback systems. The contract teachers focus on teaching. Faculty Supervised Study, the IRPs, student contact, research and writing related to teaching, and on assisting the design team.

This proposal for a legal education renaissance is not a panacea. It is a plan designed to stimulate discussion. A new model can fit within existing rules and institutional frameworks. Use the best of the traditional, borrow from others, combine methods, innovate, experiment, and create a flexible responsive system that meets the needs of students, the profession, and clients. Make nothing so permanent as to smother creativity and innovation.

Fundamental principles and challenges of humanising legal education
B Fines

To begin, scholars devoted to humanising legal education might consider the language we choose: what is it to ‘humanise’ something? According to the Oxford English Dictionary, ‘humanise’ means to ‘make more humane’ or ‘give a human character to’. At a minimum, humanising should remove that which is inhumane or dehumanising. Thus, a consistent theme of the scholarship of humanising is that law schools need to identify negative stressors in the law school environment, reduce or eliminate those as much as possible, and help the students to manage those that cannot be eliminated.

In 1991, the same year that Gerry Hess, with characteristic idealism and enthusiasm, was creating the Institute for Law School Teaching, I wrote my first published law review article called Fear and Loathing in the Law Schools. My thesis was a fairly straightforward one: many aspects of legal education created undue and unnecessary stress which interfered with learning. My faculty colleague who had been assigned to guide me through the tenure process read it and told me it was nicely written, but probably would not count as legal scholarship. He asked, ‘Couldn’t you write something I can agree with?’

What was it that was so foreign in that article? That we were creating threatening learning environments? That those environments undermined student learning; and that student learning could be enhanced by balancing demand and reward, and by placing more control in the hands of the students? I recall clearly another colleague’s reaction to my article at that time. This caring teacher, passionately committed to the law and justice, said I had it all wrong: ‘If they can’t take the heat, they...
should get out of the kitchen. The practice of law is brutal. We need to get them ready for it’. Getting them ready for it meant creating an equally brutal, demanding, and disorienting educational experience.

I do not mean to suggest that my senior colleagues were uncaring and anything less than fully committed to their teaching responsibilities. I do believe, however, that a subtle but significant headwind in reform of legal education is grounded in the professoriate’s sense of helplessness about their role as teachers.

We have lobbied our colleagues to consider the emotional climate of legal education and to address the debilitating effects of stress on our students, lest we continue to build a profession with significant problems of substance abuse, depression, and other stress related problems. We have given speeches at orientation and published pamphlets for students to instruct them in the self-management approaches that will help them to cope with the demands of law school. We have held numerous conferences and workshops, and written an impressive collection of scholarship on the subject of the learning environment.

Since 1991, law schools have made significant progress in creating more supportive environments for students. If politics of the AALS are any indication, we have had enormous success. There are now two AALS Sections — Academic Support, created in 1998, and Balance in Legal Education, created in 2006 — whose missions include attention to learning environments. Today, nearly every law school in the nation has some form of academic support beyond the Dean of Students. There is still progress to be made, however.

Legal education cannot truly be humanised while so many faculty members are wedded to an educational philosophy grounded in a competitive ethos. Yet, at the core of humanistic educational philosophy is the understanding that the more individuals aim for the external rewards of achievement, the less likely they are to reach their goal. Competitive cultures create powerful extrinsic motivators that undermine intrinsic motivation, skew and narrow learning, communicate a preference for hierarchy and control by the ‘winners’, and undermine professional values of cooperation and service.

Though law faculty and administrators increasingly are willing to talk about these issues of supportive educational climates, until resources reflect this commitment, the talk is mere lip service. For example, we know that learning is enhanced if students are engaged, and we know that their engagement depends on our engagement. Yet, the LSSSE results indicate that ‘about 15 per cent of [first-year students] and about one quarter (24 per cent) of [second-year students] never received prompt feedback from faculty members’. Why, when we know what is required for engaged and balanced learning environments, do we not make the structural and curricular changes necessary to create these environments?

The simple answer is that teaching is only one of our priorities. All resources must be balanced in achieving the two primary aims of law schools: scholarship and teaching. Today, it seems that all resources must be balanced in achieving yet a third aim: reputational enhancement. In that balancing act, it is difficult to give teaching real weight. How can a law school leverage a faculty member’s dedicated, respectful, energised devotion to student learning into a glossy brochure to improve one’s reputational rankings in US News & World Report? In contrast, a faculty member’s expertise in a subject, publications, speaking engagements, and news reports that attest to that expertise, can indeed be the subject of reputational marketing.

To do no harm, law schools must deliberately and courageously choose to ratchet down or step out of the hyper-competitive value system that pervades our institutions and reapportion resources and institutional priorities to create positive learning environments for students.

Much of the work in humanising legal education has been about making this careful study of our pupils and the compassion and benevolence we might extend to them. We teach our students as individuals, with all their diverse personalities, intelligences, backgrounds, and circumstances.

Proponents of humanisation are concerned that students develop themselves as confident, caring, reflective professionals, discerning their own values and purposes, and knowing how to work with others collaboratively and to understand diverse perspectives.

Here is where the skeptics might take issue: ‘These are not the goals of a law school education!’ they would protest. ‘These are adults! It’s our job to help them “find themselves” or “understand others”. They’ll do that on their own’. It is not that opponents would disagree that the goals of the humanisers are important — simply that it is not the law school’s job to help the students reach these goals. They are confident that students will come out of law school better and more well-rounded without their intercession.

Students do not just ‘pick up’ their development as professionals along the way. To the contrary, students will be formed by our teaching regardless of our intention. Professional development, like morals teaching, is more often ‘caught than taught’. Indeed, I have argued that fundamental features of our institutional structure, such as grading curves and solitary evaluation methods, prefer values of
competition and institutional control while the values of learning, cooperation, equality, and professionalism remain underprivileged. Marjorie Silver argues that ‘[l]egal education should cultivate emotional intelligence’ and law schools should take responsibility for preparing students for the emotional aspects of lawyering.

Reform, however, has come slowly, and we have far to go. While 70 to 90 per cent of students agree that law school gives them a broad legal education, teaches them to think critically and analytically, helps to develop legal research and writing skills, and fosters self-directed learning, fewer than 50 per cent believe that law school has helped them understand themselves or develop a personal code of values and ethics.

The scholarship of humanising legal education must develop more tools for helping students become reflective, cooperative practitioners. The Washburn University School of Law Humanising Legal Education Symposium demonstrated some fine examples of that emerging scholarship: using insights from positive psychology and counseling theory, we are learning even more concretely and empirically how to help students deal with the stress of law school. There is better understanding of what harms our students’ sense of self — the pressure of extrinsic rewards that robs students of intrinsic motivation and the lack of control and autonomy over their schedules, lives, and learning in law school.

The answer to humanising legal education and legal practice lies in rekindling professional values of peacemaking and service. It is little wonder that many of the voices one hears in the humanising community are those of faculty members and practitioners working in fields such as alternative dispute resolution, therapeutic jurisprudence, collaborative law practice, holistic lawyering, and public interest practice.

Humanising legal education is concerned with the whole student, with developing the student's capacity to meet the needs at the top of Maslow’s hierarchy — self-actualisation and concern for others. However, the challenge is that, while focusing on the top of Maslow’s needs hierarchy, it is easy to forget that money matters, because money supplies the bottom of the need hierarchy. Money is the single greatest challenge to humanising legal education because economics drives much of the form and structure of legal education.

Why is the Socratic Method, in large classes with one exam at the end of the semester, still used today? It is an incredibly efficient method of education. Why do we have a caste system of faculty in which low paid, non-tenure track women shoulder the lion’s share of labour intensive skills instruction and academic support? Discrimination aside, it is cheap.

How can students become agents for justice when the beginning salary for attorneys in public interest work was $36,656 in 2004? How can students follow their own career goals without feeling that anything other than corporate representation is second-best when attorneys in small firms earn dramatically less than those in larger firms? When debt loads soar and salaries stagnate or fall, students simply cannot be empowered to step out of the income race. Indeed, a national study recently ‘found that law student debt prevented 66 per cent of [law] student respondents from considering a [public service career].’

To truly humanise legal education we must step out of the classroom and hallways and advocate on behalf of our students. We must step into the admissions and financial aid offices and take into account the values of investing in our students. We must step into the state houses to advocate on behalf of law, lawyers, and legal education.

Clearly, we need to take our skills in education to reach out to the public and help them understand the value of law and the importance of investing in law school.

If changing the culture of law schools seems a difficult task, changing the economics of law schools may prove even more difficult. Yet, if we sincerely seek to do no harm, to teach the whole student, and to prepare students to be peacemakers and agents of justice, we must put our values into action in the most concrete of terms.

**CURRICULUM**

**21st Century climate for change: curriculum design for quality learning engagement in law**

S Kift


Recent decades have witnessed dynamic change in the working environment of 21st century lawyers: legal practice has been transformed by external drivers such as globalisation, competitiveness and competition reform, information and communications technology, and by a determined move away from the adversarial system as the primary dispute resolution method. Similarly, the higher education sector has been subjected to relentless change from a range of (remarkably comparable) external drivers, and particularly by the demand that our students now graduate with a profile of knowledge,
skills and attitudes that include, but go beyond, the disciplinary expertise or technical knowledge that traditionally formed the core of most university courses.

Legal educators face significant conceptual challenges in meeting persistent demands for curriculum innovation within new quality assurance frameworks. Further, at a time when higher education has renewed its focus on learning and teaching professionalism and the quality of the student experience, the current fraught reality for all — academics and students alike — is that we need to be more effective and efficient in our daily practices and educational engagements.

The changing patterns of student engagement or, perhaps more accurately, the effects of widening participation and the potential for student disengagement, have been subjected to considerable sector-wide investigation and reflection. Much international research has been conducted around (what is generically termed) the ‘first year experience’ (FYE) of commencing undergraduate students and the reasons behind instances of higher education non-completion. Most recently, in the United Kingdom, Mantz Yorke and Bernard Longden, reporting for the Higher Education Academy (HEA), found that, while a number of issues affecting student engagement and retention remain outside our institutional control, major factors are discernible as:

- the quality and organisation of teaching;
- program difficulty and students’ lack of preparedness to cope with it;
- poor choice of program, including lack of vocational relevance (specifically, it was found that 40 per cent of students who had little or no prior knowledge of their program considered withdrawal, whereas only 25 per cent of their better informed peers did so); and
- student worry over financing of their studies.

Yorke and Longden found broad similarities between the United Kingdom experience and the FYE of Australian students. The most recent Australian FYE data suggests that students will consider withdrawing because of a ‘complex interrelationship between course dissatisfaction, course preference, limited engagement, and student perceptions of academic staff and of the quality of teaching’.

Further, today’s students, who pay for their higher education and are ‘highly anxious about … the debts they are accumulating’, will routinely go through several changes of career in their working lives, while research has consistently shown that only 50 to 60 per cent of law graduates will remain in longer term legal practice. As long as a decade ago, Sumitra Vignaendra identified that the most frequently used skills by law graduates in any type of law related employment were those of communication (both oral and written), time management, document management and computer skills. Legally specific skills, while important to private professional practice, were not the most frequently used.

If law schools are to produce globally portable citizens, able to engage effectively with knowledge generation and management in increasingly diverse and globalised workplaces, then their curriculum design and pedagogy must intentionally equip graduates with the knowledge, skills and attitudes required to self-manage learning for an unknowable future.

A further impetus to reconsider the validity of any heavy doctrinal emphasis in law curricula is the inexorable push, coming variously from government, employers, professional associations, students and, in Australia, from universities themselves, to equip students with ‘graduate attributes’. Graduate attributes have been defined as ‘the qualities, skills and understandings a university community expects its students to develop during their time at the institution and, consequently, shape the contribution they are able to make to their profession and as a citizen’.

In the decade since the West Review in Australia in 1998, almost every Australian university has defined these attributes and sought to integrate them into core curriculum in various ways.

Effective integration of skills and attitudes into learning and teaching design delivers higher quality learning outcomes for students (by explicitly equipping them with the intellectual rigour to use their technical knowledge to do what the modern workplace demands of them). It further secures a robust foundation for future careers and citizenship in the knowledge economy, where graduates will be continually challenged to learn and engage with new ideas that extend beyond the content of their university courses.

Against this background, the question must be asked whether legal education has kept pace with the climate that has changed so dynamically around it — the constitution and engagement of student cohorts, the globalised world of work and the growth of the knowledge economy, and movements in higher education thinking and practice.

It should be noted that there has been no shortage of advice and examination of these issues in the legal context. From as early as the 1970s, a plethora of reports has been produced across many jurisdictions (for example, the United States, England, Australia, Scotland, Canada, Hong Kong), most of which have exhorted a reorientation of the traditional approaches to legal education, essentially from a content focus and towards skills and values acquisition and training. With the exception of
some interesting developments in the area of transnational legal curricula, by and large the international academy has paid scant regard to this building clamour for curriculum transformation (though the Australian response has probably been the most positive). As a result, the more recent analyses have started to criticise the academy’s reluctance to embrace change. In particular, two 2007 reports out of the United States — one by the Carnegie Foundation for the Advancement of Teaching, in its professional education series, entitled *Educating Lawyers: Preparation for the Profession of Law* (the ‘Carnegie Report’) and the other by the United States Clinical Legal Education Association entitled *Best Practices for Legal Education: A Vision and A Road Map* (the ‘Best Practices Report’) — have focused a great deal of international attention on desirable approaches to curriculum and course design in legal education, particularly in the United States context, but with an accompanying analysis that is easily transferable to other jurisdictions. Finally, a number of reviews are current even at the time of writing, perhaps most significantly in the Australian context, the Council of Australian Law Deans’ (CALD) initiative around the setting of Law School Standards for quality assurance and benchmarking purposes, and the associated formation of a Law Schools Standards Committee.

Broad, recurrent themes evident in the discipline reviews of law include:

- Emphasising that what lawyers need to do is at least as important as what lawyers need to know — a rebalancing from traditional content focus to skills and values acquisition — and that legal education should be underpinned by a pervasive approach to legal professionalism that facilitates, inter alia, reflection on ‘the values of the [legal] culture’;
- Recognition of the effects of changing patterns of student engagement and the diversity of commencing cohorts;
- Reference to deeper understandings of the nature of student learning and the facilitation of active learning, which have demanded a more professional approach to university teaching;
- Recognition of the impact of internationalisation and globalisation on legal education;
- Encouragement towards a more liberal education that embeds contextual, interdisciplinary and theoretical approaches in core curriculum;
- Alarm at the widening disjunct between the academy and practice and calls for their re-integration; and
- Concern at the lack of attention paid to the continuum of legal education and its staged articulation — from law school, through the Legal Practice Course (LPC), and into Continuing Legal Education (CLE) — as a lifelong and life-wide process.

A constant refrain, hinted at in many of the above, is the perpetually uneasy relationship between the study and the practice of law: at one level, the aspirational balance to be struck between a liberal education and the knowing, the doing, and the practice — between the academic and the vocational — and, at another, more practical, level, how the ‘contexts of actual legal practice’ might more efficaciously be enacted in contemporary curriculum design. Too many schools rest easy with the status quo and have declined to embark on an informed and principled reconsideration of the law degree’s program objectives, its contemporary role in the formation of professional identity, and how it prepares students for global citizenship and the modern world of work.

In these various ways, the law curriculum might be reconceptualised as a broad-based liberal (legal) education that will prepare students for the 21st century workplace and practice, and as ‘intellecutally and morally responsible citizens’. Integrative curriculum approaches suggest that when we claim to inculcate our students with the cognitive habits of ‘thinking like a lawyer’, such an outcome is not to the exclusion of ‘thinking like a lawyer in practice settings’ nor alien to a concomitant interrogation of what it is to assume the lawyering role and deploy lawyering capabilities responsibly.

If we can agree that the purpose of the law degree is to embed knowledge, skills and attributes (underpinned by pervasive professionalism) for student whole-of-program development and acquisition, then it is trite but true to require that the curriculum response must be systematic, coherent and comprehensive.

As Queensland University of Technology found when it embarked on this type of major curriculum renewal in the late 1990s, it was necessary to map the integration of knowledge, skills and attitudes in an incremental way across the entire degree program and then turn to assuring the valid alignment between what was being taught, how it was taught and how that learning was assessed.

This whole-of-program mapping is now a process upon which almost every law school in Australia (and certainly most disciplines in the sector) has either embarked or is currently implementing. Broadly, this curriculum approach starts with a whole program matrix onto which the discipline’s desirable knowledge, skills and attitudes are carefully mapped for multiple learning opportunities and contexts, which increase in complexity over the course of the degree program.
Curriculum renewal of this magnitude is complex and a significant culture shift for staff, students and employers alike, pockets of whom may be resistant for various reasons that require careful change management.

Academic workloads in a research-intensive environment, where scholarly teaching and the scholarship of teaching are still not necessarily well understood or valued, is a major constraint, the amelioration of which requires significant ‘learning leadership’.

A useful strategy is to use integrating devices across the law degree, including, for example: teaching teams working across years to ensure incremental development for increasing complexity; the provision of multiple opportunities and contexts across the program for students to develop and enhance their acquisition of learning objectives; the harnessing of learning, teaching and assessment approaches for integration; and the engagement of relevant stakeholders in the process, including the profession, sessional teaching staff, graduates and students.

More recently, some newer curriculum imperatives have also presented; specifically, the articulation and enactment of the teaching/ research nexus, and the desirability of building in more opportunities for both peer-to-peer interaction, and the harnessing of the ePortfolio — akin to the United Kingdom’s Personal Development Planning (PDP). Given continuing massification and the diversity of the entering cohort, it is also incumbent upon us to pay greater attention to the early and intentional development of our students ‘tertiary literacies’ (in the legal context especially, the academic literacies of skills in reading, referencing, listening, writing, and presenting orally — though information and computer literacies are also relevant — and, increasingly, cultural literacy).

In the modern age, it would be further remiss not to refer to one final area deserving of our consideration; creativity. Business literature and economic policy now make frequent calls for enhanced ‘creativity’ in the workplace, while innovating on the basis of creative ideas is a key aspect of recent knowledge economy discourse. While no definitive definition of ‘creativity’ has yet emerged, it has been suggested that ‘creativity embodies generic attributes including communication, team-work, problem solving, cultural understanding, and decision making skills’.

In this regard, it is important for us not to conflate critical thinking and problem-solving skills (with which legal educators claim familiarity) with creative thinking; though it may well be that the higher order, abstract ranges of the former skills stretch towards the creative capability.

Preparing our graduates for modern citizenship and the 21st century workplace requires significant qualitative, if not transformative, change to our current learning, teaching and assessment practices. It is what the student does (as opposed to is) with the various resources and inputs they are given — how they construct their own understandings and new knowledge, ways of doing and professional identity — that is critical.

Legal educators will need to be newly skilful in their design of these learning-centred approaches and embrace the understanding that ‘[l]earning takes place through the active behaviour of the student; it is what [they] do that [they] learn, not what the teacher does’.

Critical to the efficacy of any pedagogical approach adopted is how we frame our assessment practices.

Once we settle, finally, the objectives and purpose of the law degree, the alignment question for us to address is — what do we really expect our students to learn, to do and to value and how do we best assess for that?

In adopting the various integrative approaches suggested here, an underpinning philosophy should be an intention to manage the entirety of the student experience proactively for engagement, satisfaction and learning success.

The possibilities around these ideas for harnessing and linking curricula and co-curricula domains to inspire, motivate and engage law students is currently an underdeveloped area of legal education. Similarly, learning framed as an active and collaborative social experience with other students and teachers could and should be exploited with greater intentionality.

In the United States, John Gardner has urged a focus on reflection, integration and closure as a mechanism to improve the ‘senior year experience’ to support student success and transition to life after graduation.

Carnegie contextualises this thinking to legal education by advocating the provision of a capstone opportunity, in the final law year, for students to ‘develop specialised knowledge, engage in advanced clinical training, and work with faculty and peers in serious, comprehensive reflection on their educational experience and their strategies for career and future professional growth’.

Most students enter law school naturally idealistic and positive about their legal future and with a degree of altruistic intent regarding the potential value and meaning of their prospective lawyering work. Unfortunately, the tradition has been for law school to quickly instil an ethos of lawyering replete with the negative messages Carnegie has identified, leading many students to conclude that
they must set aside their values, compassion, and moral and social consciousness as aspects more likely to hinder than help ‘successful’ lawyering or, at best, as secondary to it.

Implementing a new vision for a liberal legal education that will better prepare students as professionals and citizens for the modern (legal) world will require leadership and moral courage from us all. But the choice is either leadership for responsive integration or the perpetuation of disengagement for contemporary professional irrelevance into which we will sink in the face of a perfect legal education storm.

Science in the law school curriculum: a snapshot of the legal education landscape
M Merlino, J Richardson, J Chamberlain & V Springer
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Practising attorneys, the judiciary, and political policy-makers, who increasingly encounter expert testimony from diverse fields in litigation and decision-making contexts, face additional challenges as rapid advances in science and technology demand a broader range of skills and knowledge. These developments bring with them new issues that must be addressed at numerous levels, many of which will find their way into the courtroom or the halls of legislatures.

As Howell Jackson of Harvard Law School stated, ‘Lawyers — whether corporate counsel or public interest advocates — must work in a world in which arguments are framed in quantitative terms and the evaluation and presentation of data are critical to effective advocacy’. In the current climate of fast-paced scientific and technological discovery, attorney and judicial competence in the area of expert testimony has become even more multi-faceted, encompassing a broader range of knowledge and skills than ever before.

How have law schools adapted in this area to the changing needs of their students? Why have some expanded their course offerings or materials to include courses on science, while others have chosen to offer more traditional curricula? What factors are related to whether or not law schools disseminate innovations in litigation practice to their students?

Interdisciplinary collaboration among legal scholars and researchers from other disciplines is increasing as law school faculty are under increasing pressure to publish in scholarly journals. Other scholars argue that empirical research methodology should be adapted to the requirements of legal scholarship, and that the infrastructure of teaching and research at law schools should be reorganised to support such empirical research. Potential employers of law students may value a variety of technical skills such as econometrics, statistics, engineering, and fields of basic science that are outside the traditional law curriculum. Attorneys are even being encouraged to develop increased sensitivity toward the cultural backgrounds and psychological well-being of their clients.

Although many legal educators and practitioners recognise the general importance of broadening the scope of legal education to include training that will allow them to work collaboratively with members of diverse professions, little empirical work addresses differences in the availability, structure, and content of such courses. The research to date suggests that many law schools may have fallen behind the curve when it comes to preparing students to litigate cases in which expert testimony will be proffered. To our knowledge, the 1992 Carnegie Task Force Survey and the 2000 Science Education Survey are the only two empirical studies of the availability of science education in law schools that have been performed to date.

The Carnegie Task Force Survey on science education opportunities in law schools suggested that by 1992 several law schools had already begun to incorporate interdisciplinary courses in their curricula. The Science Education Survey revealed that by 2000 more law schools had added courses specifically designed to give their students a basic understanding of the philosophies and methods of science. However, Merlino et al also found that the number of students enrolling in the courses identified were relatively small. It was not possible on the basis of the Science Education Survey responses to determine whether the class enrolment was a function of student interest (eg, the courses may have been elective) or enrolment limits imposed by the course instructors. Also, only about 50 of the 172 US law schools that were sent a questionnaire returned the survey. It was not clear why this was the case. Perhaps schools with more offerings in the area of science education for attorneys were more likely to return the instrument. Or perhaps the requests for information from the law professors were not received or were not forwarded from the Dean’s office in a timely manner. While the findings from these studies suggest that interdisciplinary education is on the rise at US law schools, the modest response rate for the Science Education Survey precludes making any definitive statements about the efforts of law schools to meet the changing demands of the litigation environment. One might speculate about the reasons for the disparity in the availability of science education for law
students, but the fact remains that prior to the present study no clear picture existed of the education landscape with respect to interdisciplinary education about science in law schools.

A sociological process model for the production and diffusion of innovations in litigating cases involving purportedly scientific evidence was articulated by Richardson and Ginsburg, and elaborated upon by Gatowski, Dobbin, Richardson and Ginsburg. These researchers proposed several mechanisms that may either facilitate or constrain the production and diffusion of scientific evidence. Among these mechanisms are the characteristics of the overall practice environment and the level of structural equivalence among legal systems. Each of these mechanisms plays an important role in shaping the course of law school education.

According to Gatowski et al, structural equivalence refers to the degree to which different legal systems are similarly situated sociologically and historically. The more similarly situated two legal systems are, the greater the likelihood that diffusion will occur when similar issues arise within the two systems. If law schools can be conceptualised as legal sub-systems, institutional characteristics can be compared to create a view of the influence of such characteristics on the diffusion of practice innovations within the law school curriculum.

The overall practice environment includes such characteristics of the legal system as precedent, statutes, administrative constraints (eg. rules of evidence, admissibility standards, appellate/review procedures), state and national law-making organisations (eg. legislatures), and the existence of law reform commissions. Changes in laws, precedents, and even the characteristics of individual cases or case congregations change the overall practice environment. The practice environment within which law schools are embedded varies according to state. State evidence laws governing the admissibility of expert testimony may differ. Consequently, the science content in law school evidence courses might be expected to reflect the admissibility standards of the state in which the school operates.

Our study addresses several important questions. How do schools that have incorporated science education in their curricula differ structurally from schools that do not offer courses with scientific content? What other institutional factors might contribute to the offerings of science education for law students?

We also addressed differences in the science-related course offerings by examining the characteristics of the practice environment in which the schools were situated. Specifically, we wanted to know whether the science content of evidence courses reflect the admissibility standards in a specific practice environment. Our findings are based on data obtained from a combination of sources. We conducted a secondary analysis of existing statistics from several sources. Institutional statistics (eg. number of students per section, institutional affiliation, degrees offered, number of faculty, institutional resources, location) were abstracted from the resources published the Law School Admissions Council (LSAC) and the American Bar Association (ABA) websites. Information about relevant courses was obtained from each school’s site or by contacting the school directly by telephone.

We also conducted a content analysis of course materials submitted by professors who participated in our ‘Science in the Law School Curriculum’ survey. The objective of the content analysis was to assess empirically several characteristics of the course materials used in the general evidence, scientific evidence, and relevant interdisciplinary courses. These characteristics included: (1) the variety of science-related topics; (2) the focus of the course materials (eg. legal or scientific); (3) the proportion of the course materials related to the explanation of scientific concepts; and (4) the extent to which scientific concepts are discussed.

A significantly greater number of courses with science content were offered by doctoral extensive institutions than by masters/bachelor programs.

Free-standing law schools, the overwhelming majority of which are private (25 of 29), offered the second-highest number of science-related courses. Tuition level was positively correlated with the number of full-time faculty at the institution, the number of general evidence courses, and the number of courses with science content.

Free-standing law schools on average had a significantly greater number of full-time students than any of the college or university affiliated schools. However, the student GPA and LSAT scores were highest for the doctoral extensive level schools. Thus, it may be that there is greater demand among higher-achieving students for specialised courses such as those with science content.

The availability of courses with science content was negatively correlated with the number of credits required to earn the JD, but there was no significant difference in the number of credits required to earn the JD among the Carnegie classifications of the school. This negative correlation might be explained by the number of faculty available to teach courses with science content. Free-standing institutions and doctoral extensive institutions offered more courses with science content than masters/bachelor institutions or doctoral institutions. This explanation is also supported by the finding that there is a negative relationship between the availability of courses with science content
ABA and are licensed to practice law in at least one state. Forty states require members of the Bar to
Bar Association and state bar associations. For example, many law professors are members of the

interactions with the Environmental Protection Agency, wildlife conservation groups, and a division
management of those resources (eg. a school in an area in which heavy logging occurs might have
schools situated near significant natural resources may offer scientific content related to the
some states have courts of special jurisdiction to deal with cases involving natural resources. Law
of evident claims.

resources to bear (eg. lobbyists, relevant expertise, financial assistance) that facilitate the production
innovation because professors teach future attorneys (and judges) about law and its operation in the
courtroom. Law professors who have little experience in the area of science may be hesitant to include
much scientific content in their courses. Some law professors may feel that the methods and
philosophies of science are beyond the scope of their teaching responsibilities. It may also be true
that negative attitudes about science, scientists, or scientific evidence inhibit some professors from
incorporating science content into their courses.

Understanding some of the characteristics of law schools and the institutions they are affiliated
with is an important part of exploring the availability of science education for law students. However,
institutional characteristics are only one factor among many that must be considered. Others include
credible dissemination sources for practice innovations, the attitudes and experiences of law professors,
and the political and social support for the use of various types of scientific evidence.

Credible dissemination sources include law review articles, case law, professional conferences,
academic journals, and other professional resources. This knowledge base develops through the
recognition that the production of a particular scientific claim has value as possible evidence, followed
by social construction of the claim as evidence or counter-evidence by ‘evidence entrepreneurs’ (eg.
the party who perceives the value of the evidence and promotes its use). Available, accessible, and
credible dissemination sources constitute ‘state of the art’ knowledge for practitioners and for future
attorneys who are being socialised into legal culture via their experiences in law school. The
dissemination sources most commonly used in law schools are casebooks, texts, and law review
articles.

Law faculty also bring innovations into the classroom by participating in professional and academic
conferences, where discussion about current topics and research are presented. Law school professors,
who are ‘gatekeepers’ of the diffusion of practice innovations to the law school curriculum, can be
conceptualised as evidence entrepreneurs whose courses reflect the activities and affiliations of the
professors.

The attitudes and experiences of law school professors should play a role in the diffusion of practice
innovation because professors teach future attorneys (and judges) about law and its operation in the
courtroom. Law professors who have little experience in the area of science may be hesitant to include
much scientific content in their evidence courses. Some law professors may feel that the methods and
philosophies of science are beyond the scope of their teaching responsibilities. It may also be true
that negative attitudes about science, scientists, or scientific evidence inhibit some professors from
including such content in their courses. Other professors may believe that assessing scientific evidence
is very important, leading them to promote such knowledge in their courses.

High-profile cases, emotionally charged issues, or catastrophic events often attract intense media
coverage. Such intense publicity tends to highlight sensitive social issues that in turn may attract the
attention of certain advocacy groups. Once advocacy groups are attracted to these issues, they bring
resources to bear (eg. lobbyists, relevant expertise, financial assistance) that facilitate the production
of evident claims.

Social issues can also be expected to influence the content of law school courses. For example,
some states have courts of special jurisdiction to deal with cases involving natural resources. Law
schools situated near significant natural resources may offer scientific content related to the
management of those resources (eg. a school in an area in which heavy logging occurs might have
interactions with the Environmental Protection Agency, wildlife conservation groups, and a division
of the science department dedicated to the study of environmental issues). Thus, the work of evidence
entrepreneurs is influenced by the interaction between the practice environment and the larger culture
in which the practice environment is situated.

Another source of influence on the activities of evidence entrepreneurs is that of the American
Bar Association and state bar associations. For example, many law professors are members of the
ABA and are licensed to practice law in at least one state. Forty states require members of the Bar to
attend mandatory continuing legal education. These courses are sponsored by a variety of organisations
(eg. women’s, children’s, and minority advocacy groups, experts in various fields, banks, insurance
providers), and their availability may reflect the attitudes and opinions of the course instructors or
the state bar association’s CLE regulatory committee about the needs of attorneys in the current
practice environment.

While research described here provides a useful snapshot of one aspect of the legal education
landscape, it is clear that a full understanding requires consideration of the relationships among
the mechanisms described above. Law schools and law faculty influence the production of science in the
courtroom, and in turn are influenced by the practice innovations that develop at this rapidly evolving
intersection of law and science. The progressive multidisciplinary content that some law school
curricula reflects the changing demands of the litigation environment. Increased multidisciplinary
education in turn impacts the course of litigation by preparing future attorneys and judges to deal
with increasingly complex scientific and technical information. Recognising and facilitating these
complex interactions helps shape law students into effective advocates who are better able to serve
their clients, and judges who are knowledgeable and capable decision makers in areas of complex
litigation involving scientific evidence and expert testimony.

Respondents from a national survey of law school professors (n=225) were asked to submit a copy
of their course syllabi and the references for textbooks, casebooks, law review articles, academic
journal articles, and other sources of reading by fax, mail or e-mail to the research site. Sixty-nine
professors submitted their materials. A database of reading materials was compiled and a reference
list organising the readings by subject area and type (eg. textbook, casebook, law review article,
journal article) was created. Textbooks and casebooks for scientific evidence courses were identified
and acquired for coding purposes. The references for articles were examined and articles that were
used by a significant number of professors were acquired and coded.

Systematic quantitative and qualitative content analysis procedures were used. These procedures
were various versions of content analysis that followed established techniques that we have used in
previous studies in other legal contexts. The unit of analysis was the course syllabus and the unit of
observation was the reading assignment within the syllabus. The codebook consisted of mutually
exclusive and exhaustive coding categories, which were empirically constructed using the materials
identified.

This categorical variable included six broad categories of science: health care / medicine,
engineering / technology, physical sciences, social / behavioural science, business / law / public
administration, and trades / forensic.

The institutions that accepted students with the highest LSAT scores (100 per cent quartile) offered
significantly more science/law and science courses (M = .45) than 75 per cent quartile institutions (M
= .30; p = .02), 50 per cent quartile institutions (M = .27; p = < .01) and 25 per cent quartile
institutions (M = .15; p = < .01).

A significant number negative correlation was found between the total number of science/law and
science courses and the student/faculty ratio (r ² = -208, p = .005, n = 184), indicating that as the
student/faculty ratio increased, the number of courses with science courses decreased.

The globalisation of legal education
S Chesterman

Legal education has always borne an ambiguous relationship to the practice of law. Is a law degree a
technical qualification, like carpentry or medicine, or a serious field of intellectual inquiry, like
philosophy? The uncertain answer to that question is evident in the fact that so many jurisdictions
require a professional qualification administered by the local guild — a pupilage, or a bar examination
— as well as a degree in order to practice.

How one answers the question affects more than the careers of professional lawyers: it will have
important implications for how one teaches in a law school. In Australia, for example, law is increasingly
regarded as a kind of de facto Arts Degree — only about half of all law graduates actually end up
entering the private legal profession. Singapore, by contrast, until recently treated law more as a
technical qualification, with the government’s Third Committee on the Supply of Lawyers capping
the number of law students at the estimated number of lawyers required in the republic. As a result,
Australia has more than six times as many law students per capita — 28,000 compared to around
1,000 in Singapore, or one student for every 700 people in Australia as opposed to one for every
4,600 in Singapore — but has also embraced a more critical and theoretical approach to the study of
law.
This article focuses not on how legal education is changing within any particular jurisdiction, but as a result of transformations across jurisdictions. The difference now is that the engine of change is not top-down politics but bottom-up practice. The transformations identified here have been led, first, by the profession, as changes in the way law is practised have necessitated a change in the way in which it is taught. Such influences are linked to developments in transportation and communication and the enmeshing of diverse economies embraced by the loose term ‘globalisation’. A second influence has been the more mobile student population that law schools confront, with immigrants, expatriates, and exchange students making up ever larger proportions of our classes. Thirdly, there has also been an intellectual shift, as those of us studying the law realised that there was far more to be gained from comparative analysis and, more recently, that something interesting was happening that transcended traditional jurisdictional analysis.

These influences have seen legal education move away from a purely local approach and through three broad paradigms, which one might term ‘international’, ‘transnational’, and now ‘global’ approaches to legal education.

Even with the standardisation of legal education in common law jurisdictions, the guild-like nature of the profession encouraged a focus not merely on national but on sub-national jurisdictions. As interstate commerce and thus cross-jurisdictional legal practice increased, so did the need for lawyers to be familiar with other jurisdictions and, with the movement of professionals, to have a means of transferring accreditation.

As a modest advance on a purely local conception of the law, this international paradigm saw the world as an archipelago of jurisdictions, with a small number of lawyers involved in mediating disputes between jurisdictions or determining which jurisdiction applied.

Students within this period rarely moved. The vast majority studied in the jurisdiction in which they lived and within which they would practice, with the exception of those living under colonial rule who might be sent to the metropole for instruction and recruitment into the ruling class.

The term ‘transnational law’ is commonly attributed to Philip C. Jessup’s Storrs Lectures at Yale in the 1950s, where he used the term to embrace ‘all law which regulates actions or events that transcend national frontiers’. For present purposes, it denotes the shift in perspectives that came slightly later, in the 1970s and 1980s, where the world came to be seen not as an archipelago but as a patchwork of jurisdictions. The increasing mobility of capital and people required, and made possible, greater familiarity across jurisdictions.

Law schools began to offer summer programs abroad: in the United States in 1975, five American Bar Association (ABA)-approved law schools offered such programs; a generation later 120 law schools did.

Of more lasting significance was the increase in exchange programs and the rise in the number of foreign students admitted into law degree programs. The National University of Singapore, for example, today has one of the most extensive exchange arrangements in the world. More than a third of its undergraduate law students spend a semester or full year on exchange to one of more than 50 universities in 16 countries, with a corresponding number of students coming from abroad to study in Singapore.

The world has moved from archipelago to patchwork to web — both in the sense of the rise of the Internet as well as in the sense that commercial and other activities do not simply overlap at the edges but may be structurally and inextricably linked. Leading law firms increasingly present themselves as ‘global’, a status measured for the first time in 1998 when the American Lawyer first published its ‘Global Fifty’ list of firms ranked by size and revenue. This has been augmented by the increasing importance of non-traditional regulatory regimes that transcend traditional jurisdictional analysis. Whether it is compliance with ISO standards, controlling the behaviour of multinational corporations, or — to pick the most obvious example — regulation of the Internet itself, contemporary normative questions are frequently global rather than local.

To operate effectively in such a world, individual lawyers need to be comfortable in multiple jurisdictions, often simultaneously. In the words of one dean, we need to educate lawyers to be ‘residents’ rather than ‘tourists’ in new jurisdictions. At the same time, the students entering law school are different. In the course of the twentieth century, we moved from a tradition of a person having one job as a career to expecting to move jobs once or twice. We now deal with students who expect to move countries a few times, seeing themselves as part of a global elite in a worldwide market for talent.

Within legal education, the first mark of globalisation as distinct from transnationalisation was the move from exchange programs to double-degree programs across national jurisdictions.

Such double-degrees are essentially an extension of traditional exchange programs. More interesting intellectually is when law schools actually start teaching together.
The NYU School of Law and National University of Singapore Dual Degree Program, known informally as ‘NYU@NUS’, is a move in this direction. It offers master of laws degrees from each of the partner institutions, but is taught entirely in Singapore with NYU faculty flying out during the northern summer months; students then stay on to take courses with NUS and visiting faculty. What is novel about the approach is that it is a genuine collaboration between the two institutions, going beyond the exchange model to integrate courses into a whole that is greater than the sum of its parts.

When planning the program, it had been assumed that two broad categories of students would apply: first, Asian students who aspire to an American legal qualification but choose not to base themselves in the United States; and, secondly, American and European students who recognise the benefit of an NYU-brand degree, but see their intellectual or professional future in Asia.

Interestingly, we had assumed that the largest contingent would be in the first, Asian, category — in fact Asians made up less than half of the inaugural cohort. In the second year of the program, over 50 students from two dozen countries enrolled, once again touching every continent and with well under half from Asia itself. This reflects the extraordinary international interest in Asia as the future of globalisation, as well as the suitability of Singapore in general and NUS in particular as a gateway to that region.

The above description of the changing paradigms of legal education is not intended to suggest that the evolution that has taken place is either equitable or progressive in the political sense of the term. Indeed, on the face of it the exact opposite would appear to be true, as the ability of graduates to enter into the top jobs is increasingly tied to their ability to study in the most expensive or exclusive institutions.

In this context, a small ray of hope in the phenomenon of global legal education is that it is essential for lawyers to be able to cope with diversity. This offers an incentive — heavily litigated in the United States — for law schools to use scholarships to expand opportunities to candidates that are diverse in every sense. Nevertheless, the emergence of ‘global law schools’ predicted by Dean Tan in this journal recently will certainly be an elite phenomenon.

A second critique that might be made of the phenomenon and the way it has been described in this article is that what is occurring is not so much globalisation as Americanisation. Of the ‘Global Fifty’ law firms cited earlier, 30 of the top firms by size were American; when ranked by revenue all but seven were. Within academia, one can see the shift of English-speaking educational pedigrees from Oxbridge to the United States (for example within the faculty of the National University of Singapore) as well as the gravitational effect of US institutions on pedagogy and US journals on research.

The US model of legal education has also exerted its own pull, clearly influencing reform initiatives in Japan and Korea, which have moved to adopt JD-style graduate law degrees. The same may happen in Australia, where the University of Melbourne has adopted a similar approach.

Comparable developments appear to be underway in Hong Kong and the Philippines, where the JD is offered alongside the LLB.

Nevertheless, programs like NYU@NUS also exemplify the limitations of the US model — and a recognition (by Americans and others) that a truly global legal education requires not simply the exporting of US ideas but a genuine engagement with the people and the places that make up today’s global profession.

As an Australian educated in Europe working for an American law school based in Asia, these reflections are of more than academic interest. The transformations driven by changes in the practice of the law, by the types of students pursuing degrees, and — somewhat belatedly — by research developments in the loosely defined area of ‘global law’ have radically changed the nature of legal education. This is true even if not all law schools have recognised this, and these forces are going to continue exerting pressure as the notoriously protectionist world of lawyers becomes exposed to market forces.

One constant is that basic law degrees will remain within the province of individual jurisdictions. (Similarly, admission to practice will continue to be controlled at the jurisdictional level — though there will be pressure from industry to liberalise the recognition of foreign-trained lawyers.) Nevertheless, the push for standardisation in the global market for legal talent will encourage more states to move in the direction of an American-style JD graduate law degree. England will probably remain an outlier with its three-year undergraduate programme, but a higher proportion of its students will seek graduate qualifications elsewhere. The content of the basic law degree will continue to emphasise the traditional subjects, but the move away from the memorisation of black-letter law will become irresistible: faculties will seek ways to ensure that their graduates are both intellectually and
culturally flexible, capable of adapting not merely to new laws but to new jurisdictions. Comparative and international subjects will receive greater emphasis, with comparative and international perspectives also being introduced to a wider range of subjects.

In addition, at least some international experience will increasingly be seen as essential to the practice of law at the upper echelons, with more law schools offering exchange and double-degree programs. Early collaborations were transatlantic, but many future tie-ups will focus on Asia, recognising the important role that Asia now plays in economic terms and the role it will assume — eventually — in political and cultural terms. A second locus will be the Gulf, offering enormous financial resources but less conducive to genuine partnership given the dearth of English-language scholarly institutions.

Law's ambiguous status as both a professional qualification and a subject of serious research has seen it evolve fitfully, driven by the demands of the profession and the needs of students, with pedagogy often being more ex post justification than forward looking agenda. It is an exciting time to teach law, but an even more exciting time to study it.

HISTORY
The history and status of legal education
J O Sonsteng, D Ward, C Bruce & M Petersen

The law school legal education system seems successful at a glance. The general law school curriculum is a significant source of training in eight of seventeen important legal practice skills: library legal research; knowledge of the substantive law; legal analysis and legal reasoning; sensitivity to professional ethical concerns; computer legal research; knowledge of procedural law, written communication; the ability to diagnose and plan for legal problems; and legal practice management training in technology, computers, and communication skills.

In spite of this evidence, a closer examination of the legal education system reveals that the legal education system does not equip its graduates with the skills to understand and thrive in the practice of law.

In addition, the legal education system does not provide a significant source of training in nine legal practice skill areas: (1) understanding and conducting litigation; (2) drafting legal documents; (3) oral communications; (4) negotiations; (5) fact gathering; (6) counseling; (7) organising and managing legal work; (8) instilling others' confidence in the students; and (9) providing the ability to obtain and keep clients. Nor does the legal education system provide training in eight important legal practice management skills areas: (1) project and time management; (2) efficiency, planning, resource allocation, and budgeting; (3) interpersonal communications and staff relations; (4) fee arrangements, pricing, and billing; (5) governance, decision-making, and long-range strategic planning; (6) marketing and client development; (7) capitalisation and investment; or (8) human resources, hiring, and support staff.

Before law was taught in schools in the late 1700s, aspiring lawyers received little formal education. In fact, legal training continued to be informal into the twentieth century. Many lawyers were self-taught, while others trained as apprentices and received practical education by working under experienced professionals.

The apprenticeship system worked well as it adapted easily and apprentice labour could fill a number of necessary functions. Despite the benefits, apprentice training was unstructured and uneven. Time was often spent on menial tasks rather than study, and even the best lawyers could not always dedicate adequate time to their apprentices.

The first law schools grew out of specialised law offices that employed several apprentices at one time. Originally, law schools were a supplement to the apprenticeship program, and justified their existence on the ground that they were specially adapted to provide one phase of a student's multi-phased preparation for lawyering.

Harvard Law School, the first university affiliated law school, was in operation by 1817. The law degree (LLB) was not a post-graduate degree. It was not standard for law schools to require any prior college work. Classes at Harvard generally consisted of students gathered in a hall to listen to a professor lecture on the law.

By 1860, few states required any sort of apprenticeship. Twenty-one law schools had become popular alternatives for law students. The proprietary law schools (those not affiliated with a university) provided a structured and systematic approach to legal education. In addition, they offered students a more significant practice component than university-based law schools. The universities distinguished themselves with a mission to teach theory, history, and philosophy of the law.
The lecture method was predominant in all schools. It demanded little from the students and offered very little practical information about how to apply what had been learned.

Harvard and other law schools struggled to compete with the education provided to law students studying under a practitioner, and they sought to make changes that would further their recruitment efforts.

There were no exams or attendance requirements, and faculty taught part-time while maintaining full-time legal or judicial work. Langdell elevated law to a post-graduate level of study and increased the length of study to three years. He introduced entrance exams, graduation exams, rigorous coursework, and the case method.

Langdell's case method was considered novel because it replaced textbooks with appellate cases 'arranged to illustrate the meaning and development of principles of law'.

In addition to the case method, Langdell incorporated Socratic dialogue into classroom discussion.

When the three-year curriculum requirement took effect in 1876, enrolment steadily plummeted from 199 students to a low of 138 in 1882. While this troubled Langdell, and drew much criticism, by 1883 enrolment increased, the faculty expanded, and the new legal education culture finally took hold.

The ABA was founded by 100 lawyers from 21 different states on August 21, 1878. At the very onset, in 1878, the ABA directed the newly formed Committee on Legal Education and Admission to the Bar to prepare a plan for establishing uniform requirements. Three years later, the Committee on Legal Education presented three proposed resolutions: (1) implementation of a thorough three-year course of study in all law schools, (2) admission to the bar after having passed an oral and a written examination and receipt of a diploma, (3) authorisation that time spent in law school is equal to time spent in an attorney's office. All three resolutions were adopted in 1881.

By 1916, the ABA had adopted standard rules for admission to the bar, and educational standards for law schools.

As a result of the ABA's push for a more uniform legal education requirement, by the end of the 1930s nearly every American law school had adopted the ABA standards.

In the early part of the twentieth century, law schools attempted to address students' lack of preparation for lawyering by introducing clinical education. Law students at several schools established volunteer, non-credit 'legal dispensaries' or legal aid bureaus to provide hands-on opportunities to learn and practice lawyering skills and legal analysis.

In the post-Watergate years, an increased demand for law schools to add legal ethics to the curriculum was realised. The ABA responded by requiring that all law students take a course in professional responsibility.

In 1979, the ABA commissioned Roger Cramton to conduct a study on the state of legal education. The results of the Cramton Report concluded that, at best, legal education was providing students a two-year program with a fairly useless third year.

In the late 1980s, the ABA formed another task force to address concerns with the state of the legal education system. Studies were conducted, and in 1992 the MacCrate Report was published. Much talk followed about implementing the changes recommended by the report, but in the following years, schools reverted to the status quo with very little movement toward reform. In February 2007, the Carnegie Foundation for the Advancement of Teaching issued a report entitled 'Educating Lawyers'.

The history of the legal education system shows that in spite of criticism and attempts at reform, the system remains similar to that of the late 1800s.

The current legal education system does not focus on effective teaching for the adult learner, does not require curriculum aimed at teaching the basic skills necessary to practice the law, and does not communicate the importance of balancing life with the stresses of a legal career.

The case method of teaching is a one-size-fits-all approach that critics argue is ineffective. Although the method helps prepare students to meet some of the challenges of the legal profession, it only provides a fraction of what is required for graduates to be competent lawyers.

The Socratic method breeds stress through the arbitrary and sometimes ruthless questioning of students about cases and legal principals that are often subtle, minor, and obscure.

Adding to the pressure of classroom culture, the traditional law school model does not provide regular or relevant performance feedback, so students have little opportunity to improve. Prior to law school, many students had outstanding scholastic records and developed a belief system that equates self-worth with achievement. A significant number of law students lose self-confidence and their motivation to learn.

A major obstacle to innovation is a failure to take into account students’ individualised learning styles and capacities. The personal preferences of professors often drive curriculum design. Skills or
clinical courses are viewed as an expensive drain on law school budgets as compared to traditional lecture-based courses.

The majority of law schools require students to take a separate first year course in legal research and writing. In most schools these courses are not taught by traditional tenure-track faculty, but by ‘instructors who specialise in teaching legal research and writing'.

The current curriculum does not train students to view the practice of law as both a profession and a business. While law firms and law schools agree that some skills must be learned on the job, competent lawyers — especially those in small firms or solo practice — would benefit from a curriculum that included the fundamentals of how to run a business.

Legal education’s assessment systems are as outdated as the standard curriculum, and are neither effective nor appropriate.

Law school assessment is infrequent, consisting of only one or two exams per semester, which does not provide an adequate opportunity for improvement throughout the duration of a course.

Clinical professors see students at the bottom of their class flourish in clinical settings that allow them to demonstrate communication or persuasion skills.

Multiple-choice exams provide little to no opportunity for students to display what they actually know about a particular topic.

The legal academic community places a higher value on research than on teaching. The publish-or-perish mentality diminishes quality of teaching and offers greater reward and recognition for scholarship than for teaching-related accomplishments.

Because law school professors have limited knowledge of learning theory, they teach without regard to the effectiveness of the method. Without an understanding of why and how students learn, they are unable to help students perform and learn effectively. Traditional scholars, however, resist sacrificing theoretical instruction to practical training because they believe that the practical aspects of legal practice should be left to clerkships and opportunities outside of law school.

In spite of its benefits, the tenure system does not encourage change because it offers professional security, regardless of whether change is overdue or implemented. Many skeptics question the benefits of tenure to students in a system where tenured professors are often viewed as untouchables with unquestioned job security.

The concern with integrating technology into the education setting is that it may interfere with teaching rather than enhance it. The use of PowerPoint slides and laptops within the traditional classroom could hinder interactions between students and teacher and may create a passive-learning environment.

As students and professors become increasingly technically sophisticated, distance learning is a more viable option for legal education. Schools remain resistant to the idea of distance learning, however, because of a fear that students will not learn effectively or that it could take longer to develop a distance learning class than a traditional one.

A legal education should be affordable for anyone qualified to be a lawyer. Law school tuition rates increase at about eight per cent per year, more than twice the general inflation rate.

The students who take government or other public interest placements make an average of $35,000 per year. When that income is compared to $85,000 in debt, the financial impact is substantial.

Shortly after the ABA began to regulate legal education and bar acceptance, a number of studies were initiated to analyse the legal education system. The studies examined the effectiveness of legal training, determined lawyers’ preparedness for legal practice upon graduation from law school, and identified where lawyers were actually receiving much of their training.

On February 7, 1913, the Committee on Legal Education requested that the Carnegie Foundation for the Advancement of Teaching review legal education in the United States. In 1921, the foundation funded a study called the Reed Report, which identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training. To satisfy the requirement of a general education component, the Reed Report called for at least two years of pre-law college training — a proposal the ABA promoted beginning in 1921. This recommendation was widely implemented, and by 1936, 32 states required at least two years of college education before being admitted to law school. Reed’s recommendation regarding practical skills training was not vigorously pursued.

In 1979, the ABA commissioned a committee to examine the status of legal education and provide recommendations for change. Known as the Cramton Report, this report recognised that diversity and experimentation, as opposed to mandated uniformity, offer the most likely path to more effective law school education.

For instance, schools should work toward shaping attitudes, values, and work habits critical to a lawyer’s ability to translate knowledge and relevant skills into adequate professional experience.
Dissatisfied with law schools’ preparation of graduates for the actual practice of law, in 1989, the ABA established a task force to examine a perceived gap between legal education and law practice. The task force, led by Robert MacCrate, published the MacCrate Report in 1992. The report found that while law schools appeared to be committed to practice skills instruction, they needed to affirm their commitment to train students to practice effectively.


Generally, the law school curriculum was credited as a significant source of training in eight of the 17 legal practice skills. Respondents believed that non-law school sources were a significant source of their training for all legal practice areas, even though most believed that law schools were capable of teaching all 17 skills.

In addition to analysing essential lawyering skills, the Minnesota survey addressed the importance of management skills and measured how prepared lawyers felt in those skills upon graduation.

In 2003, David A. Binder and Paul Bergman conducted research and advocated a new approach to law school clinics. Findings showed that ‘60 per cent of these lawyers reported that they received no practice or rehearsal training before taking their first deposition’. Binder and Bergman suggest that when students have increased opportunity to practice those necessary lawyering skills in a systematic way and in different contexts, with frequent feedback and the recurring prospect for self-assessment, they will be better prepared for practice.

Sheldon and Krieger’s research emphasises that skills training courses have a positive influence on the individual’s ability as a lawyer, including competence, dealing with stress, and personal well-being.

The Carnegie Foundation for the Advancement of Teaching examined the way law schools develop legal understanding and professional identity in its February 2007 report entitled Educating Lawyers. The report made five key observations of legal education in the United States and Canada. First, law school provides rapid socialisation in the standards of legal thinking. Second, law schools rely heavily on one way of teaching to accomplish the socialisation process, primarily through the case-dialogue method. Third, the case-dialogue method of teaching has valuable strengths but also unintended consequences. Fourth, the assessment of student learning remains underdeveloped. Fifth, legal education approaches improvement incrementally, not comprehensively.

Additionally, Educating Lawyers discusses seven recommendations. Law schools should: (1) offer an integrated three-part curriculum: teaching of legal doctrine and analysis, introduction to the several facets of practice, and exploration and assumption of the identity consonant with the fundamental purposes of the legal profession; (2) join lawyering professionalism and legal analysis from the start; (3) make better use of the second and third years of law school; (4) support faculty to work across the curriculum; (5) design the program so that students and faculty weave together disparate kinds of knowledge and skill; (6) recognise a common purpose; and (7) work together within and across institutions.

It is important for professional education programs to acknowledge and accommodate multiple learning styles. A system catering to one type of learner can limit a profession by allowing only a small percentage of students who happen to excel best under the predominant learning method to enter the job market successfully.

Traditional law school instruction focuses almost exclusively on the lecture-based method of teaching and a timed-essay format of testing. Only a small segment of students are able to achieve high academic success within this system. Often discouraged from entering the profession is a segment of students who may be better suited to certain aspects of lawyering, such as client interaction, trial advocacy, mediation, and negotiation, skills that remain untapped and academically unrecognised at many law schools.

Learner-centred education focuses on the pre-existing knowledge, skills, beliefs, and experiences students bring to the classroom. Teachers in learner-centred environments engage students to discover their pre-existing knowledge and use that information to initiate discussions of the students’ differences in the context of education.

Knowledge-centred classrooms emphasise the importance of establishing a baseline of knowledge before moving on to complex problem solving. The teacher must ascertain what the students do and do not know before the teacher can determine what must be taught. Law professors must strike a balance among requiring students to learn information, understand theory, and apply general concepts to real-life problems.

Assessment-centred environments continuously provide opportunities for students to identify what they do and do not know and opportunities to achieve greater understanding. Teachers in assessment-
pace and in time increments that are conducive to a variety of lifestyles. Virtual classes will not
where hundreds of students view lectures and multimedia presentations over the Internet at their own
this trend, law schools could eventually be transformed into a dual physical-and-virtual environment
accessibility and enhanced search ability. This format could break down barriers for some readers
and feedback given too late can slow a learner’s motivation.
student, feedback must be given in a timely fashion. Feedback delivered too early can be confusing
collect journals or self-critiques such as those mentioned above. In order to be most useful to the
coupled with the reflection must follow for learning to be effective. Reflection can be in the form of a log,
concept based on the first two phases; and fourth, application of the new experience, information, and
analysing the new information and making sense of it; third, coming to a conclusion, new idea, or
by doing and being involved; second, reflective observation and thinking about the experience while
The learning cycle suggests that even advanced practice-based forms of teaching and learning are
not in themselves sufficient. Merely doing something is not enough, reflecting on the doing and
testing out the reflection must follow for learning to be effective. Reflection can be in the form of a log,
diary, portfolio, journal, or even a video diary.
Reflective teaching and learning are essential to education. To be effective and grow as a teacher or
student, an individual must reflect on the experience.
Kolb describes a four phase learning cycle which includes: first, experience that involves learning
by doing and being involved; second, reflective observation and thinking about the experience while
analysing the new information and making sense of it; third, coming to a conclusion, new idea, or
concept based on the first two phases; and fourth, application of the new experience, information, and
concepts in fresh situations, which results in active experimentation.
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not in themselves sufficient. Merely doing something is not enough, reflecting on the doing and
testing out the reflection must follow for learning to be effective. Reflection can be in the form of a log,
diary, portfolio, journal, or even a video diary.
Reflective practitioners are adult learners who engage in a professional activity, and reflect on
their strengths, weaknesses, and areas for development. Students also should be encouraged to use
situations, tutorials, or placements to reflect on what they have learned.
Learning theorists agree that adult students need specific feedback in order to stay motivated. Too
often law schools use negative reinforcement that is useful only in changing bad behaviour rather
than they would credit themselves with being able to achieve, can have a dramatic impact on their
performance. Teachers also need to clearly communicate their expectations to the students, and
when possible, demonstrate their expectations through concrete examples of past student work they
find exemplary.
‘Elements of a supportive environment include teachers’ attitudes, student-faculty contact, and
role-model and mentor relationships’. A supportive environment enhances students’ learning,
willfulness to take risks, and their openness to offering and considering a variety of perspectives.
Simulations, externships, and live-client clinics add value to a student’s learning experience and,
although it may be educationally and economically difficult, these teaching techniques should be
incorporated into the law school curriculum.
Reflective teaching and learning are essential to education. To be effective and grow as a teacher or
student, an individual must reflect on the experience.
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their strengths, weaknesses, and areas for development. Students also should be encouraged to use
situations, tutorials, or placements to reflect on what they have learned.
Learning theorists agree that adult students need specific feedback in order to stay motivated. Too
often law schools use negative reinforcement that is useful only in changing bad behaviour rather
than providing positive reinforcement.
Professors can require students to write short, ungraded essays throughout the semester, initiate
group and class discussion regarding assigned problems, require peer review of student work, or
collect journals or self-critiques such as those mentioned above. In order to be most useful to the
student, feedback must be given in a timely fashion. Feedback delivered too early can be confusing
and feedback given too late can slow a learner’s motivation.
Electronic or virtual textbooks are portable, take little space for multiple volumes and give instant
accessibility and enhanced search ability. This format could break down barriers for some readers
accustomed to computer screen format.
Laptop-friendly classrooms and wireless law school campuses are now an expectation. Following
this trend, law schools could eventually be transformed into a dual physical-and-virtual environment
where hundreds of students view lectures and multimedia presentations over the Internet at their own
pace and in time increments that are conducive to a variety of lifestyles. Virtual classes will not
Some video classrooms extend beyond video conferencing into actual digital communities where participants can cooperate, share, and learn across any distance. Teachers on a digital network engage students in activities that allow them to interact with classmates at different sites and partner with other participants to practice new skills.

The Center for Computer-Assisted Legal Instruction (CALI) is a non-profit consortium of law schools that provides legal education resources over the Internet. CALI started a legal education technology project that helps instructors record their lectures digitally and post them on the Internet so that students can review their notes or catch up on missed classes electronically. Podcasts allow students to download lectures as MP3 files, making iPods a popular education tool.

Video games allow players to step into new personas and explore alternatives so they can try to solve problems they have not mastered, receive immediate feedback on the consequences, and try again. The ability to explore immediately makes games more engaging than textbooks or lectures because it allows students to perform before reaching a level of competency. Since games keep things ‘pleasantly frustrating,’ players are motivated to improve their performance.

**Blind Justice** is a board game which uses actual cases. Players acting as a lawyer or juror draw cards and, based on the directions, must convince the other players to find in their favor. **Verdict II** is a board game ‘designed to teach eight basic grounds on which a witness statement might be inadmissible’.

There are also a series of **Objection** games that simulate a trial, where the player responds to various evidentiary objections by the opposing attorney. In the game **In the First Degree**, the player assumes the role of a prosecutor who interviews witnesses and decides which evidence to present.

Critics of simulated teaching tools point to some disadvantages. For instance, simulations incorporate hidden assumptions that may not entirely reflect reality and student players realise that the exercise is not authentic. Additional critiques include cost, the logical path computer programs must follow, and possible detraction from social interaction and social skill building.

For more than 20 years students at William Mitchell College of Law in St. Paul, Minnesota, have had the opportunity to take part in a complex simulation-based course called Legal Practicum. Students taking Legal Practicum practice law in two-person law firms under faculty supervision. Simulated cases, problems, and clients are presented to each law firm during the semester. Student lawyers must handle a variety of integrated substantive and procedural law exercises in numerous areas. Each student law firm is involved in proceedings that include a jury trial, oral arguments, motion arguments, mediation, arbitration, negotiations, and settlement conferences.

Legal Practicum has undergone a thorough bi-annual evaluation process since its inception in the mid-1980s. Student evaluations demonstrate the course’s effectiveness.

**Integrating academic integrity education with the business law course: why and how?**

S McGill


As a member of the academic integrity committee at Wilfrid Laurier University, I was part of a cross-disciplinary group of faculty and administrators asked to review and revise the existing academic integrity policies and procedures. During the completion of this task, there was often lively debate about fundamental legal topics such as due process, privacy, intention, whistleblowing, misrepresentation, and intellectual property. As the content of these debates began to spill into my business law classroom, I wondered why I was not using this very student-centred issue to teach the procedural and substantive legal content of the course.

This article advocates integrating academic integrity education into the business law course. Many have suggested teaching business ethics this way but have ignored the natural overlap in legal content with the traditional business law course. Rather than highlighting only the ethical components of academic integrity, this approach emphasises the legal aspects of academic misconduct. It connects personal student experiences with many of the substantive legal topics covered in the course, thereby improving the learning opportunity.

Academic integrity also provides a student-centred example of the natural link between law and ethics. Students often mistakenly believe that satisfying technical requirements of the law amounts to ethical behaviour. Although a law may be founded on a broad ethical principle, its application may be quite narrow. Students have trouble understanding that legal requirements set the minimum standard
of acceptable behaviour, and ethical behaviour often requires a higher standard. Contrasting the specific language of the academic misconduct regulations with the expansive goals of academic integrity policy highlights the connections and distinctions between law and ethics.

In addition to its contribution to the substantive goals of the business law course, academic integrity education reduces the incidents of academic misconduct, an area of particular concern in the business faculty. Research has established a link between academic misconduct and unethical workplace behaviour. Therefore, enhancing academic integrity education may reduce student academic misconduct in the present and may have a positive effect on the conduct of the business community in the future.

When using the phrase ‘academic integrity’, I refer to the general ethical climate in the academic environment, in addition to any specific codes of conduct regulating behaviour and imposing sanctions. It is designed to capture the broad ethical attitudes, perceptions and standards of the academic community with respect to academic behaviour as well as specific conduct or misconduct expressly designated as unacceptable. The phrase ‘academic misconduct’ refers to the specific conduct designated in the university academic misconduct policy as unacceptable behaviour worthy of penalty. Distinguishing between integrity and misconduct helps students understand the connection between ethics and law. Finally, ‘academic misconduct policy’ refers to two key components: the university’s published code of conduct (substantive component) and the enforcement process followed before penalties are imposed (procedural component). Much of the overlap between academic integrity issues and the business law content focuses on these two academic misconduct policy components.

Cheating is an epidemic among university and college students, and business students are no exception. In a recent 2006 study, 537 students from an American college responded to a survey requiring them to rank the acceptability of unethical and illegal business practices. The study found that all students viewed illegal behaviour as unacceptable, but business students were more tolerant than nonbusiness students of unethical business practices. Business students are also more likely than nonbusiness students to participate in questionable ethical behaviours. In addition to being more likely to cheat, business students feel more justified in doing so than do other students.

If cheating students are more likely than honest students to engage in workplace misconduct once employed, then reducing academic misconduct is one way of addressing future unethical conduct in the workplace. Much has been written over the need to address business ethics in the business school environment as a way of encouraging ethical conduct in future business leaders. In 1995, Barbara Cole reported a study of 537 business students from twelve different schools and 158 business people; she found that students responded less ethically than business people to business scenarios. Despite the ongoing debate over whether ethics can be taught, most business programs now include business ethics education and identify business ethics education as an overall program goal. In fact, often this forms part of the business law course content.

Students are able to transfer the ethical issues raised in academic misconduct scenarios to the business environment. In a 2004 study, academic content questions were paired with similar business content questions to determine if attitudes toward ethical behaviour changed between an academic and business setting. The study found that most students had similar attitudes in the two venues, and business students generally rated the situations as less unethical than did nonbusiness students. In particular, business students found falsification of job applications to be less unethical than did nonbusiness students.

The more comfortable a student becomes with cheating, the more often he or she will repeat the conduct in the future. One key indicator of whether a student will cheat in the future is whether the student has cheated in the past. Those students who have cheated in high school are more likely to cheat in university.

Understanding why students cheat is a complicated task. The reasons lie in a combination of personal values, individual characteristics, and institutional factors. Many studies have isolated individual characteristics such as gender, age, class standing, and discipline. Male students are more likely to cheat than female students; younger students are more likely to cheat than older students. Students with low grade point averages (GPAs) show a higher propensity to cheat than students with high or mid-range GPAs and, as has already been noted, business students are more likely to cheat than nonbusiness students. In the search to understand why some students cheat, other researchers have identified the following institutional or contextual factors: pressure to achieve good grades; probability of being caught (low faculty reporting); opportunity (available technology or few safeguards); social acceptability among peers (perception that everyone does it); low jeopardy (light sanctions even if caught); faculty member (instructor) tolerance; lack of knowledge of the rules; and time pressures.
Many of these reasons are the same as those given by corporate cheaters, most notably performance goals and peer tolerance. Business students identify fear of being caught and severity of consequences as the most important considerations when deciding whether or not to cheat. It is possible that these reasons are just excuses used to justify known dishonest behaviour; even so, research shows that eliminating the justification for past cheating reduces the likelihood of future cheating.

Including academic integrity and misconduct content in the business law course can impact at least four of these institutional factors or excuses: it can teach students the rules, it can change peer perceptions of social acceptability, it can change a perception of faculty tolerance, and it can raise awareness of serious sanctions.

One 2001 study compared the focus placed on academic integrity at two business schools and found that placing a high priority on academic integrity through educational emphasis decreased the incidents of cheating.

Education is of particular importance as the student population becomes more international. Significant differences exist between the attitudes, beliefs, and likelihood of cheating of students from different countries.

Making the academic integrity honour code and the academic misconduct policy of the institution part of the substantive business law content sends a very high priority message to students while actually informing them about the specific misconduct rules. Both of these strategies help reduce incidents of academic misconduct.

Success will depend on faculty member commitment. The attitudes and behaviours of faculty members have been found to be one of the strongest influences on student attitudes about ethics. One 1993 study surveyed ethical attitudes of faculty members, seniors, and freshmen students and found that seniors had attitudes more in line with faculty members than did freshmen. A factor in this was perceived to be increased exposure to the ideas and values of professors. Another 1990 study found that the behaviour of business faculty members was the most influential factor in ethics education. If faculty members present no position on academic misconduct and rarely enforce the rules, then students will believe that faculty tolerate the conduct and that they are unlikely to be caught or punished. This will influence the attitude of the student with respect to the importance of academic integrity. What is the attitude of faculty members toward academic integrity? Even faculty members are confused about the rules and distinctions between unethical, illegal, unprofessional, and socially undesirable behaviour.

Students often describe instructor commitment and awareness of institutional policies as key factors in the decision not to cheat. Faculty members generally tend to ignore academic misconduct. One well-known study found that 65 per cent of faculty members reported having discovered one or more students cheating, but only 21 per cent reported the incidents. Possible reasons for this failure to report include lack of familiarity with the process, difficulty of proving allegations, dissatisfaction with sanctions, fear of litigation, sympathy for the student, faculty time commitment, and damage to a faculty member's reputation or teaching evaluations. Business faculty members have been found to be even more tolerant of academic misconduct than instructors in other faculties.

As individuals, our perceptions and sense of truths are shaped by the lessons of our past experiences. Change, and therefore learning, occurs when the new experience is no longer explainable based on past experience. We are called upon to revise our past perceptions to make sense of the new experience.

As educators, this is what we strive to achieve: we hope students will identify the issue we present as one relevant to their sense of consciousness so they will make the effort to reconcile any disjunction and thereby trigger learning. The greater relevance the issue has to the student, the more likely the student will make the effort to learn from the experience.

Drawing on students' primary experience is likely to engage a student in the topic under consideration. Using the subjects of academic integrity and misconduct to personalise specific topics in the business law course will create a primary experience more relevant to the student's present circumstances than other usual examples from the still unfamiliar business context or legal environment. Therefore, using the academic integrity context to identify the principles included in the business law course improves and expands the student's learning opportunities.

Academic integrity is an experiential example of ethical principles in the student environment. In addition, understanding the link between ethical principles and the law is a fundamental underlying concept in the business law course; ethical values find their way into judicial decision making and legislative intent. Studying the academic code of conduct together with the academic misconduct definitions and sanctions shows this link in action. It provides an important example of the role of the code of conduct and the ability to enforce the code of conduct.

The academic integrity topic may also give added credibility to business law faculty teaching ethics; sometimes faculty are seen by students as being isolated in an ivory tower separate from the
pressures of the business world. Applying those same principles to the academic world where the professor has expertise and standing may credentialise the professor in the eyes of the student and increase the impact of the ethics content.

Academic misconduct policy is an opportunity to focus on a student-centred example of legal principles in practice. The school’s academic misconduct enforcement process is a visible demonstration of many of the same due process principles taught in business law. Analysing the academic misconduct enforcement process in place at the specific educational institution can highlight such issues as burden of proof, standard of proof, and admissibility of evidence. It is also perfect for developing an understanding of the role of discipline in professional organisations and the difference between civil, regulatory, quasi criminal, and criminal regimes. One popular topic for class debate on due process is whether judges should be elected or appointed. The issue of student representation on academic misconduct adjudication panels parallels this issue. A review of the sanctions for academic misconduct raises an opportunity for understanding the goals of criminal sentencing in contrast with the goals of civil law remedies. Few courses in the overall business program offer the broad overlap with academic misconduct policy as the traditional business law course.

Almost every topic in the business law course can be adapted to include academic integrity education. The topics identified here are just a sampling of the possibilities and have been selected because they connect well with the two general academic misconduct policy components: the code of conduct including sanctioning guidelines; and the enforcement process associated with violations of the code of conduct.

It is not suggested that every possible topic be used. The instructor should introduce the academic integrity issue early in the course and then select two additional legal topics spaced throughout the term. Ideally, one topic would be adapted to the procedural academic misconduct enforcement component and the other to the substantive academic misconduct code of conduct.

The academic integrity issue is initially introduced with an academic integrity quiz in the orientation or first class of the term. The questions deal with the various topics that are discussed below and allow the quiz to be used in successive terms no matter which legal topics are chosen for use in the specific term. Students are asked to choose an answer from among the highest to lowest ethical standards. The results for each question form the basis of a class discussion focusing on the legal principle presented by the question and the ethical value behind the principle. The distinction between academic integrity and academic misconduct is highlighted. This is an opportunity for the instructor to link law and ethics. The ethical values of the community as a whole will shape the interpretation and development of the law just as the academic integrity climate at the university will influence the level of academic misconduct.

The second and long-term use of the quiz is to introduce the specific business law topics as they are reached during the course. For example, one popular topic is whistleblowing; question three of the quiz asks the students whether or not they will report a fellow student if they become aware that he or she is cheating. This question and the results returned on the first lecture are used to introduce the whistleblowing topic in the corporate governance class. The quiz ensures that students have considered the implications of whistleblowing in the student environment before they are asked to understand the concept in the workplace.

Students can gain an understanding of the role of a code of conduct by reviewing the codes of conduct that apply to them now, as students of the university. Students are asked to search the code for examples of misrepresentation as academic misconduct. Common examples are misrepresenting someone else’s work as their own, misrepresenting the state of their health to obtain a deferral of an exam and misrepresenting their religious commitment to obtain extra benefit such as time on an assignment. Would this give rise to a tort action for deceit? A discussion follows about whether damage has been sustained by the professor or the administration relying on the misrepresentation. The differences between a tort action and discipline proceedings are introduced.

When dealing with the concepts of innocent, negligent, and fraudulent misrepresentation by professionals, the role of the professional organisation and its standards of professional conduct are central. In addition to being the standard of care in a negligence action, the standards of practice and the professional rules of misconduct form the basis of disciplinary action against a professional. Any disciplinary action undertaken by a professional organisation must meet the requirements of procedural fairness and natural justice.

When a university disciplines a student for academic misconduct, it faces the same procedural fairness obligations as a professional organisation when dealing with its member. Academic misconduct hearings provide a very student-centred example of professional discipline.

The academic misconduct code of conduct provides a firsthand example of a standard form contract interpretation issue. What if the student is not aware of the academic misconduct policy when he or
she accepts the offer of admission? How is a student supposed to know the rules and why is a student bound by this code of conduct? If the university and student relationship is presented as contractual (even though it is not only contractual), then the contract between the student and university is a standard form contract or contract of adhesion.

What steps does the university take to bring these terms to the attention of the student? Most universities now have electronic calendars available through their websites with a link to the code of conduct. This is an obvious example of external terms incorporated into the contract through either a click wrap or browse wrap agreement. It provides an easy opportunity for academic integrity integration. Students are asked to trace their registration steps online and determine if the academic misconduct policy forms part of the contract between the parties and whether the contract is a click wrap or browse wrap agreement. How can the university improve its process to ensure that the codes of conduct come to the attention of the student during contractual negotiations? Students are able to use traditional rules of offer and acceptance, as well as consumer protection principles associated with contracts of adhesion, to determine if the codes of conduct form part of their contractual relationship with the university. This exercise allows the student to experience firsthand the offer-and-acceptance process while heightening awareness of the codes of conduct.

One of the most natural correlations with academic misconduct is the topic of whistleblowing. New corporate governance rules in the United States impose a positive obligation on lawyers and accountants to report accounting and securities misconduct often referred to as ‘Up the Ladder Reporting’ and ‘Noisy Withdrawal’. The students debate the pros and cons of student reporting. Often issues of broken relationships are raised and this corresponds well with the concern for the violation of the solicitor-client relationship. Retaliation and alienation are other reasons often cited for a failure to report academic misconduct. This invites an assessment of what protections would be necessary to secure reporting and whether the criminal code section goes far enough.

When academic integrity content is integrated into the course, students receive a more experiential learning opportunity. Students will not only learn the substantive legal topic being taught but also gain familiarity with the university academic misconduct policy. Students will see faculty and the administration assigning a high priority to academic integrity and research suggests that this will decrease the incidents of academic misconduct. Research shows that student academic misconduct is an indicator of future unethical business behaviour; therefore, reducing student academic misconduct may improve the ethical performance of future business leaders.

Using technology-enabled active learning tools to introduce business ethics topics in business law courses: a few practical examples

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Business schools have a unique responsibility to advance their students’ ethical awareness and ethical reasoning skills, as well as to increase the students’ understanding of the core ethical principles that will help to guide them as they navigate the evolving legal and compliance environment that is today’s business world. As such, there is an onus on business school faculty to develop curricula to inspire today’s students to be cognisant of the countless ethical considerations in business. Beyond recognition, it is incumbent upon business faculty to provide students with tools that will assist them in forming an effective response to the ethical dilemmas that arise in the workplace, on both personal and organisational levels. This responsibility is further challenged by the increasing proliferation of asynchronous learning environments, wherein direct interpersonal contact between student and instructor is minimal at best.

We have found business law courses to be an excellent occasion to raise and explore ethical issues inherent in business situations. Many laws have a moral content, and many serious legal problems begin as ethical problems.

The study of ethics in the context of business law takes on a global perspective in an examination of the difference in outcomes of the antitrust cases brought against Microsoft in the United States and the European Union. On a more individual level, the effect of e-commerce on ethical issues is brought home by examination of the global ramifications of eBay, and the necessity of dealing with the ethics and mores of customers and vendors in an environment of global diversity and international law; one recalls the difficulties encountered by an American seller with respect to advertising memorabilia from Nazi Germany on eBay, thus violating French law, and the censorship controversy that arose when Google agreed to block Web access by Chinese customers to online content deemed ‘objectionable’ by the government of the People’s Republic of China.
Significantly, however, ethics is not simply prescribed or proscribed conduct to be learned from a code or set of rules. Rather, it is an active decision-making behaviour based on duties and consequences. Learning ethics requires taking part in this active decision making. A student’s recurring exposure to diverse business ethics issues is as important in the business world as is the student’s knowledge of the specific laws acquired in a business law course. It is our contention that a more effective method for developing future business leaders is to challenge students to consider the ethical, along with the legal, ‘bottom line’, by addressing real life situations and dilemmas in ‘real time’, that is, as contemporaneous challenges that are encountered in the decision-making process on an ongoing basis rather than simply as an exercise in historical review.

When ethical dilemmas or challenges are encountered in the business world, they are not mere theoretical discussions; there are consequences to be foreseen, and courses of action to be chosen. At that point, the focus is on what needs to happen next. As we expect our students to learn to make sound decisions, we need to cultivate recognition of potential consequences and effective decision making in a context akin to that which will be encountered in the ‘real world’, where action is required. What better way, then, to inculcate students with the necessity of including the consideration of ethics as an integral aspect of decision making in business, than to utilise active learning?

The challenge becomes finding the tools and techniques that will encourage the student to move from passivity to active learning. We have found that the challenges associated with understanding the complexities of ethics in business lend themselves particularly well to technology-enabled active learning tools. Such tools can be employed to teach students to identify various stakeholders’ interests (which are often conflicting) and to recognise that different actors have different ethics and ethical standards, and that these standards must be accommodated or confronted, depending on their relationship to societal standards. This recognition can also be applied to the standards of diverse societies, to foster understanding of how businesses and individuals reach accord so as to allow for an effective ongoing business relationship, or to terminate the relationship where the dichotomy is so great as to render a relationship inadvisable. Of course, these tools can be used to examine the consequences of unethical behaviour, and to consider means to correct improprieties before they become liabilities.

The most common resource available to students and instructors alike, of course, is the textbook. Current business law textbooks routinely devote a chapter to ethics and often position that chapter prior to material on substantive law. Typically, this chapter discusses the following areas: the meaning of ethics in general, and business ethics; establishment of an ethical tone; examples of the consequences of ethical shortcomings; ethics and the law; approaches to ethical reasoning; and global applications of ethics.

There are limitations to this format, however. Not the least of these problems is the academic background of the typical business law instructor who has a law degree. These instructors tend to rely on the law schools’ approach to teaching, that is, the use of the case book. In studying case law, the student is expected to learn the basic principles of law, and how those principles are typically applied in individual cases. In the context of an undergraduate business law course and textbook, the case approach is subject to editing of the case that is often severe, and that may obscure the underlying ethical challenge, including its origins.

If the case is not heavily edited and appears in its original language and length, it may be so daunting as to discourage careful consideration; the undergraduate student will shy away from reading the case.

A further drawback arises from the fact that the cases in the textbook are appellate court cases. The courts consider only those issues presented to them by the litigants; these typically will be arguments involving questions of law. The underlying causes of the ethical lapses remain obscure at best, and often are unreferenced in the appellate decision. An appellate court decision specifically discussing ethics is almost unheard of, as the decision is based on interpretation of the law itself.

The broad coverage of an undergraduate business law textbook presents difficulty vis-à-vis consideration of the ethical component of a business decision. Typically, the textbook covers foundations of law, torts, criminal law, contracts, business organisations and their formation, securities law, antitrust, property, intellectual property, and international law.

In covering all of these subjects, key legal elements must be discussed. This leaves little room for discussion of ethical ramifications, which must be addressed as integral factors in business decision-making. It is incumbent upon the instructor, therefore, to introduce the ethical considerations involved in business disputes.

Three other problems present themselves in the reliance on appellate court decisions in the teaching of business ethics. The cases used tend to be clear-cut, or at least currently are clear-cut, as they are established law. It would be beneficial to examine scenarios wherein the conduct in question is less
obvious: while most of us would agree that embezzling $1 million is wrong, how would we react to
taking home a box of pens without permission? Or, in an example near and dear to the hearts of the
authors’ students, what is so bad about downloading music without the artists’ permission?

A related problem is the language of court decisions, in that these decisions are drafted by legal
scholars. While the language is familiar and relatively comfortable for legal scholars, it can be
problematic for those outside of the legal profession. Especially in introducing the analysis of ethical
topics in business, it is beneficial to use language more accessible to students. Such language is
likely to come from sources that are more specifically business related than law related.

Finally, appellate court decisions, while creating law, are retrospective in terms of analysis, that
is, they focus on the past. The goal of addressing ethics in a business law course, or any academic
course for that matter, is for students to be able to identify ethical issues and to use that knowledge to
take appropriate action, both during the course and in their professional endeavours. While the case
outcome does emphasise the consequences of unethical behaviour, we are explicitly informing the
student that the case involves unethical behaviour and are specifying what that behaviour is. We do
little to prepare the student to recognise an ethical challenge at its inception, let alone equip the
student to select a course of action that will resolve the dilemma. The companion element of this
disadvantage to using the textbook is that while the case creates updated and upgraded standards of
court, the case is itself completed, under most circumstances. We miss the element of impact-
what was the result to the business or individual involved in the ethical dilemma? It would be beneficial
to see how the problem was ultimately handled and whether the business or individual’s conduct
changed as a result. The textbook, while an integral element of the teaching and learning process, is
inadequate to be the sole teaching tool in discussion of ethics and ethical behaviour, and the selection
of a proper mode of conduct.

Engaging students in higher-order thinking requires a variety of techniques to enhance the varied
learning styles of students. Our students are undoubtedly the most technologically advanced generation
to date, so the use of technology is at once familiar to our audience and by its immediacy gives access
to current situations in the business world. Visual media, such as films, videotapes, demonstrations,
television, and the Internet, have the advantage of being easy to deliver in most classroom environments
and are inherently interesting to the current generation of students. We use simulations and role
plays, media resources, interactive games, discussion forums, and Web logs.

The tools we employ, though varied, comport with the philosophy of active learning and the
parameters of the Framework for Ethical Decision Making developed at the Markkula Center for
Applied Ethics: Recognise an Ethical Issue; Get the Facts; Evaluate Alternative Actions From Various
Ethical Perspectives; Make a Decision and Test It; Act, Then Reflect on the Decision Later.

Through these active learning tools, we seek to encourage students to integrate ethical considerations
into business decision making by utilising the aforementioned framework to address a business
challenge in an environment wherein a student can explore alternatives and select the best practice
absent ‘real’ consequences.

Putting theory into practice, simulations and role plays offer students the opportunity and challenge
to demonstrate what they have learned in a controlled environment. As a group exercise, they provide
a vehicle whereby students can move from enlightened self interest to consideration of the needs and
interests of other stakeholders, and the organisation in toto.

You Be the Judge is an online interactive product from McGraw-Hill. Access to the product is via
a password bundled with McGraw-Hill business law texts or purchased separately. It includes
enactments of 18 hypothetical business law cases, all of which are based on real cases within the
accompanying business law texts, the underlying bases of which include contract law, tort law,
employment law, property law, and consumer protection law.

Each enactment allows the students to view interviews of the plaintiff and defendant before the
courtroom argument, see the courtroom proceedings, review relevant evidence, read actual cases
relating to the issues in the case, and create their own rulings, as judge or jury. After the decisions are
generated (or one ‘verdict’ is decided upon, if it is a group exercise), the students view what the actual
judge ruled (unscripted) in the case. The students then get the chance to defend or change their
ruling. It generally takes only one or two students with envelope-pushing legal arguments to get more
conservative-thinking members of the group to join in the discussions. The goal of the product is to
teach critical thinking and analysis. Our experience is that student-group use provides additional
stimulation to discuss and debate the resolution of the legal and ethical issues presented.

Shaping our Culture is an online ethics awareness training exercise Lockheed Martin uses to
sensitise its employees to ‘ethics, diversity, and full spectrum leadership’ issues. The exercise consists
of introductory remarks by Chairman, President, and Chief Executive Officer, Bob Stevens, as well as
minicases that deal with seven ethical dilemmas.
After viewing each case video, students are asked to answer online questions about the issues involved and how the situation may be resolved. Not all answers are clear-cut; some are partially correct. We encourage our students to share their own similar experiences, and to discuss them in context of the videos. Through group interaction and discussion, the exercise enables students (or, in the Lockheed Martin case, employees) to gain a better understanding of what constitutes an ethical issue and how to resolve it. We find these vignettes to be modern and realistic examples of what our students might expect to encounter in the workplace.

_Drama of the Law I_ is a series of light and entertaining video dramatisations published by South-Western/Cengage Learning that helps students realise that ethical and legal issues are all around them. The main characters are Vinny Garcia, an employee at Kowalski’s Supermarket; Oscar Schmidt, the supermarket manager; and Maria Fuentes, a customer. Points of law address major concepts covered in business law courses, including agency law, contract law, and personal property and bailments. Each scenario is approximately seven to ten minutes in length and provides a wealth of material for class discussion, or to test students on concepts. _Drama of the Law II_ takes place at a car dealership; students are introduced to Tony and Shelly, two car sales representatives, and Herman, the owner of the dealership. The segments cover such topics as consumer protection, employment law, intellectual property, environmental regulation, and free speech.

We generally assign groups of students to consider and represent the legal and ethical interests of the respective parties depicted in the vignettes. As the students view the videos, we guide them to consider the needs of their ‘client’, and the ramifications of their actions vis-à-vis other actors and society at large, including potential civil and criminal liability. Afterward, we encourage the students to engage in discourse, utilising the ethical framework, particularly to propose and test possible resolutions. By doing so, students’ horizons are broadened by the insights of their classmates. They often find that there are facets of the depicted problem they had not recognised, as well as multiple solutions.

While these videos are a bit dated, having been published in 1992 and 1994, respectively, they nevertheless serve as an effective springboard for lively group discussions and related individual assignments.

_Business Reality-Principles of Business Ethics_ is a Web-based software application that can be used as an ethics training and teaching support vehicle for students within any basic business class. Employing an interactive software format, the exercise attempts to mirror the parameters and constraints associated with the reality of business.

Via the Web, students engage in interactive play as they progress through their own game of business reality from the age of 23 to retirement at age 63, during which they face numerous legal and ethical dilemmas. At the start, the simulation software allows the student to join an ethical, semiethical, or unethical company. Based in theory, each company has been programmed with its appropriate outcome probability. Each ‘year’ of the game, the student answers a different business ethics vignette. Depending on the company the student has chosen, different consequences will result. Outcomes range from getting fired, to experiencing financial loss, or to simply receiving a negative employment report.

As they react to different situations, students reap different rewards or penalties based upon realistic probabilities built into the software. If the student does not make a decision within the time allowed, the software makes the choice for him or her. Success or failure in the game depends upon a number of variables: (1) how well the student retains business principles, (2) how the student defines his or her basic set of values, (3) what decisions the student makes concerning the time at work versus home, and (4) how much ethical content the student retains at the end of the game. At the game’s end, the student’s values and goals are contrasted with financial achievements and home life. What one student might deem adequate performance, another might perceive as failure. Each game is unique and semipredictable. Student participants may be graded in a variety of ways, including: (1) by comparing the differences between pre and post exam scores on business ethics content, (2) by comparing the student’s value and moral philosophy structure to his/her behaviour in the game, or (3) by counting the number of illegal decisions the student made.

If various students choose to engage in similar scenarios, at the same ethical level, they can, upon completion of their ‘electronic careers’, compare experiences with their peers, learning what crises were encountered and what solutions were chosen.

Many news organisations, MSNBC.com, CNN.com, BBC.co.uk, WSJ.com, and Reuters.com, to name only a few, provide online multimedia and extras that serve as excellent resources for current examples of business ethics issues. While it is not always feasible to integrate these resources in the classroom, when it is possible, they can be quite effective. During our discussion of the issue of corporate liability for the criminal acts of employees and the related theories of vicarious liability and
respondent superior with our students in fall of 2006, the Hewlett-Packard spying scandal unfolded. Related news videos of less than a minute or two in duration lent themselves readily to inclusion in an otherwise tightly scheduled class. News videos may be easily found online. MSN Video, for example, provides a tool that allows the user to search MSN and other Web source videos using searcher supplied terms. Using 'HP' and 'spying' as search terms, our search resulted in 33 links to relevant online video clips from numerous news sources.

Other online resources include blogs, podcasts, RSS feeds and interactive features. WSJ.com, for example, incorporates all of these.

The Wall Street Journal also publishes The Weekly Review, a weekly email that specifically addresses discipline needs by directing professors to relevant WSJ articles. The weekly, discipline-specific emails (formerly known as Educators’ Reviews) are written by professors and are designed to help instructors easily integrate WSJ content into their classes. Each email highlights three to five recent WSJ articles and includes summaries, discussion questions, and WSJ.com links. One of the weekly reviews is a business ethics review. The reviews are emailed to subscribers every Friday. Stimulating, discipline-oriented discussion questions accompany each review. A six-year archive is also available online, so instructors can easily find past pertinent articles for the current week’s classes.

Now firmly established as a technology-enabled learning tool, a Web log is a Web site where entries are made in journal style and displayed in a reverse chronological order. Abbreviated as ‘blog’, these Web sites often provide commentary or news on a particular subject, such as politics, local news, or even business ethics. Better than hard copy readings that must be reserved, copied, or scanned, we regularly assign blog articles that our students can access free of charge, from any place with an Internet connection, and on their own time.

Two of our favourite sources are Chris MacDonald’s Business Ethics Blog, and Allison Garrett’s International Corporate Governance. Neither pro- nor antibusiness, MacDonald points out the factual ethical concerns underlying the current headlines.

Business Ethics Jeopardy is an interactive game, designed using Power-Point to motivate students to actively participate in class and assume more responsibility for learning. The template for building the computer-based game board is available online from numerous sources.

This game follows the format of the popular game show televised around the world: teams of students select answers of varying point value and difficulty from several categories. When they believe they know the question that correctly corresponds to the answer displayed, they signal with a clicker, buzzer, bell, or other similar device to have the opportunity to ask the question. The team that ‘buzzes in’ first is allowed to ask the question. That team is awarded points for a correct response or loses points for an incorrect response. There is a final question on which the respective teams may wager up to their entire point total. The official winner is the team with the most points. By hearing the correct responses and collaborating with teammates, everyone benefits. On occasion, small prizes, such as candy, have been awarded to the winners.

We attempt to create categories of answers that will appeal to all learning types: for example, ‘Name that Perp’ for visual learners, and for those adept at memorisation, ‘Restate the Restatement’. We encourage the kinesthetic learners to control the buzzer. Just as often, we encourage groups of students who describe themselves as retiring and noncompetitive to come up with the questions and answers for the game. We generally find that this group of students, who might not otherwise willingly participate in the exercise, benefit greatly from their ‘hands-on’ assignment and learn as much as, if not more than, the student ‘contestants’.

Even as this article is written, we recognise that it is not fully current, as with the growth of clicker/polling technology, which is not addressed herein. Just as new ethical dilemmas constantly occur, the tools for consideration and resolution of ethical dilemmas, and formation of ethical behaviour are expanding. This expansion provides the opportunity for educators to keep abreast of changes almost as rapidly as they occur, in a format that is fresh, vibrant, and more likely to maintain students’ interest than more traditional forms of instruction. However, it is just as important to remember that as ethics and moral conduct still follow certain traditions, we still find that the more traditional tools have their place: we are adding to the palette, rather than eliminating tried-and-true approaches.

“What are you doing here? You should be working in a hair salon or something”: outsider status and professional socialization in the solicitors’ profession.

H Sommerlad

Despite the existence of definitional difficulties with the concept of profession, there is substantial agreement about its core characteristics: namely, a grounding in an articulation of cognitive and
normative dimensions, producing both the ability to control a market and achieve social status and its exclusive, community character which is justified as producing a natural adherence to common ethical standards.

As one of the ‘classical’ professions, the solicitors’ profession in England and Wales conforms to this paradigm: whilst its social justice ideology entails a discourse of equal accessibility and a role enactment based on demographic neutrality — termed ‘bleached-out’ professionalism — traditionally it has been characterised by a white male middle class culture, practised social closure and exercised strong pressure on its members to conform to professional norms, values and rituals. This remains the case despite the exponential increase in women solicitors; women have made up over 50 per cent of new entrants for over 10 years, producing an 850 per cent overall increase in the last 25 years. Yet their participation has failed to feminise either professional structures or culture, in part because it coincided with a general expansion of the profession, in part because the majority of these women emanated from the same socio-economic and ethnic groups as their male colleagues, and in part because child care remains highly gendered, with the result that many female solicitors have broken career trajectories. Instead, the coincidence of mass female entry with a general expansion of the profession facilitated the redesign and stratification of professional work, concentrating ownership and governance in fewer hands. The resulting disjuncture between the legal profession’s discourse of meritocracy and accessibility, its increasingly varied membership and its persistently male white middle class culture has recently been accentuated by the expansion of Higher Education (HE) and the resulting increase in law students drawn from other minority groups. Yet the deeply stratified nature of UK HE institutions and the status nature of the professional project have meant that these developments have neither eradicated class nor produced equality of opportunity.

The professional project entails control over training and qualification in order to ensure that it comprises sufficient indeterminacy to facilitate exclusion and produce professional solidarity. Whilst this control has reduced as a result of graduate entry, it remains evident in the predominance of black letter law, the requirement for a core of qualifying subjects and the minimal input of socio-legal studies into the law curriculum. The extensive research into diversity and education shows that the successful embedding of widening participation is associated with its full integration into an institution’s strategic goals; the maintenance of a focus on widening participation throughout the student lifecycle; the development of institutional structures and processes which value diversity, and an approach to the curriculum, learning and teaching which reflects diversity. This approach is supported by evidence that the design of law curriculum should be approached with ‘an appreciation of the ethnic dimension to learning’. In practice, however, overt closure strategies continue to operate in law schools; for instance, McGlynn writes: ‘Gender informs many aspects of the law school, from admissions policies, to mooring, to the inclusion of gender perspectives in the … curriculum … to the inculcation of the values, ethics and principles of the law and legal profession and to the recruitment, retention and promotion of women academics’. Thus law curricula generally continue to embody the classed, raced and gendered nature of the legal profession, and few law schools have taken on board the stricture that to embed widening participation they must ‘know (their) students … their interests, demographic background, motivation for undertaking the subject, level of knowledge, and previous learning experiences’. Rather, the connections between professional status and determination of what constitutes legal knowledge have resulted in conservative pedagogies which accentuate the mystifying nature of legal doctrinalism: thereby compensating for the explicitly vocational dimension of the law degree.

Beyond the academy, private practice controls first entry into the profession through its control over training contracts, and then workplace training. Research indicates that whilst many law firms have endorsed the need to increase the diversity of their members, their entry requirements not only generally discriminate against graduates from new universities, but also exceed simple degree and/or professional qualifications and extend to a range of attributes and practices many of which are tacit and involve insider knowledge. These attributes are likely to be so instinctive and intrinsic to professional and organisational narratives, that employers themselves may not be aware of them. New university students therefore tend to suffer significant disadvantage in the legal labour market, and encounter difficulties in obtaining the training contracts which are necessary to qualify as solicitors.

Theoretical and empirical work on professional socialisation supports the description of professions as ‘crucibles of identity formation’, so that even where firms’ intake does become more diverse, this diversity is effectively erased.

For instance, Goriely and Williams suggest the persistence, despite the implementation of anti-discriminatory measures, of the traditional approach to evaluating newly qualified solicitors, which relies more on measuring them against characteristics of the suitable ‘chap’ than on a rational standardised approach to evaluation and appraisal.
Nevertheless, growing awareness of the need for a representative legal profession and of the persistence of discrimination has produced pressure for reform at both the governmental and professional association level. A concern with equity was one of the motivating factors behind the Training Framework Review (TFR) which proposed more diverse and less costly routes to qualification based on the assessment of outcomes, thereby challenging the traditional career trajectory. Boon et al have commented on the ambivalent nature of these proposals: on the one hand, they may be seen as part of the move towards a post Fordist system of education in that their key features comprise a non-liberal individualisation or ‘flexibilisation’ of learning and positioning of legal knowledge as a product of the market place. On the other hand, they are also progressive not only in their embrace of diversity and accessibility but also their emphasis on vocationalism rather than doctrinalism.

However the vitality of the professional status project has ensured that the professional elites (both the elite law schools and firms) have been able to resist these proposals, stalling their implementation.

This paper reflects on the issues raised above through discussion of the findings of an ongoing longitudinal study of students and trainee solicitors. I consider the encounter between aspirant lawyers from minority groups and the solicitors’ profession, and I pay particular attention to the processes of professional socialisation those who gain entry are obliged to undergo.

The research project (which was piloted 2003-4) was begun in September 2004 and is a longitudinal study of two cohorts of part-time and full-time post-graduate students undergoing the academic stage of their vocational training (the Legal Practice Course (LPC)) at a ‘new’ university in a large provincial city. Cohort 1 comprised part-time students 2004-6 and full-time students 2004-5; cohort 2 part-time students 2005-7 and full-time students 2005-6. The number of students in each cohort varied slightly in each year of the study: 2004-5 30 were part-time, 57 full-time; 2005-6 33 part-time, 63 full-time). The research with the students is designed to track developments in career aspirations, perceptions of the legal professional field, levels of attainment during and after the vocational training stage and into qualification and experience of professional socialisation.

A mixture of methods was deployed: two questionnaires were administered to the student cohorts (both full and part-time) at different stages in the LPC, the first during their first week and the second towards the end of their course (therefore the administration of questionnaire two to the part-time students in a cohort took place a year after its administration to the full-timers). The questionnaires were designed to capture basic socio-demographic details; understandings of the profession; motivations and aspirations; the development of motivation, aspiration; and success in obtaining training contracts. The data from the questionnaires was quality checked and, where appropriate, coded before being input into SPSS for analysis.

The first questionnaire was followed by focus groups which were held about a third of the way through the full-time year (a year later for the part-timers in the cohort). Around one third of the student body participated in four groups of between four and nine students, which were selected to comprise various combinations: for instance, one group was all female, one all male; one all non-white; one mixed both in terms of gender and ethnicity. Each group was led by a different member of the research team. Amongst other topics, the groups explored views on law as a discipline and on ideal jobs and drew timelines charting and exploring their first awareness of a desire to do law through to where they saw themselves in five, ten and 15 years. In order to elicit internalised, and possibly tacit understandings of the profession, responses to questions were explored both in open discussion, and also by asking respondents to write descriptions and to draw what came into their minds when, for instance, they thought of solicitors. The sessions lasted around two and a half hours.

This focus group work was followed by semi-structured interviews with students, largely drawn from the full-time cohort but including some part-timers. Interviews are now being conducted with selected members of the cohorts at staged interval during their training contract and through into their first two years post qualification, again at regular intervals. The project is also tracking selected respondents who have not yet obtained a training contract.

Another sample comprised representatives of the local legal employment market. The research methodology adopted with these employers is similar to that deployed with the students. At the time of writing, a questionnaire, which includes many questions which correspond to those asked of students, had been administered to 50 per cent of local law firms, and this is being followed by focus groups and interviews. To date, around 25 questionnaires have been returned and reminders are being sent out, and five employers have been interviewed.

The gender balance of the research sample corresponded to the national law student average (55 per cent female). However 41 per cent of students were drawn from Black and Ethnic Minority groups (BME) compared to a national figure for all BME students in 2004 of 23.9 per cent. The other striking differential was the high proportion (45 per cent) of students who could be categorised as working
class. On the one hand class has been described, along with other social categories, as obsolete, a ‘zombie category’. Yet the related proposition that we are seeing an increase in transformative agency is undermined by the decrease in social mobility in the UK. Instead, following Savage, we might view class as increasingly related to cultural practice, and it may be argued that the entire system of informal barriers and benchmarks erected by the profession turn on the resilience of the concept of class, as revealed in educational institution attended and, of course, other signifiers such as dress and speech. This is supported by the widespread failure of the elite HEIs to recruit ‘non-traditional’ students who are instead concentrated in the new universities, a pattern which both fits with and accentuates the lower status of new universities and their (related) greater emphasis on vocationalism and innovative pedagogical practice.

In order to establish the class background of the sample, we therefore deployed a mixture of indices including post code, parental occupation, students’ self-categorisation, school attended, patterns of familial attendance at university, and the university where the students had studied for their first degree: for only a quarter of the student body was it common for their family to have attended university; for half, either they or their siblings were first generation students, and these results corresponded with attendance at state schools; and 55 per cent had studied for their first degree at a new university (most at the university under study).

The enactment of socio-economic background in cultural practices was manifest in other ways which would make it difficult for outsider students to ‘pass’ as potential lawyers. For instance, the dress codes of some female students distinguished them from their middle class colleagues, resulting in an aesthetic which could be coded as ‘common’. One student said of an interview at a law firm: ‘they sort of looked at me as if ‘what are you doing here? You should be working in a hair salon or something’, and a mature student who had had a previous career as an accountant made the following observations on her colleagues: ‘I can envisage some of them as being lawyers, but others I look at them and think, ‘what are you doing here?’ … their whole demeanour … some of them look very dolly birdy … the ones that you can tell will get a training contract … the women are young, attractive, thin, blonde … flirty, but dressed very subtly … they are aware and confident’. On the other hand, the Islamic students’ dress highlighted the additional problems they would face seeking to enter a profession which reflected ‘the particular biographies, beliefs and expectations of … white(s) …’.

Speech of course remains one of the most powerful signifiers of class. A primary function of legal training is to achieve enculturation in the profession’s official language; in addition to specific legal terms and the frequent use of Latin, this includes the use of the passive voice and modal markers to signify detachment, which working class students tended to find alien. Many such students had also become conscious of the need to acquire a vocabulary, intonation and accent which would ‘bear(s) the imprint of a professional attitude’ and spoke of the disadvantage they perceived as flowing from their regional accents.

Thus, although students’ reflections on law as a discipline revealed the extent to which they had internalised law’s cultural paradigm and discourse, and, moreover, were aware of and took pleasure in the cultural capital this gave them, this socialisation could not compensate for the differential between these outsiders and the professional template, and, perhaps most significantly, their ignorance of the profession. Whereas many law students in old universities come from legal dynasties, and therefore not only possess a network of contacts and cultural capital, but also that intuitive understanding of what the profession requires, the knowledge of many outsiders was originally grounded in films and television programmes like Ally McBeal and LA Law.

The reasons for the difficulties in obtaining contracts varied according to professional sector. As observed above, the employment practices in the large corporate sector generally reveal a significant bias against new university students.

Yet there is little evidence that the corporate sector’s preference is economically rational, and has been described as ‘misguided’: for instance QAA reviews have consistently indicated broad parity between HEIs in terms of teaching quality. In fact, anecdotal evidence suggests that there may be an inverse relationship between the status of a university and the importance attached to teaching. In fact the claimed correlation between the quality of a law degree and the prestige of the conferring institution may be described as ideological rather than based in evaluative, comparative research. The attributes cited as necessary to be a good lawyer always include ‘people skills’, good communication, time management, and (by corporate firms) entrepreneurialism. Yet it appears that large firms’ criteria is for choosing trainees is grounded in the prestige of their university and other status indicators, and extends to the applicant’s age (around 26); other life experiences which point to the possession of the above attributes tend to be discounted.

This preference for universities ‘marked’ with class status is more than explicable if we see education as a positional good, and acknowledge the dominance of the middle class over professional education
and training. It then follows that one of the primary functions of assessment and qualification is to advantage those existing class groups who have best access to prestigious institutions and professions. The resulting investment which the middle class have in ‘traditional’ qualifications exists in tension with the modernising bent of educational policy: Human Capital theories which argue that the rational operation of labour markets precludes structural barriers to participation on the basis of characteristics like class, gender and race, and the accompanying neo-liberal discourses of competencies, arguing for modes of training of demonstrable value to work performance. These trends have been identified as having produced the utilitarian turn in HE, with its emphasis on Personal Development Profiles (PDPs) and the need to produce workers unencumbered by tradition. As we have argued above, because both HE and the professions remain sites of class and gender privilege, these processes are being resisted, especially by Russell Group universities. Similarly with law, there is a tension between the imperative to meet the different needs of a fragmenting professionalism and fragmenting society through production of different kinds of lawyers, and the interests of the profession in maintaining the obscure link between legal knowledge and practice.

The decline in the small firm / High Street sector of the profession extends to their intake of trainees: nationally, sole practices and firms with up to ten partners take 37 per cent of trainees registered with private practice. Furthermore as a result of the partial persistence of quasi-kinship structures in this sector, contacts remain a primary means of obtaining a contract with the result that ethnicity and gender are far more determinant of students’ chances of success. This has led to the development of niches in the market, where small high street firms or sole practices run by minority solicitors can provide a refuge for those who would have difficulty finding places with larger firms.

This latter strategy recognises the importance of social capital, and an alternative approach is to seek to build and exploit ‘bridging’ social capital with ‘insiders’.

However, the process of accumulating bridging social capital is not accessible to all outsiders. An alternative strategy is to accumulate workplace skills and competencies in a lower status niche, and then to ‘sell’ those skills to a more advantageously placed firm.

The ‘incomplete and idiosyncratic foundation’ offered by legal education intensifies the professional socialisation process which trainees undergo during their training contracts. As experiential learning, in which practices (both technical and cultural) are modelled by the master, it serves to break trainees down and re-make them in the image of the firm. The formal training in legal skills is designed to inculcate those dispositions which embody the culture of an organisation, and although full professionalism will ultimately be exemplified by certitude, initially the effect on the trainee tends to be loss of confidence.

Thus trainees must learn how to display, effortlessly and therefore convincingly, a professional demeanour, which, as the comments by a middle class white man, training in an expanding commercial firm, make clear, is rigidly bounded: ‘(it’s) conformist … people believe they have to act in a certain way to be looked at as lawyers …’.

Instead, I want to suggest using the key findings of research about both the barriers facing non-traditional students, and the strategies used by those who achieve ‘success,’ to enhance the education and training process at the undergraduate stage in a way that will both reduce the opacity of the way in which entry to the labour market works, open employing organisations to more public scrutiny and thereby reduce the information asymmetry which market theorists would see as one of the key dysfunctions of the current state of affairs.

This could be achieved by incorporating learning elements within HET’s equality and diversity strategies in order to enhance the employability of all students, but particularly those from minority backgrounds, and to raise the profile of ‘outsider’ students with the profession and sensitize it to diversity issues. This might be accomplished by embedding within degree or professional qualifications a pedagogical instrument which combines research, similar to that reported here, into the student body (in order to acquire the necessary in-depth knowledge of their demographic background, their motivations and aspirations), tutor led work to improve students’ critical understanding of the legal profession, together with exercises also designed to engage law students in critical reflection about the legal profession. This last dimension could comprise student research into the profession’s structure and culture, including an analysis of skills and other attributes it requires; student link or mini-placement with a firm, and the development of a personal career strategy including practical steps to meet not only those employer needs which are explicitly stated, but also some of the implicit unstated expectations. This pedagogical instrument could take the form of either a dedicated professional employability module or modifications to existing PDP activities, or elements of these embedded across the law degree, and would thus combine the research methods described above with tutor led input and student research exercises.
The current focus on equality and diversity and widening participation, which is shared by HEIs, government and the professions, makes this a crucial moment to interrogate what is entailed in transforming both HE and the professions into genuinely diverse and open institutions. I have sought in this paper to contribute to the debate over how we can realise the potential for encouraging diversity, not just in the sense of widening entry, but also in the sense of rendering the profession as a space more open to the contributions of different kinds of lawyers (and see the arguments of Erica Rackley in a similar vein in relation to the judiciary) by using opportunities for curriculum innovation to create a bridge between the profession and non-traditional aspirant lawyers.

**SUBJECTS**

Adding legislation courses to the first-year curriculum

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Charges that legal education (at least in the most elite schools) is out of touch with legal practice are old ones; and many professors scoff at conversations about curricular reform because they know they've had these conversations before, in one form or another. Indeed, despite the sometimes optimistic tone of today's reformers that we are on the verge of a breakthrough, experimentation with the law school curriculum is hardly a 21st century phenomenon: For example, the Critical Legal Studies movement sought (and temporarily succeeded in some places) to reshape the basic curriculum. Some law schools have self-consciously organised their curricula to promote social justice activism and make clinical education much more central to their pedagogy.

The cycles of excitement for reform present new opportunities to focus attention on some of the well-known ongoing pathologies in legal studies education and to develop further thinking and empirically grounded research about elements of that decades-long struggle to harmonise legal education with modern lawyering.

There is perhaps one more reason not to ignore today's cycle of reform enthusiasm that might set it apart from generations previous: the standard-bearer of legal education, Harvard Law School, has actually tinkered with its first-year curriculum in a very public and visible way. To the extent that many schools march to the beat of Harvard's drum, this change by a single school may have dramatic ramifications for legal education more broadly. After all, the vast majority of law schools modeled their pedagogy — whether directly or indirectly — on the methods of Harvard's famous Dean from 1870 to 1895, Christopher Columbus Langdell. Of course, many schools adopted some of the recent 'Harvard changes' before Harvard did — but no other school has done so quite as visibly and no school is as likely to instigate a copycat phenomenon. Although, to be sure, Harvard has experimented with changes in its first-year curriculum before, the recent announced changes are not being treated as experimental; they are less difficult to replicate, integrate, and adopt; they have been met within the Harvard faculty with the sort of enthusiasm and consensus that will likely sustain the changes for a long time. And although Harvard's inclusion of International Law in the required first-year curriculum has been treated by some as having political and ideological content, the rest of Harvard's recent choices have not provoked political opposition.

My task here is to discuss only a small piece of the larger reform conversations of the day, focusing on one element of Harvard's curricula reform: the reconstructing of first-year curriculum to include a freestanding 'Legislation and Regulation' course. Although it may seem hard to isolate one piece of a reform agenda for analysis without addressing some of the larger animating concerns of the reform debate, I aim only to lay out the case for why law schools should consider adopting some version of this particular reform, recently embraced by Harvard's faculty unanimously.

For a long time, the standard first-year curriculum has been badly out of synch with what lawyers actually do. The particular way it is out of synch for my purposes here is that the first year slate of courses tends to be dominated by a judge-centred perspective on the law, in which all legal questions are answered by people in black robes — and generally black-robed people at the appellate level. That neither reflects reality, nor approximates how lawyers need a sophisticated understanding of the law-making process and they need to acquire sensitivity to methods of reading statutes and regulations to facilitate their clients' compliance with the law. Reading appellate cases well can be an important skill as well, of course, but it is hardly so central a skill relevant to the practice of law that training alone should dominate the first-year curriculum in the way it does.

Mandatory first-year Legislation courses could be designed to overcome many — though obviously not all — of these pathologies. First, in light of what Guido Calabresi famously called the 'stratutorification' of American law, they could help cure students of their excessive attention to appellate arguments and judge-made common law in their first-year coursework. They could also
contribute to instilling in students some respect for the hard work of our primary law-making vehicles: our federal, state and local legislatures.

Moreover, by mandating the courses in the first year, schools can remain confident that their students are being exposed to skills in reading and interpreting statutes and regulations that are likely to comprise their ultimate practice of law and that they are exposing students to a broader range of practice opportunities than first year generally permits in its virtually singular focus on litigation-oriented jobs.

Furthermore, by putting the courses in the first year, schools can ensure that students are taking the courses when they are at their most attentive, since it is widely believed that students are most diligent in their first year of law school. And because the Legislation course is so useful in better understanding higher-level courses, putting it in first year enables it to serve as a foundational course. Indeed, large numbers of students are likely to take upper-division Constitutional Law, Administrative Law, Law & Politics, and other statute-based substantive law classes; they could use the foundation as early as possible in their educational careers.

Another major benefit of taking the course early in one’s educational career is its unique ability to instill respect for methodological pluralism about law. Quite simply, legislatures and agencies ‘think’ differently about lawmaking and law-application than courts do — and they can operate quite differently too. Virtues that are celebrated in the common law — like predictability and clarity — do not always contribute to effective and successful legislative and administrative work; consensus-building, participatory deliberation, and interest group activity need not be dishonourable and are central to legislative and administrative decision-making.

Finally, to the extent that Legislation courses expose students to regulatory practice, state and local government organisation, and agency rule-making and adjudicative processes, students can get a feel for both our general governmental structure as well as the sheer diversity of legal regimes that often escape notice in the first-year curriculum. By engaging deep questions about comparative institutional competence as the Legislation course requires, students can get a lot more out of their other substantive first-year requirements, where questions about comparative institutional competence always lurk but are rarely addressed with any sophistication.

Although I fully agree with those who complained with the current first-year curriculum was insufficiently preparing students for reading and analysing statutes, I also tended to agree with the faculty members who insisted that there was plenty of statutory exposure in the first year, as it stood. Indeed, in my Contracts course I tried to cover some basics about legislation and regulation through my course materials. And at least one of my colleagues has an extended module on statutory interpretation in her Criminal Law class. There is certainly a foundation upon which professors can build to accentuate process and interpretation in the standard menu of first-year courses.

But over the last several years, I have had a change of heart. It has become increasingly clear to me that professors who are teaching Criminal Law, Contracts, Torts, Civil Procedure, or Property simply cannot do double duty, especially as those courses have shrunk and are continuing to shrink to make room for other classes, like Constitutional Law, Legal Writing, Moot Court, and other first-year requirements. Administrative law, regulation, and statutory interpretation are all complex and rich areas that cannot be treated matter-of-factly within other courses. It is a bit like expecting all professors in all subjects to teach Professional Responsibility so that we don’t have to devote students’ time to learning professional responsibility in a stand-alone course.

I perfectly well concede that using other substantive courses to cover some of the material in Legislation courses may be a very useful second-best strategy for updating the first-year curriculum in the ‘age of statute’. And, indeed, if schools can’t staff a sufficient number of Legislation sections, it is not a bad idea to try to get some of the coverage through other courses. Nevertheless, it is much more difficult to manage in such a diffuse manner — and it risks diluting the central message that a free-standing course can communicate to students about what their professional lives are actually like. Moreover, by mandating the courses in the first year, schools can ensure that students are taking the courses when they are at their most attentive, since it is widely believed that students are most diligent in their first year of law school. And because the Legislation course is so useful in better understanding higher-level courses, putting it in first year enables it to serve as a foundational course. Indeed, large numbers of students are likely to take upper-division Constitutional Law, Administrative Law, Law & Politics, and other statute-based substantive law classes; they could use the foundation as early as possible in their educational careers.

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Anyone who has taught these courses knows that they present pedagogical challenges. Even second- and third-year students find these courses especially complicated and disorganised. Indeed, student dissatisfaction with these courses keeps many teachers away: teachers — especially untenured ones who might be somewhat more likely to have chosen these areas as specialities (or more likely to have been recruited to teach these courses because they are the least able to resist the deans) — do not want the hassle of mediocre student evaluations. Because student complaints sometimes drive the agenda for curricular reform in the first place, adding (or retaining) a course about which students complain seems odd.
Sometimes, of course, students don’t know what is best for their educations. Administrative Law and Statutory Interpretation are hard courses — and they can even be boring at times. But that doesn’t mean that they aren’t critical to good lawyering and that they aren’t foundational courses that students might be required to take in their first year.

First, unlike what is typically contained in the rest of the first-year curriculum, the Bar Exam will usually not test the vast majority of content in Legislation courses. This frustrates students and contributes to their general sense that a free-standing course is an indulgence and is unimportant.

Second, much of the basic Legislation course invariably draws upon political theory, political science, and positive political theory — and students without some background in these areas may feel especially disoriented. While students love the spoon-feeding that is possible when instructors give them a list of canons with which to play, they resist the lessons of public choice theory, the legal process school, and high democratic theory because it doesn’t look like law and seems less determinate.

Third, to teach statutory interpretation well, instructors have to push students (and themselves) into substantive areas of law that they know very little about — with great agility and speed.

To be sure, these are all helpful ways to understand student dissatisfaction. But the first source of gripes — rooted in the Bar Exam — does not strike me as worth much discussion. The Bar Exam is itself insufficiently out of touch with what most lawyers do that it makes little sense to cater our first-year curricula to that examination, nearly four years away from its administration. Our law schools should be aspiring for more long-term contributions to the education of the next generation’s lawyers.

But the second and third reasons mentioned in the above for student discontent are real and cannot be ignored. The Legislation course is theoretical and ‘political sciency’, and it does draw on many subjects and disciplines.

In short, many problems can be alleviated through careful syllabus design and some effort to integrate the course with other substantive first-year courses.

Finally, although it seems anecdotally true that students tend to give professors who teach these courses (like those who teach Administrative Law) lower evaluation scores relative to course and professor averages, so does it seem anecdotally true that students have a quite different estimation of the course once they get into the world of practice. From corporate lawyers to public interest lawyers, former students often have to concede, sometimes grudgingly, that the course actually helped them in the practice of law. Too often, curriculum committees listen to the gripes of today’s students, when asking alumni what they actually need and use in practice seems like a sounder method of gauging consumer satisfaction levels and planning for the future.

Every proposal for a new course in the first year presents a trade-off: Contracts, Torts, Civil Procedure, Criminal Law, Property, Constitutional Law, and Legislation can’t all get six units in the first year — and adding something to the curriculum means taking units away from something else. Moreover, the Legislation course can’t be compared only against a fifth or sixth unit of Contracts and/or Torts, which many might agree to be indulgent; it must be weighed against the choice of including International Law, Professional Ethics, Jurisprudence, Law and Economics, Lawyering, Criminal Procedure, or any number of many worthy possibilities. Rethinking the curriculum more broadly might lead to restructuring students’ upper division courses.

Nevertheless, I remain of the view that a Legislation course should be a high priority for all the reasons already discussed: it is foundational for many upper division electives, extremely useful and practical (even with forays into theory that help illuminate the doctrine and its applications), necessary for much of today’s lawyering, and is a perspective unlikely to be well-explored through other basic courses.

With well-designed course materials — and a plethora of them to choose from — instructors can do a better job ensuring the success of the courses.

In fact, the strategy of many of the newer casebooks in the field is to try to mitigate the difficulty of exposing students to too many areas of substantive law by developing materials surrounding only a few statutory and regulatory areas.

But because approaches to the study of legislation can be so varied and because casebooks in this area continue to proliferate, it is worth considering what some versions of the course could look like.

The options I identify below are not necessarily mutually exclusive, nor are they exhaustive. However, it is unlikely that one could adequately teach a course that successfully incorporates all of these components, whether in a three or four-unit format. Still, getting the menu before us at least serves the salutary function of articulating many of the available options in course design.

The Statutory Interpretation Course: This version of the course focuses student attention on the mechanics of statutory interpretation, introducing them to linguistic and substantive canons in varied legal contexts. It usually involves substantial exposure to theoretical debates about intentionalism, textualism, the ‘legal process’ family of theories, and dynamic or purposive statutory interpretation.
Ultimately, these theories and their viability simply cannot be understood without some sensitivity to separation of powers concerns; and the course is generally rounded out with some basic details about administrative law and deference to agency interpretations of statutes. In a three-unit format, professors cannot hope to teach much more than this — and a course centred on these main issues is invaluable to students, no matter what substantive area of law they pursue in academic or professional settings. Indeed, this version of the course is among the most portable and most versatile.

*The Legislative Process Course:* This version or focus to the course attempts to expose students to the various processes that produce statutory law. Professors in these courses often pursue thinking about representational structures and some basic voting regimes; some turn the course into an introductory class in election law (especially when Election Law scholars are the ones offering the course). Commonly, teachers include in their syllabi further study of the legislative drafting process, legislative committee structures, the lobbying process, the rules surrounding lobbying and campaign finance, and the rules structuring legislative deliberation.

No one doubts the importance of this version of the course and many teachers try to draw from some of these materials no matter what version forms the core in a given syllabus. Still, it is much harder to argue that, say, Election Law is foundational in the same way as the Statutory Interpretation course because it is not obviously as portable to disparate concentrations throughout a law school career.

In a 14-week semester, I’d suggest that about four weeks should be devoted to some process materials. Without a piece of this version of the course, there is a risk that students will only depart with a sense of how courts treat statutes.

So what process material would work best when combined with a largely Statutory Interpretation-focused course? Certainly, students need a sophisticated picture of how bills become laws, one that gives them a juicy empirical sense of how things ‘really’ work and a juicy theoretical overview of legislative process (including some exposure to pluralism, public choice theory, liberalism, republicanism, and institutionalism).

*The Administrative Law Primer:* Some professors teaching courses that fall under the general ‘Legislation’ label use the opportunity to spend most of their students’ time exploring the architecture of the administrative state, the mechanics of administrative procedures, agency implementation of legislative directives, legislative oversight over agencies, and judicial review of agency decision-making.

This version of the course is undoubtedly important — even in states whose bar exams do not test Administrative Law, since most lawyers engaged in practice that intersects with federal law will need competence in Administrative Law. And although learning about federal regulations and their enforcement is surely an important corrective to excessive fixation on common law courts, it would be a substantial missed opportunity to fail to teach about the legislation and institutional structure (and thinking) that creates the agencies in the first place. So although some basic administrative law should clearly be a component of well-designed Legislation courses (say, some basic introduction to administrative processes and *Chevron* and its progeny), it shouldn’t displace the entire curriculum, as it can easily do.

An additional difficulty of this version of the course — though this is more a degree issue than a type issue because all versions of the course suffer this problem to some extent — is that the underlying substantive law shifts around so much that students invariably tend to feel that they are skipping around from topic to topic.

*The Basic Regulation Course:* This version of the course focuses on policy design, cost-benefit analysis, and the competency of agencies to solve social problems of a certain scale. Risk regulation takes centre stage and instructors cover accounts of how parties bargain, evaluate, and communicate risk. Given the substantial interest in gun, tobacco, environmental, and public health regulations, courses might pursue recent approaches to and proposals for comprehensive regulation in those areas.

Yet, the vast majority of schools outside the top tier will not generally have the same caliber of student as attend the top schools — and the curricular design for the Legislation course needs to remain sensitive to the needs and capabilities of the students in the class. In short, even if the top schools head in this direction, it would be far sounder for lower-tier schools not to emulate them on this dimension.

*The Substantive Law Course with a Statutory Core:* One approach taken by some schools (including, for now, my own) is to attempt to impart some of the content from the aforementioned versions of the course by way of a ‘statutory course’ with a clear substantive focus. Through teaching students, say, employment discrimination, environmental law, food and drug law, immigration law, or other domains controlled largely by statute and regulation, instructors can introduce students to elements of the
legislative process, statutory interpretation, administrative law, and regulation. One of the purported benefits of using substantive courses of this nature is that schools can offer students a choice, even if the pedagogical goals across the substantive courses are supposed to be harmonised. And doing it this way tends to alleviate many of the staffing-related problems, since deans can usually round up enough faculty to teach these types of courses by experts in their respective fields.

Although, of course, this strategy of ‘double-coverage’ can be done successfully, it does present unique challenges to students, who want structure and substance wherever they can find it, especially in their first year. Since few who teach these substantive courses care as much about the legislative and administrative law core as they do about their substance — and because exams and coursework will largely focus students on the substantive law ‘vehicle’ — I tend to think this is a much harder method of imparting the relevant skills and foundation that the courses generally seek to achieve.

Obviously, there is no perfect way to design the course, even if, as I’ve argued, one type or focus is more promising and useful in the first year than its alternatives.

Ultimately, design challenges vary depending on the consumers: first-year students will need to be taught in one way and upper-division students another; aspiring academics can perhaps be taught differently than aspiring firm lawyers; students who have taken Constitutional Law will be differently situated than students who haven’t already been exposed to separation of powers and federalism. And design variations also arise because of the providers of these courses: professors with varied interests come to the course with their own research agendas and teaching strengths — and they reshape their versions of the course accordingly.

That said, assuming Legislation does become a required first-year class at a critical mass of schools, some effort must be made to maintain some consistency across sections in the first year, where students are most sensitive to what their colleagues with other professors are learning. Accordingly, when a law school makes a commitment to add a Legislation course to the first year, the school must do more than simply change their bulletins: they should do the harder work of coming to some agreement about which version of or focus to the course they wish for professors to teach.

It is all well and good to conclude modestly (as I think we must) that curriculum committees across the country should consider following Harvard’s unanimous decision to add a Legislation course to the first year. But there is a lot more thinking to do about the shape that the ideal course should take, how much consistency there should be between sections, and what minima should suffice, given staffing limitations at any particular school. This article is an attempt to start that thinking.

SUBJECTS
Legal education, philosophy and values consciousness of the law students
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The value of teaching philosophy in law schools has been the subject of considerable debate. Few law schools require a course in legal philosophy, and detractors in academia and practice bemoan its abstraction and doubt its utility. Unsurprisingly, while commercial law electives do not need a reputation for being well-taught or interesting for good enrolment, anecdotal evidence suggests that the average law student is not inclined towards a legal philosophy elective due to its perceived difficulty and a fear that law firms do not see its worth. Such disinclination towards a subject that allows critical reflection on ideals of law seems counter-intuitive as the student should be concerned about the worth of the legal system within which she serves in future. It is, however, understandable in light of pragmatism: while understanding ideals is possibly assurance against a wasted life, it is technical expertise that is immediately employed in the practice of law.

Law schools have a special responsibility to teach legal ideals to counter the tendency in legal education to construct boundaries that delineate what is properly ‘legal’. These boundaries, described in the next part, are often unquestioningly accepted, but may stem from contentious assumptions about law and the legal system. Only when students’ hearts and minds are critically engaged on fundamental questions and what they have hitherto accepted as givens may they meaningfully understand their role and purpose in the larger legal process.

Some academics suggest that legal education insidiously constructs boundaries of law in the minds of law students as they learn, from Day One, that legal reasoning is different from moral or political discourse. This may be because the predominant view of law in law schools tends to be a positivistic one, according to which law and morals are separable. Students taught by academics in this vein believe that law comprises rules to be learnt, but ‘little do students who operate in this fashion … realise they are in fact utilising one conception of legal theory, viz., positivism’.
Students are socialised into a lawyer's role when, in most of their courses, they are taught legal rules 'plucked out of' cases or statutes, sometimes without regard for general underlying principles or a demand for coherence amongst the rules. When students are taught to distill rules from cases, they learn to abstract objective generalisations of facts. When it is suggested to them they must be 'objective' rather than bring in their own moral values, they acquire a sense that legal reasoning is objective and special, different from controversial moral reasoning which is subjective and which they soon learn to banish as emotionality from their legal thinking. Soon, they put on moral blinkers, define 'moral dilemmas in legalistic terms' and 'solve' them with reason by dispassionate answers that fit into some legal classification governed by some legal principle'. A sense of omnipotence is acquired due to the pervasiveness of law and the seeming efficacy of legal analysis in presenting solutions to all problems that law touches, in contrast to the relative indeterminacy of moral discourse.

The very ideal of advocacy and the nature of the adversarial system sometimes further desensitises the students to their own moral beliefs or opinions. The basis of advocacy, that truth will emerge if advocates pit their skills of persuasion against one another, sometimes ends up fostering an indifference to truth, with consequences on one's character, as one is taught to suspend one's judgement. In mooting classes, for example, students are often assigned a controversial legal problem in which a question of law arises and draft a memorial arguing for a particular position on the controversial point of law. Assigned a particular case, competitive students have to make the best argument for their case. Students recount that in some of these classes, after the written memorial has been submitted and assessed, to their surprise, they are assigned the opposing stand for their oral argument, a second component of the moot program. Such training is worthwhile from the point of view of learning argumentative techniques, but the effect that 'switching sides' has on the student who worked hard on her case and came to believe in the strength of her arguments is profound. At an early stage of legal training, because conviction is helpful when one presents arguments, the good student may try to convince herself of the strength of the opposing case to which she has now been assigned. While seeming to train one in objectivity, the other side of the lesson that a student subconsciously imbibes is that it does not pay to feel too strongly about one's case, for one could end up on the other side, and equally strong arguments may be mustered on either side. The result may be a sense of the relativity of truth.

As one's character is determined in part by what one cares about, a cynical carelessness to the discovery of truth in aspects of social life that law encompasses may develop.

The Socratic method, a favoured mode of instruction in law school classes and in pop culture described in Scott Turow's One-L and epitomised by the notorious Professor Kingsfield in the movie Paper Chase, may, in the hands of the unskilled, also lend to the fostering of a belief in relativity of truth. In the Platonic dialogues, Socrates elicits views of his interlocutor on a particular subject, puts to him further questions to elicit what turns out to be an elaboration of the same subject, and then challenges his interlocutor about any possible contradiction of the first opinion evinced by his further responses to Socrates' questions. The aim is to help the interlocutor assess his commitment to his first judgement, or reformulate it where necessary. An unskilled teacher may lead the student to greater confusion or relativism by insufficient direction or an inability to point out contradictions which show that several of the student's beliefs may not be consistently embraced. The student is left thinking that all positions are equally plausible.

With the obstacles mentioned, the inculcation of values falls often on the shoulders of the teacher of professional ethics. This, however, is problematic. In the first place, a course in professional ethics may not be compulsory, but left to the professional bar. Such inculcation of values is less effectual when it occurs at such a late stage of one's legal education, and when it is taught in such an isolated manner. Second, even if taught earlier, while a legal ethics course apprises students of ethical dilemmas, if it focuses primarily on existing codes of professional ethics, working around rules and hypothetical scenarios and the emphasis on sanctions for breach arguably do little to inculcate in students sensitivity to ideals underlying the legal system. These courses may 'make virtually no effort to develop or present a theory of responsible professional behaviour and are not organised around a coherent theme or explicit moral philosophy'. Professional ethics becomes another course in the curriculum, where ethical problems are resolved by the same legal thinking through the application of rules of a code. Even the organisation and content of the materials used in a course of this nature assumes that 'the professional role of the lawyer is morally defensible — that legal thinking in general and the ideology of advocacy and the adversary system in particular are socially and ethically justifiable'. Students blindly accept professional rules, just as their creativity in working around rules to achieve desired outcomes for clients is rewarded in substantive law courses, in legal ethics courses too students may be accustomed to learn to comply with the letter, rather than the spirit, of the law.
Legal philosophy allows students to examine the value of law and the ideal of the legal system. What students acquire in legal philosophy acts as ballast against the ‘acculturating’ effect of legal education. A well-designed legal philosophy course challenges students to reconsider false assumptions, and bring their own values into their assessment of the law and counselling or advice of the client in two ways: First, through content that provides alternative ways of looking at the law and sensitises the students to the role of law in society and law’s impact on real lives and people; second, through pedagogy that engages the students’ own comprehensive worldviews and awakens the students to the potential of their roles as active citizenry and agents of change in a deliberative democracy.

A good legal philosophy course that enables students to reconstruct boundaries of law must challenge students to consider what they had accepted as given: law’s legitimacy and its relation to other phenomena such as power, morality, justice and reason.

Some fundamental questions that students must be asked, which are not asked in many other courses, include the following. How is law different from power exercised by a group of bandits? What characteristics must be possessed by law for there to be a meaningful distinction between rule of law and rule by man? Are manifestly unjust laws really laws? Or must laws meet a minimum moral standard before they acquire their legal status? Is justice always done when officials follow existing rules, or is it done in some cases when officials refuse to follow some rules? What is the proper justification of a legal system in a postmodern pluralist world: That it serves a common good, or that it allows individuals maximum autonomy? Should laws enforce controversial moral beliefs? For example, why should abortion be allowed when some believe it is murder? Why should polygamy be prohibited when it is allowed by some religions? These questions heighten students’ consciousness of law’s value in society in guiding the behaviour of subjects of law in a manner that respects their dignity. Such value is achievable only if law bears characteristics which distinguish it from arbitrary power. Students who understand such concerns are equipped to practise law in a manner which serves justice and respects the dignity of subjects.

In the National University of Singapore, law students may take an upper year elective in Jurisprudence, and are required to do a course called Introduction to Legal Theory in their first year. As the introductory course is taught when students know too little law to appreciate broad sweeping descriptions of the law by different schools of legal philosophers, my course is designed thematically. This, in contrast to exploring schools of legal philosophy such as legal positivism and natural law theory as is conventionally done in jurisprudence courses in other institutions, allows a direct exploration of law’s ideals. Current and familiar contexts are employed as launchpads to engage the students by presenting them with practical situations in which theoretical questions arise, thus explicitly integrating theory and practice.

The course, taught over 12 weeks in three-hour weekly seminars, is divided as follows:

- Legal education, the construction of boundaries of law and the uses of legal philosophy (Topic (i));
- Perspectives of law: the nature of disagreement about law and theories about law (Topic (ii));
- The rule of law (Topic (iii));
- Law, justice, morality and liberty (Topic (iv));
- Foundations of the legal order (Topic (v));
- Adjudication and legal reasoning (Topic (vi));
- The constitution and jurisprudence (Topic (vii)); and
- Role of lawyers and professional identity (Topic (viii)).

Topic (i) invites students to step back and look at their legal education thus far, to consider how legal reasoning and discourse in classes have shaped their view of law. Students examine the impact of their personal (oft unarticulated or unknown) philosophy about law on the kind of arguments they make in substantive law classes. Students read two cases in Topic (ii) — one involving judge-made law, and another involving the interpretation of legislation. Through scrutinising arguments made by the lawyers and decisions reached by the judges in the majority and in the dissent, students consider the nature of disagreement about law. What do lawyers or judges mean when they think a particular case should be decided one way rather than the other? If the sources of law are statutes and decisions of the courts, why would participants of the legal enterprise argue about what the law is on a particular issue? Is this not a question that could be easily resolved by opening statute books or law reports? From this, students are introduced to two major contending theories about law — legal positivism which suggests that what law is is determined by a test adopted by a particular society or its officials (for example, official practice may recognises valid all laws that conform to the constitution of the country), and natural law theory which suggests that law conforms to fundamental principles of morality.
or justice. Students are shown how differing views in real cases hinge on the definition of law which lawyers and judges subscribe to.

By this stage of their legal education, students are likely to have heard of an old adage that even the king is subject to the law. In Topic (iii), they examine characteristics of the rule of law, in contradistinction to the rule of man. They consider a sceptical (and also Marxist) view that law is politics and serves to perpetuate existing hierarchies and further the interests of the rulers, and are invited to reflect on their experience to determine if this is true.

Topic (iv) is a major segment of the course, in which students consider law’s underlying values of justice and morality. Popular notions of morality (such as the subjectivity of moral opinions) are examined, drawing upon the students’ pre-law school experience. Students are asked to reflect on the connection between law and morality, and the problems this poses in a postmodern pluralist world in which moral opinions differ. Whose morals should law be connected with? They explore the manner in which existing laws enforce controversial moral notions and impinge on the liberty of the subject, for example in the case of criminal laws prohibiting consensual sexual acts (adult incest, bestiality, and homosexual acts) which apparently harm no one. Students examine whether the legitimate basis for law is the enforcement of moral values, the protection of the moral environment, or to prevent harm to others. Students also explore the relationship between rule-following and justice, and consider whether it is always just to apply all rules (particularly, unjust ones). What injustice is done, for example, if a merciful judge deviates from an unjust law that requires him to put to death a person on the basis of race alone, and lets off one member of the race who has been brought before him? Further, with the case study of the laws of the Nazi regime, they analyse what lies behind the notion of an obligation to obey the law, and how it arises. They explore the notion of fairness — whether it consists of treating people equally and whether that encompasses affirmative action and so on. Even visceral reactions are valued as students are invited to reflect on whether such reactions are rationally justifiable and whether particular responses to specific situations stem from more general principles that constitute principles of justice.

Students are invited to examine the legitimate foundation of the legal order in Topic (v). They consider whether the legal framework should respect individual autonomy or promote particular ideas of the good life, and the type of reasons which may be given in the public square for public decision-making. To contextualise abstract questions, I use the example of laws regulating abortion. By setting students the simple task of articulating reasons they would use or have heard others use to justify prohibiting or allowing abortion, students experience a debate in real time. They are then required to take a step back and assess if each reason cited may be comprehensible to interlocutors with different worldviews.

Topic (vi) focuses on the practice of adjudication. In view of the fact that many law students will spend some of their lives arguing before judges, they are asked to consider whether there is a right answer that the judge must arrive at, and the source of such a right answer, if any. Is it found within the legal institutions and materials, or does one have to resort to an extra-legal morality? Students consider critical perspectives of adjudication such as the view that how judges decide depends on what they had for breakfast. Their assumptions about truth and justices they argue before a judge are unpacked.

Topic (vii), students learn about constitutionalism. How the preceding topics fit in with the existence of a text in the country which purports to be the supreme law of the country is examined.

Finally, in Topic (viii), students relate all they have learnt to their future role as a lawyer. How would their view of what law is impact the way they practice law and their conception of the professional duty of the lawyer? They are asked some final questions: Can a good lawyer be a good person? Can a good person be a lawyer? To what extent must the lawyer do for his client what he would not even do for himself? Students examine how the dominant metaphor of the lawyer as a ‘hired gun’ has shaped professional identity, and consider alternative metaphors, such as the lawyer as a healer of conflicts or a defender of justice.

While every good philosopher has an awareness of her personal worldview, my mission is not to impart mine, but to challenge students to formulate theirs. In terms of pedagogy, I have found the Socratic techniques of the dialectic and the elenchus helpful.

I hear what my students have to say on a particular subject, put to them further questions to elicit an elaboration of the same subject, challenge them about possible contradictions, and prod them to reassess their commitments or reformulate their views. With the chosen themes, the end result is that a keen student forms her own view about law’s relation to justice and morality, and how professional practice sits with her own comprehensive views about life in general.

In official student feedback on the course, students have appreciated the employment of culturally current tools to teach abstract philosophical issues, as they gain real world perspectives of theoretical
Civil litigation is a dynamic process. One of the great challenges for teachers of civil litigation is conveying the dynamic nature of litigation in the formal environment of a lecture theatre.

Witnessing litigation in action is an ideal way for students to develop a sense of ‘how it all works’ in practice. Where student numbers permit, court visits are a very successful method for both engaging students and contextualising the rules of court. It is much more difficult to bring the subject of civil litigation alive in larger classes where student numbers pose a logistical barrier to court visits and in-class group exercises. Taking large numbers of students to the courts is not a viable option. Locating a courtroom where an interlocutory application is being heard in its entirety is not simple. Even if you are able to find an interlocutory application that runs, it is difficult for students to follow what is happening in court without the court file or access to the lawyers.

Another important factor in teaching civil litigation is that most civil court cases ‘are resolved without a hearing, through direct negotiations between parties, conciliation, mediation and other processes’. A vital aspect to teaching civil litigation is therefore to convey how negotiation and mediation interplay with the traditional court processes. Negotiations are a step by step process mainly conducted informally between the parties’ legal practitioners. Mediation is increasingly becoming a routine step in the litigation process, imposed by many courts under their case management procedures. Due to the private nature of mediation in Australia, it is not viable to arrange for students to observe mediation in practice. Where student numbers permit, court visits are a very successful method for both engaging students and contextualising the rules of court. It is much more difficult to bring the subject of civil litigation alive in larger classes where student numbers pose a logistical barrier to court visits and in-class group exercises. Taking large numbers of students to the courts is not a viable option. Locating a courtroom where an interlocutory application is being heard in its entirety is not simple. Even if you are able to find an interlocutory application that runs, it is difficult for students to follow what is happening in court without the court file or access to the lawyers.

Given the logistical problems in facilitating court visits and exposing students to real-life negotiations and mediation, the authors decided to bring the court and mediation room into the classroom through a simulated dispute, which students were able to watch on DVD. There are a number of recognised benefits of ‘role-playing’ simulations in legal education (where students actively participate in the simulation). These include bringing the subject to life, promoting active learning, developing basic interpersonal skills, encouraging constructive student interaction and involvement, increasing student confidence, and providing a framework within which to raise ethical issues. The use of a simulated dispute which students watch on DVD (rather than directly participate in) has many of these benefits. Another key benefit of using DVD clips is that they provide a visual method of instruction, which balances the more traditional verbal method of delivery used in lectures and assists students to learn in context. Getting students to watch a simulated dispute also enhances interactive or experiential learning as it allows students to model the behaviour they see in a DVD in subsequent role-playing simulations. In the context of civil disputes, simulations can also bring to life the rules of procedure and the theory of dispute resolution, which can only really be understood in the context of a dispute.

A multimedia project called ‘Litigation in Action’ was devised in an attempt to bridge the gap between the classroom and the court and mediation room. The project generated a DVD entitled,
Keeping Your Cool — A Guide to Civil Dispute Resolution, which simulated the common steps involved in a civil dispute, from the initial client interview through to informal negotiations, mediation and several interlocutory hearings, culminating in a trial.

The development of television, computers and the internet has revolutionised how people communicate. In a society bombarded with visual images, it is not surprising that many people process information more easily when it is presented in a visual format. While all students differ in their learning styles and preferences, several studies have shown that most people of tertiary age and older describe themselves as predominantly visual (as opposed to verbal) learners.

The categorisation of ‘visual’ and ‘verbal’ learning styles is based on the Felder-Silverman tertiary education model. Visual learners learn best from what they see, such as pictures, diagrams, graphs, flow charts, films and demonstrations. Verbal learners learn more effectively from words. For example, they prefer either written or spoken explanations and learn even more by explaining things to others. Felder and Silverman assert that teachers should cater for different student learning style preferences by striving for a balance of instructional methods.

Broadly speaking, educators recognise the significance of a communication trend based on visual images and are eager to bring education up to speed. Law schools, however, have been slow to integrate technology in the classroom. The remainder of this paper will focus on the use of multimedia technology to develop a visual learning environment in civil litigation classes, to enhance (rather than replace) other more traditional methods of teaching law.

Delays were expected and experienced. The project was made under a strict budget of less than AUD $50,000. This was made possible by using in-kind services of law staff, the university’s multimedia department and members of the profession (such as the judges and lawyers that appear on screen). The project was financed through a small faculty multimedia grant in collaboration with the Leo Cussen Institute, Melbourne.

The project involved the drafting of a fully scripted scenario and a suite of background documents, including a court file. The script was professionally edited to ensure a realistic production. The authors recruited actors (both professional and amateur) to play the various characters involved in the dispute. The various scenes were filmed over four days. The footage was then edited and graphic designers were used to prepare a user-friendly end product. The scenario related to the plaintiff purchasing an air-conditioning unit from the defendant that exploded shortly after being installed by the plaintiff’s brother in law. The subject matter is a typical consumer type dispute and would be considered too dull to make a television plot line but is realistic enough to hopefully engage the students.

The final DVD includes a number of live demonstrations (or clips) which form the basis of the dispute. The scenes depict the various stages of litigation, including courtroom activities and other dispute resolution processes, eg. client interview, settling a statement of claim, mediation, directions hearings, two interlocutory applications (summary judgment and joinder) and trial extracts. The DVD scenes are complemented by a large file of documents. The file is not dissimilar to what a party’s legal practitioner’s file would look like in such a dispute. There are file notes of telephone calls, the client interview file note, a brief to counsel, court documents and correspondence between the parties and between the plaintiff and his legal practitioner.

A selection of the DVD clips was incorporated into the teaching syllabus for Dispute Resolution in 2006. The classes in which the DVD was utilised incorporated other tasks, such as reading, discussion, role-plays and reflection, to build on the information presented in the DVD.

Individual clips were shown to students in classes which covered the subject topics in the clips. So, for example, in the class on commencement of proceedings, students were shown the client interview clip where the solicitor discussed with the client the nature of the claim and considerations relevant to commencing proceedings.

Ideally, students were provided with a selection of corresponding file documents relevant to the clip a week before they were to be used in class. The documents were made available to students via the online subject page, which included downloadable versions of these materials. Also the clips were made available on the online subject page immediately after the class in which the clip was viewed and discussed.

The timely and limited publication of the clips and corresponding documents to the students enrolled in the subject was designed to encourage students to attend class and not just rely on the notes collated by, for example, a student who took the class last year. The limited publication of the documents also gives each teacher the choice of whether or not to use particular documents in the file. The document file is detailed and was created with the knowledge that it would be unrealistic to discuss all the documents in a first year introductory subject.
As part of the multimedia package, a list of questions pertinent to each clip was also created for discretionary use by the teachers. Students were given a list of questions to consider, based on the scenario in the clip, immediately before being shown the clip. The questions attempted to integrate the practical matters dealt with in the clip with the theory contained in the readings. For example, in relation to the client interview clip, students were asked: ‘What is the dispute about? Is the dispute suited to litigation? What options to litigation does the lawyer mention?’ These questions required students to understand not just the legal practicalities of a dispute but also elements of dispute resolution theory covered by the readings. Class discussions, based on the list of questions provided, occurred after the clips were viewed.

In some instances, students were required to participate in role-play exercises relevant to a particular subject topic. For example, after students were introduced to ADR theory and shown a clip on mediation, they were then divided into groups to participate in various negotiation and mediation simulations. Students were given the opportunity to play a variety of roles, including that of the client, lawyer and/or mediator. This was a valuable experience for students as, later on in the course, they were assessed on their performance in a negotiation. The negotiation assessment exercise was based on a different factual scenario from the one shown in the DVD.

Teachers were generally positive about the use of the DVD as a teaching tool. Some teachers found the clips to be very useful for providing a factual matrix to explain difficult concepts. For example, the interlocutory application seeking to join a third party made the often confusing topic of multiparty joinder much easier to teach. This is because the students were familiar with all the particular parties in the dispute and could therefore focus on the legal concepts rather than be distracted by which party is which. Another great time-saving benefit was the use of the same fact scenario throughout the course. This avoided the need for teachers to explain the facts in each class as the students were intimately familiar with them.

The teachers observed that class discussions that followed the showing of the clips were lively. By showing the clips in class, students were given information on a topic in an easily digestible and engaging form.

Many students who otherwise did not talk in class spoke up. Students who hadn’t done the reading were able to participate in the class discussion, based on what they saw in the clips.

Some of the teachers believed that by giving students a glimpse into the background to a dispute, the clips facilitated student-directed learning and encouraged students to make connections between different topics in the course. This assisted the teachers in conveying an important conceptual point: although the course is taught in specific topic order, according to how the ‘usual’ litigation steps may proceed, there is no set order of process in litigation.

The authors designed a survey to obtain feedback from students, which was distributed before the conclusion of the Dispute Resolution subject held in Semester 2 of 2006. The survey questions were designed to gain a broad overview of student perceptions of the product and gain some insight into how to improve the use of the current product. A similar product could be used in other subjects (such as torts or criminal law).

Of the six streams of Dispute Resolution classes, we surveyed four of the streams. There were 168 students enrolled in those four streams and 113 of those students responded to the survey. Those who did not respond either did not attend class the day the survey was taken or chose not to participate in the voluntary survey.

Of the students taking this course, 85 per cent were in their first year of law studies and were, on average, 20 years of age.

The students were asked how strongly they agreed with the following statement: ‘I found the clips to be helpful as a learning tool’. Of those who responded, 93 per cent (n = 103/111) either strongly agreed or agreed with the proposition. The remainder of students, seven per cent (n = 8/111), were neutral about whether the clips were helpful. Students were then asked to elaborate on their answer by explaining why the scripts were helpful or unhelpful. Several positive themes resulted from this question.

Students found it helpful to see (sometimes abstract) theory and rules put into practice. Some students expressly stated that visualisation/illustration of the process assisted them in understanding the theory and its application in practice. Some students observed that learning from a ‘real-life’ scenario would assist them in applying theory to real-life disputes in future. Another common theme was that the clips gave context to the theory and rules that students were learning. Some students commented that the use of actual parties involved in actual disputes made the subject matter more accessible. Others noted that it was easier to remember the theory/rules when they have been contextualised in a real-life scenario.
The students also found it helpful to follow the same scenario through a number of different topics — this assisted them to bring the subject together at the end of the course. Several students said that the questions based on the clips and post-clip discussions were very helpful in clarifying the issues.

Some students commented that the clips provided a good insight into the behaviour and different roles of lawyers, who not only appear in court but also at client meetings and in negotiations and mediation. This feedback reveals that the DVD helped at least some students understand the relationship between ADR and civil procedure. It also reinforces the importance of the clips in portraying not just a realistic depiction of lawyers but also a good model for students, in terms of ethical and professional behaviour.

To give us greater insight into the results of the survey and to assist us in improving the subject in the future, we asked students two questions about themselves.

First, we asked them if they thought they were visual or verbal learners. Whilst a traditional law course caters primarily for students who are verbal learners, the multimedia product was designed to appeal to those who are visual learners. A strong majority of the students who responded to this question perceived themselves to be at least partially visual learners: 83 per cent (n = 87/105). Only 17 per cent (n = 18/105) of students described themselves as verbal learners. These results appear to be consistent with Felder’s assertion that most students of tertiary age (at least in Western cultures) are visual rather than verbal learners.

Secondly, we asked the students what they based their understanding of legal practice on (eg. television, personal experience, etc). About a third of those who responded to this question, 32 per cent (n = 34/105), said that they based their knowledge of legal practice on what they saw on television (including US dramas, news and current affairs shows). A quarter, 25 per cent (n = 26/105), said that they based their understanding on personal experience (including work experience, family and friends and court attendances).

The students were asked if they understood what was going on in the clips. Of the 14 students (13 per cent, n = 11/105) who did not find the clips or some parts of them easy to follow, most explained that they found the first part of the third party application clip confusing. Some observed that the use of legalese made it difficult for them to follow this part of the clip. The first part of the clip did not deal with subject matter that the students needed to know and understand. It was designed to introduce students to a typical application day before a Master. The roll-call that occurs at such hearings is chaotic to observe, so it is not surprising that some students felt overwhelmed by the first part of the clip. The student feedback has highlighted to the instructors the need to preface the showing of the third party application clip with a short explanation as to its purpose.

The students were also asked how the clips could have been changed (if at all) to enhance their learning. More than half the students did not offer any suggestions for improving the clips when asked. The two main suggestions for improving the clips were better acting and shortening the clips. However, it is possible that these complaints were influenced by the students’ perceptions of how lawyers should look on screen. Given that over a third of students said that they based their knowledge of legal practice on what they saw on television, the influence of the slick lawyer on US shows has likely impacted upon the students perceptions of how a courtroom scenario should be played out. The clips are generally about 15–20 minutes long. Once again, students might have thought that they were unduly long because they are used to television shows having regular advertisement breaks.

In addition to the DVD, students were provided with a selection of court documents relevant to the dispute. Students who participated in the survey were shown some or all of the following court documents:

- the writ and statement of claim;
- a summons and affidavit seeking leave to file a third party notice; and
- documents relevant to the third party application.

The documents themselves are more accurately described as verbal rather than visual. It is useful, however, to discuss the use of the documents as they were intended to complement the DVD in providing a range of learning activities.

The students were asked how strongly they agreed with the following statement: ‘I found the precedent court documents helpful as a learning tool’. Of those students who responded to this question, 61 per cent (n = 59/95) of the students either strongly agreed or agreed with this proposition. Only five per cent (n = 5/95) of the students disagreed. The remainder of students, 34 per cent (n = 32/95) were neutral. Careful thought must be given as to how court and other precedent documents are used in the classroom before introducing them to the students, to ensure that they are not creating superfluous reading material.

On the whole, student and teacher satisfaction with the DVD was reasonably high and student survey responses suggest that the DVD was a useful learning tool.
The DVD did, however, involve a significant time commitment from those involved in the production process and took several years to complete. It will be several years before the authors have the energy to embark on such a project again. Anticipating the investment of time, money and energy that this project would involve, the producers were conscious of creating a DVD that would not date too easily. They were also mindful of creating a DVD that was flexible enough to be used in different course structures. The producers determined that the expense of a DVD project does not make it a good format to be utilised in assessment (other than the first time it is taught, where previous students of the subject do not exist). The primary objective of the DVD was therefore as a teaching tool rather than a means of assessment. No doubt, as the rules of practice and procedure change over time, the DVD may become dated in parts. While it may be possible to explain minor variations between the DVD and current practice to students in class, any major amendments to the civil procedure rules would necessitate the development of a new DVD in the future. Given the positive student feedback, the DVD will continue to be used in Dispute Resolution to reinforce what students learn from reading and class activities. The use of DVD clips and related court documents has proven to be an effective way to achieve the integration of theory and practice that is so important in a subject like Dispute Resolution.

One important feature of this approach to teaching civil litigation has been that students are able to appreciate that the final hearing of a dispute is only one aspect of the resolution of a civil dispute. Even for those few matters that make it to final hearing, the majority of time is spent on other processes, including negotiation, mediation and preliminary hearings. By revealing these processes to students, they are able to obtain a better understanding of the role of civil litigation in the overall administration of justice and can hopefully analyse the process of litigation with a more critical eye.

The tutorial model for undergraduate law courses: objectives, approaches and outcomes
G Wilson

Within undergraduate law programmes the tutorial continues to be the main forum in which students are able to engage and interact with their tutors, discuss the various issues raised by the subjects which they are studying, and resolve any uncertainty or confusion upon their part as to the subject matter under consideration. Tutorials also provide a forum in which opportunities may present themselves for students to gain guidance upon, and practice in, examination technique. The importance of the tutorial forum is regularly emphasised by tutors, and students are constantly instilled with the need to attend their tutorials if they are to gain the optimum benefit from their course and be suitably prepared to succeed in assessment.

In this author’s experience approaches to tutorials have varied between two significantly different, albeit not always mutually exclusive, models, which may possibly represent radically different views as to the main purposes of the tutorial forum itself. The first of these involves students being presented with a series of short, general questions which they may be expected to prepare note style answers to for discussion in class. The questions set (with the exception of problem style questions) will not resemble formal assessment style questions, but instead serve as general markers for discussion of the more pertinent issues raised by the topics under consideration. In this sense there is no rigid structure to the tutorial, but rather general parameters guiding discussion, which may proceed in a variety of ways depending upon the interests or needs of the participants. In marked contrast to this model is one within which students tend to be presented with questions resembling formal assessment style questions. The intention is that students will draft out some form of outline plan or notes upon the questions in advance of the tutorial, which will then serve as a more specific reference point for discussion, with the aim being primarily to collectively answer in some form more specific questions. In this sense the tutorial structure is more rigid. Discussion is largely confined to preparing students for assessment by considering how particular questions should be tackled in an examination or essay setting.

The apparent divergence in approaches towards the delivery of tutorials provides the basis for an exploration of purposes and outcomes which tutorials are intended to serve and how this influences the approaches taken towards their delivery by tutors.

Drawing upon empirical research conducted in a small sample of law schools, this paper aims to consider the different ways in which tutors approach the delivery of undergraduate law tutorials, and to assess the extent to which there may exist tensions between achieving different objectives through the tutorial forum.

To obtain the views of legal academics on approaches to tutorial delivery within the undergraduate law curriculum, a questionnaire was sent to a sample group of academics. The questionnaire consisted
primarily of a box-ticking exercise, but participants were given the opportunity to clarify responses and add any comments they considered relevant to the exercise. The questionnaire was divided into four sections. The first section collected basic statistical information upon the participants and their teaching to provide an overriding picture of the sample group, and to make it possible to identify any trends and patterns in the responses received from academics sharing particular features in common. The following three sections focused specifically upon the perceived purposes of tutorials, the form which the respondents’ tutorials took and the considerations influencing this, and the desired outcomes of tutorials.

To ensure consistency, it was decided to restrict the survey to academics teaching in particular subject areas, and it was sent only to staff with teaching responsibilities in the areas of public law, the law of obligations and land law.

To obtain a representative sample of participants, six law schools were chosen to provide a ‘focus group’ for the survey. To ensure that this group was relatively representative of the wider legal academic community, half of the schools chosen were located in ‘old’ universities and half in ‘new’ universities. Although six law schools comprises a small sample, it is submitted that the range chosen nonetheless provided scope for any diversity in perceptions to manifest itself.

The response rate to the survey was 72 per cent, which included responses from all of the institutions sampled and from academics teaching all of the subject areas which provided the focus for the survey within each institution. Generally speaking, the statistical information obtained indicates a fairly representative sample of participants. Respondents are evenly divided between old and new universities, and those who have taught for varying periods of time. There is also a fairly even divide between those teaching modules through primarily doctrinal and those adopting wider approaches. Most respondents had overall responsibility for the relevant module and tended to set all or at least some of the tutorial tasks for that module.

Participants in the survey were asked to rank on a scale of 1-5 the relative importance which they personally attached to different purposes which tutorials may serve.

Six possible purposes of tutorials were provided, as follows: A. Providing students with a general forum for debating issues raised in the module; B. Providing students with an opportunity to practice answering examination style questions/writing essays; C. Providing an opportunity for students to clear up matters of confusion/difficult points; D. Providing an opportunity for students to develop their oral communication skills; E. Providing a forum for students to interact with their peers; and F. Other purpose.

Respondents tended to attach the strongest importance to the first three of these listed purposes. When a mean result is calculated, the importance attached to each is as follows: A = 4.3; B = 4.0; C = 4.6; D = 3.9; E = 3.3.

From this it would seem that participants overall attached most importance to the role of tutorials in clearing up matters of confusion and providing a general forum for student discussion. To a slightly lesser extent they valued their role in providing students with an opportunity to practice examination/assessment style questions and to develop their oral communication skills.

From the responses to these questions although it cannot be said that tutors generally attach priority to one purpose of tutorials above all others, where tutors have singled out one such purpose only a small minority have stated this as being the provision of an opportunity for students to gain practice in answering examination/assessment style questions. There was no relationship between the importance which participants attached to the various tutorial purposes and either their institutional location, length of teaching experience or subject area.

When asked to rank what they considered to be the relative importance of the different purposes for tutorials in generating student attendance, the mean result for each changes noticeably. While much importance is attached to students desire to receive practice and guidance in preparing for their examinations/essays, and in clearing up matters of confusion or difficult points (with a mean of 4.3 and 4.6 respectively), the other purposes for attending tutorials are not regarded as being of particular importance for students. Those respondents who singled out one perceived purpose for student attendance at tutorials as far more significant than the others primarily singled out gaining guidance with examination/assessment preparation (44 per cent) and the compulsory nature of tutorial attendance (33 per cent).

While many tutors regard tutorials as important for the general discussion forum they provide, they do not feel that students value tutorials in this way but that students do place a heavier emphasis upon the role of the tutorial in providing guidance upon examination/assessment technique.

In anticipation of possible different degrees of emphasis being placed upon the various objectives tutorials are designed to serve, respondents were asked whether during their academic careers they believed that the perceived purposes of tutorials had changed upon the part of either tutors or students.
A majority did not believe that for tutors the perceived purposes of tutorials had changed much or at all (58 per cent). For those who did detect change, the main developments were an increased emphasis upon the development of student skills as opposed to the general dissemination of information and student discussion, and the attachment of greater significance to the role of the tutor in facilitating discussion. This may account for the relatively significant importance attached by respondents to preparing students for examinations/assessment, and suggests that teaching has become more outcome driven.

Popular comments were that students increasingly see tutorials as a supplement to lectures and wish to play a more passive role, leaving the tutor to ‘lead’ them. Another participant commented that students increasingly attend tutorials in order to be prepared for examinations — as an ends to a means — rather than for the educational experience that is the tutorial itself. This sits well with the high level of importance which students were perceived to attach to tutorials as an examination preparation exercise, and the relatively minor level of importance attached to the tutorial as a forum for general discussion.

In conclusion, it seems apparent that from the perspective of tutors several objectives are regarded as of particular importance, particularly clearing up confusion, providing a general forum for discussion, and assisting students in the development of the skills they will need to succeed in assessment. In contrast, students are perceived to be more likely to attend tutorials to receive assistance with their preparation for assessment and sometimes because they are compelled to attend.

Having gained respondents perspectives of the perceived purposes of tutorials, the survey went on to explore how these might influence the approaches which they adopted towards the structuring of the tutorials for which they were responsible. Respondents were asked to consider four questions concerning the approaches which they adopted towards their tutorials.

On the same 1-5 scale used in the previous section, respondents were asked to rank the relative importance they attached to various considerations when setting tutorial tasks. These considerations were as follows: A. Providing a general open forum in which students can debate the issues raised by the relevant topic; B. Providing students with an opportunity to practice answering examination/assessment style questions; C. Providing students with an opportunity to give presentations upon specific topics; and D. Providing students with an opportunity to undertake group work exercises.

The first two of these considerations were of the most importance to respondents, producing mean results of 4.3 (A) and 4.1 (B) respectively. Relatively little importance was attached to the other considerations.

Having established the primary considerations influencing tutors approaches to devising tutorial tasks, respondents were asked how regularly the tutorial tasks which they set (excluding problem-solving exercises) took one of the following forms: A. The questions/tasks are relatively general bullet points serving as loose reference points for discussion; B. The questions/tasks take the form of formal essay style questions; C. The questions/tasks take the form of titles for students to present papers on; D. There are no questions/tasks set as such, simply topics or themes for a completely open discussion; or E. Other form.

The responses obtained demonstrated a tendency upon the part of tutors to deploy a variety of tasks within tutorials, with each approach being used to some extent. However, when a mean figure is calculated for each one, formal essay style questions were, by far, the most commonly used form of tutorial task (mean = 3.3). Tutorials in which there were no questions set as such, simply general bullet points as loose reference points for discussion or titles for students to present papers on were used to a limited extent, both producing a mean of 2.3.

Based upon the responses to the survey it would appear that undergraduate law tutors choose, more often than not, to set as tutorial tasks formal questions resembling those which might feature in examinations or essays. If the tutorial is built around very specific formal questions, to what extent is there a forum for general student discussion and clearing up matters of confusion? Arguably this is likely to depend upon how rigidly or flexibly the tutorial is structured, and what is specifically expected of students who attend. The next two questions asked of respondents sought to obtain some information upon these matters.

Participants were asked to choose from four statements a description which best described the structure of the tutorials which they taught. The four statements descended from describing a very loose structure to a rather rigid one, as follows: A. They are very loosely structured and the boundaries for discussion are quite flexible; B. They are usually loosely structured but some boundaries are imposed upon the scope of what is discussed; C. They are relatively clearly structured and discussion is centred on very specific matters, but there is some flexibility over their content; and D. They are very clearly structured and discussion is confined to very specific matters.
Invariably respondents categorised the tutorials which they taught as being described by statement C (62 per cent). A few regarded their tutorials as being best described by statement B (15 per cent) or D (23 per cent), and none by statement A. Thus, tutors generally appear to structure their tutorials relatively clearly, centring discussion upon very specific matters while leaving some flexibility over content.

Also important in understanding how tutors approach the delivery of tutorials is their expectations of their students, as this provides further evidence of existing perceptions of the tutorial process.

A significant number of respondents expected students to be regularly prepared to contribute towards a general debate on the more controversial or difficult issues raised by a topic either always or often (mean = 4.3), and to have prepared basic notes on questions set for discussion (mean = 3.8). However, there was less expectation that students would have prepared either formal or note form responses to assessment style questions, with the former producing a mean result of 2.8, and the latter 2.5.

That students are expected to be prepared on a rather general level for tutorials suggests further that although tutorial tasks may take the form primarily of the kinds of questions found in assessment modes, the tutorials are intended to provide a more general forum for debating the relevant issues such questions raise, as opposed to a forum which provides a mock assessment opportunity.

To consider whether there existed compatibility with the perceived objectives of tutorials and the approaches taken towards their delivery, participants in the survey were asked to indicate the relative importance which they assigned to a series of possible outcomes from the tutorial process, using the same 1-5 scale used in the earlier parts of the survey. Four tutorial outcomes were listed: A. Students are better prepared for their examinations; B. Students are clearer in their understanding of the issues covered by the tutorial and any controversies or difficulties raised; C. Students have become more confident at engaging in oral argument and have improved their communication skills; and D. Students have been able to develop their interest in the subject area.

When a mean figure is calculated for each of these from the responses obtained, most importance is attached to outcome B (mean = 4.8). This is followed by outcomes D (mean = 4.4), A (mean = 4.3) and C (mean= 3.7). Furthermore, of those indicating the importance of one tutorial outcome above all others, a clear majority (71 per cent) state this to be outcome B. This lends further support to the view that tutors believe that the most important thing to emerge from tutorials is that students are clearer in their understanding of the subject area under consideration. It remains, perhaps, surprising however that given their focus upon improving student understanding of issues, the dominant form of tutorial task is that of the formal essay or problem type question.

A liberal approach to the tutorial would be expected to attach more importance to its role in providing a general forum for students to engage in discussion upon the issues which they have been studying, thus stimulating their interest, and clearing up matters of confusion in order to enable students to be more able to understand what it is they study and appreciate properly the knowledge they acquire, than in preparing students for examination or assessment or particular modes of employment beyond their period of study. By contrast, adopting a vocational approach to the undergraduate law tutorial is likely to produce a view of the tutorial which is heavily related to specified outcomes. Ultimately, assessment within the degree is the means used to assess students’ ability to satisfy certain required skills. Nonetheless, in both instances the values influencing the delivery of education are outcome driven, whether the concern be ensuring that students are prepared to succeed in assessment or that they are equipped to take on particular functions in the world beyond university.

Just as the viewpoint one takes of the purposes of education is likely to inform one’s perception of the purposes of the undergraduate law tutorial, it would consequentialy be expected to influence the approach one adopts in devising tutorial tasks. From a liberal perspective, a more open tutorial model where there are looser boundaries to guide discussion might be expected to be favoured. Different emphases on the part of those more concerned with the achievement of certain outcomes through the tutorial forum is more likely to result in the adoption of a tutorial model in which students are set formal questions for preparation and/or discussion. The use of more formal tutorial tasks is designed to ensure students are developing knowledge and skills that are particularly specified in relation to the topic under consideration, and which seek to stand them in good stead for succeeding in assessment on their course.

What is perhaps surprising — and even possibly of some concern — is that despite an evident attachment to the virtues of a liberal education upon the part of legal academics, there appears to be nonetheless a preference on their part for tutorials that are more outcome driven, particularly in relation to preparing students for assessment.
There have certainly been increased moves in higher education towards the measurement of outcomes. In particular, greater emphasis is increasingly attached to the preparation of graduates for the employment market, and the teaching of skills receives more attention within higher education courses in general. Students are increasingly regarded as consumers, both by educational institutions and themselves, and come to expect more assistance by way of preparation for life beyond their time at university. A greater number are likely to see their degree course as purely a means to an end, and not see the inherent value which it has in itself. Other factors such as the higher number of weaker students and larger class sizes have also perhaps served to make it more difficult to adopt tutorial models which lack an assessment driven, more structured focus. Thus, the apparent contradiction between some academics belief in a liberal education and the adoption of outcome driven tutorial formats can perhaps be attributed, at least in large part, to tensions produced by external factors.

There is certainly scope to open a broader debate upon the extent to which liberal and vocational values influence the agenda for undergraduate law tutorials, and whether legal academics should allow themselves to be compromised by external influences to the extent to which they appear to be.

BOOK REVIEW

Concise Legal Research
Robert Watt and Francis Johns
The Federation Press, 2009, 323pp

When the first edition of this book was published in 1993 it occupied a unique position in legal education as there had been very few texts published on the topic. Those in existence were more oriented towards the student engaged in postgraduate legal research studies. Now of course legal research is regarded not only as a major form of postgraduate study but is becoming a standard requirement in most undergraduate degree programs. This has meant that there has been a major expansion of books dealing with legal research. However despite this, Concise Legal Research has managed to maintain its niche in the field. Why is this? One reason would be that Robert Watt, the original author, has remained as a face-to-face teacher in the subject and therefore has been able to translate his first-hand experience in teaching the subject into each new edition of the book. Additionally he is also a qualified librarian, which has ensured that these additional professional skills continue to contribute to the high quality of the topic legal materials which remains a major component of the text. The introduction of Francis Johns as co-author has injected his particular expertise within the area of on-line date retrieval, apart from his own experience as a law collection consultant.

There will be a temptation for the reader to access those particular chapters which are directly relevant to the research task which is facing them. However this reviewer would recommend that one of the features of the book is that it is written in such a way that enables anyone who is new to the topic of research to obtain an overall knowledge of the subject by reading the book from cover to cover. If this is not an attractive prospect then at least one should read the Introduction — What is Concise Legal Research? This has the advantage of encapsulating in just over a page and a half the needs of which the prospective law student or teacher will need to be aware of when engaging in their own legal research. For the law lecturer it is an ideal format to serve as a text for teaching legal research, particularly for first year students.

All readers are directed particularly to Chapters 1. Citation; 2. Primary Source Material; and 5. Secondary Source Material. These chapters, which deal with the fundamentals of legal research, are written in a clear and readable style, and contain many useful insights. In particular a knowledge of them would enable the reader to gain a mastery over the detailed requirements of legislation, law reports and the more in-depth knowledge of these topics in the particular jurisdictions set out in the other chapters.

Although the authors have integrated the various forms of electronic data retrieval throughout the text, they have still retained in the final chapter a comprehensive list of Non-Commercial Internet Addresses for Legal Research.

The value of the book lies in establishing a feeling of confidence in the reader who might be involved with legal research for the first time. To those who are experienced in legal research this new edition will still serve as both a useful aide-memoire and stimulation for the conduct of their future research.

Emeritus Professor David Barker AM
Editor
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