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A FUTURE FOR LEGAL EDUCATION:  
PERSONAL AND PROFESSIONAL DEVELOPMENT AND ETHICS

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INTRODUCTION

Legal education in the university sector faces major challenges as we digest the recommendations of the Legal Education and Training Review and prepare to respond to the changed regulatory environment currently under planning by the Solicitors' Regulatory Authority (SRA) and the Bar Standards Board (BSB). This paper is developed from one presented at the Nottingham Centre for Legal Education's first Conference on 7 – 8 February 2014. My starting point is that this challenge provides us with a huge opportunity to approach our goals of designing challenging educational experiences for our students while also contributing in a serious way to the personal development of all and the professional development of those interested in entering legal practice. My focus is on the undergraduate law degree, although some of my proposals will be relevant to the Graduate Diploma in Law. My proposal is that we and our students will benefit from our addressing professional ethics in the undergraduate degree, particularly if we think about how it might inform our overall curriculum and if we develop appropriate learning methods to do so. This development, effectively implemented, will contribute to ensuring a future for academic legal education.

LIBERAL, VOCATIONAL AND PROFESSIONAL LEGAL EDUCATION

Proposing to introduce professional ethics into an academic degree raises hackles in some quarters. It is seen as fundamentally vocational in nature and as such antipathetic to the educational goals of an undergraduate degree. It could certainly be introduced in such a way and I share the view that this would be damaging. I need, therefore to be clear that I am not

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proposing that we should teach students the contents of the professional Codes of Conduct.

This would be narrow vocationalism, pander to the differently narrow mind-set of the black-letter law lecturer<sup>1</sup> and be deadly dull. What is more, the knowledge gained would fade as it would exist outside any context or experience, and by the time those students who made it into legal practice were able to make use of it, would be out of date.

Michael Lower distinguishes between vocational and professional legal education.

Professional education is concerned with a knowledge base, a way of reasoning, and an introduction to relevant theory and ideology. Vocational training builds on this but is concerned with the know-how that can be put to use in the office. A professional legal education is one version of a liberal or academic education.<sup>2</sup>

Quoting Bradney, he links this with the purpose of liberal legal education which “involves a search for structures and seeks to inculcate in a student an awareness of the all-pervasive nature of values and questions about values in the world that surrounds them”.<sup>3</sup> I share this view and will argue that professional ethics may be an effective vector for achieving these aims.

## THE REGULATORY FRAMEWORK

In order to place the functions of legal education in their legislative context it is worth going back to the Legal Services Act 2007. This establishes regulatory objectives for the SRA and the BSB and their own regulator, the Legal Services Board (LSB). Amongst those objectives is “encouraging an independent, strong, diverse and effective legal profession”.<sup>4</sup> What is

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more, the LSB has prioritised this amongst its objectives. “Education and training is one of a number of tools available to regulators to manage risk and support the delivery of the regulatory objectives set out in the Act. We consider this has particular relevance to two of the regulatory objectives - protecting and promoting the interests of consumers; and encouraging an independent, strong, diverse and effective legal profession.”<sup>5</sup> The profession is made of its members. We should be encouraging their independence of mind as well as their intellectual abilities. We should also be encouraging in those of our students who do not go on into the legal profession an understanding of what is expected of lawyers and the values that underpin their practice so that as engaged citizens they can hold the legal profession to account.

The Legal Education and Training Review researched the views of practitioners, regulators, academics and other “stakeholders” as to what legal education should address. They found: “The centrality of professional ethics and legal values to practice across the regulated workforce is one of the clearest conclusions to be drawn from the LETR research data.”<sup>6</sup> They also said: “The importance of ethics is signalled, to a high degree, throughout the qualitative data. Professional ethics, and its regulation, are seen as a critical defining feature of professional service.”<sup>7</sup> This led to two key recommendations:

**Recommendation 6:** LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.

**Recommendation 7:** The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner’s role) to an

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understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.

Recommendation 6 refers to the outcomes that entrants to the profession should be able to demonstrate at the time of entering practice. It sets the context for recommendation 7, which proposes outcomes for the undergraduate or academic stage of legal education. It reminds us that what we should aspire to is not limited to knowledge but must encompass understanding, and not merely understanding of the law but of the nature and values of law. This is a normative and not merely a descriptive analysis. It requires us to test laws against underlying values and to be willing to question those values. The interaction of people and the law is mediated by lawyers and students therefore need to understand something of lawyers' work and the values that might underpin it. This is both a professional and a liberal legal education.

### VALUES IN LEGAL EDUCATION

Francis Bacon famously said "Knowledge itself is power".<sup>8</sup> He was talking about the knowledge of God, but his words have been used more often to talk about the knowledge of humans. A law degree provides its students with a lot of knowledge, and knowledge of the legal tools for controlling human behaviour may indeed provide those who acquire it with power. Equally famously, power is said to tend to corrupt.<sup>9</sup> We would not consider denying our students knowledge just because of that corrupting tendency. However, we can design our courses so that we provide students with the skills to use that power effectively and the values to use it well.

Carrie Menkel-Meadow has provided guidance on how we might approach this: 'In my view, what modern legal education should prepare students for is a set of values and skills

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that are informed by what “legal” values and law offer to deal with what are essentially human needs.’<sup>10</sup> The legal values she identifies as “Realisation of ‘justice’” and she presents a set of general “problem-solving” skills.

A sensitivity to:

- i. Fairness
- ii. Peace
- iii. Decision making
- iv. Leadership, facilitation and management
- v. Creativity
- vi. Counselling and collaboration
- vii. Governance.<sup>11</sup>

She goes on to apply this by exploring the values of lawyering in terms of “making, not breaking things”.<sup>12</sup> The ensuing discussion explores legal values not only in their own right but through comparisons with those of other professions. This leads to suggestions as to what we need to encourage our students to learn and proposals as to creative outcomes that might be sought from the “crisis in legal education”. These relate particularly to circumstances in the USA but provide a stimulus for our own aspirations.

A major recent contribution to this debate is the Carnegie Report, *Educating Lawyers*.<sup>13</sup> Drawing from a wide experience far beyond that of legal educators they identify three apprenticeships of professional education. These are:

1. the intellectual or cognitive apprenticeship, which “focuses the students on the knowledge and way of thinking of the profession”.
2. an apprenticeship “to the forms of expert practice shared by competent practitioners”.

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3. “the apprenticeship of identity and purpose [which] introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible ... it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective ... the essential goal ... is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities ... it is the ethical-social apprenticeship through which the student's professional self can be ... explored and developed.”<sup>14</sup>

The Report goes on to argue: “If professional legal education is to introduce students to the full range of professional demands, it has to initiate learners into all three apprenticeships. But it is the ethical-social apprenticeship through which the student's professional self can be most broadly explored and developed.”<sup>15</sup> As with Lower the deep link between liberal and professional education is at the heart of this analysis.

#### THERE'S NO ROOM IN THE SYLLABUS

Academic resistance to the “Foundations of Legal Knowledge”<sup>16</sup> imposed on the qualifying law degree by the professions is understandable and many will welcome it if the results of the SRA's development of an outcomes approach to regulating legal education include their abandonment. Whether or not this happens, there has been a closely-associated claim that the syllabus is already full and that there is no scope to introduce a new subject such as professional ethics. My response to this is two-fold. The first is that professional ethics is not necessarily best introduced to the LLB degree in the form of a discrete module or subject.<sup>17</sup> I will develop an alternative approach below. My second response is that it is not inherently impossible. This can be demonstrated by the experience of the Graduate Diploma in Law programme at City University London. The professional requirements of this one-year full-time programme include coverage of the Foundations of Legal Knowledge plus

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one additional Foundation subject at the choice of the course provider. The Director of the GDL at City, David Herling, introduced Legal Ethics as the additional Foundation subject in order to enable students “to reflect on the ethical challenges that you might face as a lawyer in practice”.<sup>18</sup> An independent evaluation shows that it aims to address, in a thoroughly academic way, the issues raised by Carnegie’s third apprenticeship: “City’s legal ethics course is oriented towards engaging thought-provoking discussion about values, and encourages students to reflect on how their own values will be expressed, tested and developed in legal practice.”<sup>19</sup> If it is possible to achieve this in the constraints of an intensive one-year course which also addresses all the Foundations of Legal Knowledge, this can clearly be achieved in the three years of an undergraduate degree.

#### AN INTEGRATIVE FUNCTION FOR PROFESSIONAL ETHICS

The Carnegie Report notes that the three apprenticeships they identify tend to be in different hands: “Yet within the professional school, each of these aspects of the whole ensemble tends to be the province of different personnel, who often understand their function differently and may be guided by different, even conflicting goals.”<sup>20</sup> This tendency is exacerbated if professional ethics is placed in one of a number of discrete subjects in a degree course. The traditional model of legal education tends to operate in this way. As Jon Harman observed:

One of the problems with language learning is the way it is taught, very linear and strangely scaffolded. I see similar parallels with legal education in how the foundations are taught, seldom with the relational conceptual elements. I once explained to John Flood that I saw the teaching of legal education akin



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to teaching the human anatomy without explaining the interconnecting relationships - this week the foot, next week the heart and so forth.<sup>21</sup>

Similar observations have been made about this traditional model in more academic publications. Richard Johnstone describes it as: “Repetitive, incoherent between years and without planned incremental development, and narrowly focused on doctrine rather than skills, theory, values or attitudes ...”.<sup>22</sup> Earlier, Mary Keyes and Richard Johnstone had identified more related characteristics of the traditional model:

Students are taught the same type of material – a detailed analysis of common law rules – and are given the same kind of assessment – examinations testing mastery of the legal rules and their application to hypothetical problems – semester after semester, in much the same way ... The only thing that changes between subjects and between semesters in the student's progression through the degree is the substantive rules which forms the content of the subjects.<sup>23</sup>

Today this rarely represents the totality of a law student's undergraduate experience. However, in spite of the existence of admirable exceptions, I suggest that most of us will recognise that many of the modules studied by our students share these characteristics. This is stultifying. It tends towards teacher-centred module design leading to passive learning by the student whereas modern learning theory consistently stresses the centrality of student learning in course design. “Learning takes place through the active behaviour of the student; it is what [s]he does that [s]he learns, not what the teacher does.”<sup>24</sup>

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Johnstone's proposal to address this dilemma is a "whole of curriculum design". As he says:

A good law curriculum also needs to be congruent, integrating the teaching of skills, doctrine, theory and ethics and values, and coordinating the curriculum so that students can develop their knowledge, skills and values progressively or incrementally. In other words, the relationship *between subjects* in the curriculum needs to be congruent – both across the curriculum and through the curriculum.<sup>25</sup>

Johnstone gives two examples of law degrees designed in this way. The first is at the University of Technology Sydney, whose curriculum identifies the attributes the degree seeks to encourage in students and maps them across the stages of the degree. The figure below distinguishes intellectual, professional and personal attributes which to a degree mirror the three apprenticeships identified in the Carnegie Report. You can see how, for example, ethics is mapped across the three years of the programme, with specific responsibility for it being accepted in a number of different modules. This enables both a progressive treatment of students' learning and an enhancement of those modules in which it is addressed to lessen the extent to which they are as repetitive as in the traditional model.

Figure 1<sup>26</sup>

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## UTS Law Mapping of Graduate Attributes

### Graduate Attributes Table

The table shows where each attribute will be targeted throughout your course.

The attribute numbers relate to the numbered sections of this workbook.

	Intellectual Attributes				Professional Attributes			Personal Attributes		
	1	2	3	4	5	6	7	8	9	10
<b>Stage 1: Foundations</b>										
70115 Perspectives on Law (8cp)	✓	✓	✓		✓	✓	✓	✓	✓	✓
70120 Legal Method and Research (6cp)	✓	✓	✓	✓						
70218 Criminal Law (8cp)	✓	✓	✓		✓		✓	✓	✓	
70211 Contracts (8cp)	✓	✓	✓		✓		✓	✓	✓	
70311 Torts (8cp)	✓	✓	✓		✓		✓	✓	✓	
70616 Australian Constitutional Law (8cp)	✓	✓	✓		✓			✓		
<b>Stage 2: Essentials</b>										
70317 Real Property (8cp)	✓	✓	✓		✓					
70327 Commercial Law (6cp)	✓	✓	✓			✓		✓		
70516 Equity and Trusts (8cp)	✓	✓	✓	✓	✓					
70417 Corporate Law (8cp)	✓	✓	✓	✓	✓					
70617 Administrative Law (8cp)	✓	✓	✓	✓	✓			✓		
75421 Civil Litigation (6cp)	✓	✓	✓		✓		✓			
70717 Evidence and Criminal Procedure (6cp)	✓	✓	✓		✓		✓	✓		
75420 Ethics and Professional Conduct (6cp)	✓	✓	✓		✓		✓	✓	✓	✓
<b>Stage 3: Options</b>										
75402 Property Transactions or Elective (6cp)	✓	✓	✓		✓	✓				
75403 Commercial & Estate Practice or Elective (6cp)	✓	✓	✓		✓	✓				
75412 Legal Skills or Elective (6cp)	✓	✓	✓		✓	✓		✓	✓	
75413 Advocacy or Elective (6cp)	✓	✓	✓		✓	✓		✓	✓	
75411 Practical Experience (8cp)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

**Intellectual Attributes**

1. Critical Thinking Page 06 - 11
2. Analysis and Evaluation Page 12 - 17
3. Spoken and Written Communication Page 18 - 23
4. Legal Research and Technological Literacy Page 24 - 29

**Professional Attributes**

5. Disciplinary Knowledge Page 30 - 33
6. Lifelong Learning Page 34 - 39
7. Ethics Page 40 - 45

**Personal Attributes**

8. Self and Cooperative Work Management Page 46 - 51
9. Cultural Awareness and Global Outlook Page 52 - 57
10. Social Justice Page 58 - 63

His second example is at Griffith Law School. Here, the same approach was further developed by identifying a series of vertical subjects which were incorporated into a vertical curriculum. This requires students, in each vertical subject:

1. in the early years of the undergraduate program to engage with the basic principles governing its subject matter and skills;
2. in later years to engage with more advanced principles and skills, and the relationship between these principles and skills and other principles and skills;
3. at all stages of the program to use and practice the principles; and

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4. at all stages to undertake assessment tasks in relation to the skill and/or subject matter.<sup>27</sup>

Vertical subjects include skills such as group work, and concepts such as legal ethics. The key concept is to identify points at each stage in the curriculum where each may be addressed in a way which allows for coherence and progression. Michael Robertson, writing at the planning stage of the Griffith vertical curriculum, explains:

The vertical subject is a continuing one that would progress *throughout* the programme in a carefully structured way. It would intersect with and reside within various courses in each semester or year of the programme. The levels of understanding contained in ethics learning objectives would increase in complexity from one host subject to the next. Points of co-existence with other subject areas would be determined by the extent to which practice in those substantive areas unavoidably implicated enquiries about both the role of the lawyer and ethical decision-making in particular. Moreover, in each site in which the vertical subject co-existed with the traditional subject area, ethics learning objectives, teaching and assessment within the host subject would need to be carefully aligned.<sup>28</sup>

This requires a degree of control over the curriculum that may be hard to achieve in many law schools. However, it is clearly possible as the experience of law schools at Griffith and UTS show. Moreover, these curricula integrated a number of vertical subjects. My proposal is more modest: that legal ethics be identified as a vertical subject and planned into the

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curriculum in the way described by Robertson. It would thus meet many of the goals identified by Deborah Rhode in her seminal paper on ethics by the pervasive method<sup>29</sup> and avoid some of the problems she identifies in later writing.<sup>30</sup> Thus, rather than requiring teachers who are uninterested in or antagonistic towards introducing ethics into their classes it should be possible, in a willing faculty, to identify colleagues for whom this will be a worthwhile intellectual and teaching challenge. By providing a coherent, progressive development of students' understanding we should avoid the risk that ethics be perceived as relatively unimportant by not justifying a subject or module of its own.

Different law schools may, of course, take divergent views as to what is appropriate at the undergraduate stage in terms of coverage and personal development. If the professional regulators do remove content requirements as they shift to an outcomes approach there will be considerable scope for such divergence. It may be that one law school would regard their central interest to be to develop students' understanding of the ways in which lawyers interacted with lay clients in different ways and in different circumstances. This might lead to an identification of at least one module in each year which allowed for this. Criminal law, Obligations and Commercial law spring to mind as a possible set which would be simple to introduce and integrate. Another law school might be more concerned to develop students' intellectual understanding of the relationship between law and morality. This would be more challenging as a reasonably sophisticated understanding of basic philosophical concepts would be necessary before any exploration of the relationship was possible. If this were built up in selected modules over later years of the programme colleagues would have to devise learning activities which introduced students to progressively challenging concepts. This should be possible. A third law school might be interested in developing the moral character of their students. They would need to design learning experiences combined with reflection

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on how they were responding to challenges. Here, active use of Rest's Four Component Model of moral development<sup>31</sup> and the Defining Issues Test<sup>32</sup> would be useful.

Although there is considerable agreement as to ethical actions, this is not true of the justificatory principles, nor of how to identify a hierarchy of ethical understanding.<sup>33</sup> This makes it difficult to agree upon a progressive programme of ethical learning appropriate for a vertical curriculum. The experience of successful "whole of curriculum" designs referred to above<sup>34</sup> suggests that this is not impossible and may indeed provide another vector for individual law schools to develop a distinctive approach.

In order to engage colleagues with varying views it is worth considering the different learning methods that might appeal to people with very different approaches to their students' learning.

## LEARNING METHODS

### *Student Law Clinic*

The most profound learning comes from the experience of working with real or at least realistic cases. This provides a depth of insight into academic study which takes students' understanding far beyond the skills they are also acquiring. The variety of approaches which may be used include the in-house advice clinic and placements in other organisations providing legal advice and representation including law firms and NGOs. This is not the place for a full discussion of clinical methods.<sup>35</sup> It should, however, be realised that ethical dilemmas are inherent in working with real clients.<sup>36</sup> Given this, the work at La Trobe in Melbourne in designing a student law clinic especially designed to develop students' ethical understanding and reflection is worth exploring. They argue:

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Clinical method ... properly implemented, offers unrivalled opportunities for exploring and examining the ethical dimension of legal practice. The key to this ... is the existence of spontaneity or “randomness” in the clinic environment. This provides a rich and realistic learning opportunity for both individual student practice and group discussion that shares their experiences and application of ethical decision-making strategies.<sup>37</sup>

It may be objected that the cost of clinical experience puts it beyond the reach of many law schools, especially if it is to be made available to all students. Donald Nicolson has presented low-cost ways of introducing an extra-curricular clinic which nevertheless informs students' other learning.<sup>38</sup> Some of these techniques, such as developing student responsibility for clinic management, may be transferable to the sort of curricular clinic that would meet my proposals for integration, and Nicolson explores these in his 2013 article.<sup>39</sup>

If real-client clinic is unavailable, much of the value of clinical learning may be achieved through the use of simulation.<sup>40</sup> The key achievement of both real-client and simulated clinical approaches is that, instead of students being asked what they would do in a particular situation they are placed in that situation and have to do it, with opportunities of reflection to follow.<sup>41</sup> This provides a much better basis for developing a learning spiral<sup>42</sup> which can be incorporated into the integral role of legal ethics to meet Bruner's ideal of a spiral curriculum.<sup>43</sup> As a learning design tool it has the further advantage of being able to control students' experience in ways unavailable in the real-client clinic.

### *Socio-Legal Studies*

Most student learning is likely to take place in the classroom or on-line and with more conventional student activities. This is no obstacle to developing the insights of a critical

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understanding of the role of lawyers. Indeed, the development of the Law in Context movement<sup>44</sup> is premised on this approach and has been enhanced by the development of socio-legal scholarship in the last 40 years. As John Baldwin and Gwynn Davies have argued:

[I]t is principally through empirical study of the practice of law...and in studying the way legal processes and decisions impact upon the citizen, that the disciplines of sociology and, to a lesser degree, philosophy, psychology, and economics have entered into and enriched the study of law. This multidisciplinary research has, in turn, influenced many aspects of legal practice...Even the rules and procedures of the law, which can seem arcane and specialist, reflect this influence.<sup>45</sup>

This analytical approach is key to a critical understanding of the values of law and of the role of lawyers in relation to those values. As such it properly lies at the heart of any critical liberal education as well as one which is to meet the requirements of the LETR. One objection should be addressed. Amongst the research findings reported by the LETR is the view of practitioners placing socio-legal studies towards the bottom of a ranking of legal subjects in the minds of practitioners.<sup>46</sup> However, it should not be concluded therefore that it is in fact undervalued by practitioners, for there is a methodological flaw here. "Socio-legal studies" is included in a list of knowledge items such as "contract law" and "tort law" into which it simply does not fit. It is a research and learning approach, not a subject. It is no wonder that the practitioners consulted did not know where to place it. It is worth noticing that "professional ethics" appears in one of the two top-ranked positions in each category of



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practitioners, ahead of the Foundations of Legal Knowledge and other conventional subjects.

This, therefore, is not evidence that practitioners do not value socio-legal studies and good arguments are made for their relevance to meeting the requirements of a liberal legal education in the context of the LETR Report by Jessica Guth and Chris Ashford.<sup>47</sup> What is more, Andrew Sanders makes a powerful argument that without a socio-legal approach there is a risk that students will only learn about law for the rich and never understand how it impacts upon most members of society.<sup>48</sup>

The vibrancy of socio-legal research and its appeal to students also makes it an ideal way of developing research-led teaching. This is not simply to develop thoughtful critical future lawyers but lies at the heart of the liberal project of higher education. As the former Archbishop of Canterbury recently argued:

...helping to shape a culture in which it is harder to treat the public as fools, harder to exploit prejudice or fear, and easier to conduct constructive argument in public without the melodrama of extreme polarisation. “The truth will make you free” is a text that as a religious believer I care about deeply. Its application to the life of the university in the wider society is not the least important aspect of what it means.<sup>49</sup>

For students of law a critical understanding of the values of law and legal practice is key to this.

### *Moral Philosophy*

My proposal for integration of ethics across the undergraduate curriculum will only work if a reasonable proportion of faculty colleagues are supportive. Not all will be keen to be

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involved in clinical developments, other approaches to active learning or socio-legal approaches. For colleagues whose preference is for theoretical teaching the ethical issues raised by the LETR report may be approached through moral philosophy, either in its purer form or as mediated through the jurisprudence literature. Jurisprudence was once seen as core to the undergraduate study of law, with all but two of the 1965 law schools making it compulsory.<sup>50</sup> By 1974 this had dropped to 18 out of 25 university law degrees<sup>51</sup> and 12 out of 20 polytechnics.<sup>52</sup> By 2004 only 34% of law schools had a compulsory jurisprudence/legal theory module with a further 14% incorporating it into a compulsory module.<sup>53</sup> Moreover, it is only ranked 13<sup>th</sup> amongst “knowledge subjects” by practitioners.<sup>54</sup> However, I would argue that whether as a discrete module or as an intellectual approach to be applied at more than one point during the degree, it has an important role in ensuring the intellectual challenge and critical edge that a liberal legal education should provide.

Martha Nussbaum proposed a variety of approaches to introducing philosophy into legal education some 20 years ago and I can do no better than present her concluding justification for the proposal:

This world is a philosophical world, whether we like it or not, a world in which philosophical ideas and conceptions are understood or misunderstood, for better or for worse, and action is taken as a result of these understandings. At the same time, for all her weird detachment, and indeed perhaps in part because of that detachment, the philosopher is a contributor to the world. Her thoughts and arguments have pertinence to the world and the potential for leading it to understand itself more fully and

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clearly. I think that these facts give us some powerful reasons to incorporate the teaching of philosophy into legal education.<sup>55</sup>

William Twining has recently presented as one of his four priorities in responding to the LETR: 'Design modules, courses and materials on ethics and values suitable for each stage of LET.'<sup>56</sup> As to teaching jurisprudence he said:

I teach jurisprudence and throughout my career I have thought that I was dealing with values, ethics and normative questions. Questions about personal and professional integrity are philosophical questions: what is ethical integrity for a lawyer presupposes a view on what it means to have individual integrity as a person. ...

I readily admit that in my teaching of jurisprudence I could have focused more on issues of individual integrity in relation to lawyering and judging. I did once try to use Plato's *Gorgias* as a set text, but I could have done much more. Personally, I would have no difficulty in adjusting a jurisprudence course to accommodate such issues. There is a rich treasury of dilemmas and examples, and Dworkin's *Justice for Hedgehogs*<sup>57</sup> and Kronman's *The Lost Lawyer*,<sup>58</sup> among others, could serve as admirable and demanding texts. So I see opportunities rather than a threat to making explicit and relevant basic issues about values and ethics in academic curricula - nor do I see any objection to introducing serious philosophical debates into the later stages.<sup>59</sup>

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There are many starting points and many routes through this rich treasury and many of our students would benefit.

## CONCLUSION

UK higher legal education faces a number of challenges in a world where each law school may wish to develop a distinctive offering. However, the circumstances require sophisticated considerations. Students may join law degrees with aspirations to join the traditional legal professions, but the proportion who maintain that hope declines throughout the degree course.<sup>60</sup> Many will end up in para-legal careers, others doing legal work in commercial or administrative organisations, yet others working in other ways in the economy. It will be hard for a law school to meet all these aspirations with one degree programme. Moreover, the emphasis on “employability” should not be taken to mean that a narrowly vocational approach will be attractive to potential employers. Richard Moorhead explains the experience of Washington & Lee Law School in the USA which found their students’ employability in jobs which required legal qualification declining when they introduced a new curriculum designed to focus on lawyers’ skills.<sup>61</sup> The comparison needs to be made with care. The US JD is (subject to the relevant State Bar exam) the point of qualification, whereas in the UK the professional and apprenticeship stages follow. The fees US law students pay for their JD far exceed those paid by UK students. However, it may be a warning against undergraduate degrees introducing practice skills for their own sake. Experiential and contextual learning should be introduced to develop the person, not to meet narrow vocational objectives.

It is probably the case that the elite sectors of the legal profession, especially when faced with hundreds of well-qualified applicants, see university law school status as a proxy for quality which avoids the need to consider something as complicated and hard to define as a particular approach to learning. Recent research at the Bar shows a strong preference for

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graduates of high status law schools. 71% of all barristers went to Oxbridge or a Russell Group university. This figure went up to 75% in respect of those called to the Bar under the age of 30.<sup>62</sup> Non-elite law schools will have an uphill struggle to challenge this tendency but their best chance is by developing well-educated critical individuals who have a deep understanding of the system in which they are interested, whether as practitioner or citizen. We can provide opportunities for our students to gain experience through their studies which Gandhi, an alumnus of my own law school, could only obtain through the experience of practice.

My joy was boundless. I had learnt the true practice of law. I had learnt to find the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me, that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul.<sup>63</sup>

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\* Professor of Legal Education, The City Law School, City University London. I am indebted to the journal's anonymous referees. Errors and speculations remain my own.

<sup>1</sup> See Allan C. Hutchinson, 'Beyond Black-Letterism: Ethics in Law and Legal Education' (1999) 33 (3) *Law Teacher* 301

<sup>2</sup> Michael Lower, 'The academic / professional tension in the structure of the law degree' paper delivered at W G Hart Legal Workshop, IALS, June 2014

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<[http://ials.sas.ac.uk/research/hart/wgh\\_legal\\_workshop\\_current\\_year.htm](http://ials.sas.ac.uk/research/hart/wgh_legal_workshop_current_year.htm)> accessed 7

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<sup>3</sup> Tony Bradney, *Conversations, choices and chances. The liberal law school in the twenty-first century* (Hart Publishing 2003) 90

<sup>4</sup> Legal Services Act 2007, s 1(1)(f)

<sup>5</sup> Legal Services Board, 2013, 'Increasing Flexibility in Legal Education and Training'

<[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/pdf/20130918\\_consultation\\_paper\\_on\\_guidance\\_for\\_education\\_and\\_training\\_FINAL\\_for\\_publication.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/20130918_consultation_paper_on_guidance_for_education_and_training_FINAL_for_publication.pdf)>

accessed 7 October 2014, at para 29

<sup>6</sup> LETR, 2013, 'Setting Standards: The future of legal services education and training regulation in England and Wales' <<http://letr.org.uk/the-report/index.html>> xiii, accessed 7

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<sup>7</sup> *ibid* 2.71

<sup>8</sup> Francis Bacon, 1597, *Mediationes Sacrae*, 'On Heresies'

<[http://en.wikisource.org/wiki/Meditationes\\_sacrae#11](http://en.wikisource.org/wiki/Meditationes_sacrae#11)> accessed 7 October 2014

<sup>9</sup> Lord Acton, 1887, letter to Bishop Mandell Creighton

<<http://oll.libertyfund.org/titles/2254>> accessed 7 October 2014

<sup>10</sup> Carrie Menkel-Meadow, 'Crisis in Legal Education or the Other Things Law Students should be Learning and Doing' (2013) 45 *McGeorge L Rev* 133, 137

<sup>11</sup> *ibid*

<sup>12</sup> *ibid* 138

<sup>13</sup> William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007)

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<sup>14</sup> *ibid* 28. The selective quotation in 3 is in Graham Ferris, 'Values ethics and legal ethics: The QLD and LETR recommendations 6, 7, 10 and 11' (2014) 48 (1) *Law Teacher* 20

<sup>15</sup> *ibid*

<sup>16</sup> Joint Statement of SRA and BSB, Schedule 2

<<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/jasb-documents/>> accessed 7 October 2014

<sup>17</sup> This is for the positive reasons presented below, and also because of the shift towards an outcomes approach proposed by the Regulators. In 2010 Andy Boon proposed a new Foundation subject in his report for the Law Society, but this was at a time when the Joint Academic Stage Board still controlled the content of the qualifying law degree. His proposals for content are, however, a useful source for anyone considering what an ethics curriculum, however structured, should contain. See

<<http://www.lawsociety.org.uk/representation/articles/report-on-legal-ethics-at-the-initial-stage/>> accessed 7 October 2014

<sup>18</sup> City Law School course description at

<<http://www.city.ac.uk/courses/postgraduate/law#course-detail=1>> accessed 7 October 2014

<sup>19</sup> Magdalene d'Silva, 'A new legal ethics education paradigm: culture and values in international arbitration' (2013) 23(1) *Legal Education Review* 83

<sup>20</sup> Sullivan and others (n 14) at 27

<sup>21</sup> John Harman, post on Basecamp Legal Education Hub, 19/12/2013. This is a discussion forum for those interested in legal education at <<https://basecamp.com>> accessed 7 October 2014

<sup>22</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law', in S Kift, J Cowley, M Sanson and P Watson, (eds) *Excellence and Innovation in Legal Education*, (Lexis Nexis 2011) 2, 3

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<sup>23</sup> Mary Keyes & Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26 (4) *Sydney Law Review* 537, 541

<sup>24</sup> Ralph W Tyler, *Basic Principles of Curriculum and Instruction* (University of Chicago Press, 1949) 63

<sup>25</sup> Johnstone, 'Whole-of-Curriculum Design in Law' (n. 22) 14. Also see Roy Stuckey, et al, *Best Practices for Clinical Legal Education: A vision and a road map* (Clinical Legal Education Association, 2007) <<http://www.cleaweb.org/best-practices>> accessed 7 October 2014, especially ch 3

<sup>26</sup> Presented in Keyes and Johnstone, 'Changing Legal Education' (n. 23) 17

<sup>27</sup> Johnstone, 'Whole-of-Curriculum Design in Law' (n. 23) 22

<sup>28</sup> Michael Robertson, 'Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective' (2005) 8 (2) *Legal Ethics*, 222, 238

<sup>29</sup> Deborah Rhode, 'Ethics by the Pervasive Method' (1992) 42 *J Legal Education*, 31

<sup>30</sup> Deborah Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (Little, Brown & Co 1994) at xxix

<sup>31</sup> James Rest, Darcia Narvaez, Muriel Bebeau and Stephen Thoma, *Postconventional Moral Thinking: A Neo-Kohlbergian Approach*. (Lawrence Erlbaum Associates 1999)

<sup>32</sup> Muriel Bebeau, 'The Defining Issues Test and the Four Component Model: Contributions to Professional Education' (2002) 31 *J. Moral Educ* 271, 283

<sup>33</sup> My thanks to the journal's anonymous referees for this insight.

<sup>34</sup> Johnstone, n. 25

<sup>35</sup> For a critical analysis of how these methods may be used, see Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press 2013). For proposals as to how they might specifically be used to address legal ethics, see Nigel Duncan and Susan Kay, 'Addressing lawyer competence, ethics, and professionalism' in Frank Bloch (ed) *The Global*



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*Clinical Movement: Educating Lawyers for Social Justice* (OUP 2010). For a recent development in Scotland see Donald Nicolson, 'Calling, character and clinical legal education: a cradle to grave approach to inculcating a love for justice' (2013) 16 (1) *Legal Ethics* 36

<sup>36</sup> See for example, Nigel Duncan, 'Responsibility and ethics in professional legal education' in Burrige et al (eds) *Effective learning & teaching in law* (Kogan Page 2002) 105 at 124

<sup>37</sup> Liz Curran, Judith Dickson and Mary-Anne Noone, 'Pushing the boundaries or preserving the status quo? Designing clinical programmes to teach law students a deep understanding of ethical practice' (2005) 8 *Int J Clinical Legal Education* 104. See also Nicolson 'Calling, character and clinical legal education' (n 35)

<sup>38</sup> Donald Nicolson, 'Learning in Justice: ethical education in an extra-curricular law clinic,' in Michael Robertson, Lillian Corbin, Kieran Tranter, Francesca Bartlett (eds) *The Ethics Project in Legal Education* (Routledge 2010) and Nicolson 'Calling, character and clinical legal education' (n 35)

<sup>39</sup> Nicolson (n 35)

<sup>40</sup> Roger Burrige and Nigel Duncan, 'Role-play and simulation in the clinic' in Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education: Active Learning in your Law School* (Blackstone Press 1998) 173-208

<sup>41</sup> Donald Schön, *Educating the Reflective Practitioner* (Jossey-Bass 1987)

<sup>42</sup> David Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, (Prentice Hall 1984)

<sup>43</sup> Jerome Bruner, *The Process of Education* (2<sup>nd</sup> edn, Harvard University Press 1976) 13, 52-54

<sup>44</sup> William Twining, *Law in Context: Enlarging a Discipline* (Oxford University Press 1997)

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<sup>45</sup> John Baldwin and Gwynn Davis, 'Empirical Research in Law' in Peter Cane & Mark Tushnet, *The Oxford Handbook of Legal Studies*, (OUP 2003) 881, quoted in Hazel Genn, Martin Partington, and Sally Wheeler, *Law in the Real World: Improving our Understanding of How Law Works* (Nuffield Foundation, 2006) [http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/inquiry\\_report.pdf](http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/inquiry_report.pdf), accessed 7 October 2014 at 1.

<sup>46</sup> LETR, (n. 6) Table 2.4, 34.

<sup>47</sup> Jess Guth & Chris Ashford, 'LETR: Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 (1) *Law Teacher* 5

<sup>48</sup> Andrew Sanders, 'The Nature and Purpose of the Law Degree in the Light of LETR: The Centrality of Socio-Legalism', in Sonia Harris-Short, Hilary Sommerlad, Steven Vaughan and Richard Young, *The Futures of Legal Education and the Legal Profession*, (Hart forthcoming)

<sup>49</sup> Rowan Williams, 'No fooling about impact', Times Higher Education, April 17, 2014.

<sup>50</sup> John Wilson, 'A survey of legal education in the United Kingdom' [1966] *JSPTL* 1, 44.

<sup>51</sup> John Wilson and Stan Marsh, 'A second survey of legal education in the United Kingdom' [1975] *JSPTL* 239, 280

<sup>52</sup> *ibid* 283

<sup>53</sup> Phil Harris and Sarah Beinart, 'A survey of law schools in the United Kingdom' (2005) 39 (3) *Law Teacher* 299, 311

<sup>54</sup> LETR Report (n. 46). This finding is, to a lesser degree susceptible to the same criticism as that of the inclusion of 'socio-legal studies' as a subject

<sup>55</sup> Martha Nussbaum, 'The use and abuse of philosophy in legal education' (1993) 45 *Stanford Law Review* 1627, 1645

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<sup>56</sup> William Twining, 2014, 'LETR: the role of academics in legal education and training: 10 theses', 48 (1) *Law Teacher*, 94, 103

<sup>57</sup> Ronald Dworkin, *Justice for Hedgehogs* (Belknap Press 2011)

<sup>58</sup> Anthony Kronman, *The Lost lawyer: Failing Ideals of the Legal Profession* (Belknap Press 1993).

<sup>59</sup> William Twining, (n. 56) 102.

<sup>60</sup> Alison Bone, 'The twenty-first century law student' (2009) 43 (3) *Law Teacher*, 222, 228-9. Penny Childs, Nigel Firth and Hugo de Rijke, 'The gap between law student career aspirations and employment opportunities, (2014) 48 (1) *Law Teacher* 51, 55-58. See also, Melissa Hardee, 'To prescribe or not to prescribe? That is the question,' 2014, 48, 1 *Law Teacher*, 69.

<sup>61</sup> Richard Moorhead at <http://lawyerwatch.wordpress.com/2013/06/27/letr-ii-employability-may-not-be-what-really-employers-want/> accessed 7 October 2014. James Moliterno has explained the rationale behind this development in 'The Future of Legal Education Reform', 2013, 40 *Pepp. L. Rev.* 2. For details of the Washington & Lee initiative see <http://law.wlu.edu/thirdyear/> accessed 7 October 2014.

<sup>62</sup> Bar Standards Board, 'Barristers' Working Lives: a second biennial survey of the Bar', 2013, at [https://www.barstandardsboard.org.uk/media/1597662/biennial\\_survey\\_report\\_2013.pdf](https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf), accessed 7 October 2014, 23.

<sup>63</sup> Mohandas Gandhi, *The Story of my Experiments with Truth*, Vol 1, (Navajivan Trust 1927) Part II, ch. 22.