

Centre for Legal Education Annual Conference 2014

The Value of Legal Education

Abstracts

If I'd known then what I know now, a reflection on legal education and training by a young lawyer abstract

Alexia Binns

Alexia Binns will personally reflect on elements of the 'What is valued and required from the Legal Services Sector?' section of Chapter 2 of the Legal Education and Training Report in her presentation. In particular Alexia will comment on the qualifying law degree and her experience of the core subjects as a foundation for her knowledge base and relevance in her career to date.

Alexia will also review the LPC in particular, the need for students to research and gain work experience in areas of law prior to commencing the LPC but also to take electives for sheer enjoyment of the subject. She will discuss that LPC providers should engage with a wide variety of employers about the subjects that they wish students to be offered as electives.

Alexia will evaluate the most commonly talked about knowledge area for prospective and current commercial solicitors; commercial awareness. She will explain how her legal education helped to foster her commercial awareness and the need for commercial awareness to be introduced to students from the qualifying law degree stage.

Bringing the outside in

Rod Brazier

If, as educators, we are interested in our subject matter, then we're going to be passionate about teaching. Similarly, if a student enjoys learning and finds common ground with a subject then they're more likely to embrace it.

Teaching on the foundation year of a four year degree is challenging and our institution attracts students from diverse backgrounds with wide ranging skill sets. Most of them

haven't achieved A-level (or equivalent) qualifications whilst many are from overseas, so we needed to produce an adaptable approach – at our establishment, one size does *not* fit all! We wished to introduce 'instructional scaffolding'; simply, by using experiential education, we empowered students to structure their own programme (with a little help and guidance).

The Citizens, Law and the State module has seen traditional lectures and seminars replaced with a classroom full of political parties living the lives of MP's and a 'media group' who scrutinize and pressurize. They have fun, learn whilst they do and see the law from a different perspective.

Similarly in Legal Environment, students have explored the legal issues in the wake of a fatal train crash, considering duty relationships and causation and the bio-ethical and legal issues relating to end-of-life decision-making.

Material is provided in the form of mock up newspaper articles, TV clips, press conferences and much more.

Following the first semester, a student commented that 'the teaching had been sneaky' and that the students 'had been enjoying the modules so much they hadn't realised how much they were learning.'

We would like to tell the story of how we introduced experiential learning and how we have inspired students by making them the voice of their learning.

Learning and teaching within the legal services organisation: a collaborative clinic

Jane Ching

Increasingly, organisations are focussing on the learning and teaching that takes place within the workplace. This may be for pragmatic reasons, because of changes in regulatory structure (such as the SRA's outcome 7.6 or the introduction of the CILEx competency framework) or following the introduction of new educational routes (such as apprenticeship). The LETR final report endorsed collaborative consistency between "what is learned in formal education and what is learned in the workplace" and recommended distinct support for supervisors of periods of supervised practice across the sector.

Drawing on experiences from the SRA's work-based learning pilot (supporting and assessing achievement of "day one" competences in the workplace context), this interactive 60 minute workshop will use both collaborative sharing of problems and solutions amongst practitioners and academics, as well as DVD and other material to promote effectiveness in:

- Supporting workplace learning generally;
- Developing useful in-organisation CPD activity.

The future of legal education: professional development and ethics

Nigel Duncan

This paper will build upon a keynote address to be given at the Higher Education Academy Law Summit in January 2014. It will explore the developing debate since the publication of the LETR Report in June on how best to respond to the report's recommendations relating to legal values and ethics. In particular it will consider different approaches which may be adopted, including the theoretical, the socio-legal and the experiential, and explore what learning outcomes might be associated with each approach. A focus of interest will be the extent to which different potential outcomes might meet the demands of a liberal education in law and also the concerns of the professions and the professional regulators. It will be informed by research into the development of professionalism in the legal and other professions and by the debate at the HEA Law Summit.

The Legal Education and Intellectual Property Value Interface

Janice Denoncourt

It has never been more necessary to be able to measure the objective value and subjective quality of intellectual property assets. The phrase intellectual property refers to the bundle of legal rights arising from the creative genius of the human mind. These legal rights play a key role in the economic prosperity of a nation and serve to motivate creative individuals to share their intellectual pursuits with society.

However, measuring the value of IP rights requires an interdisciplinary approach involving both the accounting and legal disciplines. IP requires joined-up thinking to overcome the 'information asymmetry' which currently exists in the field of IP finance. Only when the full value and quality of patents as a store of potential financial value is better understood, will IP owners be able to access the funds they need to commercialise their inventions and share them with the world.

The legal and accounting & finance professions need to be better able to understand and communicate (interface) with each other in order to facilitate access to finance. At this juncture IP law education has an important role to play. If the subjective quality of IP assets is more fully understood, the easier it becomes to realise the value of those assets. Thus, crucially, legal education can positively impact on the value of IP. This paper proposes a

new direction for legal education appraising a curriculum for the pioneering field of IP finance education.

Do We Need to Talk About Our Ethics in Order to Know How to go About Teaching Ethics?

Graham Ferris

As academics we may want to teach students about ethics. Indeed LETR has recommended that in legal education, including the undergraduate degree, more attention should be given to ethics, values and professional identity. Some people have concerns over the appropriateness of teaching ethics and in particular professional ethics, but they are not my concern here. Some people feel it would be a good thing to make more of values and ethics and thereby support the identity projects of students. However, for these people there are several sources for trepidation in this area:

- Is concern with values likely to become propaganda?
- Are we expert in ethics?
- Are we experts in the theory of ethics, but perhaps even more worryingly in ethical practice?
- If we are not experts then can we teach the subject?
- Should we not emphasise the distinction between ethics or morals and the law?
- Does such an emphasis entail we should teach law and *not* ethics?

In answer to these concerns this paper argues that:

1. We need to reflect upon our own professional ethics as academic practitioners – as teachers and educators;
2. That this reflection will lead us to believe we have a duty to teach ethics;
3. That this reflection will help us to think more clearly and constructively about the problems of increasing the ethical and value content of legal education and the proper place of professional ethics and identity within such educational practice.

As Simon Blackburn noted:¹

“The educator will not countenance a habit of finagling or lying or taking opportunistic advantage of others, since these things generally diminish the agents well being. We should educate people for whom we care into the habits that are most likely to benefit them, and on this account, these will be the paths of virtue. Generally speaking people will do well by doing good, or at least by avoiding doing bad.”

¹ Ethics: A Very Short Introduction, pp.97-98.

It is possible to have an unethical educational system that works against the best interests of the students within it. Our primary task must be to avoid the mis-education of the law student. To do this requires a greater commitment to value discourse and support for ethical behaviour. If we first attend to the ethical demands of our own role we are already better equipped to support the ethical development of our students.

To be effective we will need to be self-aware, avoid hypocrisy, and be willing to support student self-discovery rather than imposing our own preferences. In the words of Derek Bok:²

"It is not the place of faculty members to prescribe what undergraduates ought to consider virtuous. But surely faculties should do whatever they can to prepare their students to arrive at thoughtful judgments of their own."

To walk this line between malign neglect and officious assertion requires some ethical self-consciousness on the part of legal academics. This paper suggests possible directions for such reflections but argues the process is necessary and pressing regardless of the eventual resolution of conflicting ethical positions.

The crisis of function of legal education

John Flood

Legal education is either in the midst of crisis or enjoying a renaissance, depending on which part of the world one is in. Real divergence is happening as many parts of the world are moving away from British-style LLB degrees to US-style JD degrees. The market perception is that JD degrees are "practice ready" in ways which the British LLB fails to be. Whether this is true or not is open to question and the perception is probably based on a move to professionalize legal education and shift it to a second degree. This gives the academy more opportunity to generate finance from legal education and gives the profession false hope that its new recruits are ready to practice law. Yet we know that general counsel are refusing to pay for first and second year associates because they think they are paying for training rather than actual work.

As result of the financial crisis legal practice and the profession has changed to adapt to straitened times. Layoffs, greater use of contract lawyers, legal process outsourcing are some of the ideas adopted. Behind this is a change in the structure of the legal

² D.C. Bok (2006) *Our Underachieving Colleges* p. 150.

profession which is leading to greater segmentation and fragmentation. Tournament theory of law firms is dead. Instead we have a greater deprofessionalization that is producing bigger numbers of paralegals, interns, legal technicians, apprentices and more.

The result is that legal education is in crisis but it is a crisis of function. What is it for? Is it to train an elite or is it to mass produce drones?

Valuing Socio-Legal and Liberal Legal Education: Implications of the LETR

By Dr Jessica Guth and Professor Chris Ashford (to be presented by J Guth)

The Legal Education and Training Review which reported in June 2013 conceded that undergraduate law degrees are generally outside the remit of the review other than when there is a direct impact on the provision of legal services. On first glance therefore the review has few implications for those of us interested in delivering a liberal legal education and developing socio-legal approaches to law and legal study. However, on closer reading, the report contains a number of suggestions which, if taken up by regulators, have significant potential to change law degrees, even if regulation remains 'light touch'. This paper sets out why we should value socio legal approaches to legal education and liberal legal education, how those two link and what the implications of the LETR on them might be.

Improving learning environments, increasing value

Jon Harman

My talk shall explore a number of convergent and divergent themes occurring in higher education and their relevance to legal education.

I shall walk through the "education is broken" narrative and its meaning, what this means to legal education and how legal education is seen as a business commodity, examining some of the issues around the privatization of both higher education and legal education.

The talk shall then cross analyse against this back drop the value of legal education to a student, expressly looking at elements from QAA, LETR and student satisfaction and experience. I will question how we analyse and improve our learning environments (learning design and analytics) to potentially increase value.

Whilst my talk will raise many unanswered questions, I will conclude with thoughts on some potential futures for professional education post the MOOC hype.

The value of CPD for solicitors

Pamela Henderson

This workshop, presented by, will:

- offer an overview of the key components of the current CPD frameworks and outline the work conducted on the review commissioned by the Solicitors' Regulation Authority;
- discuss how the current framework is functioning 'on the ground', including:
 - what motivates individual solicitors to engage in CPD activity and whether they perceive it to have real value for them;
 - the main challenges experienced by solicitors under the current CPD framework and how this impacts upon the effectiveness of the CPD that they undertake;
- explore models of good practice currently operating within the solicitors' profession; and
- consider how a new CPD framework might function, so as to develop standards in the profession.

Education and licence to practise – what is being certified, when and for whom?

John Hodgson

Currently, in England and Wales, authority to provide reserved legal services (and concomitantly membership of the established regulated professions) depends on certification of the academic and vocational stages, plus training contract, pupillage, CILEX work based learning etc.

Those professionals work in a relatively narrow range of organisations – law firms, chambers, GLS, CPS, local authorities and commercial in-house.

The introduction of ABS, and the shift to entity rather than activity regulation has again challenged the validity of the current 'universal qualification' model, whereby a solicitor or barrister is formally able to act in any reserved area, subject to the personal ethical/regulatory obligation to operate within one's capacity (e.g. SRA O (1.4) and (1.5)).

At present academic and vocational stages are normally passed by achieving a defined qualification – QLD, GDL, CILEX L6, LPC, BPTC, QLTT (although transfers in are conceptually different). There are exceptions by way of apprenticeship models, APL, *Morgenbesser* etc., but these do not affect the principle, and apply to a small minority of entrants.

The shift to more emphasis on 'Day 1 outcomes' seems likely to destabilise this model.

The reality is that there are multiple areas of legal activity - criminal law, public law/private law, transactional work, dispute resolution, work for individuals/corporates. In reality they are not readily substitutable. A criminal advocate can retrain as a conveyancer, but should not claim to be one. It is possible to operate in 2 + fields simultaneously, but a different knowledge base and skill set is needed for each.

A lawyer's licence ought to be seen as a driving licence. – there is a common core, but being able to ride a moped or control a motor mower does not authorise driving a coach or 48 tonne artic.

Could adopting this approach square the circle of personal/entity/activity regulation, and if so – what goes on the licence?

The Legal Education Advancement Digihub

Professor Rebecca Huxley-Binns

Nottingham Law School

This presentation will share the background to the creation of a collaborative webpage which will serve as a hub for research and development in legal education and training, and a portal to other sites about law, and legal (including services) education and training. Taking recommendation 25 of the Legal Education and Training Review research phase as her starting point, Becky will share the work in progress towards a LEAD website and will discuss content, management, creation and administration of the site.

The value of teaching co-operation as a new legal skill

Jo Long

This presentation shows the exploring process of a constructing skill-based legal curriculum for Chinese international commercial lawyers.

The presentation may be roughly divided two parts:

1. Establishing a new skills-based curriculum for Chinese international commercial lawyers.
2. The value of co-operation as one of the legal skills and the value of teaching co-operation

The new skills-based curriculum will be led by international commercial legal practice. Anglo-American legal education tradition will be followed by the new curriculum as English

and American law firms are dominating the global legal services market at present and will maintain their leading position in the foreseeable future.

Legal skills are the heart of the new curriculum. Exclude the traditional DRAIN set, co-operation is considered to be important for international commercial legal services as well. Normally, in the context of complex international legal services market, multiple segregated teams of expertise are brought together for specific projects while there are also culture conflicts, language differences and law barriers etc. exist. It may be impossible or very difficult for a single person or two to have knowledge of how to deal with all these obstacles. However, it is possible and easier to have someone who can mediate among the differences and manage them work together. Lawyers are somehow in a good position to do this work because they need to participate every aspect of the project as a whole process. Therefore, co-operation may raise as one of the legal skills for international commercial lawyers and will benefit them if be taught before they enter into legal professional work.

The 3 "R's": a Radical, Realist Redesign of the LLB

Professor Scott Slorach

A realist perspective of legal education is that one of its major values will be the opportunities ultimately available to its graduates, and the related consequential benefits to employers and society. In the UK, the USA, Canada and a number of other jurisdictions, this real value of legal education – to students, professions and consumers of legal services – is the subject of review and debate. With increased personal and governmental costs of legal education, is it providing the best value to these interest groups? In his 2012 lecture – "Reforming Legal Education" – Lord Neuberger mooted a "practical skills curriculum" to complement the academic core of a degree, as it seemed to him that "both university and non-university legal education should develop what may be characterised as professional skills to a fuller degree than currently". Such a view has been the topic of comparatively unresolved debate for some time (see Twining "Pericles and the Plumber", 1967). However, it is argued that in current times the potential value to students of an undergraduate legal education that provides a realist rather than purely academic perspective is worth pursuing. It was to this end that the LLB the subject of this presentation was developed.

The Value(s) of Legal Education
Professor Judith Welch Wegner, University of North Carolina, USA

This keynote session will provide an overview of the “value” of legal education and the “values” that animate the enterprise. It will offer a comparative perspective that draws from experience in legal education in the United States and in Australia, and will invite UK participants to compare their experiences to those in these other countries.

The presenter is one of the authors of the report on legal education by the Carnegie Foundation for the Advancement of Teaching, published in 2007 (“Educating Lawyers”) as well as a contributor to the ongoing work of the Clinical Legal Education Association in the United States (among those contribution to the “Beyond Best Practices” publication that is forthcoming). She has also recently completed a research leave spent at the University of New South Wales, Australia, in order to learn more about forward-thinking assessment practices in Australia.

The session will argue that commenters who focus on the economic value of law degrees are missing important insights regarding broader intellectual and civic values that undergird legal education. The session will also contrast values implicit in “liberal arts” degrees in law at the bachelors’ degree level and “professional values” implicit in law degrees at an advanced level.

Participants will be invited to reflect on the UK’s LETR (Legal Education Training Review) and its final report issued in June 2013 (<http://letr.org.uk/wp-content/uploads/LETR-Report.pdf#page=1&zoom=auto,0,843>) and to consider how insights from the US and Australia may illuminate next steps for legal education reform in the UK.

Learning while you are earning
Colin Witcher

Students, academics and practitioners may have very different conceptual understandings of the value of legal education. Having experienced both classroom teaching, simulations and formal work place learning, my presentation will involve a practical explanation of and commentary on the academic/vocational legal education and training steps from the view point of a person who has recently endured them; i.e. a student.

The discussion will focus on the values of work based learning, and on the value of legal education to students, through the lens of the sandwich degree, and whether a “simulated” experience can serve any true purpose, through the lens of the BPTC and including analysis of the Wilson and Wood Report on the structure of the BTPC (formally the BVC/Bar Finals).